

*A. C. Banerjee*

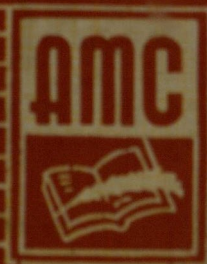
**INDIAN**

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VOLUME THREE

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**INDIAN CONSTITUTIONAL DOCUMENTS**

**1757—1947**

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# INDIAN CONSTITUTIONAL DOCUMENTS

1757—1947

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## PREFACE TO THE FIRST EDITION

This volume, like the preceding one, is intended to facilitate the study of Indian constitutional history. I have incorporated in it documents of various types: statutes, speeches, official statements, treaties, extracts from books, etc. The development of a constitutional system and the ramifications of an ever-growing administrative machinery cannot be understood simply from an analysis of legislative enactments. I have, therefore, tried to collect materials which an orthodox constitutional lawyer would hesitate to use but which historians can hardly afford to ignore. The abundance of materials has made it impossible for me to include extracts from the Government of India Acts, 1919 and 1935. I have also found myself unable to provide space for documents relating strictly to administrative problems. Towards the close of the period covered by this volume the problem of the States became closely associated with the constitutional problem in British India. As in the preceding volume, I have included some documents relating to the Indian States. Lack of space, however, is responsible for the exclusion of documents relating to the demands of the States people and the introduction of reforms in some of the States. For the convenience of the general reader I have added some notes and references and also a brief introductory survey. I hope they will be of some assistance in understanding the documents, although it is obvious that it is not my purpose to give an exhaustive summary of Indian constitutional history.

The volume ends with the frustration created by the Simla Conference of 1945. I have deliberately omitted any reference to the work of the Cabinet Mission (March-June, 1946). I hope, in common with all my fellow-countrymen, that the Constituent Assembly which is soon going to meet will be able to give India freedom and peace. If it succeeds in ushering a new era in our national history, the constitutional historian will have to record its achievements in volumes not encumbered with the story of past failures.

A. C. BANERJEE

## PREFACE TO THE SECOND EDITION

*Indian Constitutional Documents* was originally published in two volumes. The first volume covered the period 1757-1858; the second volume dealt with the constitutional developments in India under the British Crown (1858-1945). I have now found it necessary to reprint the book in a larger form. So I have divided it into three volumes: Volume I, 1757-1858; Volume II, 1858-1917; Volume III, 1917-1939. Documents relating to the years 1939-1945 have been transferred to my book *The Making of the Indian Constitution* which covers the period 1939-1947.

The present edition of this volume contains many new documents. Document nos. 5, 8, 9, 16, 17, 18, 19, 20, 21, 33, 41, 45, 47, 51, 53, 55, 56, 57, 63, 69, 70 have been inserted for the first time. Some new extracts have been added to Document nos. 12, 24, 32, 36, 37, 49, 52, 54. Introductory notes have been added to some of the documents. The *Introduction* has been partly re-written, but its scope remains unchanged. I hope this edition will be more useful to its readers in studying the period 1917-1939 than its predecessor.

A. C. BANERJEE

## PREFACE TO THE THIRD EDITION

In the present edition some new documents have been included, but the documents relating to the period 1936-1939 have been transferred to a new Volume, i.e. Volume IV.

A. C. BANERJEE

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# INTRODUCTION

## *The Mont-Ford Reforms*

The Congress-League Scheme<sup>1</sup>, which followed the agreement between the Indian National Congress and the Muslim League, had many defects and was probably unworkable,<sup>2</sup> but it undoubtedly increased the strength of the Congress and made it necessary for the British Government to listen to its demands. There was, as yet, no question of struggle, violent or non-violent, for the achievement of Swaraj; self-government was expected to come through 'progressive improvement in our mental, moral and material condition'. But the growing strength of the Indian nationalist movement and the part played by India in the Great War led the British Government to survey the Indian problem, in Asquith's words, 'from a new angle of vision'. The conclusion formed by the British Government was put in the Montagu-Chelmsford Report in the following words: "Indians must be enabled in so far as they attain responsibility to determine for themselves what they want done".

The Declaration<sup>4</sup> of August 20, 1917, was 'revolutionary' in the sense that it promised responsible government 'in the familiar British way'. It was a clear repudiation of the Morley-Minto policy, which had made no concession to the Congress demand for self-government within the British Empire.<sup>5</sup> It was 'a declaration of belief in the philosophy of liberalism'. It was, we are told, based on the idea that liberty alone fits men for liberty.<sup>6</sup> But the machinery devised in accordance with this 'belief in the philosophy of liberalism' was hardly calculated to pave the way to liberty. The result was that the Act of 1919<sup>7</sup> was accepted by the Moderates to whom the mere recognition of India's 'eventual'<sup>8</sup> right to self-government was a great step

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<sup>1</sup> See *Indian Constitutional Documents*, Vol. II, pp. 286-288.

<sup>2</sup> See *Indian Constitutional Documents*, Vol. II, pp. 286-288.

<sup>3</sup> See *Indian Constitutional Documents*, Vol. II, p. 288.

<sup>4</sup> Document No. 1.

<sup>5</sup> See *Indian Constitutional Documents*, Vol. II, pp. 286-288.

<sup>6</sup> Coupland, *The Constitutional Problem in India*, Part I, pp. 53-54.

<sup>7</sup> Document Nos. 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 18, 21, 22, 23, 24,

25, 26.

<sup>8</sup> Document No. 2.

forward, but it was rejected by the Congress<sup>1</sup> which was by far the most influential political body in India.

The Mont-Ford Reforms synchronised with a decisive stage in the evolution of the Congress from a constitutional body to a revolutionary organisation. The impact of the war, the tragedy at Amritsar, the Khilafat Movement which temporarily bridged the gulf between the Hindus and the Muslims—all these created a new situation and demanded a complete reorientation of policy and methods. Mahatma Gandhi brought from South Africa a spirit of direct struggle and a technique (*Satyagraha*) which, he claimed, never failed. The Congress was infected, and the fundamental change in its character was reflected in the first article of the constitution adopted in 1921: "The object of the Indian National Congress is the attainment of *Swarajya* by the people of India by all legitimate and peaceful means".<sup>2</sup> Self-government *within* the British Empire was no longer the goal, 'though it was not expressly ruled out'.<sup>3</sup> The goal was no longer to be attained solely through 'progressive improvement in our mental, moral and material condition' or through 'constitutional' means. Then followed what Coupland describes as 'The Revolt of the Congress'.

Of all the defects of the Act of 1919 particular attention may be directed to Dyarchy,<sup>4</sup> absence of even partial Responsible Government at the Centre,<sup>5</sup> and consolidation of separate electorates.<sup>6</sup> Dyarchy certainly failed to satisfy the Indian people. Those who accepted it found that it was too complicated to be smoothly worked. The Central Legislature harassed the Executive instead of controlling and influencing it. The consolidation of separate electorates made it difficult for Hindus and Muslims to work together in the political field and steadily destroyed the communal harmony arising out of the Khilafat Movement.

### *Revision of Mont-Ford Reforms*

The opposition to the Act of 1919 did not soon exhaust its force; on the other hand, it became gradually stronger and more

<sup>1</sup> Document Nos. 7, 10.

<sup>2</sup> Document No. 53.

<sup>3</sup> Coupland, *The Constitutional Problem in India*, Part I. p. 67.

<sup>4</sup> Document Nos. 2 (II), 12, 26.

<sup>5</sup> Document Nos. 17, 22.

<sup>6</sup> Document Nos. 2 (III), 11, 16.

effective. On February 18, 1924, the Central Legislative Assembly carried a resolution at the instance of Pandit Motilal Nehru, demanding a Round Table Conference for framing a constitution for India.<sup>1</sup> Owing to the policy of obstruction pursued by the Swarajists<sup>2</sup> no stable Ministry could be formed in Bengal and the Central Provinces. The Government of India partly responded to public opinion by appointing the Reforms Enquiry Committee under the Chairmanship of Sir Alexander Muddiman.<sup>3</sup> The response of the British Government took the shape of the all-white Simon Commission. In spite of the boycott organised by the Congress<sup>4</sup> the Simon Commission carried on its investigations which were ultimately summarised in its Report.<sup>5</sup> Meanwhile the Congress was changing its creed to complete independence<sup>6</sup> although the Nehru Committee recommended Dominion Status<sup>7</sup> and the atmosphere in the country was changing for the worse.

In October, 1929, the British Government accepted Sir John Simon's suggestion of summoning a conference of representatives of British India and the Indian States. The deliberations of the Round Table Conference might have been more useful and practical had it been a smaller and homogeneous body. The emergence of the Federal idea as a practical solution of the Indian constitutional problem was the only tangible achievement.<sup>8</sup> Mahatma Gandhi's appeal to trust the Congress<sup>9</sup> found no response, and his failure to solve the communal problem led to Ramsay MacDonald's "Communal Award" and the Poona Pact.<sup>10</sup> Thus the system invented in 1906 was consolidated and extended in 1932.

The proposals of the British Government (embodied in a White Paper published in 1933) were scrutinised by a Joint Parliamentary Committee presided over by Lord Linlithgow.

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<sup>1</sup> Document No. 17.

<sup>2</sup> Document No. 10.

<sup>3</sup> Document No. 12.

<sup>4</sup> Document No. 20.

<sup>5</sup> Document Nos. 21, 22, 23, 24, 25, 26, 31.

<sup>6</sup> Document No. 30.

<sup>7</sup> Document No. 27.

<sup>8</sup> Document Nos. 34, 37, 51.

<sup>9</sup> Document No. 33.

<sup>10</sup> Document No. 35.

The Government of India Bill based on the White Paper and the Report<sup>1</sup> of this Committee became an Act<sup>2</sup> on August 2, 1935.

*The Act of 1935*

It is interesting to compare Sir Samuel Hoare's defence<sup>3</sup> of the Act of 1935 with Mr. Attlee's criticism<sup>4</sup>, in view of the fact that twelve years later it fell to the latter's lot to modify the traditional British policy towards India. In India the Act proved unsatisfactory to all important parties.<sup>5</sup> The Congress point of view<sup>6</sup> was clearly expressed in the sober and analytical address of Dr. Rajendra Prasad in Bombay in 1934. The Muslim League condemned the Federal Scheme as "fundamentally bad.....most reactionary, retrograde, injurious and fatal to the vital interests of British India *vis 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", although the Provincial Scheme was to be "utilised for what it is worth". The Princes lost their enthusiasm and became reluctant to commit themselves to a system which implied loss of autocratic privileges; Lord Linlithgow's attempts to convince them of the potentialities of the Federal Scheme did not succeed.

The Provincial Scheme contained in the Act of 1935 was put in operation in April, 1937. After the elections, which resulted in Congress victory in most of the Provinces, the question of office-acceptance became acute. The Muslim League was then just coming out of the wilderness. It eagerly captured Provincial administration wherever it could, but the Congress remained aloof in distrust. Lord Linlithgow was very anxious to prove the worth of the Constitution of which he himself was one of the framers. He solemnly assured the Congress that the Governors would not interfere in the day-to-day

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<sup>1</sup> Document Nos. 37, 38, 39.

<sup>2</sup> See *Indian Constitutional Documents*, Vol. IV, Document No. 1.

<sup>3</sup> Document No. 42.

<sup>4</sup> Document No. 43.

<sup>5</sup> Document No. 40.

<sup>6</sup> Document Nos. 40 (I), 41.

<sup>7</sup> Document No. 40 (II).

administration of the Provinces. The Congress accepted office. But the crisis of the Second World War widened the gulf which separated the Congress from the British Government. The Congress Ministers resigned. Provincial Autonomy in most of the Provinces was replaced by the dictatorial rule of the Governors under Section 93 of the Act of 1935<sup>1</sup>.

### *Provincial Autonomy*

The most important feature of the Act of 1935 was Provincial Autonomy. From this point of view it marked the culmination of the reaction against the Charter Act of 1833, which had made the Provincial Governments completely subordinate to the Central Government in legislation as well as administration. That centralisation led to inconvenience and even conflict; the growing complexities of legislation and administration demanded gradual relaxation of the control of the Government of India<sup>2</sup>. The Act of 1861 introduced partial decentralisation in the sphere of legislation, and Lord Mayo's scheme of financial decentralisation introduced a new tendency in Indian administration. In 1891 Lord Lansdowne declared, "We are all of us fond of dwelling upon the necessity of decentralising our administration". He found in the States a good instrument of decentralisation.<sup>3</sup> In the days of Lord Curzon the old policy of centralisation was to a large extent restored. In 1907 Lord Morley appointed the Decentralisation Commission, which recommended the relaxation of Central control over the details of Provincial administration. Certain changes in the system of financial administration were introduced in 1912, but there was no basic alteration in the relations between the Central and Local Governments.

A new policy was indicated by the Government of India in a despatch to the Secretary of State, dated August 25, 1911, in which it was observed, "...it is certain that, in the course of time, the just demands of Indians for a larger share in the government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the supreme authority of the Governor-

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<sup>1</sup> See *Indian Constitutional Documents*, Vol. IV.

<sup>2</sup> See Bisheshwar Prasad, *The Origins of Provincial Autonomy*.

<sup>3</sup> See *Indian Constitutional Documents*, Vol. II, p. 348.

General in Council. The only possible solution of the difficulty would appear to be gradually to give the provinces a larger measure of self-government, until at last India would consist of a number of Administrations, autonomous in all Provincial affairs, with the Government of India above them all, and possessing power to interfere in case of misgovernment, but ordinarily restricting their functions to Imperial concern". Although the Secretary of State, Lord Crewe, declared that decentralisation did not imply popular control over Provincial administration, yet the idea of "Administrations autonomous in all Provincial affairs" captured the imagination of Indian political leaders. The Congress-League Scheme declared: "The Government of India shall not ordinarily interfere in the local affairs of a province, and powers not specifically given to a Provincial Government shall be deemed to be vested in the former"<sup>1</sup>. The Montagu-Chelmsford Report recommended that centralisation must diminish in proportion to the introduction of popular control over Provincial administration<sup>2</sup>. The Act of 1919 freed the Provincial Governments to a large extent from the control of the Government of India by providing for delegation and devolution of authority<sup>3</sup>, but the constitution remained unitary.

The idea of creating a Federation composed of British Indian Provinces and Indian States had originated even before the introduction of the Montagu-Chelmsford Reforms,<sup>4</sup> but it did not take a practical shape with the support of the Princes before the Round Table Conference<sup>5</sup>. In a Memorandum circulated by Mahatma Gandhi at the Round Table Conference the Congress standpoint was expressed as follows: "The future constitution of the country shall be federal. The residuary powers shall vest in the federating Units, unless, on further examination, it is found to be against the best interest of India." While recommending Provincial Autonomy the Joint Parliamentary Committee emphasized that the unity of India must be maintained.<sup>6</sup>

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<sup>1</sup> See *Indian Constitutional Documents*, Vol. II, pp. 294-295.

<sup>2</sup> Document No. 2 (IV).

<sup>3</sup> Document Nos. 2 (IV), 5.

<sup>4</sup> Document No. 51 (IV).

<sup>5</sup> Document Nos. 37, 51.

<sup>6</sup> Document No. 37.

The type of Provincial Autonomy introduced by the Act of 1935 did not satisfy the Congress,<sup>1</sup> although Lord Linlithgow repeatedly emphasized its political value. The Muslim League was definitely hostile to the Federal Scheme, but it decided, in the hope of capturing power in the Muslim-majority Provinces, that "the Provincial Scheme of the constitution be utilised for what it is worth".<sup>2</sup> The way was thus prepared for the attempt to vivisect India on communal grounds.

### *The Communal Problem*

The communal unity symbolised by the Khilafat Movement reached its climax in 1921, but soon afterwards a gradual worsening of the communal situation began. All hopes of forging new bonds of unity between the Congress and the League were practically given up on the failure of the All Parties' Conference in Calcutta in 1928. No concession on the part of the Congress<sup>3</sup> could create a new atmosphere, and the British Government tried its best to prevent the emergence of any united political front in India.<sup>4</sup> Mr. Jinnah circulated his "Fourteen Points".<sup>5</sup> In the Round Table Conference the Nationalist Muslims had no representative, and when Pandit Madan Mohan Malaviya held a Unity Conference at Allahabad to placate the Muslim League, Sir Samuel Hoare offered better terms (33 per cent. representation in the Central Legislature and separation of Sind). All chances of unity were thus irretrievably lost, and the solid product of the Round Table Conference was the "Communal Award"<sup>6</sup> devised by the British Government. The Congress adopted an anomalous attitude towards the "Communal Award",<sup>7</sup> but this halting concession failed to satisfy Mr. Jinnah and his followers.

Mr. Jinnah was already giving up his old nationalist ideas

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<sup>1</sup> Document No. 41.

<sup>2</sup> Document No. 40.

<sup>3</sup> Document Nos. 11, 36.

<sup>4</sup> See p. 170, Lord Birkenhead's letter.

<sup>5</sup> Document No. 36 (II). See Coupland, *The Constitutional Problem in India*, Part II, p. 111. All these points, except one, were practically conceded by the Reforms of 1935.

<sup>6</sup> Document No. 35.

<sup>7</sup> Document No. 36.

and increasing his influence on his own community.<sup>1</sup> He decided to accept the Provincial Scheme of the Act of 1935 although he was strongly opposed to the Federal Scheme.<sup>2</sup> When the Congress accepted office in certain Provinces in 1937 Mr. Jinnah protested strongly against what he called the policy of "Hindusthan for the Hindus". He "exposed" the "game" of "Congress Fascism" and levelled some specific charges against the Congress Ministries. These charges were repudiated by the Congress, and Mr. Jinnah made no attempt to substantiate them, although he demanded a Royal Commission composed of judges. He found in the Congress demand for a Constituent Assembly an attempt to consolidate the dreaded "Hindu Raj". No agreed solution of the constitutional problem was thus possible. The outbreak of the Second Great War widened the gulf between the three parties—the British Government, the Congress and the League. Mr. Jinnah began to develop the theory of "two nations" which Sir Wazir Hasan had propounded in his Presidential address at the Bombay session of the Muslim League in 1936:

"It should always be borne in mind that India is a continent. It should further be borne in mind that the Hindus and the Mussulmans inhabiting this vast continent are not two communities but should be considered two nations in many respects".<sup>4</sup>

### *The Indian States*

Lord Curzon described the Indian Princes as "colleagues and partners"<sup>5</sup> of the British rulers of India. In other words, to quote Mahatma Gandhi, they had become "British officers in Indian dress"<sup>6</sup>. As a result of his transformation into "an integral factor in the Imperial organisation of India" the "Native Chief" gradually lost his contact with the people; he was found

<sup>1</sup> See H. Kabir, *Muslim Politics*, pp. 10-12; B. M. Chaudhuri, *Muslim Politics in India*, pp. 46-47.

<sup>2</sup> Document No. 40 (II).

<sup>3</sup> See *Indian Constitutional Documents*, Vol. IV.

<sup>4</sup> Mohammad Noman, *Muslim India*, p. 326.

<sup>5</sup> *Indian Constitutional Documents*, Vol. II, p. 349.

<sup>6</sup> Document No. 52.

The type of Provincial Autonomy introduced by the Act of 1935 did not satisfy the Congress,<sup>1</sup> although Lord Linlithgow repeatedly emphasized its political value. The Muslim League was definitely hostile to the Federal Scheme, but it decided, in the hope of capturing power in the Muslim-majority Provinces, that "the Provincial Scheme of the constitution be utilised for what it is worth".<sup>2</sup> The way was thus prepared for the attempt to vivisect India on communal grounds.

### *The Communal Problem*

The communal unity symbolised by the Khilafat Movement reached its climax in 1921, but soon afterwards a gradual worsening of the communal situation began. All hopes of forging new bonds of unity between the Congress and the League were practically given up on the failure of the All Parties' Conference in Calcutta in 1928. No concession on the part of the Congress<sup>3</sup> could create a new atmosphere, and the British Government tried its best to prevent the emergence of any united political front in India.<sup>4</sup> Mr. Jinnah circulated his "Fourteen Points".<sup>5</sup> In the Round Table Conference the Nationalist Muslims had no representative, and when Pandit Madan Mohan Malaviya held a Unity Conference at Allahabad to placate the Muslim League, Sir Samuel Hoare offered better terms (33 per cent. representation in the Central Legislature and separation of Sind). All chances of unity were thus irretrievably lost, and the solid product of the Round Table Conference was the "Communal Award"<sup>6</sup> devised by the British Government. The Congress adopted an anomalous attitude towards the "Communal Award",<sup>7</sup> but this halting concession failed to satisfy Mr. Jinnah and his followers.

Mr. Jinnah was already giving up his old nationalist ideas

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<sup>1</sup> Document No. 41.

<sup>2</sup> Document No. 40.

<sup>3</sup> Document Nos. 11, 36.

<sup>4</sup> See p. 170, Lord Birkenhead's letter.

<sup>5</sup> Document No. 36 (II). See Coupland, *The Constitutional Problem in India*, Part II, p. 111. All these points, except one, were practically conceded by the Reforms of 1935.

<sup>6</sup> Document No. 35.

<sup>7</sup> Document No. 36.

and increasing his influence on his own community.<sup>1</sup> He decided to accept the Provincial Scheme of the Act of 1935 although he was strongly opposed to the Federal Scheme.<sup>2</sup> When the Congress accepted office in certain Provinces in 1937 Mr. Jinnah protested strongly against what he called the policy of "Hindusthan for the Hindus". He "exposed" the "game" of "Congress Fascism" and levelled some specific charges against the Congress Ministries. These charges were repudiated by the Congress, and Mr. Jinnah made no attempt to substantiate them, although he demanded a Royal Commission composed of judges. He found in the Congress demand for a Constituent Assembly an attempt to consolidate the dreaded "Hindu Raj"<sup>3</sup>. No agreed solution of the constitutional problem was thus possible. The outbreak of the Second Great War widened the gulf between the three parties—the British Government, the Congress and the League. Mr. Jinnah began to develop the theory of "two nations" which Sir Wazir Hasan had propounded in his Presidential address at the Bombay session of the Muslim League in 1936:

"It should always be borne in mind that India is a continent. It should further be borne in mind that the Hindus and the Mussulmans inhabiting this vast continent are not two communities but should be considered two nations in many respects".<sup>4</sup>

### *The Indian States*

Lord Curzon described the Indian Princes as "colleagues and partners"<sup>5</sup> of the British rulers of India. In other words, to quote Mahatma Gandhi, they had become "British officers in Indian dress"<sup>6</sup>. As a result of his transformation into "an integral factor in the Imperial organisation of India" the "Native Chief" gradually lost his contact with the people; he was found

<sup>1</sup> See H. Kabir, *Muslim Politics*, pp. 10-12; B. M. Chaudhuri, *Muslim Politics in India*, pp. 46-47.

<sup>2</sup> Document No. 40 (II).

<sup>3</sup> See *Indian Constitutional Documents*, Vol. IV.

<sup>4</sup> Mohammad Noman, *Muslim India*, p. 326.

<sup>5</sup> *Indian Constitutional Documents*, Vol. II, p. 349.

<sup>6</sup> Document No. 52.

more "on the polo-ground, or on the race-course, or in the European hotel"<sup>1</sup> than among his suffering subjects. Some wise British administrators foresaw the inevitable effects of this growing estrangement between the Rulers and the people. One Viceroy after another—from Lord Lansdowne to Lord Linlithgow—warned the Princes that their States should be well-governed. The spirit underlying these warnings was quite in harmony with the system of Patriarchal Government which prevailed in British India till the early years of the present century; but as a result of the gradual introduction of political reforms in British India that oft-repeated insistence on good government became an anachronism. It was certainly too late in 1939 to say that "the decision as to the constitution best suited to the needs of his people rests with the Ruler himself to take, and . . . no pressure will be brought to bear on him in this respect by the Paramount Power".<sup>2</sup> This policy might have been appropriate if the British Government recognised the validity of the Nizam's claim that Hyderabad<sup>3</sup> was quite independent "save and except matters relating to foreign powers and policies";<sup>4</sup> but the implications of paramountcy set forth in Lord Reading's famous letter to the Nizam and in the Report of the Butler Committee<sup>5</sup> reveal the hollowness of British respect for the internal autonomy of the Princes. On the whole, the policy pursued by the Government of India to the question of constitutional reforms in the States justifies the conclusion that the Princes were deliberately left free to continue the medieval system of autocracy as long as they remained submissive to the Political Department of the Government of India.

The legal and historical aspects of "treaty rights" were discussed by the Nehru Committee<sup>6</sup> and the Butler Committee<sup>7</sup>. These discussions were more or less academic. The Nehru Committee rightly pointed out that the question of the States "is more a case for the constructive statesman than for the analyti-

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<sup>3</sup> Document No. 48 shows that other States also claimed similar rights.

<sup>4</sup> Document No. 45.

<sup>5</sup> Document No. 50.

<sup>6</sup> Document No. 47.

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cal lawyer". Even the 'analytical lawyer' could hardly afford to forget that treaties concluded more than a century ago under circumstances having not the remotest resemblance to the political condition of India in the thirties of the present century, and differently interpreted by the Paramount Power at different times, could no longer be invoked in defence of a system which public opinion was not prepared to tolerate. The Indian States were not governed by International Law, but the principle of *rebus sic stantibus* is based on sound practical considerations which statesmen cannot afford to ignore.

The Nehru Committee discussed the question whether the Paramountcy of the Crown could be transferred to the Government of India if India attained Dominion Status. The Act of 1935 (and later, the Indian Independence Act, 1947) repudiated the claim of the Nehru Committee that such transfer was permissible. The Act of 1935 provided that the Crown Representative, not the Governor-General or the Government of India, would deal with the claims of Paramountcy. The Congress adopted a cautious policy towards the States, but the growing political discontent in British India did not leave the States unaffected. Lord Linlithgow failed to persuade the States to join the proposed Federation. It was left for Sardar Vallabhbhai Patel to remove the barriers between "British India" and "Princely India" and to relegate to the care of the historian the multi-coloured relics of our romantic past.

### *Retrospect*

In a sense the constitutional history of India begins in 1917. The three Indian Councils Acts (1861, 1892, 1909)<sup>1</sup> did not transfer power to India, nor did they encourage feeling of responsibility in the elected Indian members of the Legislatures. The authors of the Montagu-Chelmsford Report observed that the Morley-Minto Scheme failed because it "ceased in the brief space of ten years' time to satisfy the political hunger of India".<sup>2</sup> Had they been able really to feel the pulse of this country, they would have understood that the Reforms of 1909

<sup>1</sup> *Indian Constitutional Documents*, Vol. II.

<sup>2</sup> *Report*, Para 100.

more "on the polo-ground, or on the race-course, or in the European hotel"<sup>1</sup> than among his suffering subjects. Some wise British administrators foresaw the inevitable effects of this growing estrangement between the Rulers and the people. One Viceroy after another—from Lord Lansdowne to Lord Linlithgow—warned the Princes that their States should be well-governed. The spirit underlying these warnings was quite in harmony with the system of Patriarchal Government which prevailed in British India till the early years of the present century; but as a result of the gradual introduction of political reforms in British India that oft-repeated insistence on good government became an anachronism. It was certainly too late in 1939 to say that "the decision as to the constitution best suited to the needs of his people rests with the Ruler himself to take, and . . . no pressure will be brought to bear on him in this respect by the Paramount Power".<sup>2</sup> This policy might have been appropriate if the British Government recognised the validity of the Nizam's claim that Hyderabad<sup>3</sup> was quite independent "save and except matters relating to foreign powers and policies";<sup>4</sup> but the implications of paramountcy set forth in Lord Reading's famous letter to the Nizam and in the Report of the Butler Committee<sup>5</sup> reveal the hollowness of British respect for the internal autonomy of the Princes. On the whole, the policy pursued by the Government of India to the question of constitutional reforms in the States justifies the conclusion that the Princes were deliberately left free to continue the medieval system of autocracy as long as they remained submissive to the Political Department of the Government of India.

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<sup>2</sup> *Report*, Para 100.

had not 'satisfied the political hunger of India' even when they were promulgated. Looking back on the events of the period before 1947 we may observe that the Governments of Britain—whether Liberal, or Conservative, or Labour—never made any earnest attempt "to satisfy the political hunger of India" till circumstances made it absolutely necessary for Britain to withdraw from India. What the "agitators" said in those days of frustration will now, it seems, be acclaimed as the verdict of sober history. Had Britain realised the intensity of India's "political hunger" the Mont-Ford Scheme might have been more generous. Whatever concessions it made were due, not to generosity or political sympathy, but to pressing political and military necessity. Referring to Mr. Montagu's Announcement of August 20, 1917, an American writer says: "It was the product of motives that were more or less contradictory. India was to be rewarded for her loyalty and at the same time bribed to keep quiet while the Empire was fighting for its life".<sup>1</sup> These 'contradictory motives' undoubtedly explain some of the contradictions and incongruities in the Act of 1919. But that Act undoubtedly made a new departure in British Indian history: for the first time in the history of British rule it provided for transfer of power, even though the transfer was halting and the power extremely limited.

It is interesting, if unprofitable, to speculate whether the Act of 1919 contained within itself germs of steady constitutional progress. One writer says: "The chief obstacle was political rather than constitutional. There was only one large and well-organized party or political bloc in India and it was irreconcilable".<sup>2</sup> This attempt to distinguish between political and constitutional obstacles to the working of the Act of 1919 is really begging the question. No constitution can be worked successfully in any country if it fails to satisfy the "political hunger" of the people. If organised political opinion is irreconcilably opposed to a particular constitution it is useless to discuss its theoretical merits or demerits. The British Government knew that the only "well-organized party" in India, i.e., the Congress, was "irreconcilable". Had it been really anxious to

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<sup>1</sup> W. R. Smith, *Nationalism and Reform in India*, p. 82.

<sup>2</sup> W. R. Smith, *Nationalism and Reform in India*, p. 112.

secure genuine constitutional progress it would have tried to satisfy this party instead of weakening it by encouraging Moderates and Muslims. Even from the strictly constitutional point of view the British Government and its agents in India jeopardised the success of the "experiment"<sup>1</sup> by ill-advised opposition to popular wishes and opinions. Lord Reading used the power of certification to protect the Indian Princes from criticism and to increase the salt tax. In his famous "Steel Frame" speech in the House of Commons on August 2, 1922, Mr. Lloyd George declared that he could see no time when India could dispense with the guidance and assistance of the Indian Civil Service. Popular suspicions were strengthened by the appointment of the Lee Commission and confirmed by its recommendations. An American writer admits that "the British civilians as a class had . . . been obviously hostile to the Reforms".<sup>2</sup> If the Nationalists were guilty of destructive criticism and wrecking tactics, the rulers were no less guilty of destructive speeches and provocative actions:

So the Act of 1919 failed, and the British Government recognised its failure by appointing the Simon Commission. Once again it failed to take into account the views—call them prejudices if you will—of "the only one large and well-organized party" in India. It did not strike the British rulers that a political enquiry boycotted by the leading exponents of popular wishes could not succeed. True to traditional British policy, Lord Birkenhead tried "to terrify the immense Hindu population by the apprehension that the Commission is being got hold of by the Moslems and may present a report altogether destructive of the Hindu position". An American writer says, "If Lord Birkenhead and his associates did not deliberately intend to insult and humiliate the people of India they were woefully ignorant of racial psychology".<sup>3</sup>

As the Simon Commission proceeded with its work in spite of Congress boycott it was, to quote its own words, "increasingly impressed by the impossibility of considering the constitutional

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problems of India without taking into account the relations between British India and the Indian States". So it recommended that the British Government should summon both representatives of British India and representatives of the States to a conference "for the purpose of seeking the greatest possible measure of agreement for the final proposals which it would later be the duty of His Majesty's Government to submit to Parliament". This was the origin of the Round Table Conference. The idea of including "British India" and "Indian India" in one comprehensive constitutional scheme was a novelty in those days, and from the political and constitutional points of view it was certainly a welcome novelty.

✓ But was it an attempt to rally the Princes against the rising tide of Nationalism? Many shrewd observers of political events in India suspected that in summoning the Princes to the Round Table Conference the British Government was not guided by a genuine desire to bring uniformity to India's political scene; it was rather anxious to utilise the Princes for the purpose of nullifying in practice such transfer of power as it might be forced to make in theory. It must not be forgotten that, in Mahatma Gandhi's words, the Princes were "British officers in Indian dress"<sup>1</sup>. These "officers" could hardly be taken as friendly and reliable partners by the Nationalists who wanted real transfer of power. But the Government of India Act made the establishment of federation dependent upon the co-operation of the Princes.<sup>2</sup> It was to be, said the President of the Congress, "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".<sup>3</sup>

It is somewhat strange that the Princes finally refused to be roped in by the Paramount Power. They decided not to join the Federation, and their non-co-operation, apart from the policy of the Congress and the Muslim League, torpedoed the carefully framed Federal Scheme. As Dr. Rajendra Prasad had predicted, ". . . the Princes themselves will be more helpless than they are now and will soon realise the effect of a federation which is conceived to keep them free from the baneful interference of British India people but nonetheless subservient to the

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Viceroy".<sup>1</sup> Acceptance of the Federal Scheme would mean for the Princes submission to dual authority. The Federal Government of India, in which the Congress was sure to exercise predominant, if not always effective, influence, would control the administration of the States in some essential matters, and it was well-known that under modern conditions the Centre was likely to grow at the cost of the units. But acceptance of Federal control would not free the Princes from the undefined control of the Paramount Power. The Report of the Butler Committee had not accepted the Princes' views on Paramountcy. When the Act of 1935 was on the anvil the Princes wanted an authoritative definition of Paramountcy; but the reply was vague and disappointing. "The nature of their relationship to the King-Emperor," observed the Secretary of State, "is a matter which admits of no dispute." In other words, Paramountcy would remain paramount even if some part of "internal sovereignty" was surrendered to the Congress-dominated Federation. Why should the Princes welcome two masters in place of one?

If the Princes were afraid of the Congress, the Congress was also afraid of them. One of the principal objections of the Congress to the Federal Scheme related to the position of the Princes in the Federation<sup>2</sup>. Of course there were other objections, *e.g.*, no real transfer of power in the Centre, defects of the Provincial Scheme, special powers of Governor-General and Governor, protection of European interests, etc.<sup>3</sup> The Congress pursued a consistent policy of opposition to the Act of 1935, particularly to the Federal Scheme, and laid down the democratic principle of framing a new constitution through a really representative Constituent Assembly. The British Government did not take this proposal seriously, and it found an able ally in Mr. Jinnah, whose only constructive (?) suggestion came in a nebulous form in 1940 in the shape of the famous Pakistan resolution.

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<sup>2</sup> See pp. 268, 280.

<sup>3</sup> Document Nos. 40 (1), 41.

# INDIAN CONSTITUTIONAL DOCUMENTS

## 1. MONTAGU'S DECLARATION<sup>1</sup>, 1917.

[Mr. Montagu had been Parliamentary Under-Secretary for India under Lord Morley and Lord Crewe. His views on the relation between the 'Home' Government and the Government of India alarmed Lord Minto. Mr. Montagu said in his Budget speech in August, 1910, "The relations of the Viceroy to the Secretary of State are intimate and responsible. The Act of Parliament says 'that the Secretary of State in Council shall superintend, direct and control all acts, operations, and concerns which in any way relate to or concern the government and revenues of India, and all grants of salaries, gratuities or allowances, and all other payments and charges whatever out of or on the revenues of India'. It will be seen how wide, how far-reaching, and how complete these powers are. Lord Morley and his Council, working through the agency of Lord Minto, have accomplished much".<sup>2</sup> Regarding this speech Lord Minto wrote to Lord Morley on August 18, 1910, ". . . his reference to the position of the Government of India has taken every one aback. I had not realized that the Viceroy was merely an *agent* and the Government of India apparently only a registry office ! . . . . Chapter V on 'The Home Government'<sup>3</sup>. . . . in Sir J. Strachey's book *India, Its Administration and Progress*, explains the view I have always understood to be accepted as to the relations of the Secretary of State and Government of India. . . ."<sup>4</sup>

Montagu on  
authority of  
Secretary  
of State

Minto's view

In 1912 Mr. Montagu came to India to acquaint himself personally with the country, her people and her problems. Mr. C. Y. Chintamani says, "Mr. Montagu was not an ordinary friend of India. He had a passion for India. As a result of all that I saw and knew and learnt I do not hesitate to give the first place to Mr. Montagu among all the Secretaries of State for India. . . . no one before or after Mr. Montagu came anywhere near him in love of India and service of the Indian people."<sup>5</sup>

Montagu  
"had a  
passion for  
India"

Soon after his arrival in India Lord Chelmsford came to the conclusion "that the endowment of British India as an

<sup>1</sup> House of Commons, August 20, 1917.

<sup>2</sup> John Buchan, *Lord Minto*, pp. 309—310.

<sup>3</sup> See *Indian Constitutional Documents*, Vol. II, Document No. 23.

<sup>4</sup> Lady Minto, *India, Minto and Morley*, p. 408.

<sup>5</sup> *Indian Politics Since the Mutiny*, pp. 79, 80.

time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

Co-operation and sense of responsibility shown by Indians will determine stages of progress.

Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course to Parliament.

## 2. MONT-FORD REPORT, 1918.

[Mr. Montagu came to India in November, 1917. His published *Diary* gives some account of his activities in this country. The *Report* was drafted by Mr. (later Sir) William Marris<sup>1</sup> of the Indian Civil Service, and published in July, 1918. The Government of India Bill based on it was introduced in the House of Commons on June 2, 1919. The Joint Parliamentary Committee, presided over by Lord Selborne, altered some provisions of the Bill and submitted its report in November, 1919. The Bill became an Act on December 23, 1919, and came into full operation in 1921.]

### I. Goal of Political Evolution in India

349. Our conception of the eventual future of India is a sisterhood of States, self-governing in all matters of purely local or provincial interest, in some cases corresponding to existing Provinces, in others perhaps modified in area according to the character and economic interests of their people. Over this congeries of States would preside a central Government, increasingly representative of and responsible to the people of all of them; dealing with matters, both internal and external, of common interest to the whole of India; acting as arbiter in inter-state relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire. In this picture there is a place also for the Native States. It is possible that they too will wish to be associated for certain purposes with the organization of British India in such a way as to dedicate their peculiar qualities to the common service without loss of individuality.

Self-governing Provinces

Representative and Responsible Central Government

Indian States

<sup>1</sup> Later Governor of the United Provinces.

(1) Provincial Governments in their bureaucratic aspects

provinces is more difficult. We recognize that, in so far as the Provincial Governments of the future will still remain partly bureaucratic in character, there can be no logical reason for relaxing the control of superior official authority over them, nor indeed would any general relaxation be approved by Indian opinion; and that in this respect the utmost that can be justified is such modification of present methods of control as aims at getting rid of interference in minor matters, which might very well be left to the decision of the authority which is most closely acquainted with the facts. It is, however, in relation

(2) Provincial Governments in their popular aspects

to Provincial Governments in their popular aspects that serious difficulties present themselves. So long as the Government of India itself is predominantly official in character and therefore, remains amenable to the Secretary of State, its interference in any matters normally falling within the range of popular bodies in the provinces involves a clash of principles which cannot fail to engender some heat, and the scope of which it is on all grounds desirable to keep within very closely defined bounds. At the same time we perceive that there are many matters which, taken in bulk, may reasonably be regarded as fitted for administration by popular bodies, but which have aspects that cannot fail to be of intimate concern to the Government which is responsible for the security or good administration of the whole country.

### 3. GOVERNMENT OF INDIA ON MONT-FORD REPORT<sup>1</sup>, 1919.

Reception of the Report by

The Report itself was published in India on July 8, 1918; and you will expect us to give you as clear an impression as we can of its reception. The non-official European community took some time to form their opinions on proposals so intricate and so far-reaching. Indian opinion declared itself more rapidly, and from the first there ensued a clear division between the moderate and extreme political parties. The former declared definitely for the Report, with

(1) Non-official Europeans

(2) 'extreme' Indians

<sup>1</sup> Despatch to Secretary of State, March 5, 1919.

believe that we have laid our foundations well, and that they will bear the new superstructure. In all this we feel that we are moving with a spirit which is stronger than our calculations; and we accept whatever lies ahead. But that consideration only adds to the weight of responsibility which lies upon us when we come to advise upon the details of the plan of advance. To the form of provincial government which the Report sets up as the main vehicle of progress we have nothing to oppose; we have seen no alternative which in any way competes with it. But we can best fulfil our task and discharge our responsibility by helping you to develop the new system into a working proposition. It is a novelty in constitutions; and none of us can prophesy the manner of its growth. But there are to our minds certain universal tests of administrative machinery: its smoothness or friction in working, its burdensomeness on the people or the reverse, its educative value, and its capacity for further development. To every detail of the scheme therefore we have applied these tests, and our advice is based on its response to them. It has been no purpose of ours either to whittle down the scheme or to expand it. We take the scheme in the Report as one which, in all essentials, has our full adherence; and our sole aim has been to translate it into a working plan which, while free from obvious defects, will be in accord with the policy of His Majesty's Government.

Indian co-operation expected

Dyarchy acceptable to Government of India

'Tests of administrative machinery'

#### 4. SIMON COMMISSION ON DIFFERENCES BETWEEN MONT-FORD REPORT AND GOVERNMENT OF INDIA ACT, 1919.

140. It is important to bear in mind that the recommendations of the Montagu-Chelmsford Report were not in all respects adopted and carried out by the sections of the Government of India Act, 1919. The Bill, as introduced, represented the result of discussions which had taken place between the Government of India, the Provincial Governments,

## 5. GOVERNMENT OF INDIA ACT<sup>1</sup>, 1919.

### I. Extracts from Act.

Preamble  
Political goal of India

Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the empire:

Goal to be reached by 'successive stages'

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken:

Discretion and responsibility of Parliament

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples:

Progress to depend on Indian co-operation

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility:

Concession to Provincial Governments

And whereas concurrently with the gradual development of self-governing institutions in the provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which

<sup>1</sup> 9 & 10 Geo. 5, c. 101.

"The Principal Act was the Government of India Act of 1915. It was called 'The Government of India Acts of 1915 and 1916' after the amending Act of 1916 was passed. The Act embodying the Reform Proposals is called 'The Government of India Act, 1919'. The principal Act of 1915 as amended by the subsequent amending Acts of 1916 and 1919 is to be cited simply as 'The Government of India Act'. See Sec. 47 of the Government of India Act, 1919".—P. Mukherji, *The Indian Constitution*, p. 14.

I implore this House to show to India to-day that Parliament is receptive of the case for self-government and only seeks on opportunity of completing it by the demonstrable realization of the success of its stages. . . . 'The future and the date upon which you realize the future goal of self-government are with you, you are being given great responsibility to-day, and the opportunities of consultation and influence on other matters in which for the present we keep responsibility. You will find in Parliament every desire to help and to complete the task which this Bill attempts, if you devote yourselves to use with wisdom, with self-restraint, with respect for minorities, the great opportunities with which Parliament is entrusting you'. That is the message which. . . . this House should send to the Indian peoples to-day. . . . That message cannot be sent unless the House is determined to pass. . . . a statute which means the beginning of self-government, responsible government, in the Indian Empire.

Message to India

'Beginning of self-government, responsible government, in India'

## 6. THE CREWE COMMITTEE<sup>1</sup> ON 'HOME' ADMINISTRATION OF INDIAN AFFAIRS, 1919.

1. The Committee was appointed to enquire into the organisation of the India Office and the relations between the Secretary of State in Council and the Government of India. We were directed to have regard generally to the proposals made in the Report on Indian Constitutional Reforms for the reform of Government of India and provincial Governments, and in particular to the recommendations contained in paragraphs 290 to 295 of the Report.

Task of the Committee

\* \* \* \*

<sup>1</sup>The Committee consisted of the Marquess of Crewe, Lord Inchcape, H. H. Aga Khan, Lord Esher, Mr. G. P. Collins, Mr. G. E. Murray and Mr. Ormsby-Gore. Lord Inchcape was prevented by illness from joining the Committee.

in this respect are not limited by any formal restrictions; but as a matter of constitutional practice, reference to the Home authorities is of course made on what are understood to be specially important administrative matters. It is clear that practice should be continued under the new system. We think it unnecessary to say more on this head than that the degree of discretion allowed in matters of pure administration should be enhanced in general correspondence with the wider authority to be allowed in future in matters of legislation and finance. As regards the general principle we have suggested, we assume that consultation would be real and effective in the sense that the Secretary of State would receive ample notice of the Government of India's proposals and that a full understanding between London and Delhi would be reached by a free interchange of views.

. . . in so far as provincial action comes under the cognisance of the Secretary of State, either directly or through the Government of India, he should regulate his intervention with regard to the principle which we have sought to apply to the working of the central Government, namely, that where the Government find themselves in agreement with a conclusion of the legislature, their joint decision should ordinarily be allowed to prevail.

Control of Secretary of State over provincial matters

## 7. INDIAN NATIONAL CONGRESS ON MONT-FORD REFORMS.

### I. Resolution of Congress, Special Session, Bombay, 1918.

That this Congress appreciates the earnest attempt on the part of the Secretary of State and the Viceroy to inaugurate a system of responsible government in India, and, while it recognises that some of the proposals constitute an advance on the present conditions in some directions, it is of opinion that the proposals are disappointing and unsatisfactory

Mont-Ford proposals 'disappointing and unsatisfactory'

“Statutory  
hypocrisy”

and in constitutional theory, in the Executive Government, in other words, in the bureaucracy. It would therefore be a tragedy if we still sought to discover, in this statutory hypocrisy, the germs of self-government.

## 8. INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL<sup>1</sup>, 1921.

VI. And inasmuch as the policy of Our Parliament is set forth in the Preamble to the said Government of India Act, 1919, We do hereby require Our said Governor-General to be vigilant that this policy is constantly furthered alike by his Government and by the Local Governments of all Our Presidencies and Provinces.

VII. In particular it is Our will and pleasure that the powers of superintendence, direction and control over the said Local Governments, vested in Our said Governor-General and in Our Governor-General in Council shall, unless grave reason to the contrary appears, be exercised with a view to furthering the policy of the Local Governments of all Our Governors' Provinces, when such policy finds favour with a majority of the Members of the Legislative Council of the Province.

VIII. Similarly it is Our will and pleasure that Our said Governor-General shall use all endeavour consistent with the fulfilment of his responsibilities to Us and to Our Parliament for the welfare of Our Indian subjects, that the administration of the matters committed to the direct charge of Our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects as expressed by their representatives in the Indian Legislature, so far as the same shall appear to him to be just and reasonable.

IX. For above all things it is Our will and pleasure that the plans laid by Our Parliament for the progressive realisation of responsible government in British India as an integral part of Our Empire

Political  
goal of  
India

<sup>1</sup> Issued on 15th March, 1921.

may come to fruition, to the end that British India may attain its due place among Our Dominions. Therefore, We do charge Our said Governor-General by the means aforesaid and by all other means which may to him seem fit to guide the course of Our subjects in India whose governance We have committed to his charge so that, subject on the one hand always to the determination of Our Parliament, and, on the other hand, to the co-operation of those on whom new opportunities of service have been conferred, progress towards such realisation may ever advance to the benefit of all Our subjects in India.

**9. INSTRUMENT OF INSTRUCTIONS TO GOVERNORS, 1921.**

Whereas by the Government of India Act, provision has been made for the gradual development of self-governing institutions in British India with a view to the progressive realization of Responsible Government in that country as an integral part of Our Empire;

Provision for "the progressive realization of Responsible Government"

And whereas it is Our will and pleasure that, in the execution of the Office of Governor in and over the Presidency of Fort William in Bengal,<sup>1</sup> you shall further the purposes of the said Act, to the end that the institutions and methods of government therein provided shall be laid upon the best and surest foundations, that the people of the said Presidency shall acquire such habits of political action and respect such conventions as will best and soonest fit them for self-government, and that Our authority and the authority of Our Governor-General in Council shall be duly maintained;

Governor shall "further the purposes" of Act of 1919.

Now, therefore, We do hereby direct and enjoin you and declare Our will and pleasure to be as follows:

I. You shall do all that lies in your power to maintain standards of good administration; to

<sup>1</sup> Similar instructions were issued to Governors of other Provinces.

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privileges or advantages which they have heretofore enjoyed, or be excluded from the enjoyment of benefits which may hereafter be conferred on the people at large;

(iv) protec-  
tion of  
Services

(4) to safeguard all members of Our services employed in the said Presidency in the legitimate exercise of their functions, and in the enjoyment of all recognized rights and privileges, and to see that your Government order all things justly and reasonably in their regard, and that due obedience is paid to all just and reasonable orders and diligence shown in their execution;

(v) no mono-  
poly of  
commercial  
or industrial  
interest

(5) to take care that, while the people inhabiting the said Presidency shall enjoy all facilities for the development of commercial and industrial undertakings, no monopoly or special privilege which is against the common interest shall be established, and no unfair discrimination shall be made in matters affecting commercial or industrial interests.

VIII. And We do hereby charge you to communicate these Our Instructions to the Members of your Executive Council and your Ministers and to publish the same in your Presidency in such manner as you may think fit.

## 10. INDIAN NATIONAL CONGRESS AND REFORMED LEGISLATURES.

### I. Presidential Address of C. R. Das, Gaya, 1922.

'Boycott  
from with-  
out'

Hitherto we have been boycotting the Councils from outside. We have succeeded in doing much—the prestige of the Councils is diminished, and the country knows that the people who adorn these chambers are not the true representatives of the people. But though we have succeeded in doing much, these Councils are still there. It should be the duty of the Congress to boycott these Councils more effectively from within. Reformed Councils are really a mask which the Bureaucracy has put on.

'Boycott  
from with-  
in'

in regard to the Councils is a complete boycott of them. The All-India Congress Committee recommended this course in July last and the time has come to give effect to it.

'Real  
struggle'

This boycott will only be a means to an end. It will release energy and divert attention to the real struggle which must take the shape of the non-payment of taxes, where possible, with the co-operation of the labour movements, general strikes.

## 11. INDIAN NATIONAL CONGRESS AND THE MUSLIMS<sup>1</sup>.

Why  
Muslims  
did not  
join  
Congress  
at first

. . . When, in 1885, some Indian leaders, assisted by their British sympathisers, founded the Indian National Congress, the Mussalmans of India did not participate in the movement except in a few individual cases. If their lack of Western education made them unfit to take part in a movement essentially that of the classes educated according to Western notions, their political temper made them an element that was not unlikely to prove dangerous to any political movement. They had already lost the rule of India, but the tradition of that rule had survived. This had increased the aversion they had always felt for the new type of education. The rule of India had finally passed from Muslim into English hands by slow and hardly perceptible degrees in the hundred years that intervened between the battle of Plassey and the Indian Mutiny; but the Mussalmans had not ceased to regard the rulers of India as something very inferior to themselves in civilisation and culture. This storm of ill will and disdain had been gathering force for a whole century, and was at last precipitated in 1857. The Mutiny began near Calcutta as an affair of the Indian army, but in the storm-centre of Delhi and of my own Province, where it had to be fought out if English rule was to continue in India, it soon attracted to itself many

The  
Muslims  
and the  
Mutiny

<sup>1</sup> Presidential Address of Maulana Mohammad Ali, Cocanada, 1923.

Muslim unity. For the first time a real franchise, however restricted, was being offered to Indians, and if Hindus and Mussalmans remained just as divided as they had hitherto been since the commencement of British rule, and often hostile to one another, mixed electorates would have provided the best battle-ground for inter-communal strifes, and would have still further widened the gulf separating the two communities. Each candidate for election would have appealed to his own community for votes, and would have based his claims for preference on the intensity of his ill-will towards the rival community, however disguised this may have been under some such formula as "the defence of his community's interests". Bad as this would have been, the results of an election in which the two communities were not equally matched would have been even worse, for the community that failed to get its representative elected would have inevitably borne a yet deeper grudge against its successful rival. Divided as the two communities were, there was no chance for any political principles coming into prominence during the elections. The creation of separate electorates did a great deal to put a stop to this inter-communal warfare, though I am far from oblivious of the fact that when inter-communal jealousies are acute, the men that are more likely to be returned even from communal electorates are just those who are noted for their ill-will towards the rival community.

Separate  
Electorate  
'hastened  
the advent  
of Hindu-  
Muslim  
unity'.

Separate  
Electorate  
intensifies  
communal  
feelings.

## 12. DYARCHY AT WORK, 1921-1924.

[The Reforms Enquiry Committee was appointed in 1924 "(1) to enquire into the difficulties arising from, or defects inherent in, the working of the Government of India Act and the Rules thereunder in regard to the Central Government and the Governments of Governor's provinces; and (2) to investigate the feasibility and desirability of securing remedies for such difficulties or defects, consistent with the structure, policy and purpose of the Act, (a) by action taken under the Act and the Rules, or (b) by such amendments of the Act as appear necessary to rectify any administrative imperfections". Sir Alexander Muddiman was the Chairman of the Committee and the members were Mian Sir Muhammad Shafi, Maharajadhiraja Sir Bijay

Muddiman  
Committee.

administration of the Reserved half of the Government have not infrequently been patent factors in determining the attitude of the Legislatures towards the Ministers and have also in our opinion prejudiced the growth and strength of parties in the Councils. (6) The Meston Award has crippled the resources of the provinces. It has been the corner stone of the entire financial system, and it has prevented Ministers from developing nation-building Departments to the extent which would have enabled them to produce any substantial results. (7) The defects of the Rules . . . and the constitution and the working of the Finance Departments have put a severe strain on the system.

The criticism which the Montagu-Chelmsford Report made of the Congress-League Scheme<sup>1</sup> has been demonstrated to be true in actual experience of the defect of having an irremovable Executive with an elected majority in the Legislature as is the case in the Legislative Assembly under the present constitution . . . . .

Central  
Government

We think that the Bihar Government has correctly summed up the position in the provinces by saying that Dyarchy is working 'creakily' and 'minor remedies may cure a creak or two' . . . . .

Dyarchy  
working  
'creakily'

### 13. WORK OF CENTRAL LEGISLATURE UNDER ACT OF 1919<sup>2</sup>.

The legislative activities of the reformed Indian Legislature are illustrative not only of its attitude towards the practical requirements of the country and towards the proposals of the executive, but also of the problems which the new conditions have presented for solution and of the directions in which private members have considered amendment of the law to be necessary. Since 1921, when the Indian

Authority  
of reformed  
legislature  
on legisla-  
tion

<sup>1</sup> See *Indian Constitutional Documents*, Vol. II.

<sup>2</sup> Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

Government  
defeats on  
non-official  
resolutions

Government have only once been defeated on a resolution in the Council of State. The Legislative Assembly, however, has been less amenable to the arguments of Government speakers. It has divided on 91 occasions on resolutions, and has reached a decision favourable to Government on 51 occasions and unfavourable on 40 occasions.

\* \* \* \*

Effect of  
non-official  
resolutions  
on Govern-  
ment action

. . . . Government have given full effect to 37 and part effect to 36 non-official resolutions passed in the Assembly. The corresponding figures for the Council of State are 32 and 24.

In 32 cases, however, in the Assembly and 19 cases in the Council of State Government have found themselves unable to give effect to resolutions. . . .

#### 14. RELATIONS BETWEEN CENTRAL AND PROVINCIAL GOVERNMENTS UNDER ACT OF 1919<sup>1</sup>.

Government  
of India Act,  
Section 33

. . . . The most important of these relations (between the Government of India and the Provincial Governments) are those arising from the general superintendence, direction and control of the civil and military government of India vested by statute in the Governor-General in Council. But in actual administration the occasions of contact between the central and provincial Governments were due in a great majority of cases to other causes.

Devolution  
Act

In the first place, there is a large number of enactments where powers are reserved to the Governor-General in Council, or are exercised by local Governments or authorities, subject to his sanction or control. In 1920, as a preliminary to the introduction of the reforms, the whole statute book was examined and a Devolution Act was passed in order to remove as many as possible of the prescriptions

<sup>1</sup> Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

## 15. RELATIONS OF GOVERNMENT OF INDIA WITH SECRETARY OF STATE UNDER ACT OF 1919<sup>1</sup>.

The relations of the Government of India with the Secretary of State in Council group themselves most conveniently round the particular powers which the Government of India Act has reserved to the Secretary of State, his control of the expenditure of the revenues of India in British India, and his general powers of superintendence, direction and control.

Control of  
Secretary of  
State over  
Services

In the first category fall a large number of powers of which many, such as the power to sanction the appointment of a Deputy Governor, have never been used. But it also includes the powers to make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances and discipline and conduct. These powers are now in process of partial delegation to authorities in India. Meanwhile their exercise has necessitated a constant stream of correspondence between India and England and occasioned not infrequent difference of opinion. The Secretary of State in Council has always emphasised his guardianship of the official services, and he has accordingly exercised over the Government of India a control varying from general questions of service conditions to orders in regard to the particular circumstances of individual officers which by rule involve reference to him. His powers in this regard have been more particularly defined in various sets of rules, such as the Fundamental Rules. But, whatever the volume of this business, it is not of prime importance for the present account, for it was, under other conditions, a feature of pre-reforms administration, and, seeing that the Indian Legislature has no power over conditions of service, it does not arise from the cardinal change in the Government of India, namely, the independence and authority of the Legislative Chambers.

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<sup>1</sup> Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

## 16. THE GOVERNMENT OF INDIA ON COMMUNAL ELECTORATES UNDER ACT OF 1919<sup>1</sup>.

The problem of communal electorates was expressly mentioned in the terms of reference to the Franchise Committee who were required *inter alia* to advise:—

Terms of  
reference  
of Franchise  
Committee

how far representation can be adequately and effectively secured by territorial electorates, or where circumstances seem to require it in order to secure adequate representation of minorities, of special interests or of backward classes by (i) special or communal electorates; or (ii) reserving elective seats for special classes in plural constituencies, or (iii) nomination in such measure as the exigencies of fair and adequate representation entail; or (iv) other expedients, for instance proportional representation, etc.

It is no part of this note to examine the extent to which the Franchise Committee succeeded in proposing an electorate, based not upon interests, but measuring "the number of persons who can be reasonably entrusted with the duties of citizenship", but the Committee in paragraph 10 of its report came to an early decision that there should be "the same qualification for all communities within the same area, although this will enfranchise a smaller proportion of Muslims than of non-Muslims". Muslim representation then was to be secured not by separate electorates, with different franchise qualifications, but by a separate register prepared from the same general body of electors for separate Muslim constituencies; for in considering the problem of communal representation the Committee decided (paragraph 15) not merely that Muslims must have separate representation in all provinces (Burma was not under discussion), but (paragraph 16) that there should also be separate communal representation for Sikhs in the Punjab (as recommended by the Joint Authors),

Recommendations of  
Franchise  
Committee

<sup>1</sup> Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

## 17. DEBATE ON NATIONAL DEMAND IN INDIAN LEGISLATIVE ASSEMBLY<sup>1</sup>, 1924.

[“On the 23rd September, 1921, a resolution was moved in the Legislative Assembly by Rai Jadu Nath Mozumdar Bahadur for the establishment of autonomy in the provinces and the introduction of responsibility in the Central Government. . . . At the end of the debate, Sir William Vincent (the then Home Member) suggested a formula which was finally adopted as an amended resolution. It ran thus: ‘That this Assembly recommends to the Governor-General in Council that he should convey to the Secretary of State for India the view of this Assembly that the progress made by India on the path of responsible government warrants a re-examination and revision of the constitution at an earlier date than 1929’. This resolution was adopted by the Assembly without division. The Government of India submitted a report of this debate to the Secretary of State. On the 2nd November, 1922, the Secretary of State (Lord Peel) sent a despatch to the Government of India. . . . The Secretary of State was then apparently of the opinion that the possibilities of the new constitution had not been exhausted and he assigned three reasons against further amendment of the Government of India Act. The first reason was that progress was possible under the existing constitution. The second reason was that the merits and capabilities of the electorate had not been tested by time and experience. The third reason was that the new constitutional machinery had still to be tested by time and experience. On these grounds he refused to entertain the proposal for advance as contained in the resolution of the Assembly referred to above. This despatch of the Secretary of State was followed by a resolution moved in the Assembly by Diwan Bahadur T. Rangachariar on the 22nd February, 1923, expressing extreme dissatisfaction with it. The debate on this was adjourned, after a certain amount of discussion, *sine die*. Another resolution was moved by Dr. H. S. Gour on the 18th July, 1923, which recommended to the Governor-General to move the Secretary of State to carry out his suggestion contained in his despatch on the subject of the further reforms possible under the Constitution. This resolution was carried in the Assembly by 43 votes to 30<sup>2</sup>”.

On February 5, 1924, Diwan Bahadur T. Rangachariar moved the following resolution in the Legislative Assembly:

“This Assembly recommends to the Governor-General in Council that he be pleased to take at a very early date the

Resolution for revision of Constitution

Lord Peel's Despatch

Resolutions on Lord Peel's Despatch

<sup>1</sup> See Legislative Assembly Debates, Vol. IV, Part I, pp. 221-222, 348-400, 518-582, 709-769.

<sup>2</sup> Report of the Reforms Enquiry Committee, pp. 133-134.

Remedy for communal differences: establishment of Swarajya

Civil Service ceases to depend upon 'divisions, strife, conflict and anarchy'; in other words, unless and until Swarajya is fully established. It is only then that the mischief-maker will lose his occupation and think of some other opening for his activities."<sup>1</sup>

## '18. LORD IRWIN ON RELATIONS BETWEEN CENTRAL GOVERNMENT AND CENTRAL LEGISLATURE<sup>2</sup>, 1926.

Popular representatives may escape sense of responsibility.

Speaking of central politics, so long as there is in the hands of the Governor-General some reserve power by which in the last resort they can secure what they conceive to be essential, it is evidently possible for popular representatives to escape the sense of responsibility that ought to accompany the power, even though only partial, which they exercise. Again, so long as the Government of India is not fully responsible in the strict sense of the word, it is impossible for parties or politicians to feel the salutary check of being compelled to replace in the task of government those who have been the targets of their criticism and attack. It therefore follows

"National Demand" (1925)

<sup>1</sup> After the publication of the Report of the Reforms Enquiry Committee (March, 1925) Sir Alexander Muddiman, the then Home Member of the Government of India, moved a resolution in the Legislative Assembly on September 7, 1925, recommending the acceptance of the principle underlying the Majority Report. An amendment, now known as the National Demand of 1925, was moved by Pandit Motilal Nehru. This amendment reiterated and confirmed the demand contained in the resolution passed by the Assembly in February, 1924, asked the Governor-General in Council to take immediate steps to move the British Government to make a declaration in Parliament embodying certain fundamental changes in the Indian constitution which would introduce full responsible government, and recommended the summoning of a Round Table Conference to frame a detailed scheme of government which, after approval by the Legislative Assembly, would be submitted to Parliament to be embodied in a Statute. This amendment was carried by 72 votes to 45.

<sup>2</sup> Address to European Association, Calcutta, December, 1926.

that one of the principal distinctions between the different Indian parties is apt to be the degree of vehemence with which they assail the policy of Government. The latter, necessarily in great degree inarticulate, is presented as the common opponent of patriotic citizens.

Government  
—common  
target of  
all Indian  
parties

These are real difficulties, unavoidable so long as it is necessary to retain the final power in the hands of a Government not directly or wholly responsible to popularly elected representatives.

### 19. LORD IRWIN ON PARLIAMENTARY SUPREMACY<sup>1</sup>, 1927.

As long as the final control of Indian policy is constitutionally vested in the Secretary of State on behalf of Parliament, it is the duty of the Governor-General to guide his conduct in conformity with the general policy approved by the Imperial Parliament . . . It is his duty with his Government to seek faithfully to represent to the Imperial Government what he conceives to be India's interests, and he must count on the help of the Legislature to enable him to do this fairly. On the other hand it is possible that he may be able to help India by telling those who represent her in her Councils, from his own knowledge, of the manner in which, and the angle from which, the judgment of Parliament is likely to be formed.

'Final  
control  
of Indian  
policy'  
vested in  
Parliament

I do not ignore the fact that there is a section of opinion in India which rejects the right of Parliament to be the arbiter of the fashion or the time of India's political development. I can understand that opinion, I can acknowledge the sincerity of some of those who hold it, but I can devise no means of reconciling such a position with the undoubted facts of the situation.

But there is another section of opinion, which while hesitating to prefer so fundamental an objection to any right of Parliament to be the judge of

Indian  
point  
of view

<sup>1</sup> Address to Legislative Assembly, January, 1927.

these matters, would yet say in effect that it was indefensible for Parliament to exercise its judgment in any sense but that of granting to India forthwith a wide, if not complete extension of responsible power.

The distinction between these two lines of criticism is narrow; for Parliament would be no real judge if its title were held to depend for sanction upon the judgment that it delivers, and it is scarcely possible to impugn its right to deliver a free verdict, without challenging its title to sit in judgment on the case.

Parliament  
—judge of  
political  
progress  
in India

## 20. INDIAN NATIONAL CONGRESS ON SIMON COMMISSION, 1927.

[On November 8, 1927, Lord Irwin announced the formation and composition of the Simon Commission. He declared that the appointment of the Commission two years before the fixed statutory period was due to Indian political pressure. But Lord Birkenhead's biography makes it clear that his main object in advancing the date of enquiry was to keep in his own hands the nomination of the personnel of the Commission and to prevent the risk of a future Labour Government having anything to do with the composition of the Commission. On December 10, 1925, he wrote to Lord Reading, ". . . . I always had it plainly in mind that we could not afford to run the slightest risk that the nomination of the 1928 Commission should be in the hands of our successors. You can readily imagine what kind of a Commission in its personnel would have been appointed by Colonel Wedgwood and his friends. I have, therefore, throughout, been of clear opinion that it would be necessary for us, as a matter of elementary prudence, to appoint the Commission not later than the summer of 1927."<sup>1</sup>

Birken-  
head's  
policy

When the Simon Commission was successfully boycotted, Lord Birkenhead wrote to the Viceroy in February, 1928, "I should advise Simon to see at all stages important people who are *not* boycotting the Commission, particularly Moslems, and the depressed classes. I should widely advertise all his interviews with representative Moslems. The whole policy now is obvious. It is to terrify the immense Hindu population by the apprehension that the Commission is being got hold of by the Moslems and may present a report altogether destructive of the Hindu position, thereby securing a solid Moslem support, and leaving Jinnah high and dry."<sup>2</sup>]

<sup>1</sup> See Birkenhead, *The Last Phase*, pp. 250-251.

<sup>2</sup> Birkenhead, *The Last Phase*, p. 255.

## 21. SIMON COMMISSION ON RELATIONS BETWEEN THE SECRETARY OF STATE AND THE GOVERNMENT OF INDIA.

[The Statutory Commission consisted of seven members: Sir John Simon, Lord Burnham, Lord Strathcona, Mr. Edward Cadogan, Vernon Hartshorn and Mr. C. R. Attlee. The Chairman, Sir John Simon, was a Liberal; there were two Labour Members and four Conservatives. It was later on laid down that the members of the Commission were to co-operate with the elected members of the Indian Legislatures, who were to report simultaneously but not jointly with the members of the Commission. The Indian Legislative Assembly boycotted the Commission, but partial co-operation was received from the Provincial Legislative Councils. The *Report* of the Commission was issued in May, 1930.]

264. We now turn to consider the relations between the Secretary of State and the Secretary of State in Council on the one hand and the Government of India on the other. Their statutory control over the Government of India is still in theory complete within the field left to them by the Act of 1919. But for various reasons it is exercised in practice to an extent very much less than a literal interpretation of the Act would warrant. It goes without saying that the "superintendence, direction and control" by an authority in Whitehall of all "acts, operations and concerns" involved in the government of a sub-continent 6,000 miles away is impossible. The essential process of delagation had gone on intermittently for many years before the Reforms, but the policy underlying the Act of 1919 gave it a strong impetus. Delegation, it will be understood, differs from a statutory devolution of powers, in that it does not relieve the Secretary of State from his responsibility to Parliament; he takes the risk of trusting a subordinate authority to decide matters for which by statute he remains responsible.

Progress of  
'Delegation'.

Difference  
between  
'Delegation'  
and  
'Statutory  
devolution  
of powers'.

265. In the sphere of legislation it is possible to lay down rules to give effect to the general policy. Before the Reforms, no Bill other than a purely

Control of  
Secretary  
of State  
over Bills  
in Central  
Legislature

formal one could be introduced into any Indian legislature until the Secretary of State in Council had seen and approved its actual terms, or at least a full statement of its scope and purpose. Under the existing rules, which date from 1921, Bills to be introduced in the Central Legislature need not be referred for the approval of the Secretary of State in Council unless they relate to a limited number of subjects; for example, imperial or military affairs, foreign relations, the rights of European British subjects, the law of naturalisation, the public debt, customs, currency and shipping. It is left to the Governor-General in Council to refer for the previous approval of the Secretary of State in Council such provincial Bills as he thinks fit. Since these orders were passed, the instances in which a provincial Bill has been submitted to the Secretary of State could be counted on the fingers of one hand; and though in one or two instances considerable discussion has taken place between the Secretary of State and the Governor-General, no instance can be cited of final objection by the Secretary of State to the introduction of a Bill which the Government of India proposed to promote in the Central Legislature.

Control of  
Secretary  
of State  
over Bills  
in Provin-  
cial  
Legislature

But the need for prior reference to the Secretary of State necessarily involves delay and, if a prompt decision is essential, may cause difficulty, *e.g.*, when, in the course of the discussion of a Bill, unforeseen points arise on which negotiations between the Government and members of the Assembly offer hope of a compromise; on the other hand, delay may sometimes afford opportunity for further consideration.

## 22. SIMON COMMISSION ON WORKING OF REFORMS AT THE CENTRE.

### *The Contrast with Westminster*

248. The first essential for a correct understanding of the relations of the Central Government with the Central Legislature in India is to divest the mind of analogies drawn from the British

occasion provided the latter with unexpected champions in the Legislature.

254. The indirect influence of the Assembly on the Government has been of still greater importance. Its extent is hardly realised by the members themselves, who are inclined to lay stress on the theoretical irresponsibility of the Executive. In practice, as officials themselves have borne witness, the Government is greatly influenced by the contact of its Members with the elected representatives. Sir William Harcourt once declared that "the value of political heads of departments is to tell the officials what the public will not stand". Under a pure bureaucracy, officials are apt to make a fetish of efficiency and to fail to give due place to the importance of acceptance by the governed of the proposals of the rulers. This weakness can be best counteracted by close contact with the unofficial mind. We believe that the members of the Central Legislature have performed this useful function, and that their influence has often been beneficial. Further, it is important to remember that the existence of a popularly elected legislature not only operates to amend Government measures after their introduction, but has much effect in deciding what measures should be introduced. Again, the existence of a body of unofficial persons with powers of interpellation sets up in the Administration itself a spirit of self-criticism and desire to avoid occasion for censure.

Central  
Legislature  
gives  
officials a  
clue to the  
public  
mind.

Influence  
of Central  
Legislature  
on legisla-  
tion and  
administra-  
tion

### 23. SIMON COMMISSION ON ROLE OF GOVERNOR-GENERAL.

189 . . . Appointed from among the most prominent public men in Great Britain, and usually discharging his task for a period of five years, the Governor-General occupies the most responsible, as it is the most picturesque and distinguished, office in the overseas service of the British Crown. For, while his activities comprise all the social and benevolent obligations of the Governor-General in the

'Most res-  
ponsible,  
picturesque  
and  
distinguished  
office'

## 24. SIMON COMMISSION ON GOVERNOR-GENERAL'S EXECUTIVE COUNCIL.

188. At meetings of the Governor-General's Council, if the Governor-General himself is present, he presides. In his absence, his place is taken by the Member of his Executive Council whom he has appointed to be its Vice-President. At any meeting of his Council the Governor-General, or other person presiding, and one other Member (not being the Commander-in-Chief) form a quorum sufficient for the exercise of all the functions of the Government of India. All orders of the Governor-General-in-Council are signed by a Secretary to the Government of India. If a difference of opinion arises at a meeting of the Governor-General's Council, the decision of the majority is binding, and, if the Members are equally divided, the Governor-General, or other person presiding, has a second or casting vote. But if what is proposed conflicts with the view of the Governor-General as to what is essential for the safety, tranquillity, or interests of British India, he may, on his own authority and responsibility, overrule the decision, in which case any two Members of the dissentient majority may ask that the matter be reported to the Secretary of State and that the report may be accompanied by copies of any minutes made by Members of the Council.

President  
and Vice-  
President of  
Executive  
Council

Relations  
between  
Governor-  
General and  
Executive  
Council

Minor  
matters  
decided by  
Department

In practice, the Governor-General's Council meets at short intervals, and all the most important decisions of the Government of India are made by it. There are naturally many other matters which are decided and disposed of in the different departments, which have behind them the authority of the whole Government. One of the Members of Government, who sits in the Legislative Assembly, acts as leader of the House; this duty usually falls to the lot of the Home Member.

## 25. SIMON COMMISSION ON CENTRAL CONTROL OVER PROVINCIAL MATTERS.

255. The separation which the Reforms effected between Central and Provincial duties in no wise affects the responsibility of the Central Government for the financial and administrative stability of India as a whole. The Provincial Governments state that the large independence of the Centre which they have acquired, has resulted in a great decrease of correspondence with Delhi and Simla. But the responsibilities of the Government of India involve that it should be kept informed of all important matters connected with the government of the whole country, even when primarily of provincial concern. The obligation to supply information to the Governor-General in Council is imposed by statute, and again more precisely by rule, on both halves of Provincial Governments. Certain Central subjects again are of such a nature as to have little meaning (so far as Governors' Provinces are concerned) apart from the administration of Provincial subjects—for instance, 'statistics' and 'all-India Services'. The proper discharge by the Centre of its responsibilities in such subjects, therefore, seems to require the power of issuing orders to both halves of Provincial Governments. But difficulties have arisen in the exercise by the Centre of its responsibilities for all-India officers serving in Transferred Departments. An essential function of the Centre, which must invade the whole provincial sphere in both its Reserved and its Transferred parts, is 'External Relations'. The adherence of the Indian Government to conventions of the League of Nations and the International Labour Office has involved obligations, financial as well as administrative, on the Provinces, principally in Transferred Departments. The Government of India has, of course, made it a practice to consult all the Provinces before undertaking such commitments. But it has neither disguised the fact that it must retain freedom to override their objections, nor admitted its obligation to consult them in all cases.

Centre's responsibility for 'the government of the whole country'

Central subjects closely connected with Provincial matters

International obligations of the Centre

1924—it was sharply criticized in the Central Legislature. The exercise of the Governor-General's powers of assent, dissent and reservation has given rise to no difficulties, but criticism has been directed in the Provinces at the wide terms in which are drawn the provisions imposing the obligation of obtaining the Governor-General's previous sanction to all but a small category of provincial enactments . . . the Governor-General's discretionary powers take the place in the Constitution of any formal distribution of legislative powers between the Centre and the Provinces. They have served their purpose well. If the Provinces have been prevented from invading the proper sphere of the Centre, they have also been protected from many attempts at interference in provincial matters by way of private Members' Bills in the Central Legislature. But the procedure involves that not only provincial Bills, but amendments to provincial Bills, should be submitted for previous sanction, and, if subsequent delay is to be avoided, it is to the interest of the working of the Provincial Legislatures to give the widest possible interpretation to these provisions.

Governor-General's control over Provincial legislation

## 26. SIMON COMMISSION ON WORKING OF DYARCHY.

161. We shall, in the next part of our Report, discuss the actual working of the dyarchic system, the structure of which we have here endeavoured to describe, and one of the most important and difficult questions that will arise will be the extent to which the system has led to the adoption, as a constitutional principle, of the joint responsibility of Ministers. The intention of the authors of the Montagu-Chelmsford Report on the point is not, perhaps, very easy to ascertain. That document, in describing the working of the proposed Executive, stated that "the actual decision on a transferred subject would be taken, after general discussion, by the Governor and his Ministers", so that, after whatever meeting there may have been of the Government as a whole, "the

Question of joint responsibility of Ministers

Interpretation of Mont-Ford Report

the point of view of the efficient conduct of business; but the underlying and fundamental conception of the dyarchic system—complete “responsibility” of Ministers in a certain defined field, and in that field only—has become almost hopelessly obscured.

It would, of course, be an exaggeration to say that there was no difference in the attitude of the councils towards Ministers and Executive Councillors. There has usually been distinctly less opposition to ministerial measures and to demands for grants on the transferred side, but this has probably been largely due to the nature of the subjects assigned to each. The unpopular tasks of Government are left to be discharged by its official members. Police or land revenue administration are not subjects likely to arouse enthusiasm and often involve measures of great unpopularity; while for education, for health administration, and for other departments in the hands of Ministers, to which the term “Nation-building” is so frequently attached, there is a very real keenness.

Difference in the attitude of Councils towards Ministers and Executive Councillors

## 27. RECOMMENDATIONS OF NEHRU COMMITTEE, 1928.

[In accordance with a resolution of the Madras session of the Congress (1927) an All-Parties Conference was summoned at Delhi in February and March, 1928, and it was agreed between the Congress and other organisations present that the question of a constitution for India should be discussed on the basis of full responsible government. In May, 1928, the Conference appointed a Committee, with Pandit Motilal Nehru as President, to draft the principles of a constitution before the 1st July next. The *Report* of the Nehru Committee was well-received, although it laid down Dominion Status, not complete independence, as India's political objectives. The Calcutta Congress adopted the following resolution :—

“This Congress, having considered the constitution recommended by the All-Parties Committee Report, welcomes it as a great contribution towards the solution of India's political and communal problems and congratulates the committee on the virtual unanimity of its recommendations, and, whilst adhering to the resolution relating to complete independence passed at the Madras Congress, approves of the

Congress resolution on Nehru Committee recommendations

### III. In the provinces

- (a) there shall be no reservation of seats for any community in Punjab and Bengal;
- (b) in provinces other than the Punjab and Bengal there will be reservation of seats for Muslim minorities on population basis with the right to contest additional seats;
- (c) in the N.W.F. Province there shall be similar reservation of seats for non-Muslims with the right to contest other seats.

Provincial  
Legislatures

IV. Reservation of seats, where allowed, shall be for a fixed period of ten years.

## 28. LORD IRWIN ON DOUBLE DUTY OF MODERN VICEROYS<sup>1</sup>, 1929.

Whoever holds the position of Viceroy and Governor-General of India is bound through his office and conscience by a double duty. He is under the plain obligation of seeing that the King's Government in India is carried on, with due respect for the law . . . But in another and not less important capacity the Viceroy stands as intermediary between India and Great Britain, and as such will constantly endeavour to interpret as faithfully as he may the hopes, the feelings, the desires of the Indian people to those who may from time to time compose His Majesty's Government in Great Britain. If I may quote words which are used in connection with another office in the British constitution, he will "beg His Majesty's Government ever to place the most favourable construction upon all their proceedings".

Viceroy as  
(i) guardian  
of law  
and order

(ii) inter-  
mediary  
between  
India and  
England

## 29. LORD IRWIN ON POLITICAL GOAL OF INDIA.

### I. Address to European Association, Calcutta, December, 1928.

You . . . have referred to the movement recently undertaken in certain quarters in India on behalf of

<sup>1</sup> Address to the Legislative Assembly, January, 1929.

I have never sought to delude Indian opinion into the belief that a definition of purpose, however plainly stated, would of itself, by the enunciation of a phrase, provide a solution for the problems which have to be solved before that purpose is fully realised. The assertion of a goal is of necessity a different thing from the goal's attainment. No sensible traveller would feel that the clear definition of his destination was the same thing as the completion of his journey. But it is an assurance of direction, and in this case I believe it to be something of tangible value to India that those who demand full equality with the other self-governing units of the British Commonwealth on her behalf should know that Great Britain on her side also desires to lend her assistance to India in attaining to that position. The desire of most responsible opinion in India and that of His Majesty's Government is thus the same. . .

Assertion of goal is different from attainment of goal.

Although it is true that in her external relations with other parts of the Empire, India exhibits already several of the attributes of a self-governing Dominion, it is also true that Indian political opinion is not at present disposed to attach full value to these attributes of status, for the reason that their practical exercise is for the most part subject to the control or concurrence of His Majesty's Government. The demand for Dominion Status is based upon the general claim to be free from that control, more especially in those fields that are regarded as of predominantly domestic interest.

"India already exhibits several attributes of a self-governing Dominion".

### 30. INDIAN NATIONAL CONGRESS AND GOAL OF INDEPENDENCE.

#### I. Mahatma Gandhi's Speech, Nagpur Congress, 1920.

The resolution which I have the honour to move is as follows: "The object of the Indian National Congress is the attainment of Swarajya by the people of India by all legitimate and peaceful means".

'Attainment of Swarajya'

Independence does not exclude partnership.

mean, was not intended to mean, a churlish refusal to associate with Britain or any other power. Independence therefore does not exclude the possibility of equal partnership for mutual benefit and dissolvable at the will of either party.

### **X. Resolution of Congress, Karachi Session, 1931.**

This Congress. . . . desires to make it clear, that the Congress goal of Purna Swaraj (Complete Independence) remains intact. . . . .

### **XI. Resolution of Working Committee, September, 1934.**

Meaning of 'Purna Swaraj'

. . . . . Purna Swaraj includes unfettered national control, among other things, over the Army and other defence forces, external affairs, fiscal and commercial matters, financial and economic policy. A free India should have the freedom to make its choice between voluntary partnership with the British and complete separation. . . . .

## **31. SIMON COMMISSION'S PROPOSALS ON FUTURE CONSTITUTION OF INDIA.**

### *Outline of Provincial Changes*

364. In the Provinces, the main consequences of adopting our proposals would be as follows:

End of Dyarchy

The boundary now set up between departments of which Indian Ministers may take charge and departments from which they are excluded will be removed, and thus Dyarchy will terminate.

Powers of Governor

The conduct of provincial administration as a whole will rest with Governor. These Ministers, whether elected Members of the Legislature or not, will have joint responsibility for action and policy. The constitution of the Provincial Cabinet will be elastic and, where and when the Governor considers it necessary, it will contain an official element.

### 32. INDIAN NATIONAL CONGRESS ON FIRST ROUND TABLE CONFERENCE<sup>1</sup>, 1931.

[The reactions to Lord Irwin's announcement of October, 1929, were favourable. The Working Committee of the Congress issued a manifesto on November 2, 1929, in which the following cautious statement was made: ". . . we hope to be able to tender our co-operation to His Majesty's Government in their effort to evolve a scheme of Dominion constitution suitable to India's needs, but we deem it necessary that certain acts should be done and that certain points should be cleared so as to inspire trust and to ensure the co-operation of the principal political organisations in the country". On December 23, 1929, some Congress leaders including Mahatma Gandhi, and Mr. M. A. Jinnah saw Lord Irwin at Delhi and wanted an assurance that the contemplated Conference in London would proceed on the basis of full Dominion Status for India. Lord Irwin could not give that assurance. The Congress leaders then proceeded to Lahore, where, on December 31, 1929, the Congress in full session adopted a resolution on complete independence. Lord Irwin's address to the Legislative Assembly in January, 1930, removed all chances of reconciliation. The great Civil Disobedience Movement of 1930-31 followed. The Congress naturally did not participate in the First Round Table Conference. The Gandhi-Irwin Agreement<sup>2</sup> was concluded in March, 1931, and in August, 1931, Mahatma Gandhi agreed to represent the Congress in the Second Round Table Conference.]

Round  
Table  
Conference  
not repre-  
sentative of  
Indian  
people

The Working Committee of the Indian National Congress is not prepared to give any recognition to the proceedings of the so-called Round Table Conference between certain members of the British Parliament, the Indian Princes and individual Indians selected by the Government from among its supporters and not elected as their representatives by any section of the Indian people. The Committee holds that the British Government stands self-condemned by the methods it has employed of making a show of consulting representatives of India, while as a matter of fact it has been smothering her true voice by the incarceration of the real leaders of the Nation like Mahatma Gandhi and Pandit Jawaharlal Nehru, by

British  
policy of  
repression

<sup>1</sup> Resolution of Working Committee, January 21, 1931.

<sup>2</sup> See the text of the Agreement in Sitaramyya, *History of the Indian National Congress*, Vol. I, pp. 437-442.

ordinances and imprisonments and by *lathi* charges and firing on thousands of peaceful, unarmed and unresisting citizens engaged in the patriotic pursuit of winning freedom for their country by resorting to civil disobedience which, the Committee maintains, is a legitimate weapon in the hands of all oppressed nations.

Civil Dis-  
obedience

The Committee has carefully considered the declaration of the policy of the British Government made by Ramsay Macdonald, the Prime Minister of England, on behalf of the Cabinet on the 19th January, 1931, and is of opinion that it is too vague and general to justify any change in the policy of the Congress.

### 33. MAHATMA GANDHI AT ROUND TABLE CONFERENCE<sup>1</sup>, 1931.

(Second Session; November 30, 1931)

. . . . I said at one of the preliminary meetings of the Federal Structure Committee that the Congress claimed to represent over 85 per cent. of the population of India, that is to say the dumb, toiling, semi-starved millions. But I went further: that the Congress claimed also by right of service to represent even the Princes, if they would pardon my putting forth that claim, and the landed gentry, the educated class. I wish to repeat that claim and I wish this evening to emphasise that claim.

Congress  
claims to  
represent  
dumb  
millions,  
even  
Princes.

All the other parties at the meeting represent sectional interests. Congress alone claims to represent the whole of India, all interests. It is no communal organisation; it is a determined enemy of communalism in any shape or form. Congress knows no distinction of race, colour or creed; its platform is universal. It may not always have lived up to the

Congress  
is not a  
communal  
organisa-  
tion.

<sup>1</sup> See C. P. Shukla, *When Gandhiji Returned Empty-handed*.

Mahatma Gandhi said, "I admit that I have come back empty-handed, but I am thankful that I have not lowered or in any way compromised the honour of the flag that was entrusted to me."

## 24. WORK DONE BY ROUND TABLE CONFERENCE.

### I. Speech of Sir Tej Bahadur Sapru, January 19, 1931.

.... Now, during the last nine weeks what is it that we have witnessed emerging from this great Conference? There are three central ideas which have emerged. One, the higher, the nobler, loftier idea of an all-India federation, which has taken such a material shape, if I may say so, mainly because of the patriotic attitude adopted by the Indian Princes. The second important idea which, from the point of view of British India, is of the highest importance is the idea of responsibility at the Centre. Lord Reading . . . quoted from the speeches of Their Highnesses the Maharaja of Bikaner and the Nawab of Bhopal to show how, so far as the Princes were concerned, the only condition and the only terms on which they would come into the Federation was that there should be a responsible Government established . . . The third important idea which has emerged, and which . . . is an integral idea of all systems of responsible government, is that India must be prepared in the years to come to defend herself . . . It has been conceded, it has been acknowledged that we are entitled to have an Indian Sandhurst, and that it must be established to qualify Indians ultimately to take the responsibility for the defence of their own country. . . .

Three  
central  
ideas :

(1) Federa-  
tion

(2) Respon-  
sibility  
at the  
Centre

(3) Defence

### II. Speech of Sir Samuel Hoare<sup>1</sup>, December 24, 1932.

... we have not been working in an empty void. We have not been attempting to create a situation in the air. We have not been, like the Abbe Sieyes in the years of the French Revolution, creating paper constitutions. From start to finish we have been circumscribed by the hard facts of the world as we find it. We have been confronted with

<sup>1</sup> Secretary of State for India.

sentences. I would say, first of all, we have clearly delimited the field upon which the future constitution is going to be built. In a much more detailed manner than in the last two years we have delimited the spheres of activity of the various parts of the constitution. Secondly, . . . we have I believe created an *esprit de corps* amongst all of us that is determined to see the building that is going to be reared upon the field that we marked out both complete in itself and completed at the earliest possible date. . . .

Third  
Round  
Table Con-  
ference

### 35. THE COMMUNAL AWARD.

#### I. Statement of Mr. Ramsay MacDonald,

December 1, 1931.

We must all . . . realise that there stands in the way of progress, whether for the Provinces or the Centre, that formidable obstacle, the communal deadlock. I have never concealed from you my conviction that this is above all others a problem for you to settle by agreement amongst yourselves . . . This (Round Table) Conference has twice essayed this task; twice it has failed. . . .

It is for  
Indians to  
solve the  
communal  
problem.

. . . . We shall soon find that our endeavours to proceed with our plans are held up (indeed they have been held up already) if you cannot present us with a settlement acceptable to all parties as the foundation upon which to build. In that event His Majesty's Government would be compelled to apply a provisional scheme, for they are determined that even this disability shall not be permitted to be a bar to progress. This would mean that His Majesty's Government would have to settle for you, not only your problem of representation, but also to decide as wisely and justly as possible what checks and balances the constitution is to contain to protect minorities from an unrestricted and tyrannical use of the democratic principle expressing itself solely through majority power. . . .

Failure of  
Indians to  
solve  
communal  
problem  
will compel  
British  
Government  
to impose  
its own  
solution.

### 36. INDIAN NATIONAL CONGRESS AND CONCESSIONS TO MUSLIMS.

#### I. Resolution, Madras Session, 1927.

This Congress resolves:

Joint  
electorates

That in any future scheme of constitution, so far as representation in the various Legislatures is concerned, joint electorates in all the Provinces and the Central Legislature be constituted.

Reservation  
of seats  
with  
reciprocal  
conces-  
sions to  
minorities

That, with a view to give full assurances to the two great communities that their legitimate interests will be safeguarded in the Legislatures, such representation of the communities should be secured for the present, and if desired, by the reservation of seats in joint electorates on the basis of population in every province and in the Central Legislature, provided that reciprocal concessions in favour of minorities may be made by mutual agreement so as to give them representation in excess of the proportion of the number of seats to which they would be entitled on the population basis in any province or provinces, and the proportions so agreed upon shall be maintained in the representation of the two communities in the Central Legislature from the provinces.

\* \* \* \*

Reforms in  
N. W. F. P.  
and  
Baluchistan  
recom-  
mended

That the proposal made by the Muslim leaders that reforms should be introduced in the N. W. F. Province and British Baluchistan on the same footing as in other provinces is, in the opinion of the Congress, a fair and reasonable one and should be given effect to . . .

Separation  
of Sind

That with regard to the proposal that Sind should be constituted into a separate province, this Congress is of opinion that the time has come for the redistribution of provinces on linguistic basis—a principle that has been adopted in the constitution of the Congress.

\* \* \* \*

cerned. The Congress has always welcomed and is prepared to take advantage of any opportunity to bring about such a change by mutual agreement.

### 37. JOINT PARLIAMENTARY COMMITTEE ON INDIAN FEDERATION.

[The Third Session of the Round Table Conference (November—December, 1932) was not attended either by the Congress or by the British Labour Party. In March, 1933, the British Government published a *White Paper* containing a set of proposals for reform which were to be submitted to a Joint Select Committee of Parliament for examination and report. "In essence the majority of the Committee accepted the Governmental proposals, but emphasized still more the necessity of safeguards. . . ."<sup>1</sup> The *Report* was published in October, 1934.]

Unity must  
be main-  
tained.

26. If the establishment of Provincial Autonomy marks, not so much a new departure, as the next stage in a path which India has long been treading, it is the more necessary that, on entering this stage, we should pause to take stock of the direction in which we have been moving. We have spoken of unity as perhaps the greatest gift which British rule has conferred on India; but in transferring so many of the powers of government to the Provinces, and in encouraging them to develop a vigorous and independent political life of their own, we have been running the inevitable risk of weakening or even destroying that unity. Provincial Autonomy is, in fact, an inconceivable policy unless it is accompanied by such an adaptation of the structure of the Central Legislature as will bind these autonomous units together. In other words, the necessary consequence of Provincial Autonomy in British India is a British-India Federal Assembly. In recent discussions, the word "federation" has become identified with the proposals for an All-India Federation and for the establishment, in the common phrase, of "responsibility at the Centre".... But federation is, of course, simply the method by which a number of Governments,

Provincial  
Autonomy  
requires  
readjust-  
ment at  
Centre.

<sup>1</sup> Keith, *Constitutional History of India*, p. 310.

basis of a reconstituted Government of India must be, first, the resumption into the hands of the Crown of all rights, authority and jurisdiction in and over the territories of British India, whether they are at present vested in the Secretary of State, the Governor-General in Council, or in the Provincial Governments and Administrations; and second, their redistribution in such manner as the Act may prescribe between the Central Government on the one hand and the Provinces on the other. A Federation of which the British Indian Provinces are the constituent units will thereby be brought in existence.

154. The rights, authority and jurisdiction which will thus be conferred by the Crown on the new Central Government will not extend to any Indian State. It follows that the accession of an Indian State to the Federation cannot take place otherwise than by the voluntary act of its Ruler. The Constitution Act cannot itself make any Indian State a member of the Federation; it will only prescribe a method whereby the State may accede and the legal consequences which will flow from the accession. There can be no question of compulsion so far as the States are concerned. Their Rulers can enter or stand aside from the Federation as they think fit. They have announced their willingness to consider federation with the Provinces of British India on certain terms; but, whereas the powers of the new Central Government in relation to the Provinces will cover a wide field and will be identical in the case of each Province, the Princes have intimated that they are not prepared to agree to the exercise by a Federal Government for the purpose of the Federation of an identical range of powers in relation to themselves.

Accession  
of States to  
Federation  
must be a  
voluntary  
act.

### 38. JOINT PARLIAMENTARY COMMITTEE ON PROVINCIAL AUTONOMY.

48. The scheme of Provincial Autonomy, as we understand it, is one whereby each of the Governors' Provinces will possess an Executive and a Legislature

Definition  
of  
Provincial  
Autonomy

march of events since 1919, we are discussing not only a Federation of British India, but an All-India Federation; and we could not ourselves contemplate such a Federation, whether it comes about in the immediate or more distant future, which in its British Indian aspect is composed of other than autonomous units, independent within their own sphere of any Central control. We have arrived, therefore, at the same conclusion on this subject as the Statutory Commission, and substantially on the same grounds. Of all the proposals in the White Paper, Provincial Autonomy has received the greatest measure of support on every side. The economic, geographical, and racial differences between the Provinces on the one hand and the sense of provincial individuality on the other, have greatly impressed us. The vast distances of India and the increasing complexity of modern government are strong additional arguments in favour of the completion of the process begun in 1919, and of a development in which the life of each Province can find vigorous and adequate expression, free from interference by a remote Central Government....

Joint Committee agrees with Simon Commission.

Arguments in favour of Provincial Autonomy

### 39. JOINT PARLIAMENTARY COMMITTEE ON RELATIONS BETWEEN GOVERNOR AND MINISTERS.

74...in the present Government of India Act, there is a provision which requires the Governor to be "guided by" the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion. The Act will commit certain matters to the Governor's sole discretion, such, for instance, as his power of veto over legislation and the regulation of matters relating to the administration of excluded areas. It will also contain a declaration that certain special responsibilities are to rest upon the Governor. For the rest, it will provide that the Governor shall have a Council of Ministers to aid and advise him, but his relations with his Ministers are left to be

Governor's 'discretion' and 'Special Responsibilities'

anticipate that the occasions on which a Governor will find it necessary so to dissent or to act in opposition to the advice given to him are in normal circumstances likely to be numerous; and certainly they will not be, as some appear to think, of daily occurrence. We leave for later consideration<sup>1</sup> the list of the special responsibilities themselves and the manner in which they are defined; but, if we have rightly appreciated their place in the constitution, it appears to us undesirable to seek to define them with meticulous accuracy, though we consider that their general scope and purpose should be set out with sufficient precision.

'Special Responsibilities' should not be meticulously defined.

#### 40. DEBATE IN INDIAN LEGISLATIVE ASSEMBLY ON REPORT OF JOINT PARLIAMENTARY COMMITTEE, 1935.

[On February 4, 1935, Sir N. N. Sircar, Law Member in the Governor-General's Executive Council, moved: "That the Report of the Joint Committee on Indian Constitutional Reforms be taken into consideration". The following amendment moved on behalf of the Congress Party was rejected. (Ayes—61, Noes 72): "This Assembly is of opinion that the proposed scheme of Constitution for the Government of India is conceived in a spirit of imperialist domination and economic exploitation and transfers no real power to the people of India and that the acceptance of such a constitution will retard instead of furthering the political and economic progress of India and recommends to the Governor-General in Council to advise His Majesty's Government not to proceed with any legislation based on the said scheme". Mr. Jinnah moved another amendment consisting of three parts:

Congress view

Jinnah's view

"1. That this Assembly accepts the Communal Award, so far as it goes, until a substitute is agreed upon by the various communities concerned.

2. As regards the Scheme of Provincial Governments, this House is of opinion that it is most unsatisfactory and disappointing, inasmuch as it includes various objectionable features, particularly the establishment of Second Chambers, the extraordinary and special powers of the Governors, provisions relating to Police rules, Secret Service and Intelligence Departments, which render the real control and responsibility of the Executive and Legislature ineffective and, therefore,

<sup>1</sup> See paras 78-84 of the *Report*.

advance. Your Cabinet in the Provinces will be of the elected members responsible to the Legislature and the Legislature will be responsible to the electorates. That frame-work of the Provincial Constitution is undoubtedly an advance. But . . . . . there are certain objectionable features . . . . . such as, the Second Chamber and the Governor's powers . . . . . Therefore . . . . I cannot say I am so fundamentally opposed to it as to reject it.

Defects of Provincial Scheme

\* \* \* \*

. . . . . Modify the Provincial scheme, drop the Central scheme, and review the whole position in consultation with Indian opinion with a view to establishing complete responsible government in British India.

#### 41. INDIAN NATIONAL CONGRESS,<sup>1</sup> ON WHITE PAPER PROPOSALS.

I will judge the White Paper proposals in the light of four tests, namely, (1) how far the proposed new legislatures will be representative of the nation; (2) how far the powers alleged to be transferred to popular control are real in the Centre and the Provinces; (3) what the powers proposed to be transferred in regard to the Finances are, and what additional burdens India will have to bear for the New Constitution; and (4) whether the proposed constitution contains within itself any elements of growth and development.

'Four tests' for Reforms

It is sought to replace the bloc of officials and non-officials nominated by the Government by nominees of Indian States joining the Federation. The nominated officials and non-officials of British India cannot be said to be amenable to popular opinion but they have certainly a wider outlook and are more in contact with public opinion than any nominee of a State could be. They also feel a sense of responsibility even though it is to the British Government and

Arguments against putting nominees of Indian States in Federal Legislature

<sup>1</sup> Presidential Address of Rajendra Prasad, Bombay, 1934.

in the remaining two-thirds. But the Princes themselves will be more helpless than they are now and will soon realise the effect of a federation which is conceived to keep them free from the baneful interference of British India people but nonetheless subservient to the Viceroy.

#### 42. SIR SAMUEL HOARE ON GOVERNMENT OF INDIA BILL<sup>1</sup>, 1935.

Complication of All-India Federation:

(i) Indian States

(ii) Executive

(iii) Legislature

(iv) List of Federal subjects

I will begin with the first chapter of the Bill, the chapter dealing with All-India Federation. Any Federal Government is bound to be more complicated than a unitary Government, and in the case of an All-India Federation there is the additional complication due to the fact that the units are as different as the Indian States are from the British India Provinces. Those complications react upon almost every clause in the Federal chapter. They react, for instance, upon the provisions as to how the Federation is to be formed, for it is obvious that the Princes, being voluntary agents, can only enter of their own volition. They react, again, upon the kind of executive and the kind of legislature that is proposed, each side of the Federation obviously demanding adequate representation both in the Government and in the Federal Legislature. They react, again, upon the relations between the two Federal Chambers, the Princes, from the first, attaching the greatest possible importance to the Chambers having equal powers. They react, further, upon the list of federal subjects, the Princes, again, rightly insisting that, apart from the functions of Government which they surrender to the Federation, there should be no interference in their internal sovereignty. These complications make a formidable list of difficulties, but I would ask the House to observe, first of all, that 9 out of 10 members in this House, indeed I believe 99 out of 100 members, regard All-India Federation as our

<sup>1</sup> House of Commons, February 6, 1935.

Merits of  
the Bill

sant inquiry, a Bill that offers to India a vast and fruitful field of self-government, a Bill that holds the balance fairly and honourably between conflicting interests and competing parties, a Bill that comes in the direct line of succession to the great Imperial measures of the past. Let Indians, though they may wish for a longer and a swifter advance, mark the spirit in which we make these proposals. Let Parliament, realising the difficulties in any course of action, remembering the complexities of any scheme of Indian reform, admitting the many imperfections of any proposals, show by the majority for Second Reading and its attitude in the subsequent stages of our discussions, that it intends to act, as it has acted upon great issues of the kind in the past, with resolution and expedition no less than with caution and wisdom.

### 43. MR. ATTLEE<sup>1</sup> ON GOVERNMENT OF INDIA BILL<sup>2</sup>, 1935.

Criticism of  
omission of  
Preamble

I welcome very much the declaration which he<sup>3</sup> made on behalf of the Government with regard to the object at which we are aiming in India, and that object includes Dominion Status. But I cannot understand why, if that is the mind of the Government, the statement was not made long ago. No mention was made of the subject in the earlier discussions which we had either on the White Paper or on the report of the Committee, and yet from one end of India to the other a complaint has gone out on this particular matter of the recognition of India's

<sup>1</sup> Mr. Attlee moved: "no legislation for the better government of India will be satisfactory which does not secure the good will and co-operation of the Indian people by recognising explicitly India's right to Dominion Status and by providing within it the means of its attainment, and which does not by its provisions as to franchise and representation secure to the workers and peasants of India the possibility of achieving by constitutional means their social and economic emancipation".

<sup>2</sup> House of Commons, February 6, 1935.

<sup>3</sup> Sir Samuel Hoare. See Document No. 42.

## APPENDIX A

### DOCUMENTS ON INDIAN STATES

#### 44. MONT-FORD REPORT ON INDIAN STATES

305. . . . We wish to say that we think that the Princes should be assured in the fullest and freest manner that no constitutional changes which may take place will impair the rights, dignities, and privileges secured to them by treaties, *sanads*, and engagements, or by established practice.

Rights of Princes guaranteed

306. We have explained how, on various occasions in recent years, the Princes have met in conference at the invitation of the Viceroy. These conferences have been of great value in assisting in the formulation of the Government's policy on important matters like minority administration and succession and promoting interests in such questions as scientific agriculture and commercial and agricultural statistics. The meetings have given the princes the opportunity of informing the Government as to their sentiments and wishes, of broadening their outlook and conferring with one another, and with the Government. But although the meetings have in the last few years been regular they depend upon the invitation of the Viceroy; and our first proposal is to replace them by the institution of a Council of Princes. We wish to call into existence a permanent consultative body. There are questions which affect the States generally and other questions which are of concern either to the Empire as a whole or to British India and the States in common, upon which we conceive that the opinion of such a body would be of the utmost value. The Viceroy would refer such questions to the Council, and we should have the advantage of their considered opinion. We think it is all-important that the meetings should be regular and that ordinarily the Council should meet once a year to discuss agenda approved by the Viceroy. Any member of the Council or the Council as a whole might request the Viceroy to include in the agenda

Conferences of Princes

Proposal for establishment of a Council of Princes as a "permanent consultative body"

Procedure

will exist for bringing the senatorial institutions of British India into closer relations when necessary with the Rulers of the Native States. Matters affecting the Native States generally, or the Native States and British India in common, or the Empire might, as we have seen, be referred to the Council of Princes. It would thus be possible for the Viceroy, when he thought fit, to arrange for joint deliberation and discussion between the Council of State and the Council of Princes or between representatives of each body. He might also invite members of the Council of Princes to serve on committees of the Privy Council.

Suggested  
procedure  
for joint  
deliberation

312. With these indications of the position to be occupied by the Native States in future we may rest content. We believe that the trend of events must draw them still closer into the orbit of the Empire; we think that the process need give rise to no alarm lest their internal autonomy be threatened. We need not conceal our conviction that the processes at work in British India cannot leave the States untouched and must in time affect even those whose ideas and institutions are of the most conservative and feudal character. But in that respect there can be no intention or desire to accelerate growth by artificial means. We believe that our proposals will afford satisfaction to the progressive Rulers while respecting the legitimate desire of those less advanced to go forward at their own pace.

"Processes  
at work in  
British  
India  
cannot  
leave the  
States  
untouched."

#### 45. LORD READING'S LETTER TO THE NIZAM<sup>1</sup>, 1926.

In the paragraphs<sup>2</sup> which I have mentioned you state and develop the position that in respect of the internal affairs of Hyderabad, you, as Ruler of the Hyderabad State, stand on the same footing as the British Government in India in respect of the internal affairs of British India. Lest I should be thought to overstate your claims, I quote Your Exalted

Nizam's  
claim of  
complete  
freedom in  
respect of  
internal  
affairs

<sup>1</sup> March 27, 1926.

<sup>2</sup> The reference is to the Nizam's letter dated September 20, 1925.

In accordance with Your Exalted Highness's request, your present letter has been submitted to His Majesty's Secretary of State, and this letter of mine in reply carries with it his authority as well as that of the Government of India.

#### 46. CONSTITUTIONAL IMPORTANCE OF CHAMBER OF PRINCES.

##### I. Extracts from Report of Simon Commission.

107. Various proposals had been made before the Montagu-Chelmsford Report to organise a system of conferences amongst the Ruling Princes of India with a view both of securing the expression of their collective opinion and of providing opportunities for counsel and consultation in matters of common concern to India as a whole. But it was not until after the publication of the Joint Report that the idea took permanent and effective shape. It is not, of course, to the Government of India Act that we must turn to find the institution of the Chamber of Princes; indeed we are not aware of any specific reference to the Indian States in the Act, though in many places "India" is referred to as distinguished from British India<sup>1</sup>. It was by Royal Proclamation that the Chamber of Princes was set up on 8th February, 1921. The ceremony of inauguration was performed, on behalf of the King-Emperor, by the Duke of Connaught in the Dewani-i-Am of the Moghul Palace in Delhi. The Proclamation which was read on this occasion contained the memorable passage:—

"In my former Proclamation I repeated the assurance given on many occasions by my Royal Predecessors and Myself, of My determination ever to maintain unimpaired the privileges, rights, and dignities of the Princes of India. The Princes may rest

Conferences  
of Princes

Inauguration  
of  
Chamber of  
Princes

King-  
Emperor's  
assurance to  
Princes

<sup>1</sup> "India" is defined in the Interpretation Act as meaning "British India together with any territories of any Native Princes or Chiefs under the suzerainty of His Majesty exercised through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India".

formed of them; their decisions do not bind the Princes as a body, or individually; and their proceedings are not held in public; some of the more important Princes have hitherto refused to attend meetings of the Chamber . . . the Nizam has always adopted an attitude of entire detachment from it . . . But nevertheless the constitution of the Chamber and its Standing Committee was a great and far-reaching event. It meant that the Paramount Power had once and for all abandoned the old policy of isolating the States and that it welcomed their co-operation.

Limitations  
of the  
Chamber

#### 47. THE NEHRU COMMITTEE ON INDIAN STATES.

. . . We are aware that the sensitiveness of some Indian Princes has in recent years been touched by what they consider to be a somewhat obtrusive interest taken in them by public opinion in British India, which they have condemned as either lacking in knowledge, or political sagacity or sympathy. We, therefore, very strongly repudiate the ill-founded charge that intelligent public opinion in British India has been too self-centred to look beyond the confines of British India or has shown any unwillingness to understand the viewpoint of the Indian Princess or their subjects or even to sympathise with it wherever and whenever it has been possible to extend sympathy. If it has at times been critical of some of the "claims" of the Indian princes, or if it has at times approached their internal problems or tried to envisage the development of the constitutional relations between them and the future self-governing India from a different angle of vision, it is no more than what it is clearly entitled to do. We are afraid that the present tendency to stress the problem of Indian States as presenting insurmountable obstacles in the way of British India achieving Dominion Status is full of incalculable mischief for both and instead of helping to bring the "two Indias" closer to each other is likely to give rise to serious misunderstanding.

Indian  
States and  
intelligent  
public  
opinion  
in British  
India

pate that the judges of the Supreme Court will be men of the highest legal training, character and judicial independence.

In regard to non-justiciable matters involving financial and administrative relations, it should not be difficult to come to a settlement by mutual conferences and understandings. The position in the future will not, to our mind, be worse than it is. Indeed it is likely to be better, where, between different States, there are honest differences and an independent effort is made to arrive at just and equitable settlements. Practical goodwill and larger common interest are of far greater value than any meticulous considerations of ultimate sanctions. It is obvious to our mind that the question of common defence is one which is bound to be in future the rallying centre of the Government of India and the Indian States, and if it has been possible in the past to sustain common obligations and to keep alive a common sense of duty to the country at large, we do not despair of the future.

#### 48. JOINT OPINION OF THE PRINCES' LAWYERS<sup>1</sup>, 1928.

(1) In the analysis of the relationship between the States and the Crown legal principles must be enunciated and applied.

(2) The Indian States to-day possess all original sovereign powers, except in so far as may have been transferred to the Crown.

(3) Such transfer has been effected by the consent of the States concerned, and in no other way.

(4) The consent of a State to transfer sovereign

<sup>1</sup> July 24, 1928 Five eminent English lawyers—Sir Leslie Scott, Mr. Stuart Bevan, Mr. Wilfrid A. Greene, Mr. Valentine Holmes and Mr. Donald Somervell—were appointed by the Princes “to advise on the legal and constitutional aspects of the questions raised by the terms of reference to the Indian States Committee” (*i.e.*, the Butler Committee). This extract embodies their main conclusions. Keith says that the opinion of the Princes' lawyers ‘exhibits unhappily singularly little sense of constitutional law’. (*Constitutional History of India*, pp. 292-293).

Matters  
of a 'non-  
justiciable'  
character  
relating to  
States

Partial  
transfer of  
sovereignty  
by the  
States to  
the British  
Crown

rights to the Crown is individual to that State, and the actual agreement made by the State must be investigated to see what rights and obligations have been created.

(5) Such agreement appears normally in a treaty or other formal engagement. An agreement to transfer sovereign powers is, however, capable in law of being made informally. In such case, the onus is on the transferee, viz., the Crown, to prove the agreement.

(6) The relationship of the Crown as Paramount Power and the States is one involving mutual rights and obligations. It rests upon agreement express or implied with each State and is the same with regard to all the States. Paramountcy gives to the Crown definite rights and imposes upon it definite duties in respect of certain matters and certain matters only, viz., those relating to foreign affairs and external and internal security. It does not confer upon the Crown any authority or discretion to do acts which are not necessary for the exercise of such rights, and the performance of such duties. Wherever "paramountcy" is mentioned in this opinion we mean paramountcy in the above sense and no other.

Meaning  
of Para-  
mountcy

(7) The relationship is between the States on the one hand and the British Crown on the other. The rights and obligations of the British Crown are of such a nature that they cannot be assigned to or performed by persons who are not under its control<sup>1</sup>.

Rights of  
the British  
Crown  
cannot be  
transferred  
to persons  
who are not  
under its  
control.

#### 49. THE INDIAN STATES AND THE BRITISH CROWN<sup>2</sup>.

The first point raised by the Indian Princes is,

<sup>1</sup> For criticism of this view see G. N. Singh, *Indian States and British India*, Chapter II.

<sup>2</sup> These extracts are taken from *Memorandum of the Indian States' People* (1928), submitted to the Butler Committee. The States' people were not allowed to represent their case before the Committee which formally took into consideration only the Princes' point of view.

## 50. THE INDIAN STATES COMMITTEE<sup>1</sup> ON PARAMOUNTCY, 1929.

The 'Paramount Power' means the Crown acting through the Secretary of State for India and the Governor-General in Council who are responsible to the Parliament of Great Britain..... The Act of 1858...did not give the Crown any new powers which it had not previously possessed. It merely changed the machinery through which the Crown exercised its powers.

Meaning of 'Paramount Power'

The fact of the Paramountcy of the Crown has been acted on and acquiesced in over a long period of time. It is based upon treaties, engagements and *sanads* supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in political practice.

Basis of Paramountcy

\* \* \* \*

The validity of the treaties and engagements made with the Princes and the maintenance of their rights, privileges and dignities have been both asserted and observed by the Paramount Power. But the Paramount Power has had of necessity to make decisions and exercise the functions of paramountcy beyond the terms of the treaties in accordance with changing political, social and economic conditions. The process commenced almost as soon as the treaties were made..... In 1800 the British made a treaty with His Highness the Nizam, article 15 of which contains the following clause:

How the Paramount Power extended its authority

"The Honourable Company's Government on their part hereby declare that they have no manner of concern with any of His Highness' children, rela-

British relations with the Nizam

<sup>1</sup>The Committee consisted of Sir Harcourt Butler, Mr. Sidney Peel and Professor Sir William Holdsworth. It was appointed by Lord Birkenhead, Secretary of State for India, in December, 1927. The *Report* was submitted to Lord Peel, Lord Birkenhead's successor, in February, 1929.

For the attitude of Princes see the speech of the Maharaja of Patiala, in Panikkar, *The Indian Princes in Council*, Appendix II.

time raise unexpected situations. Paramountcy must remain paramount; it must fulfil its obligations defining or adapting itself according to the shifting necessities of the time and the progressive development of the States. Nor need the States take alarm at this conclusion. Through paramountcy and paramountcy alone have grown up and flourished those benign relations between the Crown and the Princes on which at all times the States rely. On paramountcy and paramountcy alone can the States rely for their preservation through the generations that are to come. Through paramountcy is pushed aside the danger of destruction or annexation.

Paramountcy must adapt itself to changing circumstances.

## 51. THE PRINCES AT ROUND TABLE CONFERENCE.

### I. Speech of Maharaja of Bikaner, November 17, 1930.

.... The ultimate attainment of Dominion Status under the Crown is inherent in the declaration of policy in 1917, and has more recently received authoritative endorsement. Let us hitch our wagon to that star, fully realising . . . that in the intervening stage certain safeguards and guarantees are imperatively necessary for the security of the body politic and all parts thereof, but looking straight on. Nothing worth having can be attained without facing some risks. These were taken when Lord Durham laid the foundations for the proud position which Canada enjoys to-day as the premier Dominion in our great Commonwealth, to the mutual benefit of Great Britain and Canada. Similar risks were run when Sir Henry Campbell-Bannerman secured Dominion Status for South Africa with the happiest results . . . . . I am equally convinced that if this Conference will but do the right thing by India, justly and magnanimously, my country will be a willing and contented partner in the Commonwealth. . . . . No half-hearted measures, and no tinkering with the constitution will . . . meet the situation. Many of our troubles in the past, and our troubles

"Ultimate attainment of Dominion Status" supported

Analogy of Canada and South Africa

before they were asked to come into Federation. We are now about to complete the picture.

\* \* \* \* \*

Princes  
want  
responsible  
Federal  
Govern-  
ment.

. . . whatever you give must lead to a real responsibility at the Centre. The Princes have also made it very clear . . . that they are prepared to enter into Federation only with a self-governing India, with a responsible India. . . They said they were not prepared to come into Federation with an irresponsible Centre.

## 52. MAHATMA GANDHI ON PRINCES<sup>1</sup>, 1931.

Princes are  
British  
officers.

The Princes are British Officers in Indian dress. A Prince is in the same position as a British Officer: He has to obey . . . We argue that the Princes ought to be transferred to the control of the Indian Government.

<sup>1</sup>Talk with Mr. H. N. Brailsford in London, October, 1931. See Gandhi, *The Indian States' Problem*.

APPENDIX B

CONSTITUTION OF THE INDIAN NATIONAL CONGRESS<sup>1</sup>.

Article I. The object of the Indian National Congress is the attainment of Swarajya<sup>2</sup> by the people of India by all legitimate and peaceful means. Object

(a) The Indian National Congress shall ordinarily meet once every year . . . Annual Meeting

\* \* \* \*

Article II. Every delegate elected to the Indian National Congress shall be deemed to have expressed his or her acceptance of the object of the Congress and methods of its attainment as laid down in the foregoing Article, and shall be bound by the Constitution and the Rules of the Congress.

Article III. The Indian National Congress Organisation shall consist of the following :—(a) The Indian National Congress. (b) The All-India Congress Committee. (c) Provincial Congress Committees. (d) District Congress Committees. (e) Sub-Divisional, Taluqa or Tahsil, Firka or other local Congress Committees. (f) Such other Committees outside India as may from time to time be recognised by the Congress in this behalf. Constituent Committees

\* \* \* \*

Article IV. No person shall be eligible to be a member of any of the organisations referred to in the foregoing Article, unless he or she has attained the age of 18 and expressed in writing his or her acceptance of the object and the methods as laid down in Article I of this Constitution and of the Rules of the Congress. Membership

<sup>1</sup> Adopted at Nagpur session (1921) and amended at Cocanada session (1923). It was further amended by the Bombay session (June, 1939) of the All-India Committee.

<sup>2</sup> The words "Purna Swaraj (Complete Independence)" were substituted in the amendment of 1939.

Provincial  
Congress  
Committee

Article VI. (a) There shall be a Provincial Congress Committee in and for each of the Provinces<sup>1</sup> . . .

Membership

(b) Each Provincial Congress Committee shall organise District and other Committees referred to in Article III . . .

(c) Each Provincial Congress Committee shall consist of representatives elected annually by the members of the Congress organisations in the province . . .

Article VII. Every person not disqualified under Article IV and paying a subscription of four annas per year shall be entitled to become a member of any primary organisation controlled by the Provincial Congress Committee . . .

Article VIII. Each Provincial Congress Committee shall be responsible for the election of delegates to the Congress.

No one shall be qualified for election who is not a member of any Congress organisation.

The number of delegates shall be not more than one for every 50,000 or its fraction of the inhabitants of the Province of its jurisdiction, including the Indian States therein, . . . provided, however, that the inclusion of Indian States in the electorate shall not be taken to include any interference by the Congress with the internal affairs of such States.

\* \* \* \*

Election of  
President

Article XVI. The several Provincial Congress Committees shall . . . suggest to the Reception Committee the names of persons who are in their

<sup>1</sup> There were 20 Provinces: (1) Ajmer-Merwara and Rajputana; (2) Andhra; (3) Assam; (4) Bihar; (5) Bengal and Surma Valley; (6) Berar; (7) Burma; (8) C.P. (Marathi); (9) C.P. (Hindustani); (10) City of Bombay; (11) Delhi; (12) Gujarat; (13) Karnatak; (14) Kerala; (15) Maharashtra; (16) Punjab and N.W.F.P.; (17) Sind; (18) Tamil Nadu; (19) U.P.; (20) Utkal.

opinion eligible for the Presidentship of the Congress, and the Reception Committee shall . . . submit to all the Provincial Committees the names as suggested for their final recommendation, provided that such final recommendation will be of any one but not more of such names, and the Reception Committee shall . . . meet . . . to consider such recommendations. If the person recommended by a majority of the Provincial Congress Committees is adopted by a majority of the members of the Reception Committee present at a special meeting called for the purpose, that person shall be the President of the next Congress. If, however, the Reception Committee is unable to accept the President recommended by the Provincial Congress Committees, or in case of emergency by resignation, death or otherwise of the President elected in this manner, the matter shall forthwith be referred by it to the All-India Congress Committee . . . provided that in no case the person so elected as President shall belong to the Province in which the Congress is to be held.

\* \* \* \*

Article XIX. The All-India Congress Committee shall consist of 350 members, exclusive of ex-officio members.

All-India  
Congress  
Committee

\* \* \* \*

Each Provincial Congress Committee shall elect the allotted number of members of the All-India Congress Committee from among the members of the Congress Committees within its jurisdiction.

\* \* \* \*

Article XXI. The All-India Congress Committee shall be the Committee of the Congress to carry out the programme of work laid down by the Congress from year to year and deal with all new matters that arise during the year . . .

\* \* \* \*

94547  
N

Working  
Committee

Article XXIV. The All-India Congress Committee shall . . . elect 9 members who shall, with the President, General Secretaries and Treasurers, be the Working Committee of the Congress and the executive authority responsible to the All-India Congress Committee in all matters.

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**NOTABLE BOOKS ON  
INDIAN HISTORY AND CONSTITUTION**

**BY**

**Dr. A. C. Banerjee**

**MEDIEVAL STUDIES  
PESHA MADHAV RAO I  
ANNEXATION OF BURMA  
THE EASTERN FRONTIER OF  
BRITISH INDIA  
THE RAJPUT STATES AND THE EAST INDIA  
COMPANY  
ANGLO-SIKH RELATIONS**

**By**

**Dr. N. K. Sinha &**

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**HISTORY OF INDIA**

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