PART II

THE GOVERNMENT OF THE INDIAN REPUBLIC

CHAPTER I

The Nationalist Movement

Rise of Nationalism

Nationalism is a feeling of territorial patriotism or a sense of identification of the individual with the entire people of the land. This consciousness is fostered by the development of a common language, expansion of education and means of communication and transport, growth of political parties, democratic institutions and a free press, and by the active participation of the people in government and other public affairs. The sentiment of national unity is forged among the people through struggle for independence. The exploitation and repressive policies of the rulers whip up anti-government feelings which find expression in some form of political action, constitutional or revolutionary. The pace and growth of a national movement, however, depend upon various factors, like the quality of leadership, the spirit of discipline and sacrifice among the people and the national and international situation.

In India, whose political history extends over centuries, the political and national unity, though formulated as a concept even in earlier times, was never consciously realised at any time before the nineteenth century. The country had a cultural and social unity which sustained her people through several political vicissitudes. Politically, too, a very large part of India had, for certain periods, been consolidated, especially under the Mauryas, Kushans, Guptas and Mughals, and in time of common danger people in various parts of the country had demonstrated a unique solidarity. The country had also known both the monarchical and republican forms of government and representative institutions, described as "little republics", had functioned in villages for centuries. Whatever the form of government, the Indian polity, broadly speaking, was characterised by its ethical basis, the prevalence of popular will and a concern for the general well-being. But, unfortunately, India as a country never exhibited political stability for a long period. Nor did it become a nation in the modern sense of the term, as was perhaps nowhere else during that period. Apart from the feeling of territorial affinity as a consequence of living together, there was never an organised and deliberate effort made to promote the sentiments of national unity. Tara Chand states the bare truth that "The hard moulds into which groups and communities were enveloped did not permit them to be fused together" into a politically conscious society.[1]

No doubt the rulers and people of India had offered successful resistance to some foreign aggressors and India's military history is replete with individual and collective valorous deeds and acts of chivalry, patriotism, self-sacrifice and undaunted courage, but generally personal rivalries and political intrigues, casteism and regionalism had always marred political unity that had attained great fame for her cultural and spiritual heritage. It was primarily for dissensions among the warring rulers of post-Aurangzeb India that just a handful of the British who came to trade and lived on the sufferance of the Mughal and other Indian authorities, gradually extended their political domain. It was because of their superior military organisation and better army and their successful political strategy of exploiting internal strifes that the East India Company vanquished the Mughals, the Marathas, and the Sikhs and by

1. Tara Chand, *History of the Freedom Movement in India*, Vol. I, p. 4.

the middle of the nineteenth century practically the whole of India was held under their sway.

The British in India restored peace where life and limb was in danger. The theoretical basis of political unity was provided by the British Crown holding together the British and Princely India. The period from 1858 to the end of First World War presented a picture of the administrative unification of India. The country was knitted together by a uniform post and telegraph system and its distant and far-flung parts were linked up with a network of roads and railway communications. A single currency prevailed from Kashmir to Cape Comorin and a customs union was built around the country within which the economic life was integrated. In a mult-lingual country, English, though a foreign language, enabled people from the various areas to converse with one another and to associate socially and politically. A uniform system of education also contributed to the political unity of the country.

These were some of the blessings of the British regime which made India a political unit and a geographical entity, but by themselves these could not have galvanised the country into a dynamic nation. What actually led to the emergence of a single independent union at the end of the British rule in 1947 was the prolonged and bitter political struggle of the Indian people which "gave to the sense of Indian nationhood a significance which a mere unified administration or a common education could not have given." India's freedom struggle which passed through many upheavals, unfolds a poignant and inspiring drama of the emancipation of 400 million odd Indians from the political bondage of the mightiest empire of the world.

FACTORS STIMULATING THE GROWTH OF NATIONALISM

Pre-'Mutiny' Developments

Most of the earlier invasions of India were short-lived like those of Alexander, the Huns, the Sakas, Mahmud Ghaznavi, Shahab-ud-din Ghori, Timur, Nadir shah and Ahmed Shah. The conquests of Turks and Mughals, however, were of a different nature. These invaders settled permanently in India and were absorbed in the Indian society. But the 'conquest' of India by the East India company was a new experience for the Indian people. Unlike the previous conquerors, who either withdew or made India home, the British turned the country into a political dependency of Great Britain. They did not rest at that. They shattered the economy, killed industry, transformed the land system, perpetuated economic exploitation in the interest of their own country and the people groaned under the heels of a foreign imperialist power.

The reckless policy of political expansion pursued from the time of Clive to that of Dalhousie, annexation of the Princely States through the policy of escheats, annexation and the doctrine of lapse, the arrogance of the company's officials, ill-conceived agrarian changes and the expropriation of some landlords alienated a large number of Indian Princes and the landed aristocracy and left behind a blazing trail of discontent and disaffection throughout the country. The Muslim and Hindu families, tribes and castes, which were nurseries for the supply of soldiers, administrators and leaders were ostracized from the offices of the Company's government and were condemned to serve as helots. The learned classes, who had enjoyed a great patronage under the ruling Princes and the feudal lords were gradually squeezed out of their profession. The masses, too, who had generally remained indifferent to political vicissitudes in the past, felt deeply aggrieved for having been hit hard by land policy of the Company. Heavy assessment, the unceasing growth of population and its ever-increasing pressure on land further depressed their already miserable standard of living. They virtually lived on the verge of starvation.

Haughty and arrogant attitude of Europeans towards Indians, both high and low, the inaccessibility of the British officials, the exclusion of Indians from all high offices of the Company and denial of all kinds of rights to Indians all combined together made the Company's regime highly unpopular.

The alarm caused by the rapid spread of Western civilisation in India and the proselytising activities of Christian Missionaries also significantly contributed to inflame anti-British feelings. Sir Syed Ahmed Khan, a great admirer of the British, drew attention thus to these apprehensions of Indians, Hindus and Muslims alike : "There is no doubt that all persons whether intelligent or ignorant, respectable or otherwise, believed that the Government was really and seriously desirous of interfering with the religion and customs of the people, converting them all, whether Hindus or Mohammedans, to Christianity, and forcing them to adopt European manners and habits."

The political awakening among certain

sections of the people, therefore, arose out of resentment against the Company's unjust and exploitative policies. A bitter feeling grew that the evils from which the people suffered were the outcome of Farangi's (foreigner's) rule and the periodical famines in the first half of the nineteenth century were linked with the sacrilegious way of life of the Kristan (Christians). [2] The misery that followed in the wake of famines kept alive the feeling of anger and hostility against the Company's regime.

The socio-religious movements among the Muslims and the Hindus in the first half of the nineteenth century also helped, for different reasons, in fostering national consciousness among the two communities. They awakened pride in the ancient religions and engendered dissatisfaction against foreign rule which was considered to be threatening the indigenous culture.

The Wahabi movement,[3] which was initiated in Arabia, preached a return to primitive Islam and extolled its glory, made a great impact on the minds of Indian Muslims, who were in the slough of despondency. As ex-rulers of the country, the Muslims nursed a great resentment against the British and their rule which had deprived them of all the advantages and blessings which had belonged to them as ruling community. The Company's Government, on its own part, was suspicious of the Muslims lest they should make a bid to regain their lost power. They looked upon the Muslims as their enemies and resorted to a policy of isolating them from the Hindus. A clear enunciation of this policy was given by Lord Ellenborough. He wrote to the Duke of Wellington, after the fall of Kabul and Ghazni, that whereas Muslims, as a class, had wished for the defeat of the British forces, the Hindus were delighted on their victory. He, then observed, "It seems to me most unwise, when we are sure of the hostility of one-tenth, why not to secure the enthusiastic support of the nine-tenths which are faithful." He, again, wrote to the Duke of Wellington, "I cannot close my eyes to the belief that what race (Muslims) is fundamentally hostile to us, and, therefore, our true policy is to conciliate the Hindus."[4]

Thus, began the systematic policy of 'Divide and Rule' , which gave not only a severe blow to the pride and respectability of the Muslims, but also emasculated them politically and economically. The upper class Muslims, who previously thronged the military profession, were kept out of the Company's army as, it was believed, their exclusion, was necessary for the safety of the British Empire in India. The substitution of English as the official language minimised the chances of the Muslims for recruitment to the civil services, for they clung to the old orthodox traditions of religious education and turned their back on the new learning of the *franks* (Englishmen).

On the other hand, the Hindus promptly and eagerly seized the opportunity and made the best of Western education for advancing their professional interests. Consequently, the Muslims were excluded from the lower administrative posts as well as from other soft-handed professions. The Hindu collectors of revenue were elevated to the position of landlords with the result, as Sir William Hunter pointed out, "that most of the Muslim Houses of Bengal either disappeared or were submerged beneath the new strata of society which had developed....."[5] In the Punjab, where the Muslims were in a dominant majority, their condition was not a bit better. The revenue system introduced there produced a class of money lenders who were more often than not Hindus, since usury is banned by the Quran. The Hindu money lenders throve upon the misery of the Muslims and did not hesitate even to deprive them of their land. Such expropriation, according to Thornborn, had proceeded to a dangerous extent.[6] Apart from these setbacks the deliberate policy followed by the Company's Government to liquidate indigenous industries and handicrafts ruined the professions of weavers and other Muslim artisans.

The cumulative effect of this loss of political power by and the economic degradation and social humiliation of the Muslims produced in them a deep sense of frustration and resentment

2. Christians who had no scrupples either for the cow or the pig.
3. The Wahabi Movement aimed at establishing in India Dar-ul- Islam and declared *Jihad* first against the Sikhs and later against the British after the conquest of Punjab. The Muslims were repeatedly told that no True Believer could live loyal to an infidel Government without perdition of his soul. Patna was the centre of the Wahabi movement and activities in British India.
4. Refer to Lajpat Rai's *Unhappy India,* p. 400.
5. Hunter, W. W., *The Indian Musalmans,* p. 163.
6. Refer to Thornborn's *Musalmans and Moneylenders.*

against the British. The Wahabi movement made a great appeal to them in that mood. Syed Ahmed Shah, the Wahabi leader, "stirred the Muslim population to its depths, and a wave of enthusiasm swept over the country. So elemental was its force that William Hunter had called it one of the greatest religious revivals known to Indian History."[7] The Wahabis organised the impoverished peasants in Bengal and fomented agrarian revolts. In the 1857 'revolt' they took a leading part and continued their ceaseless efforts to penalise the British administration and even after that.

The Hindus, on their part, were also influenced by certain reform movements which vitalised their social and religious life. Hinduism, which had, for five hundred years, been the religion of a subject race, was in a moribund condition. The Hindu society was sullied by superstitions, decaying customs and strange cults and its philosophy was embroiled in the superstructure of priest- ridden practices. Such a state of affairs afforded an opportunity to Christian missionaries to embark on a policy of extensive proselytisation. Although their activities met with some success in the beginning, soon they produced a strong reaction, especially in Bengal which had the deepest impact. Raja Ram Mohan Roy, the founder of Brahmo Samaj, in the first half of the nineteenth century, attempted to reform Hinduism by rationalising it on the basis of the old Hindu scriptures. He struck a new note of social reform by upholding the cause of women, preaching the abolition of Suttee and urging upon the Hindus to undo the evils of caste system and idolatry. Although his reform movement met initially a small success, it was the precursor of other and more significant movements "which in the course of a century transformed Hindu religious thought and reorganised Hindu Society." It was the reformed Hinduism which became the basis of India's national unity and the spring-board of the national movement.[8]

On the political side, too, Raja Ram Mohan Roy blazed the path of constitutional agitation in the country by advocating that the people of India had the same capability for improving as any civilised people in the world. He belonged to that class of politically conscious Indians who had learnt to apply the lessons of English literature, political thought and history to his own country and to ask the rulers for an enlightened system of government. He championed the liberty of the press and the rule of law. Thus, with Raja Ram Mohan Roy started renaissance which steadily gathered strength, and from reform the spirit of revolt emerged.

To sum up, the first half of the nineteenth century witnessed a simmering of national consciousness in the country, but there was no organised platform as yet. There was a seething discontentment against the Company's regime, but for different reasons among different sections of the people. Some progressive British administrators had forewarned the Company of the consequences of their retrogressive policies and prophesied that either those policies would foment a spirit of discontent or, if this did not happen, the people would sink in character. Their foreboding proved true. Despite the skilful policy of 'Divide and Rule' the Company could not stem the tide of political uprisings which broke out from time to time and as far back as the early part of the nineteenth century.[9] The last and the most severe uprising was the "Revolt" of 1857 that shook the East India Company's administration to its very foundations.

The "Revolt" of 1857

Starting as a military uprising at Meerut on May 10, the 1857 "Revolt" rapidly turned into a sort of "War of Independence"[10] The sepoys gave a political touch to the struggle by placing themselves under the leadership of Bahadur Shah, the last Mughal King at Delhi, and proclaimed him Emperor of Hindustan. Although initially they had taken up arms against the East India Company for the protection of their religion, they eventually fought for India's political independence in a bid to establish a political system indigenous to the soil. In many places, especially in the North-Western Provinces, Oudh and Bihar, the civil population rose independently of the 'mutineers.' No doubt, several heterogeneous elements that joined the revolt had diverse motives. Their activities were not wholly inspired by patriotic impulses and were not well co-ordinated and planned, but they were well

7. Mehta and Patwardhan, *The Communal Triangle in India*, p. 95.
8. Panikkar, K. M., *Common Sense about India*, p. 21.
9. Important among them were the Bareilly rising of 1816, the Cole outbreak of 1831-32, the Ferazee disturbances at Barisal in 1831 and later at Faridpur in 1837, the Moplah outbreaks of 1819 and 1851, 1852 and 1855, and the Santhal insurrection of 1855- 56.
10. *1857–A Pictorial Representation*, p. XV.

united in their hatred of the British masters. The struggle cemented different elements, commanding a wide popular support. For the first time Hindus and Muslims in certain places fought together against the alien ruler. Though the concept of an Indian nationality was in embryo yet, and, largely feudal loyalty served for partriotism,[11] a large number of the people of India felt happy that they had something in common as against the British, in spite of their racial, religious and linguistic differences.

The revolt was quelled by the mighty hand of the British, but not the urge for freedom. The revolt had the seeds of nationalism and the spark of revolution. Like Julius Caesar who was more powerful dead than alive, the Mutiny of 1857 became a symbol of challenge to the mighty British power in India. It remained a shining example for the nationalists, revolutionaries and anarchists alike. The unknown heroes of 1857 as well as those well-known, like Nana Sahib, Rani Lakshmibai of Jhansi, Tatya Tope, Bahadur Shah and Kunwar Singh, became national heroes and champions of national freedom. The stories of their heroic struggle and bravery inspired the Indian people in the twentieth century. Popular songs and ballads kept their memory alive and animated the fighters for freedom to keep the torch of liberty burning.

Growth of Nationalism after 1857

After the restoration of British authority, the Government took immediate measures of precaution to avoid all risks of insurrection. The Mughal line was virtually extinguished; Bahadur Shah was captured and his two sons were shot dead after capture. All the lands of the mutineers in Oudh were confiscated. The army, which took the initiative in the outbreak, was thoroughly reorganised and the scheme of division and counterpoise dominated the defence policy of British India. Tribal and communal loyalties were encouraged to prevent the growth of the sentiment of national unity among the army. People's contact with the army was sealed and even Indian newspapers were not allowed to reach the military personnel. An impregnable force of British troops was stationed in India and the artillery was placed exclusiely in the hands of Europeans. The British troops, which alone were equipped with more effective weapons of warfare, were always stationed with the Indian regiments in all important centers of the country to serve as 'internal security' troops. To preclude the chance of any future rebellion breaking out in the country, the right of using firearms by the Indian civil population was drastically restricted.

In regard to Indian States, a dual policy was pursued. On the one hand, all possible steps were taken to make them militarily weak and harmless. The Princes were reduced in rank and status, legally and theoretically by the Royal Titles Act, 1876,[12] and in practice by the assumption of rights and privileges under the cloak of 'paramountcy.' On the other hand, an effort was made to conciliate the ruling families by assuring them their future stability. The policy of 'Divide and Rule' was followed ruthlessly and the split between the Hindus and Muslims was deliberately and systematically encouraged.

It was, however, realised that the police power alone would not provide a firm footing to British Imperialism and a semblance of benevolent government was deemed necessary. The Company's rule was, thus, brought to an end and the Government was transferred to the British Crown. The new regime was heralded by Queen's Proclamation, which struck a new note of moral basis for British rule in India. The Indian Councils Act, 1861, was enacted, by which the number of Additional members was increased and for the first time Indians were associated to elicit popular reaction to legislative and administrative measures as a much-wanted safety valve.

These measures gave some satisfaction to the people and raised the hope that they would open a new chapter of good and responsible government in the country. But the solemn assurances made in the Queen's Proclamation were followed more in the breach than in the observance. In fact, the era of British administration by the British Crown was a period of broken pledges. The disillusionment and frustration caused by the violation of assurances was the most potent factor in converting the goodwill of Indians into a spirit of hatred and animosity against British rule, and sharpened the edge of the nascent spirit of nationalism, the growth of which wa the characteristic feature of this period.

Very soon the post-Mutiny era was vitiated by a spirit of racialism and arrogance on the part of the ruling class. The reasons were not far to seek. The 'Revolt' of 1857 had left behind a

11. Sen, S. N., *Eighteen Fifty-seven,* pp. 411-413.
12. Lord Lytton proclaimed to the Indian people at a *durbar* the new title of Queen Victoria, the "Queen Empress of India."

tradition of suspicion and deep hostility on both sides. Sir Edward Thompson observed, "Right at the back of the mind of many an Indian the Mutiny flits as he talks with an Englishman—an unavenged and unappeased ghost."[13] The Indians could not forget the sacrifices they had made in their bid to free the country from the alien rulers and the woeful memories of the wholesale massacre and other brutalities committed by the British soldiers not only in the course of military campaigns but in a spirit of sheer revenge even after the Mutiny had been suppressed. Garrat remarked that "The English had never attempted to remove the irritation caused by their behaviour after the Mutiny, and from that time we must date the long and bitter estrangement between the two races. Born of hatred and fear, it was nourished on a series of unfortunate incidents, most of which were the direct result of the new spirit which the Mutiny encouraged amongst Europeans."[14]

The feelings of the British towards Indians both at Home and in India were those of active hatred and they looked upon them "as the creature half gorilla, half negro."[15] The most rabid anti-Indian amongst them openly preached and practised racial exclusiveness. They regarded an Indian as a black heathen worshipping stocks and sones and swinging himself on bamboos like beasts.[16] To accept him as the equal of a Britisher, as declared in the Queen's Proclamation, appeared to them nothing short of heresy.[17] The conception of race superiority among the British could be fathomed from certain maxims which guided their conduct towards Indians. The first was that the only thing that an Indian would understand was fear; second, the life of a European was worth those of many Indians; third, that England had been forced to lose many lives and spend millions of pounds to hold India and, therefore, deserved some more substantial recompense than merely the privilege of governing the country in a spirit of wisdom and unselfishness.[18]

Intoxicated with power and flushed with the consciousness of their inherent superiority as a race, the British civil servants ignominiously treated even distinguished Indians of high merit.[19] They looked on Indians as a race to whom rules of decent conduct need not apply. The facilities of communication and speedy means of transport had brought about a great change in their attitude. They could now live along with their families in India and visit their homes frequently. Thus, they ceased to look upon India as their "adopted home" and gradually caste-barriers arose between Indians and Englishmen, increasing thereby "bitterness, hostility and fear." Blunt wrote in 1909, "The English woman in India during the last thirty years has been the cause of half the bitter feelings there between race and race.....It is her constantly increasing influence now that widens the gulf of ill-feeling and makes amalgamation daily more impossible."[20] A saying went round that where two English families lived, there were three gardens, one, of course, being the club. But their clubs were closed to Indians. They could not tolerate Indians even travelling with them in the upper class railway compartments. Assaults on innocent and helpless Indians, and striking of Indian servants on the slightest provocation were accidents of common occurrence. The planters especially surpassed others in their brutalities on Indian coolies (labourers), and still they went unpunished. The administration of criminal justice had become a judicial scandal. "The long succession of murders and brutalities perpetrated by Englishmen on Indians which either went unpunished or for which, at the demand of the whole European community, only a small penalty was exacted.

13. Thompson, Sir Edward, *The Other Side of the Medal*, p. 29.
14. Garrat, G. T., *An Indian Commentary*, p. 116.
15. *Idem.*, p. 114.
16. Henry Cotton, *New India*, pp. 46-47.
17. Sir Henry Cotton wrote : "Ten years have elapsed since the Mutiny, but the Mutiny was in the early days of my service a living memory in the minds of all. When I first arrived in the country, it was duly enjoined upon me as a matter of vital importance that I should insist on all the outward and visible signs of deference and respect which Orientals with a leaning to sycophancy, resulting from generations of subjection and foreign rule, are only too willing to accord. Although I was a very *chota* (small) *sahib* (officer), and posted only to the humble office of Assistant to the Magistrate and Collector of a district, I was early taught that, though I might be but a fly on the wheel of the official hierarchy, I was, in the eyes of the people among whom I lived, a representative of the Government and entitled as such to rights and privileges on no account to be a foregone. Such was the atmosphere in which we lived; we are directly encouraged to assume an attitude of a patronising and superior character.....The old Haileybury stone still pervaded the civil service....."Henry Cotton, *Indian and Home Memories*, pp. 65-66.
18. Garrat, G. T., *An Indian Commentary*, p. 118.
19. Blunt, W. S., *India Under Ripon, A Private Diary*, p. 74. Also refer to Blunt's *Ideas About India*, p. 46.
20. Blunt, W. S., *India Under Ripon, A Private Diary*, p. 261. Also Spear, T. J. P., *The Nabobs*, p. 141.

The scandal of which there were many flagrant instances in the sixties''[21] continued for long. On the other hand, Indians were more severely punished even for the slightest offence or discourtesy to the Britishers.[22] The obvious result was increased racial bitterness between the rulers and the ruled and it was, in the opinion of Garrat, a direct cause of the growth of nationalism. It had been correctly said that the racial arrogance of the Britishers made the British rule more unpopular and hated in India than probably any other single factor. Lord Lytton wrote to the Secretary of State for India, Lord Salisbury, on September 28, 1876 : ''The prevalent brutality towards natives of the lower orders, the crystallised official formality towards natives of highest class, and it is really a wonder that our rule is not more unpopular than it is.....I am convinced that the greatest danger we have to deal with in India is from the Whites.''

Government services have always carried social distinction besides providing opportunities of employment to the people. Any Government which discriminates among the services is bound to provoke discontentment. After 1857, the bureaucracy in India provided this gun-powder in abundance and as Raghuvanshi pointed out, ''the cry of Indianisation of the services was the starting point of political agitation.''[23] With the spread of Western education the number of educated Indians increased considerably, but the Government had neatly excluded them from all positions of trust and responsibility. It was the monopoly of the Britishers, and Indians, as Surendranath Banerjea said, ''were the helots of the land, the hewers of wood and the drawers of water.''[24] The Royal pledge to the people for free admission to services on the basis of merit alone still sanctified the professions of the Government, but as Lord Lytton confessed, these pledges were not intended to be carried out. In a confidential Minute he wrote : ''We all know that these claims and expectations never can or will be fulfilled. We have had to choose between prohibiting them (Indians) and cheating them, and we have chosen the least straightforward course.....Since I am writing confidentially, I do not hesitate to say that both the Governments of England and India appear to me up to the present moment unable to answer satisfactorily the charge of having taken every means in their power of breaking to the heart the words of promise they had uttered to the ear.''[25]

The admission of Indians to the Indian Civil Service, which provided the steel framework of the British administration, was intentionally made difficult. The competitive examination was held in London and the age of entrance was fixed at twenty-one years. But these conditions made it extremely difficult for Indians to compete in the examination. Despite these difficulties some Indians succeeded in qualifying for it. But for one reason or the other obstacles were placed in the way of successful candidates in joining the service. In 1869, Surendranath Banerjea moved the Queen's Bench for a writ of *Mandamus* and the court upheld Banerjea's contention and ordered that he should be admitted to the service.[26] The Civil Service Commissioners had to suffer Banerjea in the Indian Civil Service, but two years afterwards he was dismissed from service on a ''wicked proceeding'' instituted against him.[27] The other victim of the bureaucratic fury was Aurobindo Ghosh, who came out successful in the main examination, but was disqualified in the riding test.

These cases created a furore in the country and formed the basis of political agitation. Surendranath Banerjea and Aurobindo Ghosh became national heroes and pioneers of the national

21. Garrat, G. T., *An Indian Commentary* pp. 116-17. Also refer to Theodore Morrison, *Imperial Rule in India*, pp. 27-28.
22. Lord Lytton wrote to the Secretary of State for India, August 27, 1876 : ''Since the Fuller case has led me to look more carefully over the recent verdicts of the Courts in cases affecting natives, I have been quite *horrified* by their apparent injustice. Fuller, with the approval of High Court, was fined Rs. 30 for unintentionally killing his syce (groom). The other day a native was *transported for life* for stealing 4 annas.'' *Lytton Papers*.. Quoted in Tara Chand, *History of the Freedom Movement in India*, Vol. II, p. 487.
23. Raghuvanshi, V.P.S., *Indian Nationalist Movement and Thought*, p. 22.
24. As quoted in Annie Besant, *How India Wrought for Freedom*, p. 174.
25. Refer to the Presidential Address of Gopal Krishna Gokhale delivered at the Benares session of the Indian National Congress (Twenty-first Session, 1905). *Idem.*, p. 420. Lord Hamilton, the Secretary of State for India, wrote to Lord Elgin on May 7, 1897 : ''I do not think we should put very prominently forward the Queen's Proclamation of 1858. As a piece of English it is fine, but 40 years' practice has shown the extreme difficulty of giving effect to the academic utterances as to equality of race....'' As quoted in the *History and Culture and Indian People, British Paramountcy and Indian Renaissance, op. citd.*, Vol. X, Part II, p. 400.
26. Surendranath Banerjea, *A Nation in Making*, pp. 15-16.
27. The proceedings were instituted under Act XXXIX of 1850. ''Many years afterwards'', wrote Surendranath Banerjea, ''a Lieutenant-Governor told me that it was a wicked proceeding''. *Idem.*, p. 29.

movement in the country. Banerjea founded the Indian Association in 1876, which was intended to represent the views of the educated middle-class community and was to serve as "the centre of All-India movement" on the conception of a united India. He had four objectives in view : (1) the creation of a strong body of public opinion in the country; (2) the unification of the Indian races and peoples upon the basis of common political interests and aspirations; (3) the promotion of friendly feelings between Hindus and Mohammedans; and (4) the inclusion of the masses in the great public movements of the day. The Indian Association, wrote Banerjea, "materially helped to promote these ideals. They were the natural and normal development of the efforts of great men of the past, under the new conditions created by the closer touch of our best minds with the political thought and activities of the West.[28]

In 1877, the Secretary of State for India, the Marquis of Salisbury, reduced the maximum limit of age for the open competitive examination for the Indian Civil Service from twenty-one to nineteen years. Indians regarded it as a deliberate attempt to blast the prospects of Indian candidates for entry into the Indian Civil Service. The Indian Association immediately resolved to organise a national movement with a view to agitating for raising the maximum age limit and holding of simultaneous examinations both in Britain and India. As a result of the vigorous campaign initiated by Surendranath Banerjea public opinion was whipped up in the country, and, consequently, it was decided to send an All India Memorial to the House of Commons, followed by a deputation to place these grievances before the British Government and to enlist the sympathies of the British people. Thus, a common platform emerged in India through the Indian Association which united the people through a sense of common grievance and the inspiration of a common resolve. Reactionary policies are often the creators of great public movements and the Civil Service Movement found its culminating expression in the Congress movement.

The soil for the growth of nationalism in Victorian India was also prepared by various socio-political factors. Among these were the establishment of political stability and a strong centralised system of administration which provided an umbrella for the attainment of a representative government. The establishment of peace set the people free to turn their minds to economic and political affairs.

The unification of the country and the spread of Western education widened opportunities for employment in the administrative services, the legal profession, business, insurance, banking, industry and allied vocations and enterprises, which having been set up on a national basis, contributed to the development of a national sentiment. The rapid disintegration of indigenous institutions and the growth of modern economic groups, diversification of occupations and mobility of labour with sharp class consciousness, created in the minds of all an awareness that they were the people of India and that their weal and woe were common.

With this orientation of the social set up emerged a politically conscious middle-class intelligentsia, which became the sprearhead of the national movement in the country. The rise of this class in the post-Mutiny period was a social development of great significance, for these people "pulled society out of the medieval rut and ensured her development on modern lines."[29] With the growth of the vernacular press and the emergence of political organisations the influence of this class spread among the masses, who were still politically ignorant and inert.

The malcontents of today are the revolutionaries of tomorrow, and of all the malcontents the unemployed and the starving are the worst. In 1880, Sir William Hunter wrote : "there remain millions of Indians who go through life on insufficient food." Even Lord Salisbury, as Secretary of State for India, confessed in 1875 that British rule was bleeding India white. The economic structure of the country had become subservient to the British exploitative system. Agriculture, the mainstay of India's economy, was allowed to deteriorate miserably while the pressure of population on land increased as the population expanded and indigenous industries decayed. At the Second Session of the Indian National Congress, D.E. Wacha drew attention to the poverty of the Indian population and pointed out that the condition of the ryot had steadily deteriorated since 1848 and that 40 millions of people had only one meal a day, and not always that. He attributed this pitiable condition to an unparalleled drain of wealth from India to Great

28. *Idem.*, pp.42-43.
29. Raghuvanshi, V.P.S., *Indian Nationalist Movement and Thought*, p. 25.

Britain.[30] Dadabhai Naoroji in India[31] and William Digby in Britain[32] exposed, by an array of statistics and facts, how British policy was directly responsible for the deteriorating economic condition of India. Educated Indians were deeply moved by the grim picture of India's poverty drawn by these intellectual giants. They realised the menace of the foreign rule and it helped in rousing their political conscience.

Recurring famines in the country emasculated rural India. As compared to seven famines in the first half of the nineteenth century, the second half had to undergo the misery of twenty-four famines with a total of over 28 million deaths. The famine of 1877 was, according to R.C. Dutt, "a calamity unprecedented in its intensity within the memory of living men."[33] Five million people perished. But Nero was fiddling while Rome was burning. Lord Lytton, the then Governor-General, in utter disregard of the economic distress in the country, held an Imperial *durbar,* to declare the assumption of Imperial Titles by the Queen and his own accession to the office of Viceroy. Immediately after the assumption of office, Lytton despatched a Mission to Kabul, which eventually involved the Government of India in the Second Afghan War.[34] This Imperialist war put India to a staggering loss of twenty million sterling and a damning slight to the British prestige and authority into the bargain.[35] Had this amount been expended on important irrigation projects, as recommended by Sir Henry Cotton to the Select Committee of the House of Commons and in the same year in which the Afghan War had begun, it would have saved millions of Indian cultivators from distress and famines for all time. This callous manifestation of British Imperialism in India evoked deep resentment among the people and their reaction was canalised in the form of agrarian anti-tax riots in the Deccan. The state of things by the end of Lord Lytton's regime was, as Sir William Wedderburn summed up, "bordering upon a revolution."[36]

The evolution of political progress in every country has generally begun during the reign of malevolent rulers. In Britain it began with King John and in India it was ensured during the Viceroyalty of Lord Lytton. Throughout his tenure of office Lytton pursued a policy of repression and enacted measures that helped to stir the educated community into life, which, according to Surendranath Banerjea, "years of agitation would perhaps have failed to achieve."[37] Lord Lytton, in the opinion of the Duke of Devonshire, was the very reverse of what an Indian Viceroy ought to have been, lacking in imagination and unsympathetic even to the legitimate aspirations of the Indians.[38] His abolition of import duty on British cotton goods in the face of stout opposition of the majority of the Members of his Executive Council, who were themselves Europeans,[39] the enactment of the Arms Act, which made an invidious distinction between the Indians and the Europeans,[40] and the Vernacular Press Act,[41] were the most oppressive and discriminatory measures which were vociferously condemned by the educated Indian community. "These ill-started measures of reaction", remarked Sir William Wedderburn, "combined with Russian methods of police repression brought India un-

30. Refer to Pattabhi Sitaramayya, *History of the Indian National Congress,* Vol. I, pp. 86-87.
31. Dadabhai Naoroji, *Poverty and Un-British Rule in India.*
32. William Digby, *'Prosperous' British India.*
33. Dutt, R.C., *India in the Victorian Age,* p. 427.
34. Lord Lytton was armed, before his departure from England, with secret instructions embodied in the Secretary of State's Dispatch, February 28, 1876.
35. Gladstone in his Midlothian speech, denounced the policy of the Conservative Government and characterised it as "untrue, arrogant and dangerous." Morley, *The Life of William Ewart Gladstone,* Vol. II, p. 595.
36. Pattabhi Sitaramayya, *History of Indian National Congress,* Vol. I, p. 8.
37. Banerjea, Surendranath, *A Nation in Making,* p. 63.
38. Mazumdar, A. C., *Indian National Evolution,* p. 31.
39. The Import duty which stood at 10 per cent in 1860 was reduced to 5 per cent in 1875. In 1877, the House of Commons adopted a resolution calling upon the Government of India to repeal without delay the cotton duties. When the question came before the Viceroy's Executive Council, a majority of the Members were opposed to this repeal. Lord Lytton exercised his veto. The duty on coarse cotton goods was repealed in 1879.
40. While the Act permitted foreigners belonging to any nationality and coming to India, to keep arms freely, it required every Indian to obtain a licence.
41. Vernacular Press Act IX of 1878. The Act empowered a Magistrate or a Collector to order any Editor of a Vernacular newspaper to enter into a bond not to publish anything likely to excite feelings of disaffection against the Government or antipathy between persons of different races, castes and religions. In case of contravention of this regulation the newspaper was first warned of the offence and if it reoccurred, its equipment was liable to be seized. For those who did not enter into a bond, they were required to submit proofs before publication for scrutiny to the officers appointed by the Government.

der Lord Lytton within measurable distance of a Revolutionary outbreak."[42]

The successor of Lord Lytton was a true Liberal of the Gladstonian era. Lord Ripon believed, as a good Christian, that "righteousness exalteth a nation". He sympathised with the aspirations of the Indians and attempted to undo what his Tory predecessor had done. He concluded a treaty with the Amir of Afghanistan and repealed the Vernacular Press Act. He also took immediate steps to abolish the judicial disqualification of Indians based on race distinctions. According to the old Criminal Procedure Code (1873) no Magistrate or Sessions Judge could try a European British subject, unless he were himself of European birth. By 1883, some of the Indian members of the Covenanted Service had risen by seniority to the stage when they could become Magistrates and Judges in the Courts of Sessions. Lord Ripon felt that it would be highly invidious, if they were not given the same rights and privileges as their European colleagues in service. A Bill was, accordingly, introduced in the Supreme Council by the Law Member, Sir Courtney Ilbert, seeking to remove the existing anomaly by giving Indian Magistrates jurisdiction over European offenders.

But this was too much for the British community to swallow. They were already nursing a strong grievance against the liberal policies of Lord Ripon. To regard an Indian as an equal of his British colleagues appeared to them nothing short of heresy. Ripon was vilified and openly insulted. A social boycott was declared against the Governorr-General and even some Members of his Executive Council refrained from attending social functions at the Government House. It was reported that 'a confederacy of blusters' was formed to overpower the sentries at the Government House, to put the Viceroy on board a steamer at Chanderpal Ghat and to deport him to England.

The press in England also became violent against the Viceroy. This wild agitation alarmed the Home Government. The Secretary of State devised a compromise which practically defeated the purpose of the Ilbert Bill.[43] Lord Ripon's efforts to remove race distinctions were, thus, foiled. But the Anglo-Indian agitation taught the "Indian leaders of political thought, hitherto steadfast in their faith in British justice, that without vigorous and countrywide agitation they could not hope to combat successfully the reactionary forces at work. Thus, did the people of India learn to distinguish between the liberty-loving British nation in whose sense of justice they had placed implicit faith and the British bureaucracy and community in India from whom they despaired of getting fair play."[44]

The periods of the Viceroyalty of Lord Lytton and Lord Ripon were, therefore, the seed time of Indian nationalism. It was during their period that Indians began to feel that the time had come when they should unite in an organised effort to obtain for themselves the freedom enjoyed by the British in their own country and the same representative and effective voice in their country's administration. The Indian Association organised the first National Conference in December 1883 at the Albert Hall. About a hundred people attended the Congress and the first meeting commenced with the recitation of a national hymn. In his opening speech Anand Mohan Bose declared that the Conference was the first stage towards a national parliament. The agitation of the Anglo- Indians over the Ilbert Bill taught Indians the great value of political agitation carried on the basis of a united front. The imprisonment of Surendranath Banerjea strengthened the growing bonds of fellowship and good feeling between the different Provinces. The conference could not be organised next year, but the great International Exhibition held at Calcutta in 1884, "further convinced the Indian leaders of the possibility of carrying on an all-India agitation on sound lines."[45] Thus, ensued the era of political agitation.

Racial discrimination, repression and cruel

42. Wedderburn, W., *Biographical Sketch of Allan Octavian Hume*, p. 101.

43. Lord Ripon had to yield. His government then proposed, with the approval of the Secretary of State for India, that "the extended powers should only be granted to Sessions Judges and District Magistrates and that the High Court should have power to transfer the hearing of the case from one court to another." But even this did not satisfy the Europeans and Ripon "had to stop further." A new Act was passed in 1884 which allowed the Indian District Magistrates and Sessions Judges power to try Europeans on the condition that a European accused could demand a trial by Jury half of which were to consist of Europeans or Americans.

44. Surendranath Banerjea was convicted for contempt of court for publishing a leaderette in the *Bengalee* on April 2, 1883 and sent to prison for two months. Surendranath Banerjea claimed the hounour of being the first Indian of his "generation who suffered imprisonment in the discharge of a public duty." *A Nation in Making*, p. 74.

45. Raghuvanshi, V.P.S., *Indian Nationalist Movement and Thought*, p. 42.

economic exploitation had made the Indian people aware of the curse of political subjugation and had disturbed political waters. But more than these were other catalysts which forged stable bonds of national unity and fostered political awakening. Among them was the imposition of an alien, though rich language, for the purpose of administration and its inevitable emergence as a common medium of communication and self-expression. In introducing the English language Lord Macaulay had a limited purpose, namely, to build a new educated class of English-speaking Indians meant initially to provide a link between the rulers and the ruled and to interpret British ideas and institutions to their countrymen. But it proved a blessing in disguise for Indians. English became a common all-India language of the educated Indians living in various parts of the country, thus, forging a new bond of political unity in multi-lingual society. Till the close of the nineteenth century the acquisition of knowledge in English was confined to a microscopic minority of the population of a small upper class and some sections of the lower-middle classes. But its influence was sufficient to create ferment in the domain of ideas and to mould Indian political thought.

Through the channels of the English language came the liberal ideas of the West; which stirred the imagination of the Indian people and roused them from their slumber. It unfolded to them the dynamic concepts of liberty, democracy, rule of law, and the modern forms of government. The inspiring ideals of the French and American revolutions and philosophies of Milton, Burke, Mill, Macaulay, Spencer, Garibaldi, and Karl Marx came within their ken. Through this medium dawned the marvels of modern science and technology and the knowledge of international developments. As a result of this impact mental stirrings were produced, reason and judgment replaced blind faith and belief and superstition yielded to a rational outlook. The average Indian had never before thought in terms of freedom and individual initiative. He had mostly been swayed by the ideals of submission and renunciation. With the development of English education politically conscious Indians imbibed the ideas of political freedom and the principles of democratic and constitutional government, and began to apply them to their own country. Ramsay MacDonald observed, "Herbert Spencer's individualism and Lord Morley's liberalism are, as it were, the only battery of guns which India has captured from us, and condescends to use against us."

The press in India also played a very important part in disseminating news and views and helping to create an enlightened public opinion. After the abolition of censorship on the press by the Government of Sir Charles Metcalfe in 1835, the Vernacular Press made rapid progress. By the turn of the century Indians owned and managed about 476 newspapers and most of them were conducted in the vernacular. The Indian owned press focussed attention on the failings and unpopular measures of the Government and became a vehicle for ventilating popular grievances. The Anglo-Indian Press, on the other hand, was pro-Government and anti-national and openly preached the race superiority of Europeans. The Indian Press advocated racial equality and strove to forge national unity in order to combat racial inequality. The Anglo-Indians, therefore, *en bloc,* held that the Indian press preached sedition. Lord Lytton's attempt to gag it by enacting the Vernacular Press Act, 1878, created a great political commotion. The Act was later withdrawn, but it brought home to Indians the fact that the main obstacle in the way of their progress was their slavery and that some kind of political organization was necessary to mobilise the people for freedom. The establishment of the Indian National Congress changed immediately the tone of both Indian and Anglo-Indian Press, "and brought politics in the forefront of discussion in both cases. The more important of Indian papers now sought to educate the public in the ideals of the Congress, and some even overstepped the limit of moderation set by their institution as its standard. The Anglo-Indian Press, with a few exceptions, criticised the political ideals of the Congress as chimerical and was definitely hostile to it. In this way they reflected the British attitude which was opposed to all political aspirations of India."[46]

The writings of Indian patriots also played a notable part in creating a sense of national consciousness and patriotism. This literature revolutionised Indian thinking and contributed to the birth of extremism in India. A number of distinguished writers in Bengal, who had permanently

46. *The History and Culture of the Indian People, British Paramountcy and Indian Renaissance, op. cit.,* Vol. X, Part II, p. 251.

enriched her language, preached the national sentiments through the medium of novels, poems, songs and essays. This literature proved to be the most valuable aid in the struggle for freedom.[47] The same holds more or less true of other parts of the country. Literature in Bengali, however, outnumbered the rest. Bankim Chandra Chatterjee's *Anand Math* had been called by some "The Bible of modern Bengali patriotism", and it was in that book that the song *Bande Mataram* first appeared. *Ananda Math* had also served as a text of revolutionary nationalism in Bengal.

The recovery of Indian History, a process which began with the decipherment of Asokan inscriptions, greatly spurred the growth of the national movement. It led to the inculcation of a national image in the minds of the people. Before this "such national pride as India had was local pride : the Marathas, the Rajputs, the Andhras and all other peoples had racial memories of their greatness, but none of them had pride in India. When the History of India was gradually unfolded through archaeology, epigraph and other fields of scholarship, an image of united Indian nation emerged which pictured them as one of the great historic peoples of the world who had contributed to the growth of civilisation. That History which not only bore witness to a continuing civilisation in India, with its achievements in many fields, religion, literature, philosophy, art, architecture, etc., to which every part of India had an equal right, but to a glorious tradition of cultural expansion overseas and across deserts which founded cities, States and Empires had actively carried on an international life in the not too remote past, created in the minds of the people of India pride of Indianness. Without this new self-image, the political unity of India would have been artificial."[48]

European scholars, like Max Mueller, Monier Williams, Roth, Sassoon, Burnouf, Jacobi and Colebrooke, helped the educated Indians to rediscover their own culture and civilisation and the world to know the secrets of India's great cultural heritage. They held Indian civilisation and culture superior and thereby kindled in the bosom of Indians the fire of patriotism which was put aflame by Indian scholars, like Ranade, Raja Rajindra Lal Mitra, Har Prasad Shastri and Dr. Pandu Sen.

Even this national image created by the historic researches might have remained an empty dream like the concept of Arab unity, but for the active national movement which began in the latter half of the nineteenth century. "That provided a focus for the dispersed feelings of patriotism, which, under a uniform system of education, a growing sense of Indianness and the common suffering under foreign rule, had developed."[49]

47. In 1859, Ranglal Banerjee came out with a play "Padmini" wherein the hero made the following inspiring speech :
"Who wants to live in disgraceful dependence,
Who likes to wear shackles of slavery,
It is hell to remain in slavery for ages,
A day's freedom is but a crown of joy,
He is worthy of life and strength,
Who liberates his country by sacrificing himself."
As quoted in Hemendra Nath Gupta, *The Indian National Congress,* p. 16. Reference may also be made to a drama, *Bharat Mata,* wherein the following song occurred :-
"O India, gloomy is thy face,
Beautiful that was as the moon,
Tears flow from thine eyes,
Throughout the day and night."
As quoted in Bipin Chandra Pal's *Memoirs of My Life and Times,* Vol. I, p. 227.

48. Talk by Sardar K. M., Panikkar on "Political Oneness", broadcast from A.I.R. Delhi, May 15, 1962.

49. *Ibid.*

CHAPTER II

The Indian National Congress and the Demand for Parliamentary Institutions

An Era of New Political Life

The post-1857 period in India assumed a new dimension under the impact of Western education and other social and political developments. The people having been completely disarmed, the freedom struggle in India could have only a civil rather than a military basis. Though the spirit of violence was not altogether dead and occasionally violent uprisings broke out in the country during the second half of the nineteenth century,[1] an intellectual movement of a non-violent nature now dominated the Indian mind. The spread of English education increased the strength of that class of Indians who were influenced by Western political thought and the technique of political agitation that prevailed in Britain. The more politically conscious people in the country, accordingly, took to agitating public opinion against the evil effects of the British administration in India rather then practising violence. Dadabhai Naoroji and men of his way of thinking, although they had no intention of questioning the British overlordship, desired nonetheless that the Indian government should be guided more in the economic interest of India. They felt that to accelerate the economic and political progress of the country, it was essential to educate British public opinion in respect of India's true condition and Britain's duty towards Indians.

Dadabhai Naoroji collected a band of workers and, together with W.C. Bonerjee, established the London Indian Society, which carried on useful propaganda. On December 1, 1866, the East India Association came into being.[2] The object of this body was to bring together Englishmen and Indians "on a common platform not only for the ventilation of Indian grievances but also for the removal of the erroneous impression" that India was unfit for any form of representative institutions. Gradually the influence of the Association began to be felt in Parliament. Whenever Indian questions were discussed, several members of Parliament, either on the promptings of the members of the East India Association or inspired by their discussions, spoke with knowledge about the needs and aspirations of the people of India and brought informed criticism to bear on the solution of Indian problems.

Within two years of its establishment, the East India Association had demonstrated what a wide field of work lay ahead and Dadabhai Naoroji was deputed to India to establish branches of the Association and collect funds.Three branches of the Association were established in Bombay, Calcutta and Madras in 1869.[3] In 1870 was started the Sarvajanik Sabha[4] with the main object of serving as a bridge between the government on one hand and the people on the other. Mahadev Govind Ranade was the strong man behind the activities of the Sabha and it was at his feet that Joshi, Gokhale and Tilak received their first lesson in public service. In 1867, Surendranath Banerjea established the Indian Association at Calcutta.[5] In 1884, the Mahajan Sabha was founded in Madras. The Sabha

1. Like the Wahabi, the Kuka and the Income-tax and Indigo riots.
2. For a list of the first members of the East India Association see its Journal, Vol. I, No. 2, pp. 117-20. Though there were a number of Indian names, Europeans preponderated.
3. The East India Association, however, gradually sank in importance after 1884 due to a change in the attitude of Englishmen towards India.
4. It originally started as Poona Association in 1867 on the lines of the Bombay Association.
5. *A Nation in Making*, p. 42. Surendranath Banerjea thus explained the need for such an association : "After my return from England in June 1875, and along with the work of organising the students and infusing in them a new life and spirit, I began seriously to consider the advisability of forming an Association to represent the views of the educated middle-class community and inspire in them a living interest in public affairs. There was indeed the British Indian Association.....; but it was essentially and by its creed an Association of landholders. Nor did any active political agitation, or the creation of public opinion by direct appeals to the people, form a part of its recognised programme. There was, thus, the clear need for another political Association on a more democratic basis....." *Idem.*, Vol. I, pp. 166-68.

summoned a conference in December of the same year and during its four-day session discussed a paper recommending the expansion of the Legislative Council to the maximum number of its membership as provided in the Act of 1861, and the appointment of non-official members on a representative basis. It also recommended the separation of the judicial from the revenue functions. It was decided to send a memorial on these lines to the government.

The Bombay Association established in 1852, was replaced by the Bombay Presidency Association in 1885. It commanded an eminent position as a public body under the able direction of Ferozeshah Mehta, Kashinath Trimbak Telang and Badruddin Tayabjee. It "showed considerable activity in the early days of its existence. By resolutions, memorials and public meetings it focussed the general feelings of the community on all matters of common interest."[6] But after the founding of the Indian National Congress in December, 1885, "the main activities of India flowed through that great channel, leaving the other fields high and dry."[7]

Birth of the Indian National Congress

The birth of the Indian National Congress was the culminating point of India's political awakening in the nineteenth century. It was the first all-India association of a permanent nature, and with it began a new era in the political life of India. For more than twenty years after it came into being "it completely dominated the political life of India and gave a shape and form to the ideas of administrative and constitutional reforms which formed the chief planks in the political programme of India. Even though the Congress ceased to play the dominant role in Indian politics after the split at Surat in 1907, it served the very useful purpose of keeping alive an all-India political platform which enabled Gandhi to revitalise this great organisation and make it a fit instrument for leading India, stage by stage, to its goal of independence."[8]

Allan Octavian Hume, a retired member of the Indian Civil Service, took the initiative.[9] In March 1885, a notice was issued convening the meet of the first Indian National Union at Poona in the following December. The circular notice conveying the dates for holding the conference at Poona, *inter alia,* stated that the "direct object of the conference will be : (1) to enable all the most earnest labourers in the cause of national progress to become personally known to each other; (2) to discuss and decide upon the political operations to be undertaken during the ensuing year." Indirectly, the circular added, this conference will form the germ of a Native Parliament, and, if properly conducted, will constitute in a few years an unanswerable reply to the assertion that India is still wholly unfit for any form of representative institutions."[10]

The conference could not be held at Poona due to some sporadic cases of cholera having occurred there. The venue was, accordingly, shifted to Bombay and thenceforward it came to be called "the Congress." Seventy-two Indians drawn from various parts of the country, representing different classes and communities and speaking one common language (English) met as scheduled. Never before had so important and comprehensive an assemblage occurred within historical time on the soil of India. W. C. Bonerjee was elected the first President of the Congress. He laid down its objects under four heads :

"(a) The promotion, by personal intimacy and friendship amongst all the more earnest workers in our country's cause in the various parts of the Empire;

(b) The eradication, by direct personal intercourse, of all possible race, creed, or provincial prejudices amongst all lovers of our country, and the fuller development and consolidation of those sentiments of national unity that had their origin in our beloved Lord Ripon's ever memorable reign;

(c) The authoritative record, after this, has been carefully elicited by the fullest discussion, of the matured opinions of the educated classes in India on some of the more important and pressing of the social questions of the day;

(d) The determination of the lines upon and methods by which during next twelve months it

6. Mody, H., *Pherozeshah Mehta,* Vol. I, pp. 166-68.
7. *The History and Culture of the Indian People, British Paramountcy and Indian Renaissance, op. citd.,* Vol. X, Part II, p. 516.
8. *Idem.,* p. 524.
9. Allan Octavian Hume (1829-1912) had served the Government of India since 1846, but was removed from the post of Secretary to the Government of India by Lord Lytton in 1879 for holding independent views and expressing them frankly and fearlessly. Hume retired from service in 1882.
10. Annie Beasant, *How India Wrought for Freedom,* pp. 3-4.

is desirable for Native politicians to labour in the public interests."

The birth of the Indian National Congress was epoch-making as it "crystallised for the first time the new political forces in India, which till then had been localised and scattered.[11] According to Pattabhai Sitaramayya, "that what had been a vague idea floating generally in the air and influencing simultaneously the thought of thoughtful Indians in the north and the south, the east and the west, assumed a definite shape and became a practical programme of action."[12] The special correspondent of *The Times,* reporting on the inaugural session of the Congress, wrote : "For the first time, perhaps, since the world began India as a nation met together."[13] It marked a spectacle of national unity, a demonstration of people's sense of solidarity based on common aims and grievances.

Indian leaders, Dadabhai Naoroji, W. C. Bonerjee, Ferozeshah Mehta and others, who gave their unflinching help and unceasing co-operation to Hume in establishing the Indian National Congress, though not tools in his hands "were not interested in leading a popular movement of liberation either." Dadabhai Naoroji had cherished, throughout his political career, the fervent hope that if the British people remained true to themselves and to their traditions, they could certainly help Indians to attain parliamentary institutions. His faith in the sense of fairness of the British people was reflected in his censure of the bureaucratic government in India as "Un-British". W. C. Bonerjee, the first President of the Indian National Congress, spoke the mind of the delegates assembled in its 1885 session at Bombay when he declared that the demand for political progress was not incompatible with their thorough loyalty to the British Crown, and in "meeting to discuss, in an orderly and peaceful manner, questions of vital importance affecting their well-being." He further asserted that in organising themselves "they were following the only course by which the Constitution of England enabled them to represent their views to the ruling authority."[14] Revolutionary politics, as such, did not suit the temper of the Indian upperclass intelligentsia of those days. Even Surendranath Banerjea ruled it out as unsuited to the circumstances of India and as fatal to its normal development, along the line of peaceful and orderly progress."[15]

If Hume was the father of the Indian National Congress, Lord Dufferin, the Viceroy, was the god-father. Hume's original idea, according to Wedderburn, was that the provincial organisations, like the Indian Association, the Bombay Presidency Association, and the Mahajan Sabha of Madras, were to take up political questions whereas an All-India organisation, which he contemplated to establish, should concentrate on social questions. But "it was apparently by Lord Dufferin's advice that he took up the work of political organisation, as the matter first to be dealt with."[16] This is supported by W. C. Bonerjee. When Hume went to Simla early in 1885, he met Lord Dufferin and consulted him on his scheme of things. "Lord Dufferin took great interest," wrote Bonnerjee, "in the matter, and, after considering it for some time he sent for Mr. Hume and told him that, in his opinion, Mr. Hume's project would not be of much use. He said that there was no body of persons in this country who performed the functions which Her Majesty's Opposition did in England. The newspapers, even if they really represented the views of the people were not reliable and as the English were necessarily ignorant of what was thought of them and their policy in native circles, it would be very desirable in their interests as well as the interests of the ruled that Indian politicians should meet yearly and point out to the Government in what respect the administration was defective and how it could be improved and he added that an assembly such as he proposed, should not be presided over by the Local Governor, for in his presence the people might not like to speak out their mind."[17]

Hume was convinced by Lord Dufferin's reasoning, according to Bonerjee, and when he

11. Rafiq Zakaria, *Rise of Muslims in Indian Politics—An Analysis of Developments from 1885 to 1906,* p. 47.
12. Pattabhi Sitaramayya, *The History of the Indian National Congress,* p. 11.
13. *The Times,* London, February 1, 1886.
14. Presidential Address, Bombay Session, 1885, Banerjee, A. C., *Indian Constitutional Documents,* Vol. II, p. 84.
15. *A Nation in Making,* p. 43. R. C. Mazumdar advances evidence to show that Surendranath Banerjea was deliberately excluded at the inception of the Indian National Congress. *The History and Culture of the Indian People, British Paramountcy and Indian Renaissance, op. citd.,* Vol. X, Part II, pp. 532-34.
16. Wedderburn, W., *Biographical Sketch of A. O. Hume,* pp. 59-60.
17. Bonerjee, W. C. *Introduction to Politics (1898),* and as cited in Pattabhi Sitaramayya, *History of the Indian National Congress,* Vol. I, p. 15.

placed his two schemes, his own and Lord Dufferin's before leading politicians in Calcutta, Bombay, Madras, and other parts of the country, they unanimously accepted Lord Dufferin's scheme and proceeded to give effect to it. Thus, was established the Indian Union, afterwards rechristened the Indian National Congress. Bonerjee also in clear terms stated that Dufferin had made it a condition with Hume that his "'name in connection with the scheme of the Congress should not be divulged so long as he remained in the country, and his condition was faithfully maintained and none but men consulted by Mr. Hume knew anything about the matter."[18]

Professor Sunder Raman, who also attended the first session of the Congress, gave a somewhat different version. He said that Hume's original idea was to rouse the conscience of the English people through persistent agitation in Britain. But when he revealed his scheme to Dufferin, the Viceroy told him that agitation in Britain would be a futile attempt and the best course would be to confine it to India alone by Indians themselves through some organised all-India body under his leadership.[19]

But Lord Dufferin himself categorically contradicted both these views and unequivocally stated that he had thought that the Congress would devote and direct its attention only to social questions. This point he made clear in his speech at the Saint Andrew's Day Dinner on November 30, 1888. Lord Dufferin said in his speech : "When the Congress was first started, I watched its operations with interest and curiosity and I hoped that in certain fields of useful activity it might render valuable assistance to the Government. I was aware that there were many social topics connected with the habits and customs of the people which were of unquestionable utility, but with which it was either undesirable for the Government to interfere, or control.....When Congress was first started, it seemed to me that such a body, if they directed their attention with patriotic zeal to those (social questions) and cognate subjects, as similar Congresses do in England, might prove of assistance to the government and of great use to their fellow citizens; and I cannot help expressing my regret that they should seem to consider such momentous topics, concerning as they do the welfare of millions of their fellow-subjects, as beneath their notice, and that they should have concerned themselves instead with matters in regard to which their assistance is likely to be less profitable to us."[20] R. C. Majumdar is of the opinion that the view that Hume's original plan was to set up merely a non-political organization "cannot be easily reconciled with his 'appeal' (addressed to the graduates of the Calcutta University on March 1, 1883), and possibly Dufferin's share in this project has been misunderstood or exaggerated."[21] But Majumdar has "no doubt whatsoever that the Congress was really designed to arrest the progress of the revolutionary outbreak,"[22] and that in setting up this organisation Hume had the advice and blessings of Lord Dufferin.

Rift in the Lute

The first session of the Indian National Congress held in Bombay ended with three cheers for Hume, and Hume returning the greetings with three cheers for Her Majesty the Queen Empress. The second session was held at Calcutta, Dadabhai Naoroji presiding. Lord Dufferin received some of the delegates as "distinguished visitors to the capital" and also invited them to a garden party at the Government House. The third Congress met at Madras in Dec. 1887, and Badruddin Tyabji was elected President for that session. Lord Connemara, the Governor of Madras, entertained the delegates as Lord Dufferin had done the previous year. But soon after the Madras session, there was a rift in the lute and the bureaucracy fell foul of the Congress." Conservative opinion in Britain and India had received the birth of the Congress with considerable misgivings and hostility. *The Times* felt so much perturbed that it plainly told the "Hindu agitators" that it was by force that India was won and "it was by force that India must be governed."[23] Sir Henry Maine, the former Law Member of the

18. *Ibid.*
19. Andrews, C. F., and Mukherjee, G., *Rise and Growth of Congress in India*, pp. 122-4.
20. Bannerjee, A. C., *Indian Constitutional Documents*, Vol. II, p. 96.
21. Majumdar, R. C., *History and Culture of the Indian People, British Paramountcy and Indian Renaissance*, Vol. X, Part II, p. 531.
22. *Ibid.* Hume himself said, "A safety-valve for the escape of great and growing forces, generated by our own action, was urgently needed, and no more efficacious safety-valve than our Congress movement could possibly be devised." Wedderburn, W., *Biographical Sketch of A. O. Hume*, p. 77.
23. *The Times*, London, February 1, 1886.

Governor-General's Executive Council, wrote to Lord Dufferin on June 2, 1886, "There is the rather melancholy consideration that the ideal at which the educated natives of India are aiming, is absolutely unattainable. How can 180 millions of souls govern themselves ?"[24] In his *Essays on Indian Topics,* Theodore Beck, Principal of the Muhammadan Anglo-Oriental College, Aligarh, maintained that the Congress would inevitably develop into a "deadly engine of sedition" and warned the Government that if it allowed the Congress to spread its propaganda of the reform of Councils and constitutional agitation, the result would be "the massacre of Englishmen, their wives and children."[25] He argued that the talk of constitutional agitation was a perversion of language which would ultimately lead to bloodshed and mutiny.[26] Sir John Strachey, like Theodore Beck, accused the Congress of being a seditious organisation which was veiled under the expression of loyalty, and contended that since the ignorant masses could not follow the intricate limitations of constitutional agitation, they would only be excited by the Congress to bring about a revolution.[27] Lord Dufferin himself reacted sharply to the Congress demands. He wrote to Sir Henry Maine, May 9, 1886, "There is a mischievous busy-body of the name of Hume, whom Lord Ripon had rather feted and who seems to be one of the chief stimulators of the Indian Home Rule Movement. He is a cleverish, a little cracked, vain, unscrupulous man.....very careless truth."[28]

In spite of the moderate demands of the Congress for reforms, repeated from year to year, there was no sympathetic response. Hume was shocked and pained by the stolid indifference displayed by the Government and "no less by the misguided hostility shown towards the Congress by the official circles and by the minority communities in India, who represented the Congress movement as an attempt to subvert the government and establish a *Hindu Raj."* Hume, therefore, decided to start a public agitation against the reactionary measures and menacing policy of the Government by means of public meetings, pamphlets and leaflets on the model of the Corn Law agitation in Britain. He appealed for funds and went round the country along with other leaders of the Congress holding a thousand meetings. Arrangements were also made for the distribution of half a million pamphlets translated into twelve Indian languages. Two of them *A Congress Catechism* and *A Conversation between Maulvi Fariduddin and Rambaksh of Kambakhtpur* showing by a parable the evils of absentee State-landlordism, however benevolent the intention might be, were widely circulated. In a speech delivered at a public meeting at Allahabad on April 30, 1888 and subsequently published in the form of a pamphlet, *A Speech on the Indian National Congress, Its Origin, Aims and Objects,* Hume stoutly defended his action of mass organisation. A similar campaign was organised in Britain by Dadabhai Naoroji with the sympathy and support of Englishmen like Sir William Hunter, Sir Henry Cotton, David Yule and many others.

The activities of Hume and his colleagues alarmed the authorities in India. The reactionaries amongst them desired to suppress the Congress and even recommended that Hume should be deported. The hostility of the Anglo-Indians was not a whit less. *The Calcutta Review,* in its issue of January 1889, observed, "The Congress then is something more than a Political Club. It is a Revolutionary League.....It is obvious that agitation is on foot which may in certain events lead to the most serious consequences to the government and the country." Lord Dufferin lashed at the Congress in his Saint Andrew's Day Dinner speech. He said that the Congress represented "a microscopic minority" and it did not represent India. He then asked : how could any reasonable man imagine that "the British Government would be content to allow this microscopic minority to control their administration of that majestic and multiform empire for whose safety and welfare they are responsible in the eyes of God and before the face of civilisation." The Viceroy even charged the Congress with exciting hatred "of the people against the public servants of the Crown in India."[29]

The increasing number of Muslim delegates attending the sessions of the Congress was really more unnerving than anything else that the

24. *Dufferin Papers*
25. Theodore Beck, *Essay on Indian Topics,* Pioneer Press, Allahabad, 1888, "In What Will it End ?" p. 105.
26. *Idem.,* pp. 117-119.
27. Strachey, Sir John, *India, op. citd.,* p. 22.
28. *Dufferin Papers.*
29. Banerjee, A. C., *Indian Constitutional Documents,* Vol. II, pp. 94-97.

British bureaucracy could put up with. Official and non-official influence was set to work to misguide the Muslims and other loyalists that the Congress was seeking to establish a *Hindu Raj* in the garb of a demand for representative government. In order to kill the Congress countrywide demonstrations were engineered, and several anti-Congress Muslim and other organisations, like the United Indian Patriotic Association, and the British Indian Association of Oudh, were set up. Counter-propaganda was started by issuing anti-Congress literature for dissemination among the Members of the British Parliament and the public in general.

Technique of "Political Mendicancy"

Despite the hostility of the bureaucracy in India and the adverse criticism of the Muslim and loyalist elements, the Congress forged ahead. Its propaganda in Britain and its emphasis on constitutional agitation won for it an increasing number of British supporters and sympathisers.[30] The Congress maintained great moderation and dignity even in criticising the Government and its policies. The criticism that its leaders made was not against Englishmen or the British nation. It was directed against the defective system of Government in India, which was an autocratic despotism. Having faith in the British sense of justice, its leaders did not pitch their demands very high. They believed in winning India's freedom by gradual stages and sincerely thought that the British form of parliamentary government was a far off ideal.

Imbued with the spirit of Victorian liberalism, the Congress leaders sought to achieve their objectives by constitutional means and cautious agitation. The Congress was concerned with reforms and not freedom, educating public opinion and agitating through meetings, pamphlets and leaflets. According to Dadabhai Naoroji what India had to learn from Great Britain was to agitate most loyally through petitions, demonstrations and meetings all quiet, peaceful and decorously but enthusiastically conducted. It was for this reason that their technique of attaining their objectives was nicknamed "Political Mendicancy" by the extremists, who sought to make the nationalist movement more broad-based and revolutionary in character.

Modest Demands

In the first few sessions the Congress drew attention of the Government to the appalling poverty of the country and asked for suitable enquiry and redress. It criticised the Government measures and policies from the national point of view and championed the rights and liberties of Indians at home and abroad. Among the important demands were : abolition of the Council of India, reform and expansion of the Supreme and Provincial Legislative Councils, holding of Indian Civil Service Examinations simultaneously in India and Britain, appointment of Indians to higher posts, reduction in military expenditure and training of Indians for commissioned posts in the army, separation of the judiciary from the executive, repeal of various repressive laws and removal of restrictions on the Indian press, reduction in salt duty and land revenue, change in tenancy laws to protect the peasants against landlords. repeal of cotton excise duty, protective tariffs for Indian industries, opening of agricultural banks to provide easy credit to the tillers, revival of old industries and starting of new ones.

The popular agitation for the association of Indians with administration bore some fruit. Lord Ripon introduced reforms in the field of local government. This opened a new chapter of Local Self-government in India, although the measures were half-hearted and a poor substitute for the full-blooded local autonomy which functioned in ancient India. The British authorities thought that only by learning to manage their local affairs could Indians acquire the experience of representative government.

But the bureaucracy did not take very kindly even to these paltry reforms. Although it was anxious to enlist the co-operation of the people in the task of government, the adoption of the parliamentary system of government, reached in Great Britain by degrees and trials, was considered out of the question for the politically immature India. The British Government was, therefore, reluctant to concede the modest demands for the expansion of Legislative Councils by the addition of elected Members. The Congress leaders, on the other hand, argued that good government was not possible without its being representative. As regards the argument that Indian masses were steeped in illiteracy and were not fully alive to their political responsibilities, their answer was that such a state of affairs existed even in Britain when the Reforms Act of 1832 was passed. It was pointed out that half of Brit-

30. For instance, David Yule, W. S. Caine, Charles Bradlaugh, Samuel Smith and Dr. Clarke. The visit of Members of Parliament to India and their presence at the Congress sessions became an annual event.

ain's male population and three-fourths of the females were then even unable to sign their names on their marriage certificates.

The Congress, finding itself absolutely ignored by the Government of India, turned to Britain and the constant pressure brought on the British government and public made a dent in its intransigence. The British Government grudgingly introduced a Bill in Parliament in 1890 to counteract the Bill sponsored by Charles Bradlaugh. The chief features of Bradlaugh's Bill were : a system of election through electoral colleges and restriction of official elements to not more than one- fourth. The 1892 reforms were, thus, an attempt at compromise "between the official view of the councils of pocket legislatures and the educated Indian view of them as embryo Parliaments."

Widening of the Gulf

Some of the other demands of the Congress were also partially accepted by the British Government in due course. For instance, a number of posts hitherto reserved for the Indian Civil Service were transferred to Provincial Civil Services, enabling Indians to hold those posts. A Resolution in favour of holding simultaneous examinations for the Indian Civil Service in India and Britian was passed in the House of Commons in 1893, though it was brought into actual effect long afterwards. The views of the Congress on problems affecting India, such as the North-West Frontier Policy, the Plague Regulations, the famine grant, and the financial relations of Britain and India, had also prevailed. The Royal Commission on Public Finance held that the charges placed on India were unfair to the extent of a quarter of a million sterling per year. In accepting the finding of the Commission, the British Government conceded to India a small measure of financial justice.

This was the credit side of the constitutional agitation, but there were several other modest and minimum demands, fervently made by the Congress old-guards, that were not conceded because of the pressure of the bureaucrats in India and the vested interests of British capital.

The drama of Indian nationalism, sustained by the ideas of the National Conference, and the Indian National Congress, moved through its second act during the second half of nineteenth century. The old divided and casteridden India began to recede, yielding place to a new India animated by a new spirit of nationalism. This phase constituted a landmark in the history of India, as no clear trace of it was available in earlier periods. With the Moderates still holding the ground, the technique of constitutional agitation was by that time fully evolved. Political mass meetings all over the country, political associations at centres with branches in the *mofussil* areas, memorials and petitions both to Indian and Home Governments, and organisations and individual efforts to educate public opinion in England and interest it in the Indian affairs all these became the standard forms of political activity in India. In the context of World history, this was a period when several other European countries, like France, Spain, Germany and Italy, attained their political unity and their examples inspired people of the countries held in political bondage to break their chains.

The turn of the century witnessed fresh developments of far reaching consequence which gave a new direction to Indian politics. The sand started slipping from under the feet of the Moderates and a wave of extreme nationalism began to sweep over the placid waters. The bureaucracy, on the other hand, switched on to the policy of centralisation and officialisation, contrary to the spirit of the time. But "with each advancing year nationalism, which became the dominant factor in India's freedom movement and the stabilisation of parliamentary institutions, cast its lengthening shadow over the fortunes of the British rule in India."

The hallmark of Lord Curzon's administration was distrust of Indians and belittling of their ability and honesty. Not a representative government, but an inexorable quest for efficiency became the objective of that regime. That policy fanned extremism in Indian politics and widened the gulf between the Government and the restive political India. Educated young men "highly sensitive and touchy, holding extremist views and impatient of delay in achieving freedom" mustered within the Indian National Congress and pressed for a radical change in the policy of constitutional agitation, which had not succeeded either in securing representative government or changing the long suffered arrogance, hostility and high-handedness of the bureaucracy in India.

The new generation, therefore, pulsating with a new vision, became impatient with the imbecile technique of "political mendicancy" and felt that reforms could be secured only by political action and not by appealing merely to the good sense of the English people. The study

of Western thought instilled in them the feeling that self-government was the inalienable right of the people. *Swaraj* became the political sheet-anchor of the extremists. But the British Government, under the influence of the vested interests in Britain as well as in India, contended that Indians were not fit for it yet. Repression and reform became the keynote of their policy. Arguments against the fitness of Indians for self-government were refuted by Indian leaders, historians and archaeologists and a wave of deep resentment spread over the whole country against the policy of wanton repression. This reaction found manifestation in extreme nationalism of various brands.

EXTREMISM, CAUSES OF ITS GROWTH

Misrule of the Tory Government

The growth of the extreme type of nationalism in India was the product of the misrule of the Tory Government. From 1885 to 1902, Lord Salisbury headed the British Government, except during the brief intervals when the Liberals were in power."[31] Although not an Imperialist himself, Salisbury had "the capacity to yield, and to drift with the tide when he could not oppose it."[32] Lord Hamilton, who presided at the India Office from 1895-1903, had no sympathy with the people of India. He wrote to Curzon on September 20, 1899, "I think the real danger to our rule in India, not now but 50 years hence, is the gradual adoption and extension of Western ideas of agitation and organisation; and if we could break the educated Hindu party into two sections holding widely different views, we should, by such a division, strengthen our position against the subtle and continuous attack which the spread of education must make upon our present system of Government." Hamilton was indifferent even to the economic distress of the people and stood by unconcerned during the period of unparalleled calamities of war, famine and pestilences, which characterised eight years of his stewardship of the India Office.

Lord Elgin, who came to India as Governor-General with traditions of peace and goodwill towards Indians, felt helpless, confronted as he was, with an unsympathetic Secretary of State and the hardened bureaucrats who surrounded him in his Council. The lingering suspicion in the minds of Indians that India was exploited for the benefit of Britain, initially aroused by the policy of free trade, was intensified by fiscal and financial measures adopted in the last decade of the century.In 1896, the import duty on foreign cotton was lowered to 3 ½ per cent on the representation of Lancashire manufacturers and exporters. A countervailing excise duty was also imposed on Indian manufactures. It caused a stir in the country. The mercantile community which was hardhit, fretted and fumed but to no avail.[33]

Lord Bacon correctly said that "much poverty and much discontentment prepare the ground in which revolutions germinate." Beginning from the last decade of the nineteenth century, India passed through unexampled economic distress. There was all round economic depression and the lower middle-class people were the worst sufferers. Besides, the country suffered from natural calamities. Floods, famines, plague and earthquake had devastated the country and the people died like mosquitoes."[34] But the Government stood by unconcerned and did nothing to improve the economic lot of the people. Unemployment amongst the educated classes, especially in Bengal, produced a ferment of anti-British feelings. The Sedition Committee expressed the opinion that the economic discontent of the *Bhadrolok*, for centuries peaceful and unwarlike, was responsible for the intensity of nationalist feelings in Bengal.

It was in this period charged with commotion that the classic works, Dadabhai Naoroji's *Poverty and Un-British Rule in India*, and William Digby's *'Prosperous' British India*, appeared. They carried a factual account of India's poverty and misery and drove home to the people the curse of British Imperialism. According to Jawahar Lal Nehru these books "played a revolutionary role in the development of our nationalist thoughts. In spite of the moderate outlook of the authors of these books they gave "a political

31. February to July 1886, and from 1892 to 1895.
32. Dutt, R. C., *India in the Victorian Age*, p. 442.
33. R. C. Dutt, thus, writes, : "The result of this iniquitous legislation combined with the famines and currency legislation, has been disastrous.....New Mills are struggling into existence in spite of every check, but the output in yarn and piece goods shows a lamentable decline." Dutt, R. C., *India in the Victorian Age*, p. 544.
34. Two severe famines in quick succession broke out in 1896-97. By the spring of 1897, over four million people were receiving relief and mortality was extremely heavy. Lovat Fraser, *India Under Curzon and After*, p. 444.

and economic foundation to our nationalism."[35]

It was at this grave moment, as the Famine Commission observed, that Elgin's Government embarked upon the costly and extensive trans-frontier military operations at the bidding of the Secretary of State for India. In 1895, Surendranath Banerjea warned the Government against this "wrong and ruinous" policy. "Let me tell the Government of India", he said, "in your name (delegates of the Congress at the Poona session) that the true scientific frontier against Russian invasion does not lie in some remote inaccessible mountain, which has yet to be discovered, nor is it to be found in the House of Commons as someone said; but it lies deep in the heart of loyal and contented people."[36] That was the true voice from the heart of India, but there was no change in the Government's policy. In 1900, a fresh famine broke out over a large area and it lasted three years during which millions of men perished, Tens of thousands were still in relief camps when the gorgeous Delhi *darbar* was held in January, 1903.[37] "As a pageant", wrote Lovat Fraser, "the Durbar was without precedent in the history of Asia, and probably its magnificence will never again be equalled."[38] But unprecedented, too, was the misery of the Indians; which had no equal before or after.

These events produced a seething discontentment in the country and fed political extremism. During the 1896-97 famine, Bal Gangadhar Tilak, the most outstanding of the new group of extremists, started a no-tax campaign amongst the peasantry of the Deccan. He organised a corps of volunteers to tour through the villages and to explain to peasants their rights to relief and remission of land revenue under the Famine Relief Code. He told the people, "If you have money to pay Government dues, pay them by all means. But if you have not, will you sell your things away only to avoid the supposed wrath of subordinate government officers ? Can you not be bold, even when in the grip of death ? We can stand any number of famines, but shall we do with sheepish people ?"

Tilak voiced his feelings in the columns of his Weeklies, the *Mahratta,* English, and the *Kesari,* in Marathi. Both these papers became powerful organs to spread the principles and policies of the new wave of nationalism. In the *Kesari*, January 12, 1897, he reviewed the work of twelve years of the Indian National Congress and suggested what its future course of action should be. Tilak wrote, "For the last twelve years we have been shouting hoarse, desiring that the Government should hear us. But our shouting has no more affected the Government than the sound of a gnat. Our rulers disbelieve our statements or profess to do so. Let us now try to force our grievances into their ears by strong constitutional means. We must give the best political education possible to the ignorant villagers. We must meet them on terms of equality, teach them their rights and show them how to fight constitutionally. Then only will the Government realise that to despise the Congress is to despise the Indian nation. Then only will the efforts of the Congress leaders be crowned with success. Such a work will require a large body of able and single-minded workers, to whom politics would not mean some holiday recreation, but an every-day duty to be performed with strictest regularity."

Bubonic plague, following in the wake of the famine in Deccan, provided a further edge to bitterness. By the end of 1898, the recorded number of deaths reached an under-estimated total of 1,73,000. To prevent the spread of the disease the Government adopted some measures which evoked resentment. The military were called to help the civil authorities in that process. Without observing any customary formality, soldiers entered residential quarters, examined indiscriminately men, women and children, segregated those suspected of disease and had them sent to isolation camps. All this produced a deep sense of estrangement amongst the people. More than two thousand people of Poona, Hindus and Muslims, submitted a memorial to the Government, protesting against the conduct of British soldiers engaged in enforcing the plague rules. It had no effect on the government. Tilak took up the issue in the *Kesari* and severely criticised the official measures. Desperate but helpless people resorted to rioting and on the night of the celebrations of Queen Victoria's Diamond Jubilee, two English officers, W.C. Rand, Assistant Commissioner of Poona, and his companion, Lieutenant C. E. Ayerst, were killed in the streets of Poona. Similar riots took place in Bombay.

The disturbance was quelled with a heavy

35. Jawaharlal Nehru, *Autobiography,* p. 426.
36. As cited in Annie Beasant, *How India Wrought for Freedom,* p. 209.
37. The great Coronation Assemblage to celebrate the Coronation of Edward VII.
38. Lovat Fraser, *India Under Curzon and After,* p. 232.

hand and Chapekar brothers, suspected of murder at Poona, were arrested and tried. Damodar Chapekar was sentenced to death and executed. Coercion was intensified, for the authorities suspected in these riots a regular conspiracy to overthrow the Government. In that mood the official wrath fell on Tilak and on July 27, 1897, he was arrested for "exciting and attempting to excite feelings of disaffection to the Government", through certain articles entitled "Utterances of Shivaji", and was sentenced to eighteen months rigorous imprisonment. With the "martyrdom of Tilak extremist agitation struck root in the soil." A "nation is in tears," said Surendranath Banerjea.[39]

Repressive and Reactionary Policy

The Government, in its determination to suppress the so-called terrorist activities, followed a policy of rigorous persecution. It passed laws to restrict the liberty of the press, empowered magistrates to bind down editors of newspapers, and to send them to prison in default of security without trial for any specific offence. N. Subba Rao Pantulu, Chairman of the Reception Committee of the fourteenth Congress, expressed his deep and painful concern at the provocative attitude of Indian officials "who saw conspiracy where there was none, who narrowed personal liberty in times of peace, brought in laws against sedition, and made distinction between the British-born and the Indian subjects of the Queen Empress."[40] In 1896, the doors of the Roorkee Engineering College were closed to Asiatics of pure descent domiciled in India. Thus, the Government of India, as Anand Mohan Bose expressed it, gave "privilege to illegitimacy" by not excluding admission to the College to Asiatics of impure descent.[41] Romesh Chandra Dutt cogently remarked that he could hardly remember any time "when the confidence of the people of India in the justice and fair play of English rulers was so shaken as it has been within the last two years."[42]

In this way, in the words of C. Jambulingam Mudaliar, an Empire which had been consolidated "by confidence and goodwill has been converted into a Government of suspicion and distrust.....A permanent bitterness of feeling has taken root over the land, over its whole length and breadth."[43] The new Sedition Law placed speakers and editors of Indian origin on a level with robbers and vagabonds. It was the worst affront to the self-respect of Indians and it created a woeful sense of estrangement between the people and the Government. Lord Elgin's silly declaration that India had been conquered by the sword and by the sword it should be held, fanned popular discontent and indignation into flame. Gokhale had issued a warning to the Government as far back as 1892, that its reactionary policies were an invitation to the danger ahead. The Government paid no heed to his sane advice, and to the changing mood of the people.

But the Moderates in the Congress were fully seized of the real situation in the country. In October, 1900, Hume, Wedderburn and Dadabhai Naoroji addressed a manifesto to the Congress President, wherein they represented that "a very critical stage in the history of the organisation, possibly a parting of ways, has now been reached." Whether the constitutional technique of agitation, they observed, could succeed any more depended upon the attitude and action of the people. But "We, who were among its originators, have now well-nigh completed our work as pioneers, we have given the lead to young men and must look to them to take up in large measure the burden of the work." The younger men had already pronounced on the futility of the ideology and methods of the pioneers and decided upon a more revolutionary method which would yield quicker and better results.

Lord Curzon's Affront to Indians

When Lord Curzon landed in Bombay on December 30, 1898 the people gave him a cordial welcome in the hope that he would govern India in accordance with the best traditions of British rule. In December 1898 the President of the Madras Congress, Anand Mohan Bose, warmly welcomed the appointment of Lord Curzon as Viceroy and said, "Let a nation which is Christian endeavour truly to show the ideal of Christ, to carry out the divine command of doing to others what they would have wished done to themselves in the exercise of its power in its attitude towards Indian aspirations." Yet, in No-

39. As cited in Annie Besant, *How India Wrought for Freedom*, p. 259.
40. *Idem.*, p. 271.
41. *Idem.*, p. 272.
42. *Idem.*, p. 273.
43. *Idem.*, p. 275.

vember 1900 Lord Curzon wrote, "The Congress is tottering to its fall and one of my greatest ambitions while in India is to assist it to a peaceful demise."[44] The new Viceroy excelled his predecessors in exhibiting Imperialist arrogance and insolence and soon showed by his acts that he considered Indians definitely inferior. Bitter feelings were roused against him by his fetish of efficiency, by his unbridled egoism and racial arrogance, and by his attempt to disrupt the unity of the Bengal Province, under the cover of administrative convenience. The end of his regime, which had shown British rule at its worst, was a welcome break. Virtually, the country heaved a sigh of relief. Even a Moderate like Gopal Krishna Gokhale offered his thanks to the Almighty on this occasion. He compared Curzon with Aurangzeb and said, "There we find the same attempt at a rule excessively centralised and intensely personal, the same strenuous purpose, the same over-powering consciousness of duty, the same marvellous capacity for work, the same sense of loneliness, the same persistence in a policy of distrust and repression, resulting in bitter exasperation all round. I think even the most devoted admirer of Lord Curzon cannot claim that he has strengthened the foundations of the British rule in India."[45]

Lord Curzon, immediately after his arrival, trumpeted that his authority over the sub-continent of India was absolute and without his authority "a sparrow can scarcely twitter its tail at Peshawar." At the Delhi *Durbar*[46] in celebration of the coronation of Edward VII, Curzon acted as if he was the King himself and not His Majesty's Viceroy. He insulted the Princes who could trace their lineage to the Sun and the Moon. His curtailment of the powers of the Calcutta Corporation, his Official Secrets Act, his officialisation of the Universities, and his Tibetan expedition were some of the execrable instances of Curzon's administration. The Official Secrets Act authorised the arrest of anyone on mere suspicion and it was made the responsibility of the accused person to prove his innocence. The Act was not only odious and iniquitous but monstrous. Gokhale said it was "impossible to speak with patience or moderation on the subject." The Universities Act jammed educational progress, bureaucratised education, reduced the independence of the Universities, and throttled private education. Surendranath Banerjea, moving a resolution in the nineteenth Congress, said that the new fangled Imperialism was darkening the prospects of human freedom and that Lord Curzon's "name would go down to posterity indissolubly linked with a reactionary and retrograde measure which has been condemned by the unanimous opinion of the educated India."[47]

Such was the tense atmosphere in the country when Lord Curzon added insult to the injury by making adverse reflections on the character and ability of the Indian people. He declared in his Budget speech, March 1904, that the highest ranks of civil employment must as a general rule be held by Englishmen, as only the members of a ruling race possessed the qualities essential for the performance of the task. But even more galling to the sense of self-respect of the Indians were his utterances at the Calcutta University Convocation. He made the imputation that Indians were by their environment, their heritage and their upbringing unequal to the responsibilities of high offices under the British rule. While emphasising the importance and function of a University in moulding the character of the youth, he said, "We have hardly learned how to light the lamp of the soul.....We have to save the rising generation from walking in false paths and to guide them into right ones." Having said so, he warned the Bengalis against flattery, vituperation and eloquence. "All I say to you", Curzon said, "do not presume upon this talent." Curzon, thus, nakedly abused the Bengalis and concluded his address by saying that India was not a nation.

"Nations are swayed", succinctly remarks Masani, "by sentiments as are individuals."[48] The sentiments of the Indian people were outraged by these vituperative outpourings of Curzon. Mammoth meetings were held in all the important cities of India, condemning the representative of the King Emperor for casting aspersions on the character of the people. Lord Curzon's behavior turned many a Bengali into an

44. Curzon to Hamilton, November 1900, as quoted by Daniel Argove in his *Moderates and Extremists in the Indian Nationalist Movement*, p. 95.

45. As quoted in Annie Besant, *How India Wrought for Freedom*, p. 417.

46. The Durbar cost India £ 360,666. Morley, J., *Recollections*, Vol. II, p. 166. Lal Mohan Ghosh, President of the 1906 Congress Session, denounced the Delhi Durbar as "a pompous pageant to starving people."

47. As quoted in Annie Besant, *How India Wrought for Freedom*, p. 383.

48. Masani, R.P., *Britain in India*, p. 79.

extremist. Even the sober leaders of the Congress felt extremely disgusted. In that temper moderation was naturally discounted and extremism gained ground. For this change in the political climate Curzon must be held personally responsible to a large extent.

The Partition of Bengal

On top of all this came the decision to partition the historical Province of Bengal, which acted like match-stick that applied fire to the political gun-powder. Not only was the Partition a sinister move with the real aim to drive a wedge between the Hindus and the Muslims[49] and to hold India by dividing the people on the basis of communal animosity,[50] but the way in which the scheme was enforced under threat of British bayonets pushed the political unrest to the danger point and let loose a wave of terrorism in the country. Besides, suppressing the national forces with an iron hand, government officials fomented communalism. Encouraged and pampered, the anti-social elements among the Muslims indulged in open violence, looted Hindu shops, burnt their homes, desecrated their temples and carried away Hindu widows. Sir Bampfylde Fuller, the Lieutenant-Governor of Bengal, said in a jest that he had two wives, one a Hindu and the other a Muslim, and the latter was a favourite. Whether it was a jest or not, the joke was taken in earnest by the Muslims who generally believed that the British authorities would not take notice of their excesses and that they could have a free hand in the affair.

The Partition of Bengal led directly to the growth of extremism. "This is how extremists are created", declared Gokhale in anguish. Surendranath Banerjea and Bipin Chandra Pal took the lead and the Bengalis carried on a virulent agitation for the annulment of the Partition. The people in Bengal initiated the Swadeshi and boycott movements, which spread like wild fire throughout the country. Protest meetings, huge processions and bonfires of foreign goods became a daily feature with the Bengalis. The indiscriminate prosecution of the school lads and the circular banning the recital of Bande Mataram in public places intensified the agitation. People observed the Partition Day[51] as a day of national mourning and humiliation. Efforts to ease the situation through a high-powered deputation failed. Gokhale and Lajpat Rai were sent to London to appeal to the British Government to undo the wrong, but they came back empty-handed. In disgust Lajpat Rai gave the message to his countrymen that if they really cared for their country, they would themselves have to strike the blow for freedom.[52] Frustration was deepened even among the Moderates, who could not keep a hold on the political situation. This was reflected when Gokhale said that young men were "beginning to ask what was the good of constitutional methods, if it was only to end in the partition of Bengal."

Race-conscious Arrogant Behaviour of the Anglo-Indians

Among other important factors which fomented anti-British feelings and egged on extremism was the race-conscious arrogant behaviour of the Anglo-Indians and the anti-Indian policy of the Anglo-Indian press. Fed on anti-Indian propaganda, British soldiers and other British residents in India assaulted Indians, causing the death of many of the victims. In almost all such cases the white culprits escaped without any, or with proportionately very light, punishment. The brutish murderous assault by three drunken British soldiers on Dr. Suresh Chandra Sircar, a medical practitioner at Barrackpur in 1898

49. Lord Curzon went on tour in February 1904, in Eastern Bengal "to feel the pulse" of the people. Lovat Fraser reported that swarms of small boys greeted Lord Curzon in the streets, carrying placards on which was inscribed the legend : "Do not turn us into Assamese." Curzon told the people at a public meeting at Dacca that he had never cherished the intention ascribed to him by the placards and that the people of Eastern Bengal "must be the head and heart of any.....new organism, instead of the new extremities." Lovat Fraser, *India Under Curzon and After*, p. 381.

50. The final division was that a new Province of Assam and Eastern Bengal was created. It included Assam, the three Divisions of Chittagong, Rajshahi and Dacca and a few minor pieces of territory. The total area of the new Province was 106,540 square miles with a population of 31 millions; 18 million Muslims and 12 million Hindus.

51. October 16, 1905, the day on which the Partition of Bengal was effected.

52. At the Benares session of the Congress in 1905, Lajpat Rai congratulated Bengal on its splendid opportunity of heralding a new political era for the country and said that the English expected them to show more manliness in their struggle for liberty. They must show that they were "no longer beggars, and that we are subjects of an Empire where people are struggling to achieve that position which is their right." If other Provinces followed the example of Bengal, said Lajpat Rai, "the day was not far distant when they would win." As quoted in Annie Besant, *How India Wrought for Freedom*, pp. 427-28.

shocked the whole country. But the special jury, most of whom were European lawyers of the Calcutta High Court, acquitted the accused persons of the charge of murder and found them guilty of only causing grievous hurt. There were several other soul-stirring cases of blatant racialism in the country.[53] These cases even touched the chord of Lord Curzon's heart, who, thus, conveyed his resentment to the Secretary of State : "I do not know what you think of these cases. They eat into my very soul."[54]

The Anglo-Indian press helped in spreading the venom of racial arrogance and very often lent support to the white criminals and even abetted them to crime. When the attempt to shoot Kingsford miscarried, but resulted in the death of two English ladies, the *Asian* of Calcutta wrote, "Mr. Kingsford has a geat opportunity, and we hope he is a fairly decent shot at a short single range. Mr. Kingsford will manage to secure a big 'bag' and we envy him for his opportunity."[55] *The Civil and Military Gazette of Lahore,* and some other important Anglo-Indian papers openly abused educated Indians and used ignominious names for them. Nevinson writes that educated Indians "were spoken of as 'babbling B.A.s', 'baseborn B.A.s', 'a class that carries a stigma', and so on."[56] And yet there was no penalty for such writings which incited racial hatred.[57] The young Indians pulsating with fresh ideas of freedom could not tolerate such an outrageous treatment and the popular unrest keyed on to a high pitch.

Fresh Wave of Revivalism

The desire for freedom was also inspired by a fresh wave of religious revivalism, which was a curious blending of politics with religion, the urge to orient towards the past which conjured up a golden age of peace and plenty. The physical unity, which British rule had brought about through a Central Government as well as by the expansion of the means of communication and transport, was reinforced by the knowledge of a common rich heritage and the cultural unity of the country. Researches about the ancient polity and representative institutions gave tongue to the extremists who regarded foreign rule as the cause of all ills in India. Several eminent scholars of Indology counteracted the theories of Western scholars by pointing out that a representative form of government and enlightened public opinion were not foreign to India. These theories fed the Indian politicians to retort that if India had a self-government in the remote past there was no reason why it could not have it in the twentieth century. The concept of a new India, free from the aliens, wherein a democratic society was to be established according to the genius of the people, was mirrored in the image of Mother India, garbed in queenly attire. The idealization of India in the *Bande Mataram* song, the preachings of lessons from the Gita as well as from the life histories of heroes like Rana Pratap and Shivaji, created a new fervour in the political life of the country.

The renaissance created a revulsion against things Western and gave rise to love of things Indian. It promoted a new sense of patriotism and nationalism in the country. It also became the mainspring of the activities of Lokmanya Tilak, Aurobindo Ghosh, Bipin Chandra Pal and Lajpat Rai –leaders of the extremist wing in the Indian National Congress. Tilak, who was the foremost among them, was described by Valentine Chirol as "one of the most dangerous of pioneers of the disaffection" and "truly the father of Indian unrest."[58] Tilak was probably the most erudite of the Sanskrit scholars of the day and was proud of India's ancient glory. He devoted himself to educational activities in order to inculcate the spirit of true nationalism among the young men and through them to raise the status of India to heights reminiscent of the past. He hated and denounced the British and he hated them not because they had overthrown the Peshwas but because the impact of Western education had

53. In one such case several British soldiers outraged an Indian woman to death. Not only was punishment not meted out, but the military authorities on the spot showed a culpable disposition to hush up the whole matter, and were abetted in their attempt by the local civil officials. In 1902, the troopers of a cavalry regiment beat an Indian cook to death for having refused to procure an Indian woman for them.

54. Ronaldshay, *Life of Curzon,* Vol. II, p. 246.

55. Nevinson, H. W., *The New Spirit in India,* pp. 29.

56. *Idem.,* pp. 17-18.

57. Sir Henry Cotton wrote in 1904, "It is a grave symptom that the official body in India has now succumbed as completely as the non-official to anti-native prejudices." He further added, 'We now see a state of things in which the Indian community exists alone on the one side, while both classes of Englishmen, official as well as non-official, are united on the other." Cotton Sir Henry, *New India,* pp. 50-51.

58. Chirol, Valentine, Sir, *Indian Unrest,* pp. 40-41.

destroyed Hindu culture and polluted Hindu society.[59] Bent on the eradication of the despicable influences of Western education, Tilak thought of demolishing British rule itself. He, therefore, started a movement called the Maharashtra School of Nationalism, based on a revival of the memory of Shivaji. He drew his sanction from the Gita which teaches action and declares that kshatriya commits no sin if he kill his foe.[60]

Tilak resuscitated the Ganpati celebrations, revived the Shivaji festival, organised the Hindu youth into anti-cow killing societies and established *Akharas* and *Lathi* Clubs throughout Maharashtra. He exhorted his followers to emulate the example of Shivaji to kindle in them a heroic determination to achieve freedom from the British, and to defend the interests of the Hindu religion, of which Ganpati was the protector. "Lectures, processions, singing parties", Tilak declared, "are the invariable accompaniment of the festival and they not only afford an outlet to the religious zeal of the people but help in fostering the national sentiment also and creating interest in the outstanding questions of the day."

The Province of Bengal, exasperated by the regime of Lord Curzon, with Partition forced down its throat against the united will of the Bengalis, was the first disciple to accept Tilak's teachings. The Bengal School of Nationalism led by Bipin Chandra Pal and Aurobindo Ghosh was influenced by the neo-Vedantic movement of Swami Vivekanand which sought to realise the old spiritual ideas of the Aryan race by the idealization and spiritualization of the contents and actual relations of the life.[61] Sometimes old gods and goddesses were interpreted in a way suitable for rousing national sentiments and hopes among the people. The ancient idealism of the *Shakti* cult was revived and all the forms and symbols of Hindu worship were given a new meaning. "This wonderful transfiguration of the old gods and goddesses", observed Bipin Chandra Pal, "is carrying the message of nationalism to the masses of the country." The goddess *Kali* or *Durga*, he said, had no message for the weakling. *Durga Puja* was originally a ceremony associated with war and that the animal sacrifices were intended to quicken the martial spirit of the Indian race.

Aurobindo recalled the glory of the Indian heritage and propounded that "independence is the goal of life and Hinduism alone will fulfil this aspiration of ours." Lajpat Rai, in the Punjab, pooh-poohed westernised Indians who were blindly imitating Western customs and ways of life and were forgetting their own sublime culture.

Humiliation of Indians in British Colonies

Certain external factors, too, helped the growth of nationalism in India. While the country was internally in ferment, the people of India witnessed their brethren in South Africa and other British Colonies subjected to odious racial discrimination and humiliation. Valentine Chirol, special correspondent of the *London Times*, who visited India during the Viceroyalty of Lord Minto, admitted that "much bad blood had undoubtedly been created by the treatment of British Indians in South Africa and the attitude in British Colonies towards Asiatic immigrants."[62] Lajpat Rai gave a pathetic account of the status of Indians and the humiliating treatment which they received abroad. "The Indian", he wrote, "carried the badge of political subjection with him. The British Colonies, more than any other country, bang their doors on him. He is a pariah all over the world."[63]

The miserable plight of Indians abroad roused great indignation in Indian National Congress. Since 1894, the Indian National Congress had been protesting against the disabilities from which Indians suffered in the British Colonies, and had prayed to Her Majesty's Government

59. Tilak came from a family which had been in the service of the Peshwas and, accordingly, his mind was moulded in an atmosphere where the memories of Maharashtra's glorious past were fresh. His love for Hindu religion and pride in its ideals and institutions made him the champion of India's superiority. In order to rally the Hindu masses under one political flag, he introduced the public festival of Ganesh and Shivaji's anniversary celebration.

60. Tilak declared, "Great men are above the common principles of morality.....The Divine Krishna's teachings in the Gita, tell us we may kill even our teachers and kinsmen and no blame attaches if we are not actuated by selfish motives .....If thieves enter our house and we have not sufficient strength to drive them out, should we not, without hesitation, shut them and burn them alive....." As quoted in M.A. Buch, *Rise and Growth of Indian Militant Nationalism*, p. 28.

61. Vivekananda declared in a speech, "O, ye brave men, take courage, be proud that you are an Indian, and proudly proclaim I am Indian—every Indian is my brother.....The soil of India is my highest heaven. India's good is my good.." *The Life of Swami Vivekananda*, Vol. IV, p. 185.

62. Chirol, Valentine, Sir, *Indian Unrest*, p. 34.

63. Lajpat Rai, *Young India*, p. 80.

and the Government of India to safeguard their interest and endeavour to remove their grievances. But it had no effect.[64] At the session of the twenty-first Congress, B. N. Sarma spoke out boldly, warning Britain that in the Empire there could not be permanently a racial supremacy, one race dominating the other. "If we are true to ourselves", he said, "then the race which has produced greatest philosophers, the greatest statesmen and greatest warriors shall not crouch for this or that favour at the hands of other people. It is then and then alone that the South African problem, as well as other Indian problems will find their solution."[65]

Foreign Influences

The socio-religious awakening, the political and economic exploitation, racial arrogance and repressive measures had produced sharp anti-Imperialist feelings by the end of the nineteenth century and in that atmosphere any single blow on the citadel of Imperialism was a matter for rejoicing and a source of inspiration to nationalist India. The defeat of Italy by Abyssinia in 1896, was hailed in India and, as Garrat said, "added fire to Tilak's agitation."[66] The nationalist movement in Egypt, Persia and elsewhere thrilled the people of India and stimulated their national fervour. The victory of Japan in the Russo-Japanese War in 1905, exploded the myth of European invincibility and the prestige of Great Britain received a setback in the Boer War.[67] These events put fresh heart into Indian politics and sharpened the edge of militant nationals. The phenomenal rise of Japan to power stimulated many Indians and they began studying her history and the causes of her growing ascendancy. Her success was attributed, besides other factors, to the unique patriotism and spirit of nationhood and self-sacrifice of the people. These virtues, it was thought, could infuse a new life even into a subjugated and dismayed country like India to free herself from the British bondage. These feelings were strengthened by the study of the lives and works of Mazzini, Garibaldi and Cavour.

The beginning of the twentieth century was a period of new awakening in the East. A sense of Asian solidarity was growing. This new consciousness came as a result of the feeling that there existed fundamental unity between India, China and Japan and that if that unity was to be maintained, they must fight unitedly against the menace of European Imperialism. But the Indian people were conscious that their country could play her part only after attaining an independent and free government of their own and they firmly determined to get it.

PARTING OF THE WAYS

Two Wings in the Congress

As described earlier, the rumblings of extremism had been in evidence since 1894, but there was no formal division of the Congress into the Moderates and the Extremists. Up to 1905, both worked in alliance. But since then the cleavage between these tow wings had marked the beginning of a new ferment in the national history of India. The dragon-teeth sown by Lord Curzon ripened into a sinister harvest. Gokhale, who presided over the Benares session of the Congress, remarked that he had been called to take charge of the vessel of the Congress with rocks ahead and angry waves beating around, and invoked the divine guidance.

The 1905 session of the Congress at Benares was held at the time when the wounds caused by the Partition of Bengal were quite fresh and there was unprecedented commotion in the country.[68] The official report of the 1905 session observed: "Never since the dark days of Lytton's Viceroyalty had India been so distracted, discontented, despondent; the victim of so many misfortunes, political and other; the target of so much scorn and calumny emanating from the highest quarters— its most moderate demand ridiculed and scouted, its most reasonable prayers greeted with a stiff negative; its noblest aspirations spurned and denounced as pure mischief or solemn nonsense; its most cherished ideals hurled down from their pedestal and trodden under foot."[69] Yet, the Moderates stuck to their guns

64. In 1903 the Indian National Congress passed a resolution strongly protesting against the hardships and disabilities of the Indians living in the British Colonies and prayed to the British Government to devise adequate measures to ensure the position of equality to Indian emigrants with the European subjects in all the British Colonies.
65. As cited in Annie Besant, *How India Wrought for Freedom*, p. 425.
66. *An Indian Commentary, op. citd.*,p. 134.
67. The British Government had waged war against Transvaal and one of the declared causes of the Boer War was the treatment meted out to the Indians. But the irony was that the British Government not only connived at, but sometimes even encouraged anti-Indian legislation aiming to seriously curtail the rights and status of the Indians.
68. The Partition came into effect on October 16, 1905.
69. As quoted in Ramna Rao, *A Short History of the Indian National Congress*, p. 52.

and advocated and insisted on constitutional means for gradually achieving self-government in India. Gokhale, in his Presidential Address, thus defined the goal of the Congress ".....that India should be governed first and foremost in the interest of Indians themselves, and that in course of time a form of government should attained in this country similar to what exists in the self-governing Colonies of the British Empire. For better, for worse, our destinies are now linked with those of England and the Congress freely recognises that whatever advance we seek must be within the Empire itself."[70] He declared that the advance towards self-government could "only be gradual, as at each stage of the progress it may be necessary for us to pass through a brief course of apprenticeship before we are enabled to go to the next one; for it is a reasonable proposition that the sense of responsibility, required for the proper exercise of the political institutions of the West, can be acquired by an Eastern people through practical training and experiment only."[71]

Although the Moderates were in majority in the Congress, they were losing ground, for even their modest demands did not evoke any response in the official quarters. At the 1904 Congress session it was resolved that a deputation, under the leadership of Sir Henry Cotton and the President for the year, should wait upon Lord Curzon and present to him resolutions passed at that session, which, *inter alia,* included the Indianisation of the services, elimination of the causes of poverty, an enquiry into the conditions of the peasants and the enlargement of the Councils. Lord Curzon refused to receive the deputation and characterised the activities of the Congress as the mere letting of "gas". It was, then, decided to send a deputation, consisting of Gokhale and Lajpat Rai, to London and to present Indian grievances before the British public.

Meanwhile, the Liberals came into power in 1905, and John Morley became the Secretary of State for India. Indians, particularly the Moderates, felt happy over the change of Government in England as the Liberals, while in Opposition, had given a promise of a fair deal and of great reforms. Morley's espousal of India's cause had always been vigorous, and naturally high expectations were placed in him. But Gokhale and Lajpat Rai, during their stay in London, realised that "the speeches of a Party in Opposition are more dictated by expediency than by the principles for which the Party stands, that an imperceptible but nonetheless noticeable change occurs in the persons as soon as they shift from the Opposition to the Treasury benches; that where Indian affairs were concerned the party labels of Liberals and Conservatives have no meaning and above all that Morley's liberalism which had excited great hopes, had deserted him, and what remained of it was geographical in its scope, confined to England alone.[72] At the Benares session of the Congress, Lajpat Rai informed the delegates that the British public was too busy with their own affairs and that Indians would have to carve out their own political destiny.[73]

At the 1905 session of the Congress a difficult situation arose, which caused a serious crack in Congress unity. In January, 1906, the Prince and Princess of Wales were scheduled to visit India. The extremists in the Congress had threatened to boycott the Royal visit and the Viceroy felt uneasy about it. Minto had met Gokhale and had taken an assurance from him that the Congress would make its earnest and best efforts to make the Royal visit a success. Accordingly, the Moderates desired to move a resolution in the open session of the Congress, pledging a welcome to the Royal visitors. It proved a spark in the arsenal of sullenness and caused an explosion. The contingent of Bengali delegates became boisterous and vehemently denounced this move of the Moderates. The Maharashtra and Punjab leaders were prevailed upon to pacify the indignant Bengalis and it was with great difficulty that they agreed to let the resolution be passed in their absence. But the Moderates had to make a show of compromise with the extremists. Gokhale, in his Presidential Address, condemned the Partition of Bengal as a "cruel wrong" and denounced Lord Curzon's assertion that the agitation was "manufactured". He praised the heroic stand of the Bengalis against the oppression of a harsh and uncontrolled bureaucracy. Gokhale declared that nothing more intense, widespread and spontaneous had been seen in Indian political agitation and justified the *Swadeshi* and *boycott* movements as a political weapon.

Thus, although an open rift was avoided at

70. Banerjee, A.. C., *Indian Constitutional Documents,* Vol. II, p. 203.
71. *Ibid.*
72. Ishwari Prasad and K. S. Subedar, *A History of Modern India,* pp. 344-45.
73. Lajpat Rai, *Young India,* pp. 169-70.

the 1905 session, it left behind a trail of sharp dissension among the Congress members. Relations between the two groups were further estranged during the course of the year. The Secretary of State for India had categorically declared in Parliament that the Partition of Bengal was a settled fact and that it could not be undone. The extremists, therefore, wanted to intensify their struggle against the Partition by capturing the Congress and putting Tilak in the chair for the 1906 session, which was to meet in Calcutta.

This was too much for the old guards, and they outwitted the extremists by putting Dadabhai Naoroji in the chair. Their move was successful, but the extremists scored a few points in the game. Resolutions were passed at the Calcutta session on all the four important issues which they had professed for, that is, *Swaraj, Swadeshi, boycott* and national education. The keynote of Dadabhai's Presidential Address was *Swaraj* or self-government and the Congress switched on to a new objective. Self-government like that of the United Kingdom or the Dominions was declared to be the goal of India.

A rift between the two sections of the Congress was again averted, but not for long. Sharp differences between the two sections persisted with regard to the method of winning *Swaraj*. The boycott resolution was another bone of contention. The Moderates never desired it to be used as a political weapon to bring British rule to an end. They intended to confine its application only to Bengal as a gesture of protest against the Partition of Bengal. The extremists, on the other hand, aimed at using it as a political weapon embracing within its fold the boycott of foreign goods as well as the boycott of offices. They wanted the people to refuse to associate with the Government in any form and to extend the boycott movement to the whole country. Tilak explained the objective in his speech before a Calcutta audience. He said, "If you have not the power of active resistance, have you not the power of self-denial and self-abstinence in such a way as not to assist this foreign government to rule over you ? This is boycott, we shall not have their goods, we shall not give them assistance to collect revenue and to keep the peace. We shall not assist them in fighting beyond the frontiers or outside India with Indian blood and money. We shall not assist them in carrying on the administration of justice. We shall have our own courts and when the time comes we shall not pay taxes. Can you do that by your united efforts ? If you can, you are free from tomorrow."[74] Lajpat Rai upheld *Swadeshi* and boycott as the religion of new India; the manifestation of self-sacrificing patriotism; the means of moulding a self-reliant Indian nation and the spearhead of India's national struggle against British rule.[75] He discarded the Moderates' plea of co-operation with the Government on attaining self-government steadily and gradually, and asserted that it was folly to interpret India's status of political subservience as a beneficial school for political apprenticeship.[76]

The Surat Split

During 1907, relations between the Moderates and extremists reached the breaking point. Lord Minto, who had succeeded in introducing communalism into Indian politics, was hobnobbing with the Moderates for seeking their co-operation in the reforms which were on the anvil. This annoyed the extremists, for they had no faith in the capacity of the Moderates to negotiate with the Government. The object with which the Muslim League was founded further exasperated the extremists. They thought of the one and the only course left for them and it was to make a bold bid to capture the Congress at its ensuing annual session in 1907. For this purpose, they wanted to propose the name of Lajpat Rai as President for the Surat Session. The Moderates, who were still in majority in the Congress, opposed the move and, instead, proposed the name of Rash Behari Ghosh. Although Lajpat Rai refused to contest the presidency,[77] the extremists persisted in opposing the nomination of Rash Behari Ghosh.

Towards the approach of the Surat session, Aurobindo Ghosh called upon the extremists to counter the Moderates and set up a separate "Nationalists' Conference." The first Nationalists' Conference was held in Haripur in the outskirts of Surat on December 23, 1907. It was presided over by Aurobindo Ghosh and addressed by Tilak. Entrance to the conference was restricted to persons who openly declared that they were

74. Bal Gangadhar Tilak, *His Writings and Speeches* (192), p. 77.
75. "The Swadeshi Movement", *Indian Review*, May 1906, pp. 353-56.
76. "The National Outlook", *Modern Review*, March 1907, p. 205.
77. Lajpat Rai declared, "I will be the last person to allow myself to be made the reason or occasion for any split in the national camp." *Indian Review*, December 1907, p. 960.

Nationalists. The Conference passed resolutions on total boycott and complete independence.[78]

There were two groups in the Nationalists' Conference too. One led by Tilak had no intention to cause a split in the Congress[79] and the other led by Aurobindo Ghosh sought to capture the Congress or wreck it. The Moderates, on the other hand, had anticipated the secession of the extremists from the Congress and this was evident from the undelivered presidential address of Rash Behari Ghosh. He declared, "The National Congress is definitely committed only to constitutional methods of agitation to which it fast moved. If the new party does not approve of such methods and cannot work harmoniously with the old, it has no place within the pale of the Congress. Secession, therefore, is the only course open to it."[80]

The Congress met on December 26, 1907. As soon as Surendranath Banerjea formally introduced the president-elect, Rash Behari Ghosh, tumultuous hisses and shouts deafened Banerjea's speech. The meeting ended in a fiasco. Next day, the Congress met again, when invective was used and grave disorder was apprehended. The meeting was dispersed by the Police. The extremists left the Congress in disgust, leaving the Moderates in possession of the field. A committee, consisting of Ferozeshah Mehta, Dinshaw Wacha and Rash Behari Ghosh, met in April 1908, at Allahabad and drew up a constitution of the Congress. It clearly specified that the object of the Indian National Congress was the attainment of *Swaraj* within the British Empire, to be achieved strictly by constitutional means and by gradual reform of the existing system of administration. Every delegate to the Congress had to express in writing his acceptance of this article of the constitution. The constitution also laid down the disciplinary rules which ensured the exclusion of rebellious members from the Congress.

Under the new constitution of the Congress passive resistance and boycott, which had been adopted only the previous year as means for achieving the objectives of *Swaraj*, were ruled out. "What happened at Surat," wrote Annie Besant, "was the saddest episode in the story of the Congress." It caused an unfortunate split in the nationalist ranks and discredited the organisation. The Moderates closed the doors of the Congress to those who did not pledge themselves to its way of self-government and the methods of constitutional agitation.[81] By offering a mild dose of 1909 Reforms, the Government secured the co-operation of the Moderates. The Government was happy at the split, but still had an apprehension lest the Congress should ultimately become an extremist organisation.[82]

With the object of the Congress clearly defined under the amended constitution, it met in 1908 at Madras, when Rash Behari Ghosh was re-elected President. A resolution was passed, welcoming the Reform proposals of Morley and Minto and the hope was expressed that the Reforms would be worked in a liberal spirit. Surendranath Banerjea, who moved the resolution, enjoined upon the delegates that the reforms should be considered "as a message of conciliation." A resolution expressing detestation of the acts of violence in some parts of the country was also moved from the chair. By another resolution ill-treatment of Indians in South Africa was condemned, the annulment of the Partition of Bengal was demanded, and the *Swadeshi* movement was given unrestricted support.

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78. Tilak emphasised at the Nationalists' Conference, "we have not come to cause a split in the Congress, we do not want to hold a separate Congress, our policy is not destruction but progressive."
79. *The Surat Congress,* Natesan, Madras 1908, Presidential Address, p. 29.
80. *Ibid.*
81. Annie Besant, *How India Wrought for Freedom,* p. 465.
82. Morley, J., *Recollecions,* Vol. II, p. 201.

CHAPTER III

The Rise of Muslim Communalism

The Policy of "Divide and Rule"

Divise et impera is an old maxim of statecraft which has invariably been followed by all conquerors in all lands and in all ages. Once the validity of the foreign rule is admitted, no special blame can be attached to the rulers for having recourse to the policy of 'Divide and Rule'. The British in India would have been no exception, if, like other conquerors, they too had followed that policy. But the servants of the East India Company had resorted to such a policy much earlier when the validity of their rule in India could not be admitted. They knew too well the weaknesses of India's political fabric. Internal disunity caused by narrow jealousies, dissensions, greed, and communal and local loyalties had ever plagued India at every stage of her history and the same tendencies and influences had paved the way for British Rule in India. Malcolm was stating a bare truth when he said that Hindustan could never have been subdued but with the help of her own children. The British played successfully one dynasty or power against another and, thus, subdued the country. This policy of 'Divide and Rule' or 'counterpoise' of native against native equally stood them in good stead in holding the people in bondage.

Anti-Muslim Policy

After the annihilation of the Mughal Empire the Muslims as a community were segregated and the Britishers pursued a systematic policy of enfeebling them economically and politically, lest they might venture to regain what they had lost. Even as late as 1824-25, Bishop Heber observed that "the Mohammedans are hostile to the English as those who have supplanted them" and believed that "if a fair opportunity offered, the Musalmans, more particularly, would gladly avail themselves (of it) to rise against us."[1] And, as said earlier, Lord Ellenborough wrote in 1843, "It seems to be most unwise when we are sure of the hostility of one-tenth, not to secure the support of the nine-tenths who are faithful. I cannot close my eyes to the belief that this race (Muslims) is fundamentally hostile to us and therefore our true policy is to conciliate the Hindus."[2] He believed that the best way of restoring "equilibrium between the two religions," Hindus and Muslims, was to bring "the Mohammedans to their senses."[3] Lord Dalhousie's attitude towards the Muslims was not a whit less inimical. He really revealed his mind in a private letter to one of his friends on August 18, 1853. "The King of Oudh", he wrote, "seems disposed to be bumptious. I wish he would be. To swallow him before I go would give me satisfaction. The old king of Delhi is dying. If it had not been for the effete folly of the Court (of Directors) I would have ended with him the dynasty of Timur."[4]

In the "revolt' of 1857, Hindus and Muslims joined together to overthrow the British and both suffered heavily, but the common belief among Englishmen was that Muslims had been mainly responsible for the Mutiny. For the Muslims "the rebellion of 1857", according to Rafiq Zakaria, "was not just a revolt against the British; it was their last desperate bid for the recovery of their privileges.....They detested the Cross because it had replaced the crescent."[5] To put it in the words of Sir S. H. Cunningham, "The Musalman had a personal grievance. He was feeling the dual pain of humiliated authority and tarnished prestige."[6] The result was that during and after the Mutiny "the Mohammedans" as the biographer of Sir Syed Ahmed Khan says, "were under a cloud. To them were attributed all the horrors

1. Bishop Heber, *Narrative of a Journey*, Vol. I, p. 198.
2. Rafiq Zakaria says that Lord Ellenborough not only had a soft corner for the Hindus : "'he made no secret of his contempt for the Muslims." *Rise of Muslims in Indian Politics*, p. 4.
3. Law, Sir Alganon(Ed.), *India Under Lord Ellenborough*, p. 65.
4. *Private Letters of the Marquis of Dalhousie*, p. 262.
5. Rafiq Zakaria, *Rise of Muslims in Indian Politics*, pp. 5-6.
6. Cunningham, Sir S. H., *Earl Canning*, p. 65.

and calamities of the terrible time."[7] The European community residing in India openly preached and urged upon the Government an anti-Muslim policy. The European inhabitants of Calcutta submitted a petition to the 'Home' authorities demanding the recall of Lord Canning, as the Governor-General did not support the anti-Muslim cry raised by the European community in India.

Lord Canning was not recalled, but the British Government, as William Hunter pointed out, "turned upon the Musalmans as their enemies."[8] The post-Mutiny period was perhaps the darkest period in the history of Indian Muslims. The heavy hand of reprisal ruined many families which had enjoyed both prestige and power. It was a great blow to their pride and respectability. It was difficult for them to forget that they were once the conquering and ruling people and had enjoyed all the privileges which belonged to a ruling class. "The sense of frustration, the memories of glories departed and consciousness of the fact that the Hindus had stolen a march over them in every sphere,"[9] fostered communal loyalties in them.

Socio-Economic Decline of the Muslims

The reaction of the British conquest on the minds of the Muslims and Hindus was bound to be different.[10] Whereas the Hindus welcomed British rule in India and regarded it as a benign Act of Providence which brought them deliverance from the tyranny of Muslim rule,[11] the hostility of the Muslims towards the English was unbounded. They regarded them as their bitterest foes, since they had usurped their political authority. As the past rulers of the country, the Muslims resented their new position and sulked in their tents. The British, on their part, adopted a continuous policy of suppression towards them. In Bengal the object of the land settlement was to bring the old Muslim nobility and official class to a position of social degradation. The Hindu collectors of land revenue were elevated to the exalted position of landlords.[12] In the Punjab, where the Muslims were in a dominant majority, their condition was not a whit better. The revenue system introduced there produced a class of moneylenders who were Hindus since usury is banned by the Quran. The Hindu moneylenders throve upon the misery of the Muslim peasantry. They did not hesitate even to deprive them of their lands. Such expropriation, according to Thornborn, had proceeded to a dangerous extent.[13]

The exclusion of the Muslims from Government services was calculated and wholesale. The upper class Muslims, who had taken to the military profession as their *beau ideal,* were mostly kept out of the army as the Government believed that their exclusion was necessary to their safety. William Hunter stated that "no Mohammedan gentleman of birth can enter our regiments" and as an illustration explained that "how a ridiculous small numbers" of Muslims held commissions from the Governor-General and "as far as I can learn, not one from the Queen."[14] In the civil services their position was worse. None of them could find their way in the Covenanted Civil Service or up to the Bench of the High Court.[15] In some cases vacancies advertised clearly stated that the appointments would

7. Graham, P. F. I., *Life and Work of Sir Syed Ahmed Khan,* p. 40.
8. Hunter, W. W., *Indian Mussalmans,* p. 147.
9. Raghuvanshi, V.P.S., *Nationalist Movement and Thought in India,* p. 95. Rafiq Zakaria says that though deprived of position and authority, the Muslims looked down upon the Hindus as if the latter "were still under some Muslim Monarch. This attitude of self-deception brought upon them disastrous consequences. The alien government went ahead with its plans, contemptuous of their opposition; while the Hindus made the most of every opportunity, in a way glad that the Muslims had left them with an open field." *Rise of Muslims in Indian Politics,* p. 9.
10. *The History and Culture of Indian People, op. cit.,* Vol. X, Part II, p. 295.
11. This is evident from the statement of Raja Ram Mohan Roy who in his "Appeal to the King in Council" against the Press Regulations referred to the "despotic power of the Moghul Princes" and offered thanks "to the supreme Disposer of the events of this universe, for having unexpectedly delivered this country from the long-continued tyranny of its former rulers, and placed it under the Government of the English,—a nation who not only are blessed with the enjoyment of civil and political liberty, but also interest themselves in promoting liberty and social happiness, as well as free inquiry into literary and religious subjects, among those nations to which their influence extends." *Ram Mohan Roy—Works.* pp. 439, 445-46, 462, 465.
12. According to James O' Kinesly, the Permanent Settlement in Bengal "elevated the Hindu collectors, who, up to that time, had held but unimportant posts, to the position of landholders, gave them a proprietary right in the soil and allowed them to accumulate wealth which would have gone to the Musalmans under their own rule." As quoted in W.W. Hunter, *The Indian Mussalmans,* p. 160.
13. Refer to Thornborn's *Mussalmans and Moneylenders.*
14. Hunter, W.W., *The Indian Mussalmans,* p. 159.
15. *Ibid.*

be given to none but Hindus.[16] If no bar was placed on their entry, the Muslims soon found themselves edged out by the Hindus. The substitution of English as the official language had given the Muslims a grievous setback. Their religious beliefs and racial pride made them cling to the old orthodox traditions of religious education and they turned their back on the impious new learning of the *farangis* (Europeans).[17] The Hindus on the other hand, welcomed the new change and "rushed to adjust themselves to the new situation. They took full advantage of the official encouragement, and in commerce, education and professions found new avenues to carve out a bright future for themselves."[18]

The British policy aimed at destroying indigenous industries and handicrafts had a crushing effect on the Muslims, as millions of weavers and other artisans belonged to their community. Thrown out of employment, "Where were they to go ? Their old profession was no longer open to them; the way to a new one was barred. They could die, of course.....They did die in tens of millions."[19] Lord Bentinck, the Governor-General, reported in 1834, that the misery hardly finds a parallel in the history of commerce. Those who survived took to the land which hardly had the capacity to receive them. Consequently, appalling misery and privation haunted the Muslims.

The Muslims were, thus, gradually ousted from their lands and their offices; "in fact everything was lost save their honour." The Hindus, from a subservient state, came into the lands, offices and other worldly advantages of their former masters. "Their exultation knew no bounds, and they trod upon their heels." The result was that "The Musalmans would have nothing to do with anything in which they might have to come into contact with the Hindus."[20]

The social degradation and utter poverty of the Muslims also prevented the growth of a Muslim middle class, while among the Hindus it gradually developed and gained shape. This uneven and unbalanced development of the two major communities had a great impact on the future politics of India, and "certainly herein lies," says Zia-ul-Hasan Faruqi, "the complex socio-economic ground where the seeds of communalism were sprinkled and watered by the religious and cultural bickerings to develop into a thorny bush which subsequently inflicted bleeding wounds on the unity of India and finally divided into two parts."[21]

The Aligarh Movement

The Aligarh Movement[22] started by Syed Ahmed Khan[23] played a vital role in the evolution of Muslim political consciousness. His objective was to draw the Muslims from the sloth of backwardness and conservatism, to instil into them a desire for Western education and culture, to improve their status and to dispel from the minds of

16. According to the analysis made by the *Aligarh Institute Gazette*, February 25, 1882 (p. 219), in 1871, the proportion of Mohammedans to Hindus in the uncovenanted civil service was 1 : 10 and in the judicial and revenue departments only 19 out of 185 high officials were Muslims.
17. This view is contradicted by Ziya-ul-Hasan Faruqi. He says, "During the period under review (1800-1857) they (Muslims) were deliberately being isolated from all places of position and prestige and constantly kept out of Government services. The excuse was that the Muslims themselves were responsible for this state of affairs, for they kept on clinging to the old type of education and refrained from joining the new schools. But this is an allegation without any foundation; and if it be accepted, what treatment was meted out to them when they started learning English ? They also desired to enter the services of the Company, but they received only discrimination, sometimes mild, often ruthless, and the door was closed against them." *The Deoband School and the Demand for Pakistan*, pp. 13-14.
18. Ziya-ul-Hasan Faruqi, *The Deoband School and the Demand for Pakistan*, p. 13.
19. Jawaharlal Nehru, *The Discovery of India*, p. 277.
20. Sayani, R. M., Presidential Address, Twelfth Indian National Congress, Calcutta Session, 1896. Banerjee, A.C., *Indian Constitutional Documents*, Vol. II, p. 165.
21. Ziya-ul-Hasan Faruqi, *The Deoband School and the Demand for Pakistan*, p.16.
22. Syed Ahmed Khan's efforts to regenerate the Muslim community and to lay the foundation of modern educational avenues for his coreligionists came to be known as the Aligarh movement. He selected Aligarh as the centre of his activities for various reasons. One of them was that Aligarh and its neighbouring districts had a predominantly Muhammedan population and a Muhammedan feudal aristocracy from whom he hoped to receive substantial financial support for the growth of the college he had decided to start.
23. Syed Ahmed Khan (1817-1898) traced his descent from Hazrat Husain and would often speak of the prophet as "my grand- father". At the age of 20 he took service with East India Company as *sarishtadar*. His mother, who had been Syed Ahmed's only parent, guardian and guide since he was 19, had inculcated in him great respect for authority. Thus, during the Mutiny his loyalty to the British remained unshaken and the Government granted him pension of Rs. 200 a month for life and the life of his eldest son. In 1869, he was awarded Third Class of the Star of India and in the same year was granted a sum of £250 per annum, for two years. He retired from servioe in 1876 and in 1888 the title of knighthood of the Order of the Indian Empire was conferred upon him.

the English people the illusion that the Muslims were primarily responsible for the Mutiny.[24] Under the Aligarh Movement an educational scheme was formulated which sought to combine the Western system of education with the basic teachings of Islam rationalistically interpreted for the Indian Muslims.

Syed Ahmed Khan formed, in 1870, a Committee for the better diffusion and advancement of knowledge and learning among the Mohammedans of India. The Committee began collecting funds for establishing a college and enlisting the support of influential Muslims. But it met with stout opposition from the Muslim public in general, especially the *ulema* (religious divines). They were offended by the so-called rationalistic interpretation of Islam, which constituted one of the objectives of Syed Ahmed's educational schemes. The *ulema* held it anti-Islamic.

Syed Ahmed Khan put before himself the target of rupees two lakhs for starting the college. But the response from the Muslims was poor and there were slim hopes of reaching the target in view of the vehement opposition of the *ulema* and the orthodox Muslim press. Maulvi Sameeullah Khan, Syed Ahmed's close associate, advised him to start the college immediately even though the required amount of money was not available. The beginning was made by opening an English medium school in 1873, with L.G.I. Siddons as its Headmaster. Siddons later became the first Principal of the Muhammedan Anglo-Oriental (M.A.O.) College.[25]

The foundation stone of the college building was laid by Lord Lytton on January 8, 1877.[26] In an address of welcome presented to the Viceroy the College Committee described British rule in India as "the most wonderful phenomenon the world has ever seen", and added, that the College aimed at educating the Muslims so that they should be able to appreciate the blessings of British rule; "to dispel those illusory traditions of the past which have hindered our progress; to remove those prejudices which have hitherto exercised a baneful influence on our race; to reconcile oriental learning with Western literature; to inspire in the dreary minds of the people of the East the practical energy, which belongs to those of the West; to make the Musalmans of India worthy and useful subjects of the British Crown; to inspire in them the loyalty that springs not from servile submission to a foreign rule, but from genuine appreciation of the blessings of the good government." These are the objects, the address concluded, "which the founders of the college have prominently in view."[27]

Lord Lytton, in his reply to the address of welcome, described the ceremony as constituting "an epoch in the social progress of the Muhammadans in India under the British rule." He also welcomed the establishment of the M.A.O. college for "one special reason." There was no object, he said, "which the Government of India has more closely at heart than that the plain principles of its rule should be thoroughly intelligible to all its subjects, from the highest to the humblest." This, the Viceroy believed, could be achieved by "a body of cultivated natives...than twice the number of English officials or twenty times the number of European scholars."[28]

The establishment of the College was hailed by the Anglo-Indian press and the British officials alike.[29] Mr. Keene, the Director of Public Instruction, North-Western Provinces, observed that the establishment of the M.A.O. College marked an epoch and "was likely...to form the germ of a very wide and important movement that would live in History....."[30] Exactly the same views had been expressed by the College

24. Immediately after the Mutiny, Syed Ahmed wrote a pamphlet entitled *Asbab-i-Baghawat-i-Hind* (The Causes of the Indian Revolt) wherein he rebutted the charges against the Muslims and pleaded that the British authorities should not punish the poor Muslims for the follies and faults of Bahadur Shah, the Mughal Emperor. In 1860-61, he wrote a series of pamphlets entitled: *The Loyal Muhammedans of India* wherein he deprecated the wholesale denunciation of Muslims as a race and tried to establish that Islam and Christianity were so akin to each other that the Muslims were not permitted by their religion to wage a war against the British who were Christians by faith.

25. Originally, the M.A.O. College Committee wanted that the college should be confined to Muslims alone. But eventually it was decided to keep its portals open for the Hindus too, because of the "goodwill, sympathy and generosity" displayed by "the Hindu nobility and gentry." The Maharajas of Patiala, Benares and Vizianagram gave handsome donations.

26. The College Committee had first requested Sir John Strachey and then Lord Northbrook to lay the foundation stone, but they could not do so due to their official pre-occupations.

27. Supplement to the *Aligarh Institute Gazette*, January 12, 1877.

28. Nawab Mohsin-ul-Mulk (Editor), *Addresses and Speeches relating to the Muhammedan Anglo-Oriental College*, pp. 22-23.

29. Lord Lytton promised a monthly donation of Rs. 500 from his own purse. Prominent among other British donors were Lord Northbrook, Sir William Muir, Sir John Strachey, and Sir William Hunter.

30. *The Aligarh Institute Gazette*, January 19, 1877, p. 41.

Committee in their welcome address presented to Lord Lytton. The address said, "from the seed we sow today, there may spring up a mighty tree whose branches like those of the banyan of the soil, shall in their turn strike firm roots into the earth and themselves send forth new and vigorous samplings."[31] As Rafiq Zakaria remarks, "……its (M.A.O. College) foundation proved a landmark in the annals of Muslim education. Moreover, its leaders and students soon began to shape even the political future of their co-religionists. In fact, within less than a decade, its luminaries collectively described as the 'Aligarh School' assumed an almost monopolistic control of Muslim affairs. From them went the word to the newly educated Muslimss and in nine cases out of ten they respected the word; in consequence, for more than two decades, Aligarh turned out to be the focal point of Muslim activities, educational, social and political."[32]

Many causes could be assigned for the turn in Muslim politics and that too in favour of the Aligarh School. One of them, according to Theodore Morrison,[33] was "certainly political."[34] Syed Ahmed Khan's open and unceasing opposition to the Indian National Congress not only brought him the support of many British bureaucrats; they also helped to bring round within his fold the Muslim Zamindars, who were anxious to have some medium to express their loyalty to the British. Another important cause was the anti-cow-killing agitation started by the Hindus in many important cities and towns. It created a sense of uneasiness among the Muslims and "it led them to look for religious affinities with the British." And hence, "the whole tendency of the time", comments Morrison, "was to bring the Muhammedans and the English together."[35] Syed Ahmed Khan worked very hard to achieve it and he admirably succeeded in his efforts.

Syed Ahmed Khan was vehemently opposed to the Indian National Congress and he openly confessed that he had "undertaken a heavy task against the so called Indian National Congress."[36] He dissuaded the Muslims from joining it as he apprehended that their participation in any kind of nationalist movement would be suicidal to the interest of the Muslim community.[37] If the Muslims were involved in any agitation at that stage of their political existence and their sentiments roused there might be, he feared, a repetition of the happenings of 1857. With the avowed object of combating the nationalist forces in the country,[38] he not only exhorted the Muslims to remain aloof from the Congress, but also instilled into them the idea that the British Government would most certainly give beneficial positions to them, provided they did not give rise to suspicions of disloyalty. He, therefore, advised his co-religionists that the best and only course for them was to remain in faithful alliance with the British Government.

The Indian National Congress in its first session in 1885 had demanded the reform and expansion of the Supreme and local Legislative Councils by the admission of a considerable proportion of elected members and the creation of similar councils for the North-Western Provinces and for the Punjab. It also urged that all budgets should be referred to these councils for consideration and their members be empowered to ask questions. Moreover, a Standing Committee of the House of Commons should be constituted to receive and consider any formal protest that might be recorded by majorities of such Legislative Councils against the exercise by the Executive of power, which would be vested in it, of overruling the decisions of such majorities. It also asked for the appointment of a Royal Commission to inquire into the working of the Indian administration, and prayed for holding simultaneously examinations for the Indian Civil Service

31. These sentences were *verbatim* repeated in the address presented to Sir Charles Crosthwaite, Lieutenant-Governor of North-Western Provinces in 1894, *Aligarh Institute Gazette*, November 13, 1894, p. 119.
32. Rafiq Zakaria, *Rise of Muslims in Indian Politics*, p. 181.
33. Morrison (1863-1936) succeeded Theodore Beck as Principal of the M.A.O. College in 1899 and held the post till 1905.
34. Morrison, Theodore, *History of the M.A.O. College from its foundation to the year* 1903, p. 10.
35. *Ibid.*
36. Graham, G.F.I., *Life and Work of Sir Syed Ahmed Khan*, p. 273.
37. W. S. Caine, a Member of the British Parliament, who visited India in 1888, wrote, "Sir Syed tells me that he and his friends took no notice whatever of the first Congress at Bombay; but the second one, meeting at Calcutta, attracted more attention and a number of leading Muhammedans met privately to consider what their attitude should be and decided that no official notice should be taken." *India as Seen by W. S. Caine*, p. 28.
38. In 1888, Sir Syed Ahmed Khan founded the United Indian Patriotic Association and its membership consisted of both the Hindus and the Muslims, but it soon developed into a purely Muslim organisation. Some of the Muhammedan Associations affiliated to the United Patriotic Association formulated rules to expel those Muslims from their ranks who either belonged to the Congress or were in any way sympathetic to it.

both in England and India, and for raising the examination age to twenty-three years. These demands were repeated, with certain modifications on the elective principle and grant of franchise, at the 1886 Congress session held at Calcutta. All these resolutions not only led to a bitter controversy between officials and non-officials, but also between Hindu and Muslim leaders, particularly on proposals relating to the reform of the Councils and reconstruction of the public services.

Just a month before the scheduled meeting of the Calcutta session of the Congress, Syed Ahmed Khan wrote a lengthy leading article in *Aligarh Institute Gazette* wherein he strongly condemned the Congress and characterised its programme as "seditious." He raised the question, "Is the State of the country adapted to popular Government ?" and himself gave the reply, "certainly not."[39] The Reception Committee of the Calcutta Session of the Congress took some concrete steps to ensure adequate representation of the Muslims in its deliberations and, accordingly, wrote letters to two Muslim organisations—the Central National Muhammedan Association and the Muhammedan Literary Society—requesting them to send delegates. But their response was not favourable and both these organisations disapproved of the items on the agenda.

Twenty-seven Muslims attended the second Congress, Dadabhai Naoroji presiding. In his presidential address he defined the scope of the Congress and pointed out that it was a purely political body and it should deal only with the political matters, on which Indians were united. The Third Congress was held at Madras in December 1887. Badruddin Tyabji, a prominent Muslim leader of Bombay, was selected as its president. The efforts of the Congress to attract more Muslims to attend the session infuriated Syed Ahmed Khan and he delivered on December 28, 1887, the same day the Congress was meeting at Madras, a speech at Lucknow scathingly condemning the Congress. He disparagingly declared that the Congress movement would not do good to anybody, except a few Bengalis, "who at the sight of the table-knife crawl under a chair." He held that the Congress demand of establishing parliamentary institutions in India was a "useless uproar" and warned the Muslims that if they joined the Congress "nothing but national disaster lay in store for them." He advised his co-religionists to remain steadfastly loyal to the British Government, if they did not want their community to grow under the yoke of the future Hindu rule.[40]

Syed Ahmed Khan developed his thesis on three main points :

(1) That the Hindus and the Muslims constituted "two different nations "irrespective of the fact that they "drink from the same well, breathe the air from the same city and depend each on the other for his life." To illustrate his point Syed Ahmed Khan posed a question, "Now suppose that all the English were to leave India, then who would rule the Country ?" Is it possible "that under these circumstances the two nations—the Mohammedans and Hindus—could sit on the same throne and remain equal in power ?" He himself replied, "Most certainly not. It is necessary that one of them should conquer the other and thrust it down." To hope that both could remain equal in power was to wish for "the impossible and the inconceivable."

(2) That representative institutions were "unsuited to the conditions of India." Syed Ahmed explained, let us suppose that the right to universal franchise had been given to Indians and the highest and the lowest all enjoyed the right to vote. What would happen then ? In such an eventuality, he said, the Hindus would cast their votes in favour of the Hindu candidates and the Muslims for Muslim candidates. The result would be that the Hindu candidates would have "four times as many votes" as the Muslim candidates because their population is four times as numerous." Could the Muslims in such a situation safeguard their interest?, he posed the question. He himself replied, "It would be like a game of dice, in which one man had four dice and the other one."

(3) That it would be discreet and beneficial for the Muslims to rely entirely on the British Government for safeguarding their interests and for their effective representation in administration. He enjoined upon the Muslims to unite and co-operate with the British, because, according

39. *The Aligarh Institute Gazette*, November 23, 1886.

40. The Lucknow meeting was attended by the taluqdars of Oudh, members of the government services, the Army, the professionals of Law, the press and the priesthood, Syeds, Shaikhs, Mughals and Pathans belonging to some of the noblest families in India, and representatives of every Muslim school of thought, from the orthodox Sunni and Shia Maulvis to the youngmen trained in Indian Colleges or in England. *The Pioneer*, Allahabad, January 11 and 12, 1888.

to the teachings of the Quran, "our nation cannot expect friendship and affection from any other people."

The Times described Syed Ahmed Khan'sLucknow speech as "one of the most remarkable political discourses ever delivered by a native of India."[41] The Muslim press, too, generally hailed the speech. The *Muslim Herald* wrote in its leading article, "The Syed does not mince matters but hits out straight from the shoulder like the giant he is. In a mawkish time, enslaved by senseless conventions, it is a relief to find one man at least who, avoiding periphrasis, honestly calls a spade a spade.....We proudly accept the Syed as our leader and exponent-—the summit and the crown of Islam, a faith that binds together with the withes of iron 50,000,000 Indian Musalmans. Sir Syed leads the way. His speech sounds the keynote of our policy."[42] but the speech created a stir in the Congress, especially amongst the Bengalees who felt bitterly hurt. Lajpat Rai published towards the end of 1888, four "open letters to Sir Syed Ahmed Khan,"[43] wherein he challenged Sir Syed's attack on the Congress and his "two-nation" theory. He charged Syed with going back on his earlier advocacy of Hindu-Muslim co-operation as both constituted a single nation.

The Aligarh movement, thus, grew anti-Congress and anti-Hindu. It, no doubt, brought about the political and social regneration of the Muslims but at the same time widened the political cleavage between the Hindus and the Muslims and created a distinct Muslim unit in Indian politics. Pakistan today claims Sir Syed Ahmed Khan as one of the founder fathers of the country."[44] It is true. The father of the Muslim "nationhood" was not Jinnah but Sir Syed. The arguments that Jinnah advanced in support of the two-nation theory were precisely the same that Sir Syed used in opposing the Congress. Even the words used by Jinnah were the same used by Sir Syed in his speeches and writings. It is often stated that Sir Syed had previously advocated Hindu-Muslim unity and co-operation and references are made to his various speeches delivered at Gurdaspur and Lahore in the Punjab. But this is not supported by facts. Sir syed was first and last a Muslim and a Muslim's point of view was essentially different from an Indian's point of view.[45] Nationalism, as Coupland has said, "feeds on memories, but the memories of the Moslems were concerned with Islam than India; they did not share with their Hindu fellow-countrymen's pride in a record of civilisation stretching far into the past...."[46] Therefore, Sir Syed's "supposed advocacy of Hindu-Muslim unity", remarks M. S. Jain, "is a myth created by interested persons. The concept of a united Indian nationality never crossed his mind" and all those statements which advocated Hindu-Muslim unity were a mask to secure financial assistance for the M.A.O. College from the Hindus.[47] *The Aligarh Institute Gazette* makes a revelation. Its issue of June 23, 1871 contains a statement that "by the pretext of this (Hindu-Muslim) unity we get our work done."[48] Sir Syed was so keen to get subscriptions, from any quarter for the Aligarh College that in one of his private letters he wrote, "We would accept donations for the College on whatever condition one would offer."[49]

Role of European Principals of Aligarh College

The British Principals of Aligarh College played a key role in enticing educated Muslims away from the nationalist forces. Theodore Beck, who took over the Principalship of the Muhammadan Anglo-Oriental College in 1883, was described as an Empire-builder in far off lands.[50] Rafiq Zakaria describes him in many ways "the counterpart of Hume" as what the latter did for the Congress, Beck "did for the Aligarh Movement."[51] Mohsin-ul-Mulk publicly confessed that after the death of Sir Syed it was to Beck that the Muslims turned "for no man except Sir Syed

41. *The Times,* London, January 16, 1888.
42. Quoted in Rafiq Zakaria, *Rise of the Muslims in Indian Politics,* p. 56.
43. These letters were first published in *The Tribune,* Lahore (October 27, November 17, December 5 and 19, 1888) and later published by him in a book entitled : *The Man in his word.*
44. Refer to Symonds, R., *Makers of Pakistan.*
45. Abdul Aziz, *Pakistan* (Urdu), p. 30.
46. Coupland, R., *The Constitutional Problem in India,* p. 33.
47. Jain, M. S., *The Aligarh Movement,* p. 137.
48. P. 338.
49. *Khatoot-i-Sir Sayyid,* pp. 219-20 and as quoted in . M. S. Jain *The Aligarh Movement,* p. 141.
50. On Beck's death in 1899, Sir John Strachey paid him the handsome tribute : "An Englishman who was engaged in the empire building activities in a far off land, had passed away. He died like a soldier at the post of his duty."
51. Rafiq Zakaria, *Rise of Muslims in Indian Politics,* p. 317.

had worked with such zeal and unselfish devotion for their cause."[52] Immediately before his departure from London, Beck made a speech which was clearly indicative of his mission in India. He said that parliamentary system in India was most unsuited and it would be a futile attempt if representative institutions were introduced in the country. "The Muslims", he declared, "will be under the majority opinion of the Hindus, a thing which will be highly resented by Muslims and which, I am sure, they will not accept silently."[53]

Incidentally, Beck's arrival in India synchronised with the year when Syed Ahmed Khan had delivered a speech in the Supreme Legislative Council, deprecating the elective principle of representation, as "the larger community would totally override the interest of the small community." He underlined the elements that divided Hindus and Muslims and stressed the wide chasm that prevented the two communities from constituting a single nation. "India a continent in itself", Syed Ahmed said, "is inhabited by vast population of different races and different creeds; the rigour of religious institutions has kept even neighbours apart—the system of caste is still dominant and powerful...One section may be numerically larger than the other, and the standard of enlightenment which one section of the community has reached may be far higher than that attained by the rest of the population. One community may be fully alive to the importance of securing representation on the local boards and the district councils, whilst the other may be wholly indifferent to such matters.....The system of representation by election means the representation of the views and interests of the majority of the population."[54]

Theodore Beck, a Tory by political faith who took pride in the imperialist greatness of Britain, found in Syed Ahmed Khan the fulfilment of his mission. *Pax Britannica* was the guiding principle of Beck's life and he was convinced that an alliance between the Muslims and the British would preserve the *British Raj* for ever whereas Hindu-Muslim understanding and cooperation would ultimately ruin the British imperial majority in India. He succeeded in winning the confidence of Syed Ahmed Khan, the noblest and the most gifted with whom he had "ever enjoyed intimate personal intercourse."[55] Beck cemented Syed Ahmed's belief that while an Anglo-Muslim alliance would ameliorate the conditions of Muslims as a community, the nationalist alliance would lead them once again to a state of sweat, toil and tears. As Principal of the college, he, together with other English Professors, strove to instil into the young Muslim students the benefits of loyalty to the *Raj* and trust in the sincerity of the British. Even anti-Hindu sentiments were often encouraged.

Syed Ahmed's Lucknow speech can, without hesitation, be attributed to Beck's inspiration. Just a month before the Lucknow speech, Beck had published in *The Pioneer,* Allahabad, two articles expressing identical views.[56] Beck repeated the same ideas in London in 1895. Addressing the London Muslim Association, he emphasised the impossibility of Hindu-Muslim unity and deprecated the idea of establishing a democratic government in India, as such a system would make the Muslims slaves of the Hindus for all times to come. He warned them not to repeat the mistakes of 1857 and, therefore, not to join the seditious Indian National Congress.

Thus, the Muslims were isolated from the main stream of national politics and were used as pawns in the communal politics of the country in a bid to perpetuate the British Raj. When Charles Bradlaugh introduced a Bill in the British Parliament in 1889, embodying the elective principle in the organisation of the Legislative Councils, Beck sponsored a memorial on behalf of the Muslims, representing that democratic institutions were not suitable to India, inhabited as it was by divergent communities and interests. Again, early in 1890, on Beck's suggestion, Sir Syed decided to present a petition signed by nearly 40,000 Muslims, through Sir Richard Temple, to the House of Commons praying that Parliament would not introduce the principle of election in any scheme of reforms of the Councils. Such a step, the petitioners prayed, would "destroy that even-handed justice which has been hitherto the basis of British rule and place them (Muslims) and other minorities in an almost intolerable subjection to classes actively hostile

52. *The Pioneer,* Allahabad, November 29, 1899.
53. As quoted in Mohammed Noman, *Muslim India,* p. 52.
54. Speech delivered in the Supreme Legislative Council on the Central Provinces Local Self-Government Bill, 1883.
55. *The Pioneer,* Allahabad, November 28, 1887. Also refer to Beck's speech on Sir Syed's death as reported in the *M.A.O. College Magazine,* April 1898.
56. November 2 and 3, 1887.

to their welfare."

It was mainly due to the efforts of Beck that the United Indian Patriotic Association was established in 1889. But it did not serve the desired purpose. On December 30, 1894, Sir Syed convened a meeting and explained the implications of the elective principle embodied in the Rules made under the Indian Councils Act, 1892, and the resolution of the House of Commons in favour of simultaneous examinations for the Indian Civil Service. He pointed out that the Muslims were, as a result, "in a very awkward dilemma." They should, therefore, organise themselves and form an association for representing Muslim interests both before the Government of India and the British public. He pointed out two serious defects from which the United Indian Patriotic Association suffered—a joint organisation of Hindus and Muslims and its object was to create public opinion. The Muslims, he asserted, were in need of an *exclusive* organisation of their own which was not to indulge in any political agitation. Nor was it to hold public meetings nor to affiliate other associations to it.

The question of protecting the political rights of Muslims, Beck added, had become serious because of two agitations.....surging throughout the country.....for some years." One, he said, was the Indian National Congress, which was entirely opposed to Englishmen. The second, movement against cow-slaughter, was against the Mussalmans. To prevent cow-slaughter, the Hindus boycott their opponents to starve them into submission. This has resulted into bloody riots in Bombay, Azamgarh, etc. Since the Englishmen and the Mussalmans had become the targets of these two movements, it was necessary, therefore, he added, that both should unite in opposing both. "We should carry on propaganda in favour of true loyalty and unity of action", he emphasised.

At the end of Beck's address and on Sir Syed's suggestion the Muhammadan Anglo-Oriental Defence Association of upper India was established.[57] Beck went home in 1895. There he addressed the members of the London branch of the Association and publicly declared that Anglo-Muslim unity was possible, but Hindu-Muslim unity was not possible under any circumstances.

Theodore Morrison succeeded Beck after his death in 1899. Morrison had had his training from Beck and he faithfully "continued to follow" in the footsteps of his predecessor in the Empire-building mission. He, too, denounced the establishment of democratic institutions in India and declared that if established, they "would reduce minorities to the position of hewers of wood and drawers of water." On the death of Morrison in 1936, *The Times* wrote, "'But he will best be remembered as an accomplished interpreter of Indian Muslim life and sentiment; he was indeed, one of the makers of the Muslim renaissance in India."[58] W.A.J. Archbold, who succeeded Morrison in 1905, accomplished the rest. He was an ambitious Englishman fired with the late Theodore Beck's zeal to serve the Muslim community. In collusion with Colonel Dunlop Smith, Private Secretary to the Viceroy, Lord Minto, Archbold manoeuvred the scheme of communal representation.

The role of the three Principals of the M.A.O. College was, therefore, quite significant in Muslim politics. Every one of them took an active interest in the Indian political controversies and on not a few occasions were able to guide the Muslim leadership in Aligarh "in the particular channels they wanted."[59] There are some critics who blame the British Principals of the M.A.O. College for Sir Syed's anti-Congress and anti-Hindu views, particularly Principal Beck whom a few described as his "political father."[60] This is historically incorrect, yet it cannot be denied that Beck played "the greatest role, in Britishing the whole gambit of Muslim politics during this period. He prepared the material with which Sir Syed fought the Congress". It would, therefore, be no exaggeration to say, as Zakaria suggests, that, "but for Beck's initiative and help, many of Sir Syed's political and educational schemes would not have flourished."[61]

57. The main objects of this Association were : (1) to place the opinions and views of the Musalmans before the British people in general and the Government in particular and to protect their political rights; (2) to prevent political agitation from spreading among the Musalmans; (3) to support measures designed to strengthen British rule in India; (4) to help the Government in maintaining peace and foster a spirit of loyalty.

58. *The Times*, London, February 15, 1936.

59. Rafiq Zakaria, *Rise of Muslims in Indian Politics*, pp. 184-95.

60. See Asoka Mehta and Achyut Patwardhan, *Communal Triangle in India*, pp. 58-59, and Gurmukh Nihal Singh's Presidential Address to the Indian Political Science Conference, Agra session, published in the *Indian Journal of Political Science*, Vol. IV, p. 382.

61. Rafiq Zakaria, *Rise of Muslims in Indian Politics* p. 318.

Reversal of Government Policy

The activities of Theodore Beck coincided with a deliberate change in the policy of the Government towards Muslims. The policy of splitting the two major communities and playing Muslims against Hindus had really begun with the re-organisation of the army. The Indian army before the 'Mutiny' consisted of Hindus, Mussalmans, Sikhs and Poorbias, all mixed up. In 1858, Syed Ahmed Khan had deplored the fact that the two antagonistic races, Hindus and Muslims, should have been placed in the same regiment thereby providing them with an opportunity for development of feelings of brotherhood and comradeship in making common effort for liberation. He maintained, "If separate regiments of Hindus and separate regiments of Muhammedads had been raised , this feeling of brotherhood could not have arisen."[62] Sir John Lawrence was also of the same opinion. He maintained, "Among the defects of the pre-Mutiny army, unquestionably the worst, and the one that operated most fatally against us was the brotherhood and homogeneity of the Bengal army, and for this purpose the remedy is counterpoise, firstly, the great counterpoise of Europeans, and, secondly, of the native races."[63] To provide a safeguard against Mutiny, the Peel Commission, in its report on military reorganisation submitted in 1889, recommended that the army should be composed of different nationalities and castes, and as a general rule, mixed promiscuously through each regiment."[64] The object of the whole reorganisation scheme, *inter alia,* was to set caste against caste, religion against religion, and company against compnay. Sir Charles Wood, the Secretary of State for India , had earlier written to Sir Hugh Rose, "I wish to have a different and rival spirit in different regiments, so that Sikh might fire into Hindoo, Goorkha into either, without any scruple, in case of need."[65] The Army Commission of 1879 had strongly emphasised this principle of *'Devise et Impera.'*[66] The reorganisation of the army, after the Mutiny, thus, destroyed the sentiment of unity, and regiments, battalions and companies based on sectarian, class and caste distinctions created parochial loyalties.

In 1871, Sir William Hunter[67] in his book, *Indian Mussalmans : Are they bound in conscience to rise against the Queen ?*, drew the attention of the British Government to the grievances of the Muslims and to their complaints of British : "Want of sympathy, want of magnanimity mean malversation of funds, and great public wrongs spread over a century."[68] Hunter pleaded for justice for Muslims and urged upon the government for the removal of the causes of their discontent.British officers in India had by then realised that any more enfeebling of the Muslim community was neither politic nor warranted by the exigencies of time.[69] It was, therefore, considered expedient to take the Muslims into alliance rather to continue with the policy of distrust and suspicion about them, especially when the Government was confronted with a new threat of nationalism of the growing westernised middle-class who were predominantly Hindus.[70] Some of the British officials publicly declared that the political interests of the Muslims were identical with theirs. Sir John Strachey attacked the whole concept of the Indian National Congress by asserting that there was no country as India and that there were no Indians in the sense of a united people who were bound by racial, cultural, or linguistic ties. He, accordingly, claimed that there could be no Indian nation or any representation of Indian nationality.[71] Lord Lytton wrote to the Secretary of State for India, Lord Salisbury, that it entirely depended upon the

62. Syed Ahmed Khan, *Causes of Indian Revolt,* pp. 54-55.
63. As quoted in Mehta and Patwardhan, *The Communal Triangle in India*, p. 54.
64. *Report of the Peel Commission,* XIV.
65. Letter dated February 26, 1862. In his Minute of December 8, 1888, Lord Dufferin emphasised that the British "should always remember the lessons which were learnt with such terrible experience thirty years ago....."
66. *Report,* para 50. The Army Commission of 1879 was presided over by Sir Asley Eden.
67. A Civil Servant.
68. Hunter, W.W., *Indian Mussalmans,* p. 159.
69. Lord Mayo realised the seriousness of the situation and directed that more encouragement should be given to the Muslims in the matter of education so that they should not lose the advantages, both material and social, which the other subjects of the Empire enjoyed. Refer to Resolution Nos. 300-310. (Home Department), dated August 7, 1871, Also refer to Resolution (Home Department), dated June 13, 1873. In one of his Notes the Governor-General wrote, "We have not only failed to attract the sympathies and confidence of a large and important section of the community but we have reason to fear that we have caused positive disaffection."
Smith, W.C., *Modern Islam in India,* p. 196.
Strachey, J., *India : Its Administration and Progress,* pp. 2, 308.

policy of Her Majesty's Government "whether the sentiment of our Muhammedan subjects is to be an immense security or an immense danger to us."[72] The change in the British policy was gradual, but it was definitely evident that it marked, as Coupland said, "the end of the decline" of the Muslims "and the beginning of the recovery."[73]

The policy of alienating the Muslims from and using them as a counterpoise against the Hindus took a definite shape in 1888, when Hume started his mass movement and the official attitude towards the Congress became specifically antagonistic. When on January 4, 1887, Lord Dufferin reported to the Secretary of State for India about the abstention of the Muslims from the annual sessions of the Congress, Lord Cross wrote to the Viceroy, "This division of religious feeling is to our advantage." The views of Lord Dufferin, too, had changed by then. In his Saint Andrew's Day speech he rebuffed the Congress leaders, described the Congress as representing a "microscopic minority" and declared that "in the present condition of India there can be no real or effective representation of the people with their enormous number, their multifarious interests and their tessellated minorities." Lord Dufferin was also responsible for initiating the theory of special importance of Muslims in Indian politics, and reminded them that "fifty millions of men are themselves a nation—and a very powerful nation."[74] Lord Salisbury declared in a public speech in London that it was impossible for Britain to hand over the Indian Muslims to the tender mercies of a hostile numerical majority.[75]

Dufferin and Salisbury roused the feelings of the Muslims against the Hindus and it was not strange, in the circumstances, that the principle of separate representation was smuggled into the Indian Councils Act of 1892, although the Act itself had nothing to do with it. Nor had any organised association of the Muslims put forth such a demand. It was introduced silently; it was in the "directions issued to those charged with the duty of framing regulations as to the classes and the interests to whom representation was to be given that the Muslims were named as a class to be provided for."[76]

Both the Aligarh Movement and the definite policy of 'Divide and Rule' increased the friction between Hindus and Muslims and communal disturbances grew in frequency.[77] The British Government made a virtue of the hostility between the two communities as a safeguard of the Empire in spite of the administrative difficulties involved therein. Lord George Hamilton, the Secretary of State for India, wrote to the Viceroy, Lord Elgin (October 3, 1895), "Sandhurst (Governor of Bombay) sent me details about the riot at Dhullia. The Mahomedans were clearly in the wrong. These outbreaks are, from administrative point of view, regrettable, but they do seem to me to strengthen our position generally as reminders of what was the condition of India before our authority was established and what it would be if abolished."[78] Two years later (May 7, 1897) Hamilton, again wrote to Elgin, "I am sorry to hear of the increasing friction between Hindus and Mahomedans in the N. W. (North-West) and the Punjab. One hardly knows what to wish for—unity of ideas and actions would be very dangerous politically, divergence of ideas and collision are administratively troublesome. Of the two latter is the least risky, though it throws anxiety and responsibility on those on the spot where the friction exists."[79]

Here is a weighty rebuttal of the argument put forward by quite a few that there was not any "hard and fast policy of 'divide and rule', pursued by either the British Cabinet or the various Viceroys."[80] Rafiq Zakaria's estimate "'that the British policy was not 'divide and rule'—division was already there; it was to use Curzon's classic phrase 'to hold the scales even' between the Hindus and Muslims",[81] is neither convinc-

72. Lytton, *Personal and Literary Letters of Lord Lytton*, Vol. II, p. 65.
73. Coupland, R., *The Indian Constitutional Problem*, p. 32.
74. *Indian Speeches of Lord Dufferin* (Modern Review, 1911), Vol. I, p. 303.
75. As quoted in M. Noman, *Rise and Growth of the All-India Muslim League*, p. 55.
76. Ambedkar, B. R., *Pakistan*, pp. 240-41.
77. Serious Communal riots broke out at Lahore and Karnal (1885), Delhi (1886), Hoshiarpur, Ludhiana, Ambala, Dera Ghazi Khan (1889), and Palakad in the Salem district of Madras (1891). The year 1893 was one of the worst.
78. For details refer to *History and Culture of Indian People, British Paramountcy and Indian Renaissance, op.cit.*, Vol. X, Part II, p. 325.
79. *Ibid.*
80. Refer to Rafiq Zakaria, *Rise of Muslims in Indian Politics*, p. 354; and Jain, M.S., *The Aligarh Movement*, pp. 119-21.
81. Rafiq Zakaria, *Rise of Muslims in Indian Politics*, p. 354.

ing nor borne by public testimony. Did Curzon not create a Muhammedan Province by partitioning Bengal, comprising a region where the followers of Islam were to be in ascendancy? Did not Sir Bampfylde Fuller pursue a deliberate policy to establish a religious feud between the two communities ? Bampfylde Fuller merely gave formal and official expression to a bare truth when he represented the Hindus and Muslims as his two wives, the latter being the favourite one. "Those who are familiar with the stories of *Suo-rani* and *Duo-rani* (favoured and discarded queens) in Indian folk-tales will easily understand the full implications of this. The 'Divide and Rule jack boot' was still there—only it was on the other leg."[82] Lord Minto's Viceroyalty entrenched Muslim communalism by introducing the undemocratic and anti-national communal representation and separate electorates. Lord Minto, as his biographer stated, "had liking for the Muhammedans."[83] Rafiq Zakaria also admits this fact when he says that Lord Minto "was not only sympathetic to them but also realised that the Muslims could provide a good brake against any hasty Hindu demands for constitutional advancement."[84]

Impact of Religious Revivalism

Communal politics was also accentuated by movements of religious revivalism. The Wahabi movement left behind a trail of communal consciousness in the Muslims, which militated against the growth of secular nationalism among them. It was purely a Muslim movement and was directed against non-Muslims, the infidels, although in its later phase it became violently anti-British. An aggressive form of Hindu Revivalism, particularly under the Arya Samaj movement,[85] further sharpened the edge of communal disharmony between Hindus and Muslims.[86] The communal passions so aroused were fanned by the Anglo-Indian officials and the press.[87] Revivalism be it Hindu or Muslim, aptly remarks Raghuvanshi, "was certainly not a happy development for the growth of a sturdy nationalism in which Hindus and Muslims could sink their differences."

The leaders of the nationalist movement, who were predominantly drawn from the Hindu community, based nationalism on the glory of the Hindu religion and the traditions of the Hindu history. Tilak, Pal and Ghosh brothers, spearheads of the nationalist movement during the close of the nineteenth century, drew inspiration from India's past, cited episodes from the history of Hindu India, and tried to infuse national pride and self-respect into the masses by utilising the Hindu gods and heroes. In a multi-religious society, Hindu nationalism was bound to weaken its secular character. Nationalism, thus, expressed in religious terms and clothed in religious mystical forms, had no appeal for the politically conscious middle-class Muslims. It rather alarmed them and the Aligarh Movement contrived all possible means to counteract nationalism and identified it with Hindu communalism out to establish *Hindu Raj*. The name of Shivaji was an inspiration to the Hindus who held Aurangzeb in open contempt. The reverse was the case with the Muslims. The Rajput heroes like Rana Pratap, were the idols of the Hindus and enemies of the Muslims. The Third Battle of Panipat was the occasion of national mourning for the Hindus but of great deliverance for the Muslims.[88]

One of the many reasons why the nationalist movement did not draw within its orbit wide sections of the Muslim community even when the Indian National Congress had become a vital and acknowledged political force in the country, was that the nationalist movement continued to have a Hindu religious tinge. *Ram Rajya,* whatever be its significance, was unpalatable to the Muslims, if not for anything else, at least for its name.

The Partition of Bengal

The Partition of Bengal, as seen earlier, was used as a major device by Lord Curzon to drive a wedge between the Hindus and the Muslims.

82. *History and Culture of the Indian People, British Paramountcy and Indian Renaissance, op. cit.*, Vol. X, Part II, p. 324.
83. Buchan, John, *Lord Minto*, p. 243.
84. Rafiq Zakaria, *Rise of Muslims in Indian Politics*, p. 146.
85. Swami Dayananda Saraswati founded the Arya Samaj in 1875. The most important characteristic feature of the Arya Samaj was its emphasis on *Shuddhi* or reconversion of millions of Hindus who had been either willingly or forcibly converted into other religions. *Shuddhi* was strongly resented by the Muslims and it had ever been a source of chronic feud between the two communities.
86. Valentine Chirol observed that Hindu revivalism was as "consistently anti-Muhammedan as anti-British, ...and even more so." *Indian Unrest*, p. 120. Also refer to Jawaharlal Nehru, *The Discovery of India*, pp. 313-14.
87. Refer to Rafiq Zakaria, *Rise of Muslims in Indian Politics*, pp. 354-55.
88. *The History and Culture of the Indian People, op. cit.* Part II, p. 330.

In the name of Islam and its ascendancy, he inflamed the sentiments of the Muslims, who were initially against any kind of division. The Viceroy toured the area that was to comprise Eastern Bengal, held consultations with the Muslims, dwelling upon the advantages that would accrue to them as a result of partition, and canvassed their support for the success of his scheme. In one of his speeches, Lord Curzon promised that partition "would invest the Mohammedans of Eastern Bengal with a unity which they had not enjoyed since the days of the old Mussalman Viceroys and Kings."[89] Official influence was exercised to win over those who opposed partition.[90]

The division of Bengal on communal lines, and the anti-Hindu policy pursued by Sir Bampfylde Fuller, roused the Muslims to acts of violence. According to Nevinson, "priestly Mullahs went through the country, preaching the revival of Islam, and proclaiming to the villagers that the British Government was on the Mohammedan side, that the law courts had been specially suspended for three months, and no penalty would be exacted for violence done to Hindus or for the loot of Hindu shops or for the abduction of Hindu widows. A red pamphlet was everywhere circulated maintaining the same wild doctrines."[91] Riots broke out at many places, including Dacca, and for three days and nights "the Muslim mob ruled and looted to their heart's content the rich Marwari jewellers."[92] Nevinson toured the riot affected areas immediately after and thus described the situation : "A few lives were lost, temples were desecrated, images broken, shops plundered, and many Hindu widows were carried off. Some of the towns were deserted, the Hindu population took refuge in any 'pacca' house...women spent nights hidden in the tanks, the crime known as 'group rape' increased, and throughout the country districts there reigned a general terror which still prevailed at the time of my visit."[93]

Through such heinous deeds, directly abetted by Lord Curzon's regime, the Government sought to sharpen the edge of communal politics as a counterpoise to the growing strength of the extremists. To keep away Muslims from the *Swadeshi* and *boycott* movements, which the Bengalis had started as weapons for the annulment of partition, a propaganda was carried on by the agencies of the Government that the benefit of this movement would accrue only to the industrialists, who were predominantly Hindus. After having kindled the flames of communalism, partition was annulled. This gave "a rude shock to the Muslims, they felt once again betrayed." They believed that the Hindus had forced the government to abolish partition. This led the Muslims to think that without organization, sufferings and sacrifices nothing could be achieved from the government. Blind loyalty was nothing but weakness."[94]

Strategy of Separate Electorates

The strategy of Lord Curzon and his successors was to set one religion against the other and class against class in order to shatter the image of national unity and to disintegrate the feelings of solidarity. For this purpose he had partitioned Bengal, and had thought of establishing a Council of Princes. But in the latter attempt he did not succeed. When Lord Minto became Viceroy in 1905, he was confronted with a very tense situation in the country. In order to enfeeble the growing popularity of the Indian National Congress, he revived the attempt at the establishment of the Council of Princes and enthusiastically pushed through his plan. The Viceroy even corresponded with the Princes on the subject with a view to obtaining "mutual co-operation against a common danger." He wrote to the Secretary of State, "I have been thinking a good deal lately of a counterpoise to Congress aims. I think we may find a solution in the Council of Princes; or on the elaboration of that idea, a Privy Council not only of native rulers, but of a few other big men to meet, say, once a year for a week or a fortnight at Delhi, for instance."[95]

The response of the Princes to the Viceroy's communication was encouraging and they even recommended certain specific measures, which the government should take to combat the "common danger" of the Indian National Con-

89. As quoted by Ram Gopal in his *Indian Muslims*, p. 91.
90. Nawab Salimullah, who had condemned partition as a "beastly arrangement", was won over by advancing him a loan of £100,000 on a nominal rate of interest.
91. Nevinson, *The New Spirit in India*, p. 192.
92. *Idem.*, p. 193.
93. *Idem.*, p. 195.
94. Ziya-ul-Hasan Faruqi, *The Deoband School and the Demand for Pakistan*, p. 48.
95. Marry, Countess, Minto, *India : Minto and Morley*, pp. 28-29.

gress. But the Secretary of State did not agree with the proposal of the Viceroy, as he had complete faith in the loyalty of the Princes and was convinced of their full support against any kind of upsurge. What really worried Lord Morley was the growing sense of national consciousness among the Muslim younger generation. In spite of the efforts of Sir Syed Ahmed Khan and his followers and the policy of the Government of India for alienating the Muslims from the Hindus, Western education had created the same awakening in them as it had done among the educated Hindus during the last quarter of the nineteenth century. Thus, Morley wrote to Minto, "everybody warns us that a new spirit is growing and spreading over India.....Be sure that before long the Muslims will throw in their lot with the Congress against you."[96] Minto agreed with Morley and wrote him, "The younger generation (of Muslims) were wavering, inclined to throw in their lot with the advanced agitators of the Congress, and a howl went up that the loyal Mohammedans were not to be supported, and that the agitators were to obtain their demands through agitation."[97]

Lord Minto, at the behest of the Secretary of State, soon began to elaborate the scheme of reforms which should at least satisfy the moderate element in the Congress. But Minto's real concern was to devise means for weaning the Muslims from the politics of the country and obliterating from their minds the sense of nationalism. So, before the intended reforms could take shape, a scheme for winning the Muslims had taken a tangible form. A deputation of the Muslims was arranged to meet the Viceroy to present their demands to His Excellency. The main actors in the drama were Principal Archbold of the Aligarh College and Colonel Dunlop Smith, Private Secretary to the Viceroy.

A deputation, consisting of thirty-five prominent Muslims drawn from different Provinces and led by His Highness the Aga Khan, met the Viceroy on October 1, 1906, and presented to him an address in which they made two important demands on behalf of the Muslim community. The first was that the position accorded to the Muslim community in any kind of representation should be commensurate with their numerical strength and also with their political importance and the value of the contribution "they make to the defence of the Empire," and consistent with "the position they occupied in India a little more than a hundred years ago." Secondly, that the methods of nomination and election had failed to give the Mulsims a proper type or adequate number of representatives and if the principle of election was to be accepted by the Government in the forthcoming reforms, they should be given the right of sending their own representatives by themselves through separate electorates comprising the Muslims alone, beginning from the local bodies and going up to the Imperial Legislative Council including the Senates and Syndicates of the Indian Universities. In addition to these two important demands the deputation also asked for greater representation of the Muslims in the services of the Government, and protection of their interests if an Indian was to be appointed a member of the Governor-General's Executive Council. The address concluded that "in furthering Muslim interest, Government will be only strengthening the bond of loyalty and laying the foundation of their political advancement and prosperity."

Lord Minto expressed his entire agreement with the demands of the deputation and promised that in any system of "representation whether it affects a municipality or a district board or a legislative council in which it is proposed to introduce or increase an electoral organisation the Muslim community should be represented as a community." The Viceroy also sympathised with the extra claims of the Muslim community and said, "You justly claim that your position should be estimated not only on your numerical strength, but in respect of the political importance of your community and the services it has rendered to the Empire." He further observed, "I am entirely in accord with you. Please do not misunderstand me; I make no attempt to indicate" by what means representation of "the communities can be obtained, but I am as firmly convinced as I believe you to be, that any electoral representation in India would be doomed to mischievous failure which aimed at granting a personal enfranchisement regardless of the beliefs and traditions of the communities composing the population of this continent." Finally, the Governor-General gave an assurance that the

96. January 6, 1960. *Idem.*, p. 330.

97. *Ibid.* Some of the younger Muslims had even suggested that the best course for the Muslims was to join the Congress in large numbers, play their part in its activities and to ensure the protection of their rights and interests. Refer to Rafiq Zakaria, *Rise of Muslims in Indian Politics*, p. 96.

political rights and interests of the Muslims "will be safeguarded in any administrative reorganisation with which I am concerned, and that you and the people of India may rely on the British *Raj* to respect, as it has been its pride to do, the religious beliefs and the national traditions of the myriads composing the population of His Majesty's Indian empire."

The Anglo-Indian officers and the European population in India were jubilant at the success of this "command performance."[98] The Viceroy himself wrote that October 1, 1906, was "a very eventful day : as some one said to me, "An epoch in Indian history."[99] An official of the Government of India wrote to the Viceroy, "I must send Your Excellency a line to say that a very big thing has happened today. A work of statesmanship that will affect India and Indian history for many a long year. It is nothing less than the pulling back of twenty-six millions of people from joining the ranks of the seditious opposition."[100] The biographer of Lord Minto described the Viceroy's speech to the deputation as "a charter of Islamic right."[101]

Coupland rejects the argument, so often advanced, that the Simla Deputation "was engineered" to meet the Governor-General and the main actors in the drama were Principal Archbold of the Aligarh College, and Colonel Dunlop Smith, the Private Secretary to the Viceroy. He says, "there is no evidence to suggest that the deputation was in any sense engineered. It was actually organised by the well-known Moslem leader, Nawab Mohsin-ul- Mulk."[102] M. S. Jain[103] and Rafiq Zakaria[104] who have made special study of the Aligarh Movement, support Coupland's conclusions.

The Aga Khan deputation received a good press in Britain. The same day when the deputation waited on Lord Minto, *The Times* published an article extolling the wisdom of the Muslims and observed that "they had never been enamoured of representative institutions on the European model and that there was no nation in India as there was in Britain. " Other British papers, too, wrote in the same tone. "It appears from these articles, wrote Tufail Ahmed, "how the English press looked upon Indians being one nation with a sense of shock and heart- burning and how pleased they were to see it broken into pieces and how proud they felt in setting the Indians against one another on the basis of religion and of creating lasting hostility between them."[105] The Government of India searched for a pawn on the chess-board of Indian politics and they found it in the willing Muslims who desired to have their special claims recognined in the impending constitutional reforms and to establish their separate political existence. Buchan gave true expression to the British policy when he said that Lord Minto's "speech undoubtedly prevented the ranks of sedition being swollen by Moslem recruits, an inestimable advantage on the day of trouble which is dawning."[106]

Lord Morley did not initially approve of separate electorates. His objection was two-fold. Firstly, that it would create an invidious distinction between the Muslims and the Hindus, and secondly, that it would give the Muslims in several cases two votes instead of one. On the contrary, he suggested a scheme of joint Electoral College, but ultimately succumbed to the pressure of Minto. The system of separate electorate was, thus, introduced in the teeth of the opposition of nationalist India. The system was mischievous, as it threatened to break India's political unity and was sure to have adverse effects on the growth of a nationalist spirit. A Muslim remarked, "The attempt on the part of my co-religionists to create an irreconcilable Ulster in India is not very laudable". He most prophetically added that "this will veritably be the open-

98. An expression used by Maulana Mohammed Ali in his Presidential Address at Coconada session of the Indian National Congress.
99. Mary, Countess, Minto, *India : Minto and Morley,* pp. 46-47.
100. *Ibid.*
101. Buchan, John, *Life of Lord Minto,* p. 244.
102. Coupland, R., *The Constitutional Problem in India,* p. 336. f.n.
103. Jain says, "Thus,.....it can be stated that the whole responsibility for the deputation must rest on the Muslim community which planned and worked for it. The Indian nationalists, in their pious wish to ignore the fact of Muslim communalism, straightway branded the deputation of 1906 as a "command performance' without looking to the role Muslims played at the time." *The Aligarh Movement,* pp. 153-56.
104. Rafiq Zakaria writes, "Hence, far from being a 'command performance', the deputation was the last desperate effort of Mohsin-ul-Mulk and his friends to retrieve the position in their own community and to win over the British to their side." *Rise of Muslims in Indian Politics,* pp. 359-61.
105. M. Syed Tufail Ahmed, *Musalmanon Ka Roshan Mustaqbil* (Urdu), p. 3693
106. Buchan, John, *Life of Lord Minto,* p. 244.

ing of Pandora's box and India will then be confronted with a grave situation of the first magnitude."[107]

Several members of the Muslim community later felt that in asking for communal electorates they had committed a serious mistake. Ramsay MacDonald wrote in 1911, that "several people spoke to me with bitterness about the way that certain of their leaders had consented to play a game planned for them by the Anglo-Indian officials." Whatever might have been the difference among the Muslims as to the wisdom or folly of the step, there was a general agreement among progressive Indians that the scheme of communal representation was a clever move on the part of Lord Minto and his Government to prevent the Indian people from uniting and from depriving the Reforms of 1909 of much of their utility. In this game a large number of Muslims agreed to play to the tune of their political masters.

After the introduction of communal representation the cleavage between the two communities widened and there existed constant tension between the Hindus and the Muslims. According to the Indian Statutory Commission the communal tension was "'a manifestation of the anxieties and ambitions aroused in both communities by the prospect of India's political future. So long as the authority was firmly established in British hands and self-government was not thought of, Hindu-Moslem rivarly was confined within a narrow field....there was little for members of one community to fear from the predominance of the other. The comparative absence of communal strife in the Indian States today may be similarly explained. Many who are well acquainted with the conditions of British India a generation ago would testify that at that epoch so much good feeling had been engendered between the two sides that communal tension as a threat to civil peace was at a minimum. But the coming of the Reforms and the anticipation of what may follow these have given new point to Hindu-Moslem competition."[108] But the Commissioners did not say nor would have they said, who created the feelings of communal strife between the Hindus and the Muslims.

The All India Muslim League

Five days after the Aga Khan deputation had met Lord Minto at Simla, the Indian correspondent of *The Times* reported, "The Muhammedan delegates assembled here discussed informally the question of forming an association with a view to safeguarding the interest of the community throughout India. It was decided in the first place to organise political associations which should send representatives to a central body."[109] This was corroborated by the Aga Khan himself. He wrote in his *Memoirs*, "Mohsin-ul- Mulk and I, in common with other Muslim leaders, had come to the conclusion that our only hope lay along the lines of independent organisation and action, and that we must secure independent political recognition from the British Government as a nation within a nation."[110]

But Nawab Salimullah Bahadur of Dacca took the initiative.[111] He circulated a letter containing a plan for "the Muslim All-India Confederacy." The *raison d' etre* of the plan was to establish a political party with the sole aim of protecting and propagating the Muslim cause. Though Salimullah's scheme had definitely a little scope and was defective, but it was the embryo from which the Muslim League emerged.[112] Salimullah's plan became the basis of discussion at Dacca on December 30, 1906.[113] A provisional Committee was formed with Viqar-ul-Mulk and Mohsin-ul-Mulk as Joint Secretaries. The committee was entrusted with the task of framing a constitution of the Muslim League within four months. The committee was also authorised to convene a representative meet-

107 *The Awakening of India*, p. 129.

108. Report of the Indian Statutory (Simon) Commission, Vol. I, p. 29.

109. *The Times*, London, October 6, 1906.

110. Aga Khan, *Memoirs*, p. 76. In a letter dated October 29, 1906, the Aga Khan informed Colonel Dunlop Smith about the formation of the proposed organisation and also told him that during his absence from India Nawab Mohsin-ul-Mulk would not do anything "before first finding out if the steps to be taken has the full approval of Government privately,....." *Minto Papers*, Vol. No. 126.

111. Syed Ameer Ali, founder of the Central National Muhammedan Association in 1877, had since then urged the Muslims to organise themselves into a distinct political group, but Sir Syed had always opposed the idea. Refer to his "Memoirs" in *Islamic Culture*, Vol. V, No. 4, p. 540, and "India and the New Parliament", *Nineteenth Century*, August, 1906, pp. 257- 58.

112. Syed Razi Wasti, *Lord Minto and the Indian Nationalist Movement*, p.77.

113. After the conclusion of the All India Muhammedan Educational Conference, a special meeting of the delegates to the Conference was convened, under the presidentship of Nawab Viqar- ul-Mulk, to discuss the issue of forming a political association of the Muslims.

ing of the Indian Muslims at a suitable time and place and put the proposed constitution before that body for its final approval and adoption.

The Muslim League, thus, came into being on December 30, 1906. Its aims and objects remained undefined till its Karachi session in 1907, when they were given definite shape :

(1) "To promote among the Musalmans of India feelings of loyalty towards the British Government, and to remove any misconception that may arise as to the intentions of the Government with regard to any of its measures;

(2) To protect and advance the political rights and interests of the Musalmans of India and to place their needs and aspirations before the government in temperate language;

(3) So far as possible and without prejudice to the objects mentioned above, to promote friendly feelings between Muslims and other communities of India."

The formation of the Muslim League was a great landmark in the history of Indian politics, for it was under the aegis of this body that a large number of Muslims, mostly Nawabs, Landlords and title holders, kept communalism alive and prevented the bulk of Muslims from falling in line with the national forces in the country. The League realised the hopes of the Britishers by consistently fighting the growth of secular nationalism and thereby providing a convenient argument to British Government for denying independence to India. "Minto's policy saw its culmination when the Moslem League fought for recognition as the sole representative body of the Indian Musalmans"[114] and finally it was to split India into two parts.

Hindi-Urdu Controversy

But nothing alienated the two communities from each other as did the Hindi-Urdu controversy. Though primarily a language controversy, it roused such passions on both sides that its repercussions on inter-communal relations were grave and far-reaching. It originally started at Benares in 1867, when Hindus organised a movement to replace Urdu by Hindi and the Persian script by the Devanagari script. Immediately, after the anti-Urdu campaign, Syed Ahmed Khan, it is reported, "told his superior officer, Mr. Shakespeare, that he was convinced after the anti- Urdu agitation of the pro-Hindi Hindus that there was no hope of any kind of joint action by Hindus and Muslims. Muslims, he said, had to organise themeselves on their own to safeguard their heritage."[115]

Hindi-Urdu controversy was confined essentially to North where the British administrators, when Persian remained no longer the Court language, were faced with the question : which was the language of North India, Urdu as written in the Persian script or Hindi with its Devanagari script.[116] Obviously, the Hindus insisted on the replacement of Urdu by Hindi in Devanagari script whereas the Muslims were vehemently opposed to it. Sir George Campbell, the Lieutenant-Governor of Bengal, was the first to initiate the introduction of Hindi in Bihar, which then formed part of Bengal. In 1872, he issued instructions that in future Hindi in Devanagari script should replace Urdu for the transaction of all official business in the Patna and Bhagalpur Divisions. This was sharply resented by the Muslims and they strove for the withdrawal of this order, but George Campbell remained adamant.

The order, however, remained more or less a dead letter under George Campbell's successor, Sir Richard Temple. The Hindus, in their turn, resented the lukewarm attitude of Sir Richard Temple towards Hindi. Under Sir Ashley Eden Hindi, again, became a live subject and the Government of Bengal issued clear directions that from January 1, 1881, Hindi in Devanagari script would be exclusively used in all official documents and that the issuing of any document in the Persian script by the courts, except as exhibits, "was absolutely forbidden." Police officers and subordinate services were warned that those who did not possess a working knowledge of the Devanagari script would be replaced by those who were competent for the transaction of official business in that script.

These orders and the firm determination of Sir Ashley Eden to enforce them rigidly deeply antagonised the Muslims against the Hindus. They thought that it was at their instance that Urdu had been replaced in Bihar. Angry representations were made to the Government and whenever there was an opportunity, forceful demonstration of their anger was made. The aggressively communal attitude of many newspapers aggravated the already strained relations between the two communities. Syed Ahmed

114. Das, M. N., *India Under Morley and Minto*, p. 182.
115. Rafiq Zakara, *Rise of Muslims in Indian Politics*, pp. 293-94.
116. As quoted in above, p. 301.

Khan particularly became more bitter and declared that "the adoption of the Nagari character and the Hindi language will greatly injure educated Musalmans in both official and private life. It will in fact be the greatest injury save deprivation of their religion."[117]

Early in 1882, a fierce controversy was raged in the Punjab over the use of Urdu or Hindi. The Arya Samaj enthusiastically advocated the use of Hindi as the most suitable language "for the rejuvenation of Hindu nationality." In a speech in April, 1882, at Ambala, Lajpat Rai opposed the use of Urdu and expressed his conviction that the political solidarity of the Hindus demanded the development of Hindi into the national language of India. In the North-Western Provinces also the relations between the two communities were embitterred on the language issue. In 1883 a suggestion emanated that the character of the court language should be changed from Persian to Devanagari script. It proved a spark. The entire Muslim official class in the Province arrayed itself against the suggestion and violent protests were raised both in the public and in the press. Syed Ahmed Khan advised the Muslims to form the *Ajuman-i-Himayat-i-Urdu* in all the Provinces in order to safeguard the interests of the Urdu-speaking people. A central committee was also formed with Syed Ahmed Khan himself as its Secretary.

With the formation of the Indian National Congress in 1885, there was lull in the language controversy. The emphasis of the Congress leaders was on Hindu-Muslim unity and they would not side with any movement which would alienate the Muslims from the Hindus. However, another spurt came in 1898, when the leading Hindus of N.W. Provinces and Oudh waited in deputation upon Sir Antony MacDonnell, the Governor of the Province, and impressed upon him the desirability of introducing Hindi in Devnagri script as the Court language. Sir Antony, while conceding to the demand, deprecated any hasty change in the existing practices of the courts and Government offices. However, two years later by a Government resolution Devanagari character was given the same status as the Persian character and the use of both the languages was permitted in courts and offices. It was also decreed that no person "shall be appointed, except in purely English office, to any ministerial appointment henceforward unless he can read and write both the Nagari and Persian characters fluently."[118]

This infuriated the Muslims as the "new order not only hit them economically, but culturally." They could swallow the abolition of Urdu in Bihar "but to strike against it in its very home"— the United Provinces—was too severe a blow. Besides, they felt the blow rather intensely because "it came so soon after the death of Sir Syed; somehow they believed that if he had been alive such a disaster would never have befallen them."[119] Sir Antony MacDonnell was described as "an enemy of Islam" and a "'pro-Hindu satrap." An Urdu Defence Association was formed which carried on virulent propaganda against Hindi. All this annoyed the Governor. He asked Nawab Mohsin-ul-Mulk to desist from fomenting agitation and sever all his connections with the Urdu movement; otherwise he would not be allowed to continue as the Secretary of the Muhammedan Anglo-Oriental College, Aligarh. Mohsin-ul-Mulk had to retreat. "This role of a partisan on behalf of the Government towards which they were taught to have an attitude of unconditional loyalty was terribly shocking to the Muslims as a whole; particularly the younger generation at Aligarh was completely disillusioned and became suspicious of the British professions of friendship with them."[120]

But the hostility of the Muslims was concretely directed against the Hindus, as the Government, it was firmly believed, was favouring them. The glee of the Hindu press on this issue was too exuberant not to be noted by the Muslims.[121] The Hindus, on their part, nourished a grievance that the Government had abdicated in favour of the Muslims in not firmly implementing its own decisions. All this foreboded a deep rift which sought to cleave society and culture into two irreconcilable groups.

SUGGESTED READINGS

Humayan Kabir, *Muslim Politics.*

M.A. Jinnah, *Some Recent Speeches and Writings.*

Moin Shakir, *Khilafi to Partition.*

W.C. Smith, *Modern Islam in India.*

117. Sir Antony MacDonnell was the Commissioner of Patna Division under Sir George Campbell and was actively associated with the introduction of Devnagri characters in Bihar.
118. *Government Gazette,* North-Western Province and Oudh, Part VI, April 21, 1900.
119. Rafiq Zakaria, *Rise of Muslims in Indian Politics,* p. 304.
120. Ziya-ul-Hasan Faruqi, *The Deoband School and the Demand for Pakistan,* p. 47.
121. Rafiq Zakaria, *Rise of Muslims in Indian Politics,* pp. 308-9.

CHAPTER IV

The British Legacies

On 15 August 1947 the British rule in India came to an end and the power was transferred to two independent Dominions, India and Pakistan. On 26 January 1950, India adopted a new Constitution and became a sovereign democratic republic. But this is too simple a way to explain the two momentous events, one, the end of the rule in a country considered to be a jewel of the British Crown, and, the other, devising the constitution which was to foster the achievements of many goals and fulfilment of aims and aspirations of the millions who had hitherto been groaning under the heels of alien rulers. Morris-Jones says, "We have to ask : how new was the new republic and what was handed over along with 'power'?"[1] The answer to both these questions is rooted in the constitutional history of India. Modern India is the product of centuries of evolution and the impact of Western ideas and institutions had a prolonged effect on what India is today.

'COMPANY BAHADUR'

Traders Become Rulers

The British came to India early in the seventeenth century, but the traders soon became rulers, Sir Thomas Roe, who represented the British merchants at the Mughal court, had a word of advice for his countrymen. He told them, "Let this be received as a rule that if you will profit, seek it at sea and in quiet trade; for without controversy it is error to effect garrisons and land wars in India." This advice was not, long heeded to. As early as 1687, during the reign of Aurangzeb, the Directors of the Company instructed their chief representative in Madras "to establish such a polity of civil and military power, and create and secure such a large revenue to secure both....as may be the foundation of a large, well grounded, secure English dominion in India for all time to come"[2].

The position in India changed significantly after the death of Aurangzeb. On the passing away of a strong ruler, the process of disintegration started and the principal and ancillary organs of administration began to work at cross purposes. Internal dissensions and weakening of the hold of the Central Mughal Government provided favourable opportunities to the British. In 1705 the Company sent an embassy to the Mughal court and wrested from the weak ruler extensive privileges throughout the Empire, including the right to trade in Bengal free of all duties, to rent additional territory around Calcutta, and the right to coin money in Bombay and to circulate it throughout India. "The *firman* of 1716-1717 became known as the 'Magna Carta' of the Company, the major step in the establishment of this new type of politico-commercial power on Indian soil."[3] When in 1757 at the battle of Plassey Clive defeated the Nawab of Bengal, it was inevitable that the Company should become the leading political power in India. The Battle of Buxar (1764) completed what Plassey had begun and, as Ramsay Muir remarked, "It finally rivetted the shackles of the Company's rule upon Bengal". The work of Clive was continued by Warren Hastings (1774-84) and Lord Wellesley (1798-1805). After the two Sikh wars the Sikhs were defeated and Punjab was added to the territories of the Company. In 1856, Lord Dalhousie annexed vast kingdom of Oudh.

Thus, by the middle of the nineteenth century most of India was controlled by the British, either directly by the East India Company or indirectly through the system of treaties and alliances with the Princely States. Some of the former Indian States were annexed by the Company under the doctrine of lapse and principle of escheat, especially during the Governor-Generalship of Lord Dalhousie. Dalhousie completed the process of consolidation of British control in India.

Company and the British Government

But soon the criticism against the Com-

1. Morris-Jones, W. H., *The Government and Politics of India*, p. 2.
2. Quoted in R.C. Majumdar, H. C. Raychaudhri, and K. Datta, *An Advanced History of India*, p. 639.
3. De Riencourt, *The Soul of India*, p. 199.

pany's rule mounted high on the score that the opulence and arrogance of the servants of the Company returning home had corrupted the British way of life and demoralised its politics. Although the servants of the Company amassed wealth, the Company itself was faced with a serious financial crisis. The reckless policy of the Company's servants and its expanding political commitments in India soon made the Company bankrupt. The British Government could not remain quiet and appointed two Parliamentary Committees in November 1772" to enquire into the affairs of the East India Company. The Select Committee and the Secret Committee submitted twelve and six reports respectively, all highly condemnatory and described the woeful tale of the affairs of the Company indicting Clive for his unpardonable sins in India. The British Government decided to "regulate the Government of the East Indies" and on May 13, 1773, Lord North introduced a Bill in Parliament.

The East India Company Act, 1773, commonly known the Regulating Act, altered the form of Government in the Company's territories in India, thereby firmly establishing the right of British Parliament to regulate the affairs of the Company and shape its political destiny. The Act recognised the authority of the Company to carry on hostilities and to make treaties with the native powers in India. This provision changed the position of the Company from a trading corporation to a political body.

But the Regulating Act proved a crude attempt at providing a satisfactory governmental machinery. The one established violated "the first principles of administrative mechanics."[4] It soon broke down under the stress of Indian circumstances and its own inherent defects. The Pitt's India Act, 1784, and a series of supplementary measures that followed removed the defects and laid down the principles on which Indian affairs for the next three-quarters of a century were conducted. The Act differentiated between the political and commercial activities of the East India Company and for all political transactions placed it in direct and permanent subordination to the British Government. The Act also brought the Governor-General of India into close relationship with the British Government by creating an "Indian Ministry within the framework of the British Government without appearing to do so."

The Charter Acts of 1793 and 1833 progressively whittled down the other powers of the Company. The most important of these was the Act of 1833.

The Act of 1833 made the Company's position more anomalous by declaring it as a trustee of His Majesty the King of the United Kingdom. It put an end to the commercial activities of the Company and centralized the administration, especially legislation. It brought into existence for the first time a properly styled Central Government whose foundation had been laid by the Charter Act of 1773. At the time of the expiration of the Act of 1833, a class of politically conscious Indians stirred and made efforts to bring to an end the reactionary regime of the East India Company. But the Charter was renewed. The Act of 1853 retained the Company until Parliament should otherwise direct. The system of centralized administration and legislation continued.

The Charter Act of 1853 paved the way for the assumption by the Crown of the governance of India. It gave no definite renewal of the Charter for a specified term of years as former Charters had done. The "Mutiny" in 1857, brought about the extinction of the Company and the assumption of the administration of India by the British Crown. The Act for the Better Government of India, 1858, finally, relieved the Company of its political responsibilities and provided for the direct assumption of the Government of India by the Crown acting through a Secretary of State. The transfer of power, however, was no more than a formal change. It was the culmination of the process that had begun in 1784, if not 1773.

BALANCE SHEET OF THE COMPANY'S ADMINISTRATION

Credit Side

"The East India Company," wrote Marshman, "was created two hundred and fifty years before for the purpose of extending British commerce to the East; and it transferred to the Crown on relinquishing its function an Empire more magnificent than that of Rome"[5]. This magnificent Empire was not built without blunders and even heinous political crimes. "To disguise them and to maintain that the British administrators were always swayed by impeccable motives and unerring statesmanship is to produce an unrealistic and impossible picture, for we are

4. *Report on Indian Constitutional Reforms*, para 30, p. 17.
5. Marshman, J.C., *The History of India*, Vol. II, p. 457.

dealing after all with the human agency. But when all necessary qualifications are made the annals of the company form one of the most fascinating pages in History."[6] This statement does not come from an impartial historian, nonetheless it cannot be denied that there were statesmen in the service of the company who evolved a high standard of humanitarian administration. They "were filled with a deep sense of mission. To them goes the credit of raising the administration of the East India Company from the counter to the pedestal of trusteeship. Even when they were engaged in building it, they were contemplating its end. The instability of empires, even the mightiest, was ever before their eyes and their ideas about government and its obligation to the governed were cast in the loftiest mould."[7] Wellesley, Hastings, Munro, Malcolm, Elphinstone and Bentinck belonged to the succession of enlightened statesmen whose nation-building activities and reforms deserve just appreciation.

During the period of the Company's regime serious attempts were made to provide an effective government capable of maintaining law and order. The Company succeeded therein, though not without initial blunders. By slow degrees an efficient covenanted civil service of character, ability and experience was evolved out of the older system of pure jobbery and corruption. Hastings, Munro and Elphinstone even tried to pave the way for the Indianisation of the services. While introducing the Charter Bill of 1833, which expressly provided that no subject of the Crown should be, by reason only of his religion, decent or colour, be disqualified for any place in the Company's service,"[8] Macaulay declared in the House of Commons[9] that he would to the last day of his life feel "proud of having been one of those who assisted in the framing of the Bill which contains that 'noble clause'."

A working settlement of land revenue and the organisation of civil and criminal justice were effected in order to ensure the provision of a just government. The extirpation of human sacrifice, the extinction of slavery, the abolition of *sati* and infanticide and the suppression of *thuggee* laid the foundations of a humane social system. In fact, a constant war was waged against some barbarous customs then prevalent in India. John Lawrence adopted as his motto "the new trilogue of the British Government : thou shalt not burn thy widows; thou shalt not kill thy daughter and thou shalt not bury thy lepers alive."

Measures of famine relief were taken to relieve suffering. Efforts were made to develop means of communication and transport as well as irrigation to arrest the recurring threat of famines. The extension of the Grand Trunk Road, the great arterial highway across India, was vigorously pushed and completed in 1853, and before Lord Dalhousie relinquished his office, a network of hundreds of miles of railways was under construction. Telegraphic communication was established between Calcutta, Madras, Agra and Peshawar, and the postal system was brought within easy reach of the poor, and from one end of the country to the other. Lord Dalhousie had fervently supported the policy of digging canals and the Bari Doab Canal venture was completed in 1859. The Godavari works and Krishna River canal too fructified.

The adoption of the Western system of education and the recognition of the right of Indians to places in the Company's service, though "imperfectly conceded and treacherously delayed"[10] were valuable incentives to national consciousness and political advance in India.

Other Side of the Medal

Whatever may be the degree of excellence of the Company's administration on abstract principles or for its specific achievements, the real merit of an administrative system is evidenced by the views and reactions of those who bore the brunt of it and were directly affected by it. From Raja Rammohan Roy, father of political liberalism in India, to organised political opinion as expressed in the petitions of the British Indian Association,[11] the Madras Native Association,[12] and the Bombay Association,[13] the Company's regime was regarded as outmoded and they boldly demanded a better and nobler administration based on the model of the British Government. Their persistent demand for various re-

6. Roberts, P. E., *History of British India*, p. 24.
7. Masani, R. P., *British in India*, p. 24.
8. Cl. 87.
9. July 10, 1833.
10. Phillips, C.H., *East India Company*, p. 297.
11. Parl. Papers H. L., No. III of 1952-53, pp. 249-51.
12. Parl. Papers, H.C., No. 768 of 1952-53, p. 120; and H.C. No. 426 of 1852-53, p. 438.
13. Parl. Papers, H.C. No. 426 of 1852-53, p. 476.

forms must be taken as a fair measure of their condemnation of the Company's administration in India. Liberal- minded Englishmen, like Sir John Shore, Sir Thomas Munro, Sir John Malcolm, and George Thompson, also joined the Indians in condemning various aspects of the administrative system of British India.

The foremost of all that compels attention about the first century of British rule in India was the appalling poverty and grinding distress to which the people were reduced by the ruin of indigenous industry, oppressive land-tax and perpetual drain of wealth.[14] Indians were reduced to passive onlookers; they had no place or power in the administration of their own country. They were excluded from the dignity of offices which even the lowest Englishmen could not be prevailed upon to accept. The curse of political subjugation with all the attendant evils, so pathetically described by Munro, exercised a degenerating influence upon the life and character of the people at large. The early dreams and enthusiastic hopes of the small band of English-educated Indians were giving place to disillusion and despair, while the common people, full of discontent and disaffection, bided their time in sullen resentment, marked by occasional outbursts of violence. By the time the British completed the first hundred years of their rule, they gained the whole of India, but lost their hold on the hearts of the Indians

THE BRITISH CENTURY

Unification of India

Approximately a century elapsed between the zenith of the power of the East India Company during the Governor-Generalship of Lord Dalhousie (1848-57) and the end of the British rule in 1947. This century began with the "Mutiny" and the assumption of the Government of India by the Crown and the century ended with the withdrawal of the British and the creation of two sovereign and independent States : India and Pakistan. During this period the British restored peace where life and limb was in danger. The political unity was provided by the Crown holding together the British and Princely India. The period from 1858 to the end of the First World War presented a picture of the administrative unification of India. The country was knitted together by a uniform post and telegraph system and its distant and far-flung parts were linked with a network of roads and railway transport. A single currency prevailed from Kashmir to Cape Comorin and a customs union was built around the country within which the economic life of the country was integrated. In a multi-lingual country, English, though a foreign language, enabled people from the various areas to converse with one another and to associate socially and politically. A uniform system of education also contributed to the political unity of the country. Various steps in the direction of self-government, beginning from the Councils Act of 1861 to the Government of India Act, 1935 were taken and they together trained the people in the art of limited and responsible government and finally helped to galvanise the country into a dynamic nation.

The Pattern of British Rule

The British developed an effective system of administration, patterned after the system evolved during the earlier century. Independent India adopted in large measure the same system and continues with it since then. This is a legacy of fundamental importance.

Political India consisted of two parts, British India and the Indian States, some 562 in number, governed by the Rulers of these States, who were assured by Queen Victoria in her Royal Proclamation that there would be no encroachment on their territory, personal rights and privileges, all treaties made with them by the East India Company would be maintained and their rights and dignity honoured. Some of these States were as large as the major States of Western Europe, and since they existed in all parts of the country and "covered nearly two-fifths of the total area, a political map of India prior to partition looked like a piece of crazy quiltwork."[15] The Princes governed these States subject to the authority and supervision of the Political Department of the Government of India which was under the direct charge of the Governor-General. A Resident was appointed in each State and he was usually the effective source of power. The interference of the Politieal Department in the internal affairs of the States was proverbial.

British India was divided into eleven Provinces at the time of partition with a Governor at the head. Before the Reforms of 1918, Provinces were limbs of a highly centralised administration, though various measures had introduced an ele-

14. Refer to R. C. Dutt's *India under Early British Rule*, and *India in the Victorian Age.*

15. Palmer, Norman D., *The Indian Political System, p. 59.*

ment of decentralisation. The Acts of 1919 and 1935 demarcated the jurisdiction between the Central and Provincial Governments. The Provinces enjoyed certain amount of autonomy in their affairs first under the system of dyarchy, and thereafter as a result of Provincial autonomy. But responsible government in the provinces was introduced under heavy restrictions and safeguards and the mighty hand of the Governor-General entered all the spheres of the Provincial administration. The Governor-General and the Viceroy, the twofold title which the head of the Government of India bore till 1947, was assisted by an Executive Council which consisted before 1908 of all European members. The Governor-General had the power to override the majority opinion of the Council, if, in his opinion, any measure affected essentially the safety, tranquillity, or interests of the British possessions in India. The Governor-General, on his part was responsible to the Secretary of State for India and through him to the British Cabinet and Parliament. The Secretary of State was provided with a Council known as the Council of India. The intention was to provide him with expert advice on affairs relating to India. With the establishment of telegraph communication between England and India in 1870, and the policy of substitution of private letters and telegrams for official correspondence, both the Secretary of State and the Governor-General ignored their Councils on all important matters. From here onwards the administration of affairs in India was subjected to more direct and effective control from London.

The Provinces were divided for purposes of administration into divisions, districts and tehsils or taluks. At the head of the division, which comprised a number of districts, was the Commissioner. The district was the hub of the administration and the district officer, designated as the Deputy Commissioner or Collector, combined multifarious and diverse functions, and was charged with the duty of administering the affairs of the district, with the maintenance of law and of revenue. Alongside the District Officer would be the specialist officers, such as the Superintendent of Police, Civil Surgeon, Executive Engineer and others. These specialist officers would be responsible so far as specialist service itself was concerned to appropriate departments of the Provincial government but in general district administration they would all come under the District Officer to whom they would look for leadership. Thus generalist administrator was the Provincial Government's maid of-all-work and being the Government's representative on the spot he symbolised its authority and prestige; the physical embodiment and symbol of British *Raj*.

A district was divided into a number of Tehsils or Taluks. A Tehsil or a Taluk consisted of a number of villages. In every village there would be the headman and the patwari (accountant for land revenue purposes). Both these incumbents in the village represented the Government. This was the framework which was inherited by the new regime of Independent India.

The Indian Civil Service was, without doubt, the most valuable of the British bequests to Independent India. It consisted of small administrative aristocracy (fewer than 2,000), largely Indianized by 1947, 'generalist' and non-technical in nature, "highly educated and carefully selected by a difficult competitive examination, remarkably adaptable, almost entirely free from corruption, exceptionally devoted to duty imbued with intense *esprit de corps,* and perhaps most important of all, *pan Indian* rather than regional or provincial in its loyalties."[16] The members of this service maintained the highest standards of efficiency and integrity and manned most of the key administrative posts. They were often criticised for developing a spirit of elitism and an exaggerated sense of their own importance. But "'in a country", as Morris-Jones has said, "where any kind of government employment carried appropriate prestige, membership of the highest service of all lifted a man into a social stratosphere."[17] To belong to the Indian Civil Service was not simply a guarantee of good, interesting and lucrative job, it was practically the sole repository of power. From its ranks were drawn not only the district officers, commissioners, senior officials of the Provincial and Central Governments but also Governors of most of the provinces, the members (until 1921, and in part until 1937) of the Provincial Executive Councils and most of the members of the Governor-General's Executive Council and even some of the memberships of the Secretary of State's Councils.

With the transfer of power, the British as

16. Hansen, A.H., and Janet Douglas, *India's Democracy,* p. 23.
17. Morris Jones, W.H., *The Government and Politics of India,* p. 23.

rulers withdrew, but the great machine of government continued intact. "Its build and shape, its manner of working, the relations of its parts—all these were firmly present, constituting an enormous fact."[18] Many Indian politicians, who acquired office after 1947, regarded the members of the Indian Civil Service, initially, as imperialism's Trojan Horse and the most extreme of them demanded its abolition. But Nehru and Patel, who had learned to appreciate their adaptability, efficiency and integrity warned caution. They emphasised that, administratively continuity was the best policy. Patel, in an impassioned defence of the all-India services, said in the Constituent Assembly in 1949, "I have worked with them during this difficult period.....Remove them and I see nothing but a picture of chaos all over the country." Without the Indian Civil Service orderly administration might have collapsed and regional separatism triumphed. With it and its successor, the Indian Administrative Service, India had a "steel frame", but far from being the virtual master of India the civil servants had to become its servants.

At the time of transfer of power in 1947, five hundred non-British Indian Civil Service officers were available. Today, their cadre is extinct, either by death, resignation or retirement. A handful of them who were till recently available held key positions in the Union and the State administration. Some retired members of the Indian Civil Service till recently were posted in various trouble-shooting roles.

STEPS TOWARDS SELF-GOVERNMENT

Major Landmarks

Equally important, although of more controversial significance, was the experience of self-governing institutions which Indians acquired under various schemes of reforms, especially those that the British conceded in their later days. India's political leaders inherited the machinery of Government which carried the accumulated wisdom of the six major landmarks that had determined the course of the British rule and helped to prepare Indians for the assumption of political responsibility in 1947. A federal polity and the parliamentary system of government find their manifestation in these landmarks and both these legacies constitute, *inter alia*, the basic structure or framework, the concept used by the Supreme Court, of the 1950 Constitution.

The Government of India Act, 1935 was the penultimate chapter of rather a long story in the development of self-governing institution with a rudimentary beginning in 1861. The Indian Councils Act, 1892 was definite advance over its predecessor, the Councils Act, 1861. The changes it introduced however slight to give satisfaction to the growing politically conscious Indians, made a beginning in the direction of giving to the Councils the form of parliamentary institutions, despite the disclaimer of the Government both in India and Britain. By conceding the elective principle, though limited and indirect, and by granting the right to interpellation, and discussion on the budget, the Act of 1892 paved the way of further reforms. The non-official members were in the minority in the Councils and their functions were rigidly fettered, but they had the opportunity to express their opinions, criticize the administration and seek redress for the grievances. In spite of their defects and shortcomings, the Morley-Minto reforms (1909) constituted an important stage in the evolution of the representative institutions in India. The changes may not have been wholly parliamentary, but the Legislative Councils served a forum for the expression of public opinion and the non-official members assumed the role of the Opposition. They also used the Councils as platforms for educating the people in the affairs of the country. The Councils had become deliberative bodies, if not controlling the executive.

Controlling the executive is the essence of parliamentary system and the Government of India Act, 1919, introduced it partially under the system of dyarchy in the Provinces. The Government of India Act, 1935, abolished dyarchy in the Provinces and introduced instead provincial autonomy with ministerial responsibility, though under heavy restrictions and safeguards. The Congress Party formed ministries in seven out of eleven Provinces and in coalition with parties other than the Muslim League . When the "interim" Government was formed at the Centre, both members of the Congress Party as well as other parties had acquired considerable knowledge of, and what was important respect for parliamentary procedures and conventions. According to Morris-Jones, the Act of 1935 made three contributions to the Indian political development. "It established a full regime of responsible government in the provinces operated on an exceptionally elaborate division of powers *vis-a-*

18. *Ibid.*, p. 25.

vis the Centre," is the first among those three. Doubts about the appropriateness of the legacy of parliamentary system of government were expressed then and even now have not been laid to rest. All one can say is that neither in 1947 nor subsequently was there any coherent and generally acceptable alternative.

The Policy of "Divide and Rule"

Of all the legacies of the British rule in India the legacy of communalism is the most cruel and it finds its echo from the days of the East India Company. It however, took a concrete shap during Lord Curzon's Viceroyalty. The strategy of Lord Curzon and his successors was to set one religion against the other and class against class in order to shatter the image of national unity and to disintegrate the feelings of solidarity that the Indian National Congress had created right from its inception in 1885. Curzon partitioned Bengal in order to drive a wedge between the Hindus and Muslims, under the cover of administrative convenience, but it was entirely on communal line. Minto abetted the Muslims to form a separate organisation of their own and, thus, helped the establishment of the Muslim League. He also prevailed upon Lord Morley, the Secretary of State for India, to concede to the demand of the Muslims for separate electorates comprising the Muslims alone and weightage in services.

Curzon had kindled the baneful communal consciousness by partitioning Bengal and carving out Eastern Bengal and Assam as a separate province with a Muslim majority. Morley-Minto reforms gave it a more concrete shape and by spreading communalism, through separate electorates, achieved the greatest victory for the British Empire in the Twentieth century. The system of communal representation was opposed to history and all codes of political morality. It had nowhere existed before and perhaps nowhere else it had been planned even by the worst followers of Imperialism to divide the people of a country in this manner. "A political barrier", wrote Nehru, "was created round them (Muslims), isolating them from the rest of India and reversing the unifying and amalgamating process which had been going on for centuries....." The ultimate result was the partition of India in 1947. Communalism still plagues Indian politics and it is the most cruel legacy of the British rule.

Division and Independence

Lord Louis Mountbatten was appointed the Governor-General of India to prepare the ground for the transfer of power. His instructions were to strive for obtaining a unitary government for British India and the Indian States on the basis of the Cabinet Mission Plan. Only if by October 17, 1947, he found that there was no prospect of reaching a settlement between the two major parties, he should think of other means. Mountbatten set about most expeditiously and zealously on his mission immediately after assuming office on March 24, 1947. Within a few days he could know that his instructions were out of date and there was no alternative to division of India. The Muslim League had become desperate and the new Viceroy was a close witness to communal rioting and fires of frenzy happening all over the country, urban and rural.

Lord Mountbatten prepared a plan for partition and referred it to the leaders of the Congress and the Muslim League to know their reactions. On May 18, the Governor-General left for London to discuss his Plan with the Prime Minister and the Secretary of State. The Cabinet approved the Plan. Having obtained the green signal, the Viceroy returned to India to make the announcement incorporating the Plan itself, on behalf of His Majesty's Government.

The Congress accepted the Plan and so did the Sikhs. Jinnah did not give anything in writing, although he assured the Viceroy that he would do all in his power to get the Plan accepted by the Muslim League. The Mountbatten Plan was simple. India was to be divided into two Dominions—India and Pakistan. The North-West Frontier Province, the Muslim-majority parts of Punjab and Bengal, Sind and Baluchistan and Sylhet amalgamated with Eastern Bengal were to become parts of Pakistan.

The Indian Independence Act, 1947

The stage was, thus, set for transfer of power. On July 2, 1947 the Draft of the Independence Bill implementing the political settlement in accordance with and in conformity to the announcement of June 3, 1947 was circulated to the leaders of the Congress and the Muslim League for their consideration. The Bill was introduced in Parliament on July 5 and after having passed through both the Houses it received the Royal assent on July 18, to become operative on August 15, 1947. As a result of the setting up of the new Dominions on August 115, His Majesty's Government ceased to have responsibility as respects the Government of any territories which, immediately before August 15, were included in

British India. The suzerainty of His Majesty over the Indian States lapsed and they became independent in their political relations with the Government of the Austin Dominions.

The British legacies are clearly visible in various articles of the Indian Constitution which literally valodated the theory and practice of British democracy within the framework of the Republic state structure. The British conventions of parliamentary government apply to the Indian system of parliamentary governance both at the levels of the Centre and the component states, though these conventions have not been stated in the body of the constitution. They are just assumed and have become operational in the actual working of our Constitution.

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CHAPTER V

Making of the Constitution : Basic Decisions and Objectives

Making of the Constitution

The right of the people to determine the form of government under which they would live and to frame their own constitution, despite repeated disavowal by the British Government, was finally conceded in March, 1942 when Sir Stafford Cripps brought to India reform proposals of the War Cabinet. The Cripps Proposals were rejected, but the right of Indians to frame their own constitution through a Constituent Assembly was established. It was reiterated in the March 15, 1946 statement of the Prime Minister, Clement Attlee. While recognising India's right to independence, he said, ".....What form of government is to replace the present regime is for India to decide, but our desire is to set up forthwith the machinery for making the decision."

In pursuance of the Prime Minister's statement elections to the Constituent Assembly were held in July, 1946. The Muslim League won all but seven of the seats reserved for Muslims and the Congress secured 203 of the General seats. The Congress had also succeeded in capturing one Sikh and four Muslim seats, thus, making a tally of 208 seats out of a total of 296 seats allotted to the Provinces. The Indian States were to have 93 seats. The representatives of the States of Baroda, Bikaner, Jaipur, Jodhpur, Rewa, Udaipur and Patiala entered the Assembly in April, 1947. Representatives of States, other than Jammu and Kashmir, and Hyderabad, Junagadh and two more States, entered the Assembly subsequently. Jammu and Kashmir and Hyderabad came in after the accession of these States in October, 1947 and November, 1948 respectively.

The Constituent Assembly was a galaxy of top-ranking leaders of the Congress and the Muslim League, veteran statesmen, seasoned administrators, eminent jurists, in fact, people drawn from all walks of life and all parts of the country. In the selection of its candidates for election to the Constituent Assembly, the Congress adopted two basic norms : (*i*) that the Congress candidates should represent the country as a whole and various viewpoints within the Party itself must find due representation; and (*ii*) due care should be taken to bring on its list candidates capable of representing country's dynamism irrespective of party affiliations. It was, accordingly, ensured that persons of exceptional ability outside the Congress Party found places in the Constituent Assembly, and that minority communities were justly represented. The Cabinet Mission Plan had guaranteed seats for Muslims and Sikhs only and no provision was made for the representation of other minorities, such as, Parsis, Anglo-Indians, Indian Christians, members of the Scheduled Castes and even women. In some cases, instructions were issued by the Congress Working Committee to the Presidents of the Provincial Congress Committees to recommend the names of specified persons for nomination.[1] All minority communities were represented usually by the members of their choice. The Indian Christians had seven members, the Anglo-Indians three and Parsis three. After the partition the total number of representatives of the minorities, including Muslims, was 88 out of 233 seats allotted to the Provinces; 37 per cent of the total population of the Provinces. There was hardly any shade of opinion not represented in the Constituent Assembly.

After partition the Congress majority in the Assembly jumped to 82 per cent. There was no conceivable opposition. The twenty-eight Muslim League members from the non-Pakistan Provinces, who took their seats in the Assembly, were separately divided among themselves. The Muslim League was "suspect" in India and Pakistan having been created there was no motivating force which could bind them together in a cohe-

1. Among them were Alladi Krishnaswami Ayyar, N. Gopalaswami Ayyangar, B. R. Ambedkar, Hriday Nath Kunzru, K. Santhanam, M. R. Jayakar, Sachchidananda Sinha and K.M. Munshi, Tej Bahadur Sapru declined to accept the nomination due to illness.

sive body. Nor was there any dynamic leader to whom they would have looked for guidance. Their only aim was to safeguard the interests of the Muslims who had not opted for Pakistan. They still feared Hindu domination and, therefore, turned to Nehru and the Congress leadership for the protection of the interests of their community. The Constituent Assembly was the Congress. At the Centre and in the Provinces there were Congress Governments too. As Granville Austin has said, "The Assembly, the Congress, and the government were, like the points of a triangle, separate entities, but, linked by overlapping membership, they assumed a form infinitely meaningful for India."[2]

The Constituent Assembly met as scheduled on December 9, 1946. The Muslim League boycotted its deliberations, although the December 6 statement of the British Government had accepted the Muslim League's interpretation of the grouping clause. Jawaharlal Nehru moved the Objectives Resolution on December 13, 1946 and described it as a "solemn pledge to the people" which they would redeem in the constitution that they would frame. On the motion of M. R. Jayakar's amendment the discussion on the Objectives Resolution was postponed so as to enable representatives not only of the Muslim League, but of the Indian States, too, to participate in the deliberations of the Assembly.

The Assembly was adjourned till January 20, 1947, but the Muslim League continued with its boycott when it met after the adjournent. After the acceptance of partition the position was entirely changed. Jinnah and the league leadership agreed that the League members of the Assembly from the non-Pakistan Provinces should participate in its deliberations, and play their part in the framing of the future constitution of India, with a view to securing the interests of the Mussalmans, who were to remain in India, by providing effective safeguards. When the Assembly met for the fourth session on July 14, 1947 the Muslim League members from the non-Pakistan Provinces took their seats and declared themselves as "loyal and law-abiding citizens of India." Now, the Constituent Assembly was not bound by the provisions of the Cabinet Mission Plan. It was, competent to chalk out its own course and to establish a federation of its own choice, with as strong a Centre as desired.

Task of the Constitution-Makers

But partition had made the task of the Constitution-makers tremendously arduous. The problems they had to tackle were many and difficult to resolve. They had to devise a scheme of government for 400 million people in no way homogenous and alike. There were scores of communities speaking different languages, professing different faiths, practising different customs, following different traditions and emphasising different cultures. The demand of the Muslim League for the division of India on religious basis, culminating ultimately in slicing territories in the Wast and the East, had completely changed the pattern of the political set-up originally contemplated. The first task of the Constitution-makers, therefore, was to adequately provide for the unity and integrity of the country in the presence of a foreign State within the very compound of India.

The creation of Pakistan did not mean the total exit of the Muslims from India. More than ten per cent of the total population of the country was left on the Indian side of the border and that, too, in the same Provinces from where the cry that Islam was in danger was raised first. Having been left leaderless and forsaken by their own coreligionists whose battle they had fought, these political orphans were to be rehabilitated with adequate guarantees for the protection of their religion and culture. The object was to instil in them the sense of belongingness to India and the faith of a unified nation. Together with the problem of the Muslims, and equally important, was the problem of nearabout forty-million untouchables, numerous other minority groups, backward people and areas, like tribes and tribal areas, who were to be protected from the the centuries-old oppression and suppression.

Then, there was the baffling problem of the Indian States, 562 in number. The declaration of lapse of Paramountcy on transfer of power had created an intriguing situation. The States were left free "to enter into a federal relationship with the successor Government or Governments or failing this, enter into political arrangements with it or them."[3] Interpreted in terms of law, the Memorandum prepared by the Cabinet Mission on "States, Treaties and Paramountcy" and endorsed by the Mountbatten Plan left any Prince or a combination of Princes free to declare his or

2. Granville Austin, *The Indian Constitution : Cornerstone of a Nation*, p. 9.
3. *Memorandum of the Cabinet Mission on "States, Treaties and Paramountcy,"* May 12, 1946.

their independence and even to enter into negotiations with any foreign power and thus become islands of independent territory within the country. In fact, some States, such as Hyderabad and Junagadh, had begun to flirt with foreign States. Junagadh, a small State in Kathiawar, acceded to Pakistan, and Pakistan accepted the accession, even though the population of the State was predominantly Hindu. Apparently, the Nizam of Hyderabad desired to maintain an independent status. Envoys from the Nizam's court, together with intermediaries, like Sir Walter Monckton, went silently to and from Delhi "carrying terms and proposals, feelers and conditions." By November, 1947, no more than a Standstill Agreement could be secured from him, prolonged negotiations failed to persuade His Exalted Highness to accede to India.

The position of the Indian National Congress was clear enough on the issue of Indian States. On July 15, 1947 the All-India Congress Committee categorically rejected the claim of some of the States and the theory of Paramountcy. Speaking at this meeting Nehru said that the States have only two alternatives : they could join the Union of India either individually or in groups. "There is no third way out of the situation—third way meaning Independence or special relation to a foreign power." Coupland had aptly said, "India could live if its Muslim limbs in the north-west and north-east were amputated but could it live without its heart ?" The heart of India was its Princely States. The foremost concern of the Government of Independent India was to conserve the heart of India.

Immediately after the plan to partition and grant of Independence on August 15, 1947 was announced, the Interim Government decided to set up a State Ministry to deal with the problem of Indian States. This Ministry was placed under the charge of Sardar Vallabhbhai Patel. By August, 1947, all the 562 States, with the exception of Hyderabad, Jammu and Kashmir and Junagadh, had been persuaded by a combination of cajolery and firmness, to sign Instruments of Accession and Standstill Agreements which had the effect of surrendering their powers in the three fields of foreign relations, defence and communication, and maintaining unchanged all arrangements in other matters.

The unity of what had been left as India after the partition was so vital that the Government of India "could not view with equanimity and trifling with it"[4] The people of Junagadh forced the Nawab to flee to Karachi and in November 1947 the Muslim Dewan of the State was compelled to invite the Government of India. Junagadh became a part of the Union of India as a result of plebiscite in February, 1948. In Hyderabad the situation became explosive as a result of disorder that broke out inside the State, fanned by the Communist-led peasants of Telengana and the ugly acts of a violent fanatical group of Muslim militants, Razakars. Even raiders from Hyderabad made incursions into Indian territory. Indian troops were, consequently, ordered to enter Hyderabad and after four days of 'police action' the Nizam capitulated. He agreed to accede to the Indian Union in November, 1948 and became the nominal head of the State.

Along with Hyderabad, Kashmir was another problem. The Maharaja of Jammu and Kashmir refused to accede either to Pakistan or India prior to August 15, 1947. In October, 1947 the Pathan tribesmen from Pakistan raided Kashmir and threatened its capital, Srinagar. The Maharaja in desperation sought military aid from India which was given only on his agreeing that the State of Jammu and Kashmir should accede to India. For the Government of India it was announced by Lord Mountbatten as Governor-General that "as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the accession should be settled by reference to the people." Although a cease-fire was agreed upon on January 1, 1949, through the good offices of the United Nations, the Kashmir question has been the major issue in dispute between India and Pakistan ever since. The cease-fire line has became a *de facto* frontier.

The work accomplished by Sardar Vallabhbhai Patel in the States Ministry rationalised the political map of India by the merger or the consolidation and integration of the Indian States. It was a silent revolution and India was unified as never before in her history. No fewer than 216 smaller States were abolished as separate units and merged into the Provinces. States numbering 275 in all were integrated to form five new Unions with a Rajpramukh as the head of a Union of States. The Rajpramush was chosen by the States integrated into a Union. Sixty-one States were brought under direct Central administration either as separate units or in consolidated

4. *White Paper on Indian States,* July 1948, p. 18.

blocks. The States of Hyderabad, Mysore and Jammu and Kashmir were left unaffected by these changes.

The White Paper on Indian States had said that Indian independence would have no meaning if the people of the States did not have the same political, social and economic freedom, as those enjoyed by the people of the Provinces. All the Princely States, save for a few enlightened States, such as Mysore, were notoriously backward and even feudal. The makers of the Constitution had therefore, to devise means to make them as viable and sizable units with democratic institutions. The process of integration and democratization began after their accession to India.

BASIC AIMS AND OBJECTIVES

Basic Objectives

To forge unity out of numerous diversities, both natural and artificial, was therefore, the foremost task of the Constitution-makers. But their real and stupendous task was, as Jawaharlal Nehru explained in the Constituent Assembly, "'to free India through a new constitution, to feed the starving people and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his need."[5] On the mid-night of August 14, 1947 Nehru in a moving speech called upon the members of the Constituent Assembly to take a pledge of dedication of service to India and humanity. "Long ago," he said, "we made a tryst with destiny, and now the time comes when we shall redeem our pledge not wholly or in full measure, but very substantially....." To the people of India, Nehru made a fervent appeal "for co-operation in the great adventure of building the noble mansion of free India where all her children may dwell." The task of the Assembly was to devise a constitution that would serve the ultimate goal of social revolution, "of national renaissance." Simple drafting of the fundamental rights and moral precepts of a preamble were only a parchment of paper unless the political machinery established by the constitution did not foster or at least permit a social revolution to reach the destination.

The basic aims and objectives of the new State of India find their expression in the Objectives Resolution approved by the Constituent Assembly on January 22, 1947 and the most significant statement of such aims and objectives is found in the Preamble to the Constitution of 1950. Thus, the foundation of the constitutional structure was laid by the Objectives Resolution which prescribed :

"(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future government a Constitution;

.....

(4) Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

(5) Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

(7) Whereby shall be maintained the integrity of territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations; and

(8) This ancient land attains its rightful and honoured place in the world, makes its full and willing contribution to the promotion of world peace and the welfare of mankind."

These fundamental Objectives, which were to guide the deliberations of the Constituent Assembly, may, thus, be stated :

(1) that India is to be an independent sovereign Republic;

(2) that it is to be a democratic Union with equal level of self-government in all the constituent parts. "There cannot be," as Nehru emphasised, "different standards of freedom as between the peoples of the states and the people outside the states;"

(3) that all power and authority of the Union Government and Governments of the constituent parts is derived from the people;

(4) that the constitution must strive to obtain and guarantee to the people justice based upon social, economic and political equality, equality of opportunity and equality before the law;

(5) that there should be freedom of thought,

5. *Constituent Assembly Debates*, Vol. II, p. 316.

expression, belief, faith, worship, vocation, association and action, subject to law and public morality;

(6) that the constitution should provide just rights for minorities, backward and tribal areas, and depressed and other backward classes so that they may be equal participants in and recipients of social, economic and political justice; and

(7) to frame a constitution which should secure for India a due place in the comity of Nations and to contribute to the promotion of world peace and the welfare of mankind.

With well-defined objectives before them the Constituent Assembly established eight major Committees[6] to provide bricks and mortar for the constitutional structure. Either Patel, Nehru or Prasad chaired each of these committees and in many cases the other two or Azad, were present. With seven other Assembly members,[7] these leaders constituted an inner circle in the Committees of the Assembly. The inner circle demonstrated the inter-locking of the three organisations—the Party, the Assembly and the Congress Governments at the Centre and the Provinces—for with one exception all were also members of the Congress or of the Central Government.[8] After partition, the Constituent Assembly was a one- party body in an essentially one-party country. In other words, the Assembly was the Congress and the Congress was India.

The Drafting Committee[9] appointed by the resolution of the Constituent Assembly on August 29, 1947 submitted its report on February 21, 1948. The Draft Constitution was presented to the Constituent Assembly on November 4, 1948, for consideration, thereby providing a sufficiently long opportunity to the public, the press and the Provincial Legislatures to discuss it and focus public opinion. Its first reading comprised general discussion which commenced on November 4 and continued till November 9. Then began the second reading or consideration of the clauses of the Draft and it continued from November 15, 1948 to October 17, 1949. As many as 7,635 amendments were tabled out of which 2,473 were actually moved and discussed. The Assembly again sat on November 14, 1949, for the third reading of the Draft and it concluded on November 26. On this date the Constitution received the signatures of the President of the Constituent Assembly and it was declared passed.

The final session of the Constituent Assembly was held on January 24, 1950. It unanimously elected Rajendra Prasad the first President of the Republic of India under the new constitution which came into force on January 26, 1950. This date was specifically chosen for the inauguration of the Indian Republic, as it was on January 26, the Indian National Congress had passed the historic resolution at its Lahore session to win independence. Since then this resolution was repeated every year at public meetings all over the country till India became independent in 1947.

It was the Congress Expert Committee,[10] presided over by Nehru, that set India to her present Constitution. This Committee was appointed by the Congress Working Comittee to prepare materials for the Constituent Assembly and six of its eight members had been elected to that body. Vallabhbhai Patel was not a member of the Committee, but he attended many committee meetings. Other invitees were V. K. Krishna Menon, A. Appadorai, Mridula Sarabhai, and Raja Hathee Singh. The Committee drew widely upon the mature experience of advanced democratic countries. The Union Constitution Committee ransacked all the known constitutions of the world. They borrowed freely from the Government of India Act, 1935, although they deviated from it wherever they believed it was necessary.

BASIC DECISIONS

Seven of the decisions regarding the nature of the new State which were made with due

6. Rules, Steering Advisory, Drafting, Union Subjects, Union Constitution, Provincial Constitution, and States. The Assembly had a total of more than fifteen committees. The Advisory Committee had two Sub-Committees, Fundamental Rights and Minorities.
7. G. B. Pant, P. Sitaramayya, A. K. Ayyar, N. G. Ayyangar, K. M. Munshi, B. R.Ambedkar, S. Sinha.
8. Nehru, Patel, Azad, Ayyangar and Sinha were the members of the Central Government, Pant was the Chief Minister of Uttar Pradesh ; Prasad was President of the Assembly, Munshi and Sinha were members of the Congress Working Committee, Ayyangar was neither a Minister nor a member of the Congress.
9. It consisted of seven members with B. R. Ambedkar as Chairman. The other members were : N. Gopalaswami Ayyangar, Alladi Krishnaswami Ayyar, K. M. Munshi, Saiyad Mohd. Saadulla, N. Madhava Rau, and D. P. Khaitan. Sir B. L. Mitter, though originally appointed a member, was unable to attend the Committee meetings after the first meeting as he ceased to be a member of the Constituent Assembly.
10. The Committee was formed on July 8, 1946 and consisted of Asaf Ali, K.M. Munshi, N. G. Ayyangar, K. T. Shah, K. Santhanam (all members of the Constituent Assembly), Humayun Kabir and D. R. Gadgil.

consideration, but without significant opposition were : India should have a written constitution, it should be a federal State; it should be a republic; it should have a parliamentary democracy; it should be a member of the Commonwealth of Nations; it should be a secular State; and, it should be a Welfare State.

A Written Constitution

For a federal State the constitution must almost necessarily be a written constitution which defines the relations between the Central Government and the regional Governments, demarcates the sphere of each, and is paramount to the constitutions of regional Governments, if each component part of the union has its own separate constitution. To base the arrangements which are inherent in a federal polity "upon understandings and conventions," as Dicey said, "would be certain to generate misunderstandings and disagreements."[11] Moreover, the demand for Constituent Assembly and the making of constitution by that body postulates that it must be a written constitution.

There were other compelling reasons for India to opt for a written constitution and that, too, for an elaborate and detailed document. India inherited a written constitution in the Government of India Act, 1935, one of the longest pieces of legislation ever enacted by the British Parliament. This Act, supplemented by the Indian Independence Act, 1947, another elaborate measure of the British Parliament with certain amending statutes passed by the Constituent Assembly of India, gave the Indian Union a working constitution till 1950 when the new Constitution became operative. The Constitution-makers thoroughly familiar with the provisions and implications of the 1935 Act, and with the practical experience of the machinery of Government then available instinctively borrowed profusely from it and in many cases entire Sections from the Act were transferred to the new Constitution. The members of the Assembly believed that to effect a smooth transfer of authority from the British Indian Government to the Government of India a variety of details should be included in the constitution in order to preserve administrative continuity and efficiency. At the time of Independence, India inherited a well-established system of constitutional law. "To have recreated this body of law in the form of legislation to be passed after drafting a constitution of broad principles seemed to Assembly members a difficult if not a dangerous proposition."[12]

Then, the task of the Constitution-makers was pre-conditioned by inescapable factors of previous regime and the politico-economic set-up of the vast sub-continent. Highly divergent elements had to be welded together and units widely differing from one another were to be brought together in an organic unification. These differences created difficulties in the legislative and administrative set-up and the Constitution originally provided for four distinct types of units–Part A, Part B, Part C, and Part D of the First Schedule–on a different constitutional level. Moreover, the unity of what was left as India was so vital a necessity for the political strength, full economic development, and the cultural expression of the people that the Constitution-makers followed the precedent of Canada and prescribed, in the federal polity they established a full-dressed constitution for the States comprising the Indian Union. The Constitution also elaborately dealt with the complicated problem of relations between the Union and the States as well as inter-State co-ordination and adjudication of disputes relating to water of inter-State rivers or river valleys. Not oblivious of the centrifugal forces that worked in India from the dawn of her history and in order to checkmate any recurrence of fissiparous tendencies arising out of various divergent elements in the Indian social life, the Constitution-makers armed the Union with adequate powers to meet any contingency whenever any grave threat, internal or external, appeared or was likely to appear threatening the unity and security of India. Rajendra Prasad gave a matter of fact analysis in his observations to the Constituent Assembly on November 26, 1949. He said, "India today needs nothing more than a set of honest men who will have the interest of the country before them. There is a fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences and so forth."[13]

Referring to the detailed nature of the constitution, Prasad observed, " The Constitution has gone into great details regarding the distribution of powers and functions between the Union and the States in all aspects of their administrative

11. Dicey, A.V., *Law of the Constitution*, p. 142.
12. Granville Austin, *The Indian Constitution : Cornerstone of a Nation*, p. 327.
13. *Constituent Assembly Debates*, Vol. X, p. 891.

and other activities. I do not wish to pass any judgment on this criticism and can only say that we cannot be too cautious about our future, particularly when we remember the history of the country extending over many centuries."

The problem relating to public services, special classes, like Anglo-Indians, Scheduled Castes and Scheduled Tribes required in the opinion of the Assembly members, special constitutional provisions and they were duly provided. Similarly, the question relating to official language and regional languages has been specifically dealt with in the Constitution. Provisions relating to higher judiciary were also included so as to put its independence beyond the reach of Parliament. The Constitution embodies an elaborate List of Fundamental Rights as also the Directives Principles of State Policy. Some of these rights are unknown to other constitutions and their inclusion was necessitated by the peculiar conditions and circumstances prevailing in India. The theme of social revolution runs throughout the proceedings of the Constituent Assembly and in their efforts to achieve that end an elaborate Bill of Rights was engrafted on the parliamentary system of government and a federal system was supplemented by provisions for centralization of power whenever national interests demanded the strength of the unitary system.

The Constitution of a country cannot be divorced from the facts of history. It is, therefore, not surprising that the Constitution-makers would have produced quite a comprehensive document which at places entered into comparatively detailed provisions. The predominance of the lawyer element in the making of the Constitution might have been another contributory factor. But as K. C. Wheare explained, "in the long process by which the Government of India Act, 1935 was framed, the people in Britain learned much of the difficulties of making a Constitution of India, and any one who followed the discussions of these years, in which Indians and British alike strove to devise a good government for India will be slow to criticise the work with which the Indian Constituent Assembly has done. It has been a tremendous task and to have produced a constitution at all which can command so wide a measure of agreement is a great achievement."[14]

The constitution as finally emerged out of the Constituent Assembly consisted of 395 Articles and Eight Schedules. The Ninth Schedule was added by the Constitution (First Amendment) Act, 1951, and the Tenth by the Constitution (Fifty-second Amendment) Act, 1985. The total number of amendments so far made is 74 and many more are on the anvil. No other constitution in the world is so long. President Neelam Sanjiva Reddy in his broadcast to the nation on the eve of 32nd anniversary (1979) of the Independence Day bemoaned the "steady and cumulative deterioration of standards in public life and public morality" and the contempt with which principles of life had been compromised and the basic values of life treated. He considered that the time was ripe now for enlightened public opinion in the mainstream of national public life "to review the provisions of the Constitution in the light of working it over for the last three decades."

No other Constitution in the world is so long and detailed, even ponderous, as the 1950 Constitution of India in its present shape. M. V. Kamath humorously remarked in the Constituent Assembly, "The emblem and the crest that we have selected for our Assembly is an elephant. It is perhaps in consonance with that, that our Constitution is the bulkiest that the world has produced."[15]

Constitution-Amending Process

Jennings has said that the Indian Constitution is too long and detailed and too rigid. What makes the Constitution so rigid, he explains, "is that in addition to somewhat complicated process of amendment, it is so detailed and covers so vast a field of law that the problem of constitutional validity must always arise."[16] Long and detailed it certainly is on sound grounds in the eyes of the Assembly members, but rigid it has not proved to be. Nor was it the intention of the Constitution-makers to make it rigid. The method of amendment is not complicated as Jennings holds it to be. It is simple, though not far from easy. It has sought to avoid the difficult processes laid down by the American and Australian Constitutions. K. C. Wheare says that the Indian Constitution strikes a good balance between extreme rigidity and too much flexibility. Nehru explained the reasons for it. He told the Constituent Assembly, "while we want this constitution to be as solid and as permanent as we can make it,

14. Gupta, Madan Gopal (Ed.), *Aspects of the Indian Constitution*, p.79.
15. *Constituent Assembly Debates*, Vol. VII, p. 1042.
16. Jennings, W. I., *Some Characteristics of Indian Constitution*, pp. 9-10.

there is no permanence in constitutions. There should be certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living vital, organic people.....In any event, we could not make this Constitution so rigid that it cannot be adapted to changing conditions. When the world is in turmoil and we are passing through swift period of transition, what we may do today may not be wholly applicable tomorrow."

It is important to note that the rigidity or flexibility of the amending process essentially depends upon in practice, on the complex of political parties at the Centre and in the States, and the attitude the Supreme Court may take in the final analysis. In the absence of a single party commanding a dominant majority in both Houses of Parliament, as in the case of Congress (I) minority Government headed by P. V. Narasimha Rao, no amendment can succeed as it would be impossible to secure the requisite majority–absolute as well as two-thirds in each House–as required under Article 368 of the Constitution. The Janata Party that assumed office in April 1977, was committed to repealing the Constitution (Forty-second Amendment) Act, 1976, in toto. Though the Janata commanded a comfortable majority in the House of the People (Lok Sabha), it was in minority in the Council of States (Rajya Sabha). The Constitution (Forty-third Amendment) Bill, 1977, was introduced in the House of the People and it passed therefrom. But the Amendment Bill was allowed to languish in the Council of States on fear to be outvoted there. It was after prolonged discussions with the leaders of the Opposition and with a good deal of give and take with the leader of the Congress Parliamentary Party that the Forty-third and Forty-fourth Amendments could pass in both the Houses of Parliament and in this process the Janata had to depart from its electoral commitment and that, too, on some crucial provisions of the Forty-second Amendment.

In case different political parties and groups constituting United Fronts were to form coalition governments, both at the Centre and in the States, the probabilities of such a contingency not being remote, the amending process in regard to the entrenched provisions can hardly operate as they require for their amendment not only a majority of total membership in each House of Parliament and a majority of not less than two-thirds of members present and voting but also ratification by at least one-half of the number of State Legislatures. Such a situation had arisen after the 1967 General Elections when the Constitution remained static till 1971 mid-term elections to the House of the People. One of the reasons which can convincingly be assigned for dissolving the Assemblies of the nine Northern States by the Janata Party Government in April, 1977 was the obvious apprehension that the process of ratification by the States of the various provisions inserted in the Constitution by the Forty-second Amendment, and to which the Janata Party was committed to repeal would not be forthcoming if the Congress Party remained in majority in all those States. It was exactly the same apprehension when Mrs. Gandhi's Government dissolved the Assemblies of those States once again in February 1980; political vengeance besides.

Judiciary also plays a key role in determining the rigidity of the Constitution. The majority decision in *Golak Nath* case nearly paralysed the amending process. Five to six Judges majority held that in future Parliament would not abridge or abrogate Fundamental Rights through the normal procedure prescribed in Article 368 for amending the Constitution. The Constitution (Twenty-fourth Amendment) Act, 1971 restored to Parliament the power to amend the Constitution including the Chapter on Fundamental Rights. In *Keshavanadna Bharati,* popularly known as the Fundamental Rights case, the Supreme Court reversed the stand taken by the Court in the *Golak Nath* case, but it put a rider on the power of Parliament by ruling that it had no power to change basic structure or framework of the Constitution.

The Constitution provides for three different methods of amending it :

The first mechanism of the amending process relates to Articles which are amendable under the substantive part of Article 368, that is, when an amending Bill is introduced in either House of Parliament and passed in each House (i) by a majority of the total membership in each House and (ii) by a majority of not less than two-thirds of the members present and voting in each House.

The second mechanism embraces Articles specifically mentioned under the proviso to Article 368 items (a) to (e). Amendment to any of these Articles requires not only a majority of total membership in each House and majority of not less than two-thirds of the members present and voting in each House but also ratification by at least one-half of the State Legislatures. The rea-

sons for entrenching these Articles were given by Ambedkar in the Constituent Assembly. He explained, "If the members of the House who are interested in this are to examine the articles that have been put under the proviso, they will find that they refer not merely to the Centre but to the relations between the Centre and the Provinces (States). We cannot forget the fact that we have in a large number of cases invaded provincial autonomy, we still intend and have as a matter of fact seen to it that the federal structure of the Constitution remains fundamentally unaltered."[17] To amend the provisions laying down the distribution of powers and of revenue without permitting the provinces or the States "have any voice is in my judgment altogether nullifying the fundamentals of the Constitution,"[18] he added.

The entrenched provisions are :

(1) The method of election of the President of India (Art. 54 and Art. 55);
(2) Distribution of Legislative powers between the Union and the States (Articles 245 to 255, Chap. I of Part XI; Seventh Schedule);
(3) Extent of the Executive power of the Union and the States (Articles 73 and 162);
(4) Representation of the States in Parliament;
(5) Provisions relating to the Supreme Court and High Courts (Articles 134-147, Chapter V of Part VI, and Article 241);
(6) Amendment of the Constitution (Article 368).

The third category includes provisions in the Constitution which permit easy changes to be made with or without constitutional amendment. Generally, such provisions are alterable by a simple majority vote in each House of Parliament, followed by Presidential assent. Nearly two dozen Articles of the Constitution thus provide for their own alteration, and the pattern is a standard one. Whatever the Article establishes—for example, the qualifications for citizenship, the salaries and allowances of the Supreme Court and High Court Judges, the States that have to be bicameral legislatures—is to remain in force "until Parliament otherwise provides." Formal amendments in all such cases are not effected but otherwise they have the effect of making changes in the constitutional law.

But the most striking example of provisions alterable by simple majority vote in Parliament and assented to by the President are Articles 1, 2 and 3. Article 1 lays down that India shall be a Union of States and these States are named in the First Schedule and the Fourth Schedule of of the Constitution. Articles 2 and 3 empower Parliament to form new States and to alter the areas, boundaries or names of the existing States or to cause a State to disappear entirely by merging it with another State or States. A Bill effecting such changes may be introduced in either House of Parliament on the recommendation of the President. The President is required to refer such Bill to the Legislature of the State or States so effected for expressing its or their views thereon within the specified period of time or within such periods as the President may allow. After the expiry of the said period the Bill is introduced in Parliament. Article 4 (2) expressly states that such a law shall not be deemed as an amendment of the Constitution for the purposes of Article 368, but the fundamental importance of these Articles can in no way be minimised. They can change the political map of India and yet they are not governed by the provisions of Article 368.

The three mechanisms of the amending process were a compromise worked out by the Drafting Committee and were designed, as Ambedkar told the Constituent Assembly, to achieve a flexible Constitution. The compromise was between a small group of Assembly members who recommended the adoption of an amending process like that of the United States and a somewhat larger group that advocated amendment of all the clauses of the Constitution at least during the initial period by a simple majority of each House of Parliament. But Ambedkar asserted that the Constitution was a fundamental Document and utter chaos would result if it could be amended by a simple majority of Parliament.[19] Such a unique process of amendment of the different provisions of the Constitution did not hitherto exist in any other written Constitution. Commenting upon it, K.G. wheare remarked, "this variety in the amending process is wise but it is rarely found."[20]

17. *Constituent Assembly Debates*, Vol. IX, pp. 1661-63.
18. *Ibid.*
19. *Constituent Assembly Debates*, Vol. IX, pp. 1662-63.
20. Wheare, K. C., *Modern Constitutions*, p. 143.

A few observations may be noted with regard to the procedure for amending the Constitution. The right of initiating an amendment is vested exclusively in the Union Parliament. The Constituent States have no jurisdiction to propose a constitutional amendment except under article 169 (1) when the Legislative Assembly of a State may propose for the creation or abolition of a Legislative Council (Vidhan Parishad). Nor is the right to initiate a constitutional amendment conceded to the people. The exclusion of the constituent States from the amendment process is a negation of the well-accepted federal principle and contrary to the practice followed in other federal countries. The Drafting Committee claimed to have largely followed the model set by the Canadian federation, but even in Canada the Provincial Legislatures had the unfettered power of amending the Provincial Constitutions by the ordinary process of legislation, excepting on one point only, *viz.*, the office of the Lieutenant-Governor.[21]

The Rules of Procedure and Conduct of Business of the House of the People (Lok Sabha) as framed under Article 118 of the Constitution provided that the rules of procedure applicable to any ordinary Bill shall also apply to a Constitution Amendment Bill.[22] It means that Article 368 of the Constitution is not a code in itself and the procedure prescribed therein for amending the Constitution is to be supplemented by Rules made by each House of Parliament regulating its procedure and conduct of business. The Supreme Court held in *Shankari Prasad Singh Deo* v. *Union of India* that "having provided for the constitution of Parliament and prescribed certain procedure for the conduct of its legislative business to be supplemented by each House, the makers of the Constitution must be taken to have intended to follow that procedure so far as it may be applicable consistently with the express provisions of Article 368."[23]

The procedure followed in adopting the first twenty-three amendment Bills was to obtain special majority-at least half the membership of the House and not less than two-thirds of the members present and voting—at all stages of the consideration of a Bill. The two amendment Bills, to abolish the Privy Purses (twenty-sixth amendment) and to do away with the privileges of the members of the Indian Civil Service (twenty-eighth amendment) fell through at the consideration stage as both the Bills could not secure the requisite two-thirds majority of the members present and voting. The Rules Committee of the House of the People thereupon brought about a fundamental change which now prescribes that the special majority will be required only at the final stage of voting on the Bill. In the earlier stages a simple majority shall be sufficient.

The Rules Committee also took note of the fact that in the case of "omnibus" Bills involving the amendment of various Articles of the Constitution on different aspects and subjects, members of the House might be divided in their views on different provisions. To obviate such contingencies, the Rules Committee recommended that a Constitution Amendment Bill should deal with a single subject only. Accordingly, two separate amending Bills—the first inserting "amount" in place of "compensation" in Article 31, and the second seeking to abolish the Privy Purses and Privileges of Princes, Articles 291 and 362—were introduced and enacted separately. But this norm was not observed in the case of the Forty-second, Forty-third and Forty-fourth amendments. The Forty-second and Forty-fourth amendments covered the whole gamut of the constitutional framework, the former containing 59 Sections and the latter 45 Sections. The Forty-third amendment had 11 Sections.

The Indian Constitution, like that of the United States, does not prescribe any time limit within which State Legislatures may ratify or reject the amendments referred to them. Nor has Parliament done so on its own initiative, however urgent and time-bound the amendment may be, as the Forty-fifth Amendment was. The Constitution is also silent whether it is necessary that the amending Bill required to ascertain the will of the States must be transmitted to all the States or it is enough if it is submitted to some of them to ensure the requisite majority of the States. The situation did arise in the case of the Twenty-third Amendment Bill. The Constitution was notified to have been amended before some of the States had signified their approval. The Mysore (now Karnataka) Legislative Assembly strongly protested against this procedure. The amendment seeking to include Sikkim as an associate State of the Union became operative immediately after the requisite half the number of the States had

21. Section 82(1), The North America Act 1867 (now the Canadian Constitution Act).
22. Rule No. 159.
23. *All India Reporter*, Supreme Court, 428.

given their assent thereto. Similarly, the Thirty-sixth Amendment including Sikkam as the twenty-second State of the Union of India, and the Thirty-eighth Amendment making emergency not justiciable by courts, received the assent of the President immediately after half the States had ratified and became operative. This procedure has now become the norm and has been invariably followed in all the subsequent amendments.

When the procedure to amend the Constitution is the same as in the case of ordinary legislation, can the President withhold his assent thereto after the amending Bill has been duly passed by both the Houses of Parliament? Article 368 originally did not make any reference to the President's power to withhold his assent and, accordingly, the Presidential assent was taken as a matter of sheer formality. The question of withholding assent could only arise when the procedure prescribed in Article 368 had not been followed. Since the controversy whether the President could exercise his veto power had lingered on all those years and even eminent jurists expressed the opinion that the President had and could exercise his discretionary power if he was satisfied that the situation so demanded, the Twenty-fourth Amendment (1971) inserted, as a measure of abundant caution, in renumbered Clause (2) of Article 368 that an amending Bill duly passed by two Houses of Parliament "'shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill."

A Federal Polity

The Constitution-makers of Independent India were in no doubt that a large new State, faced with the problem of establishing a central authority strong enough to govern a vast area inhabited by millions of people with different historical and linguistic backgrounds and interests, must inevitably be some form of federal structure. With the integration of Princely States, the formation of federation had become a *fait accompli*. The Butler Committee in 1929 had said that "politically there were two Indias.....The problem of statesmanship is to hold them together."[24] But holding them together was simply not sufficient. They were integrated in the Indian Union and Sardar Patel could rightly claim that it was not "an alliance between democracies and dynasties, but a realUnion of the Indian people built up on the basic concept of the sovereign people." He also maintained that the Constitution "removes all barriers between the people of the States and the people of the Provinces and achieves for the first time the objective of a strong democratic India built on the true foundation of a cooperative enterprise on the part of the people of the Provinces and States alike."[25] For Ambedkar the Constitution of India "is a single frame from which neither (Provinces or States) can get out and within which they must work."[26]

The Assembly members were not wedded to the narrow ideas of federalism and they were not at all committed to follow the path carved out by the framers of the American Constitution. They firmly believed that India had unique problems to solve the like of which had not confronted other federations in history. Some of these required immediate effective solution, others demanded concerted policy and united efforts. There was, accordingly, near unanimity among all sections of the Assembly to have a strong centre possessing an overriding authority. The proceedings of the Constituent Assembly significantly reveal that whereas there were strong protests over the distribution of powers and revenues between the Union and the units and on the effects of emergency provisions on the federal structure there was none of the deep seated conflict of interests as between the Northern and Southern States in the Philadelphia Convention in 1787, or between Ontario and Quebec in Canada. The relative absence of conflict between the *Centralists* and the *Provincialists* smoothened the task of the Constitution-makers. "They were the members of a family" as Granville Austin put it, "who, for the first time in possession of their own house, must find a way to live together in it. If their life was not to grind to an acrimonious halt, the members' relationships must by compromise be made mutually satisfactory."[27] Drawing upon the experiences of the older federations, the Father-framers adopted the policy of "pick and choose" to see what would suit the genius of the nation best.[28] This policy of "pick and choose" with a firm determination to have a strong central

24. As cited in the White Paper on Indian States (198), p. 123.
25. *Constituent Assembly Debates*, Vol. V, p. 161.
26. *Ibid.*, Vol. VII, p. 34.
27. Granville Austin, *The Indian Constitution : Cornerstone of a Nation*, p. 192.
28. *Constituent Assembly Debates*, Vol. XI, p. 654.

authority produced an unusual political structure that defied the traditional basic principles of a federal polity and set up a new pattern of relationship between the Union and the States. Nowhere in the Constitution the word federation has been used. Article I simply described India as a Union of States.

The use of the expression Union of States was deliberate and Ambedkar explained in the Constituent Assembly the significance of the use of this expression instead of the expression "federation". He said, "It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus, the description of India as a Union, though its Constitution is Federal, does no violence to usage. But what is important is that the use of the word 'Union' is deliberate. I do not know why the word "union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee used it. The Drafting Committee wanted to make it clear that though India was to be a Federation, the Federation was not the result of an agreement by the States to join in a Federation, and that, the Federation not being the result of an agreement, no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single *imperium* derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their federation was indestructible. The Drafting Committee thought it was better to make it clear at the outset rather than to leave it to speculation or to dispute.[29]

Nature of the federal polity

The antecedents of India's peculiar needs, that necessitated such a nature of the federal polity, are to be found in the Indian history of the British period, especially of thirty years before Independence, in the anxieties and turmoils accompanying partition, in the religious fanaticism, and in the brutal murder of innocent people that the Constitution-makers themselves saw in the streets of Delhi and even outside the precincts of the Constituent Assembly building. They also witnessed the ghastly murder of the Father of the Nation on January 30, 1948. "The light," as Nehru said, in broken tones, over the All India Radio, "has gone out of our lives and there is darkness everywhere."

The problems confronting India and the legacy of the generation had not changed with the Independence of the country. At the time of the constitution-making the disruptive forces were already revealing symptoms of revival. It was a time when the great blood bath that accompanied partition was followed by invasion on Kashmir by Pakistan tribals. Not all the States had agreed to integrate in India and, as said earlier, some were flirting with foreign countries and had declared their independence. The whole country was, side by side, overwhelmed with economic crisis and famine conditions prevailed in many areas. There was the Communist insurrection in the Telengana region and Razakar[30] trouble in Hyderabad. It was, therefore, not surprising that in the midst of these disturbing conditions, the Union Government would have been given power, under the constitution, to meet the menace of disruptive forces, to curb the bane of communalism, regionalism and linguism, to vigorously save the economy of the country from disaster, to effectively meet administrative challenges created by partition and transfer of power and instil confidence in the minds of the people by settling some five and half million Hindus and Sikhs who had crossed from West Pakistan to India. "We have to deal," declared Nehru, "with a situation in which, if I may say so, if we do not try to our utmost the whole of India will be a cauldron within six months.....And I don't know whether it will not be a cauldron in next six months due to the economic situation."[31]

It the exigencies of the present as well as the pattern of the past impelled the Constitution-makers to create a strong central authority, anxieties of the future were no less compelling. The immediate goal of social revolution, improving the standard of living and increasing industrial and agricultural productivity provided yet other reasons for a strong central authority which should show effective and impressive results. Although some Assembly members, K. Santhanam was one of them, argued that welfare of the people should be the responsibility of the Provincial (State) governments, most of them believed

29. *Ibid.*, Vol. VIII, pp. 42-43.
30. An extremist Islamic para-military movement.
31. Speech at a meeting of the Negotiating Committee of the Chamber of Princes and the States Committee of the Constituent Assembly.

that regional governments would be frail reeds to such a heavy and new responsibility. This duty, they asserted, should rest with the Union in order to make a national effort to achieve the objectives in view. The attributes of a strong Union authority, explained Balkrishna Sharma, "are that it should be in a position to think and plan for the well-being of the country as a whole, which means.....having the authority to co-ordinate (and)....the power of initiative. It should be in a position to supply the wherewithal to the provision for their better administration wherever the need arises. It should have the right in times of stress and strain to issue directions to the Provinces (States) regulating their economic and industrial life in the interest of the nation as a whole."[32] G. L. Mehta observed, "We must not also forget that economic forces and strategic considerations today tend to invest the Centre with large powers. If we organise economic development and social welfare as people organise for war, then the State of the future will have to be a positive State, it will have to be a social service State. It will require large finances, and more or less homogenous economic conditions will have to be maintained in order to achieve these purposes."

It may, thus, be summed up that the history of the past, the contemporary situation and the needs and hopes of the future were the three important factors which created a demand for a strong Centre. There were some prominent members of the Assembly who pointed out that centralization was justified not merely by the peculiar conditions which were characteristic of India, but it was a trend in all the federal States to counteract the disadvantages resulting from a constitutional distribution of powers. Alladi Krishanaswami Ayyar stressed this point and said, "In view of the complexity of industrial trade and financial conditions in the modern world, and the need for large-scale defence programmes, there is an inevitable tendency in every federation in the direction of strenghtening the federal government." The Draft Constitution in several of its provisions had, he added, "taken note of these tendencies instead of leaving it to the Supreme Court to strengthen the Centre by a process of judicial interpretation."

It does not, however, mean that the concept of tight federation remained unchallenged. Some of the members expressed the view that the constitution actually provided for a formidable unitary constitution and reduced the States to the position of "glorified district boards." Mehbub Ali Beg and N. G. Ranga apprehended that the emphasis on centralization and the easy means with which the Union Government could convert the federal system into a unitary one might lead to "totalitarianism and absolute negation of democracy."[33] Hirday Nath Kunzru said that the provisions of the Constitution opened the possibilities of the States being treated "as though they were children and the President a village schoolmaster."[34] K. Santhanam was of the view that a Centre with fewer powers would really be stronger than one with too many powers.[35] But the task of the Constitution-makers was made easier by the existence of a powerful single-party with nation-wide authority and by the absence of strong regional parties.

The controversy on the nature of the Indian federation did not come to an end even after the Constitution became operative in 1950. After the Fourth General Elections in 1967, with some nine non-Congress Governments in the States and a depleted Congress majority in Parliament until mid-term Parliamentary poll in 1971, the controversy assumed added importance. Even those in office did not lag behind. Ministers of the Union Government, from time to time, gave expression to their feelings, decrying the tendency towards the increasing concentration of authority and urged the need for decentralization of power to make the democratic process and concept of federalism more concrete and tangible to the common man. Prominent among them were: H. M. Shah, Union Minister of Industries, T. T. Krishanamachari, one of the architects of the Constitution, H. V. Pataskar, Governor of Madhya Pradesh and a former Union Minister.

The growth of regional parties gave a fillip to the controversy and its advocates became more articulate. The Dravida Munnetra Kazgham Party of Tamil Nadu demanded in 1967 greater autonomy for the States and even threatened to secede. Its successor, the Anna Dravida Munnetra Kazgham, a splinter group of DMK, which came into power in 1977 and again in 1991 is as vocal on this issue as its parent body. The Marxist

32. *Constituent Assembly Debates*, Vol. V, p. 77.
33. *Ibid.*, Vol. VII, pp. 296 and 350.
34. *Ibid.*, Vol. X, p. 369.
35. *Ibid.*, p. 364.

Chief Minister of West Bengal, Jyoti Basu, wrote letters on Decembers 1, 1977, enclosing a memorandum approved by the West Bengal Council of Ministers, to all Central Ministers, State Chief Ministers and Ministers, Legislators at the Centre and in the States and others seeking their support for a national debate on his Government's demand for greater State autonomy. He went to Srinagar to elicit the support of the National Conference President and Chief Minister of Jammu and Kashmir, Sheikh Mohammed Abdullah, which was readily available. The Sheikh advocated that the Centre should possess a few enumerated powers and the residuary powers be vested in the States. Prakash Singh Badal, who headed the Akali-Janata coalition Government in Punjab was the ardent advocate of Jyoti Basu's demand for greater autonomy, although the Akali Dal had been giving dubious meanings to the concept of greater autonomy. The main thesis of the Akalis is to be found in the Anandpur Sahib resolution which unequivocally declared the Sikhs to be a nation. The Akali Dal launched "Dharam Yudh" (holy war) in August 1982 for the fulfilment of their religious and political demands rivetting on an autonomous Sikh state wherein Sikhs should dominate and their religion governed the administration. The Anandpur Sahib resolution conceded to the Central Government four enumerated subjects foreign affairs, defence, currency and communication, : and the residuary powers rested with the units. The extremists among the Akalis unfurled the banner of "Khalistan" in the Golden Temple, their holiest Shrine, Amritsar, and declared Punjab to be an independent and sovereign Sikh state.

The Janata Party in its election manifesto for the Sixth House of the People election 1977, listed decentralisation as one of the party's objectives to be achieved. But the Janata repudiated its electoral objectives after coming into office. Prime Minister Morarji Desai rejected the demand for State autonomy and asserted that there were enough powers with the States. Minister of State for Home Affairs, Dhaniklal Mandal, pointed out in the House of the People (February 22, 1978) that the existing constitutional provisions were adequate and called for no amendment. The issue was once again raised at a meeting of the Parliamentary Consultative Committee for the Home Ministry on December 22, 1980 and it was likewise turned down. It was pointed out from the Government side that granting more powers to the States would create more problems, rather than solve existing ones.

In March 1983, the Chief Ministers of three Southern States (Tamil Nadu, Andhra and Karnataka) and the Union Territory of Pondicherry established the Coun- cil of Chief Ministers of Southern States in order to form a common forum for the redressal of their grievances and demand greater autonomy for the States, especially financial. Pressurised by circumstances, particularly emerging in Punjab and Jammu and Kashmir, and alarmed on the developments in the Southern States, Prime Minister Indira Gandhi announced the appointment of a Commission, headed by the former Judge of the Supreme Court Ranjit Singh Sarkaria, to review the Centre-State relations in their entirety keeping in view the unity of the country. The Prime Minister's concept of centre-state relations was that a strong centre was necessary for strong component units of the Indian Union as both go together to cement the unity of the country. The Chief Ministers of the Southern States as well as other Opposition parties firmly believed that strong states was the *sine qua non* of a strong centre and it was the basic requirement of a federal polity. Their ranks have since swelled.

No federal polity has worked strictly in accordance with the constitution on which it is based. Various forces emerge as a consequence of which the working constitution becomes different from the original instrument. The form of constitution remains the same, but the spirit and substance of it undergoes a change. The American federation began its career with the theory of State rights. Today, the National Government is unrecognisable. It has become more powerful and the process of centralization is at its peak, that is, the National Government has assumed influence or control over functions which formerly were considered under State jurisdiction. Canada began its federal career with the scales heavily tilted in favour of the Central authority. Today, the Canadian Provinces enjoy powers almost greater than those the States do in the American federation.

The existence of a strong centre is not inconsistent with the theory and practice of federalism. Each country evolves its own pattern of Union-State relations in the light of its historical background and its political, economic and social conditions. But a strong centre must not be a dominant centre which should render regional governments hapless and helpless or in the words of Riker to "overawe the constitutional govern-

ments.''[36] During the last forty-two years the Government of India has unquestionably established its dominant role and extended its influence and control over the subjects within the exclusive jurisdiction of States. Even the Constitution was amended to effect transfer of subjects, such as, education and forests, on the State List to the Concurrent List.[37] The Constitution (Forty-second Amendment) Act, 1976, inserted a new Article 257A empowering the Union Government to deploy any armed forces of the Union or any other force to the control of the Union for dealing with any grave situation of law and order in any State. Many regarded this provision as a silent transfer of federalism into virtual unitarianism. K. Santhanam described it as paramountcy of the centre in place of a strong centre as visualised by the Founding-fathers. The Constitution (Forty-fourth Amendment) Act, 1978, omitted Article 257 A, but Entry 2A in the Union List, relating to deployment of armed forces inserted by the Forty-second Amendment, was retained. However, an assurance was given in Parliament that the Central forces would be deployed with the consent of the State concerned. Gyani Zail Singh, the then Home Minister in Mrs. Gandhi's Government, all the same, asserted in the House of the People that the Centre would not wait for a request from a State for the deployment of Central forces in case of communal riots and atrocities on Harijans and would itself take the initiative if the circumstances so demanded.

Factors Responsible for Growth of Central Control

Many factors have helped in growth of central influence and control over the States during all these years. The first is the legacy of the British rule. Independent India inherited the tradition of a strong centre from the British. Before the Government of India Act, 1935, became operative on April 1, 1937 India had a unitary system of Government and the Provincial Governments were virtually the agents of the Government at Delhi. The 1935 Act set up a federal system (which did not become operative), but the Provinces became autonomous within the sphere assigned to them. There was really no autonomy for them as the Central Government continued to exercise its control and direction through devices like the Governor's special responsibilities and his obligations to act in his individual judgment. When the Governor acted in his discretion in the exercise of any of such powers, he was responsible to the Governor-General and through him to the Secretary of State for India. It had been the maxim of British policy that whenever some reforms accompanied by devolution of authority were conceded the tight control under the mechanism of superintendence and direction of the Government of India would remain the basic feature of all such reforms.

When India became Independent, the Government of India Act, 1935, provided a working machine in the Provinces. It was, therefore, not possible to start afresh. According to Ivor Jennings, the Government of India Act, 1935, was a bad precedent for the Constitution of an independent country,[38] for the scheme of federation as embodied in the 1950 Constitution is fundamentally the same as under the 1935 Act. Having no experience of participating in the federal system other than the one working in the country, the Constitution-makers could not think otherwise than to apply their knowledge which they had acquired all through those years, 1937 onwards. Nehru had probably foreseen it. He could not at that stage of the constitutional developments in India anticipate the shape of the things to come and the compelling exigencies which free India would have to face and resolve, but the importance of a strong centre was significantly apparent in Nehru's thinking. Nehru spoke for the Congress and the Congress spoke for the country after Independence. And the four leaders of the Constituent Assembly—Nehru, Patel, Prasad and Azad—were the four heroes of the independence movement.

There is another important point. The actual experience with the working of provincial autonomy, even within the restricted scope provided by the 1935 Act, was too short a period for the politically conscious sections of the people to become firmly attached to the concept of provincial autonomy. A few of them who could know what it precisely meant had to swallow the unitary provisions, especially relating to emergency, on the assurance of their leaders in the Constituent Assembly that those would not be required in practice. The emergency provisions in the 1950 Constitution resembled closely to those of the pre-Independence period against which they had

36. Riker William, H., *Federalism : Origin, Operation, Significance,* p. 86.
37. Six subjects in all were brought on the Concurrent List by the Forty-Second Amendment.
38. Jennings, W. I., *Some Characteristics of the Indian Constitution,* p. 56.

campaigned ardently. But the same persons who were governing the country were responsible for drafting the constitution and their awareness of the issues involved made the Assembly members to agree finally. Despite the assurances given and hopes expressed in the Constituent Assembly, resort to emergency provisions, particularly, under Article 356, forms a very important feature of Indian politics. The suspension of the Constitution of a State has been more often abused rather than used as a measure of last resort.

"Looking at the Centre for leadership and guidance may be regarded as part of India's culture."[39] It rather runs in the blood of Indians and they have always found solace in the authority and might of the Central Government. It has not a whit diminished with the setting up of a federal polity with limited and divided powers. Every person high or low, educated or otherwise, a politician or a layman begins from above for the solution of his problems or the redress of a grievance unmindful of the barriers which a federal polity creates. Worst of all are the demands to the President for suspending the constitution of a State or revoking it. Such demands have been made even by persons tall in political maturity and those who had been publicly condemning the presence of Articles 356 and 357 in the Constitution. Jayaprakash Narayan demanded it for the State of Bihar by dismissing the Ghafoor Ministry. Morarji demanded it for Gujarat by dismissing Chamanbhai Patel Ministry[40] on a threat of interminable fast. Once it had been conceded, Morarji asked for the revocation of the President's Rule. Whatever be the merits or justification for the demand by these political dignitaries, it is the political habit of the people that illustrates the point of finding ultimate refuge in the Central authority.

The uni-party rule and the charismatic leadership are the most important factors to strengthen the centralizing process. With Nehru as the unquestioned leader in the formative period of new India and the Congress Party in a virtually unchallengeable position at the Centre and more or less in an identical position in all the States for seventeen years, the power, control and prestige of the Union Government was tremendously augmented. When one single party rules the nation, without any electoral shock for such a long time, and more so when the same party had struggled for more than half a century to win freedom for India and achieved it, it regards itself as the custodian of that nation. With the traditions of a national movement reflected in its centralized structure, the central leadership of the Congress Party issued command policies and treated the State Governments as subordinates. When the State units of the Party organisation are ignored at every step and they have no voice, even a feeble one, in determining the party policy, the growth of predominance of the central authority is the natural consequence thereof. K. Santhanam aptly remarked that it was "the democratic centralism of the Congress during all these years that was responsible for the strength of the Central Government and the relative subordination of State Government."[41]

It had another aspect also. The State units of the Congress Party organisation prepared the list of candidates to contest elections to the State Legislatures, but the final selection had always been made by the Central Parliamentary Board of the Party. The persons who had the luck to be nominated as Party candidates and succeeded in the elections would always look to their benefactors at New Delhi and act on the cue emanating therefrom. Even nominations for the leadership of the State Legislature Party were and are made by the central Leadership. Quite often the person so nominated would be imported into the States to lead the Government. The Chief Ministers and the legislators, thus, became the mouthpiece of the Central Government. A breath that had made them could also unmake them. Punjab Chief Minister Ram Krishan would describe himself as the "driver of the High Command."

After the General Elections of 1967 Congress lost its majority in some nine States and the non-Congress governments of the United Front came into office. The sense of consciousness and self-assertiveness of these States increased and they became quite vocal about the Centre-State relations. The Leftist Governments in Kerala and West Bengal adopted an open policy of confrontation and defied the authority of the Union Government on a number of issues. The Union Government itself in minority in Parliament, after the 1969 Congress split, and dependent upon its existence on the support of the Communist Party, Dravida Munnetra Kazhagam (DMK) and the Akalis had to swallow the bitter pill. The DMK

39. Venkatrangaiya, M., and Shiviah, M., *Indian Federalism*, p. 96.
40. Jayaprakash Narayan supported Desai's demand.
41. Santhanam, K., *Union-State Relations in India*, pp. 61-62.

Government in Tamil Nadu became vocal in its demand for autonomy to the States. But the 1971 mid-term Parliamentary poll and the General Elections to the State Assemblies, except Tamil Nadu, in March 1972, brought the Congress back to the same position that existed before 1967. The charismatic leadership of Mrs. Indira Gandhi gave a new direction to the Indian politics. The manner in which she dealt with the Bangladesh issue and the victory in war with Pakistan evoked widespread respect to the extent of worship for her. The Congress Party and its central bodies drew inspiration from Mrs. Gandhi notwithstanding her rebuttal to the contrary. The Central leadership of the uni-party in office assumed the role of the patriarch in controlling and running the administration of the States. The Janata Party followed close in the heels of the Congress when it came into power in March 1977 and soon dissolved the Assemblies in nine States in an earnest bid to establish a uni-party government at the Centre as well as in those States. The Party organisation was also similarly centralised and the Central leadership nominated Chief Ministers to be formally elected by the State Legislative Party and quite often replaced them at will. Old habits seldom die and Mrs. Gandhi again did the same in the States in 1980 what she had been doing earlier to 1977. This time criterion of personal loyalty weighed with her more heavily in selecting candidates for the State Assemblies and nominating Chief Ministers. Rajiv Gandhi did precisely the same as his mother did and there was absolutely no deviation in his style of functioning and the element of personal loyalty weighed as heavily and extensively as before.

Financial authority, like political authority, under a federal scheme should be decentralised as financial independence is a large part of general independence. According to the 1950 Constitution the taxes on the Legislative List remain much the same as under the Government of India Act, 1935. While the proceeds on the taxes within the State List are entirely retained by the States, the proceeds of some of the taxes in the Union List are to be assigned or may be assigned wholly or partly to the States. The residuary taxing authority rests with the Union. Besides these, the Constitution provides for payment of grants. Under Article 275 Parliament is empowered to make such grants as it may deem necessary to give financial aid to any State which is in need of assistance. It is for Parliament to determine the extent of the grant and it may vary from State to State according to the needs of each. Under Article 282 the Union and the State Governments are given the general power to make grants for any public purpose even if it is not within their respective legislative competence.

In both income tax and excise duties there has been continuous rise in the share of State Governments. While in 1952 the States used to receive 50 per cent of the net proceeds of the income tax and no share in the excise revenue, their share in these, as consequent upon the recommendations of the Sixth Finance Commission, had gone up to 80 per cent of income tax and 20 per cent of the Union excise duties. However, the States are now entitled to receive revenue from auxiliary taxes which hitherto were non-shareable. The biggest transfer of resources is of grants-in-aid which are generally given to comparatively backward States and these have been stepped up by three and a half times over the recommendations of the Fifth Finance Commission from Rs. 711 crores to 2,510 crores. Financial assistance and grants-in-aid are a prolific source of central control and direction. They are made subject to conditions and are fallowed by regulatory authority of the Union Government.

Also, the transfer of resources from the Centre to the States occurs for meeting the deficits of States on plan expenditure. While the States have to share 50 per cent of the aggregate public sector plan expenditure, the resources normally accruing to them from this purpose are not more than 20 per cent and 80 per cent of these resources accrue to the Union Government. As a result of continuously mounting expenditure of States on Plan and non-Plan expenditure and their inflexible resources, the gap between resources and expenditure between the States has been considerably widening. Despite liberal transfers from the Centre, the State Governments resorted to the technique of overdrafts which the Union Government converted into loans. This created an embarrassing situation for the States. "The predominance of discretionary grants," as G. Ramachandran pointed out, "has given to the Central Government a powerful leverage in influencing the policies and programmes of State Governments even in spheres such as education, medical and public health, which are constitutionally within the competence of States." Among the various factors which have been a constant source of irritation between the Centre and the States, he adds, the preponderance of discretionary grants and loans should be assigned

an important place."[42]

The Study Team of the Administrative Reforms Commission observed, "To some extent financial dependence of the States is desirable as representing a centripetal force. But the magnitude of such dependence makes a qualitative difference when the extent of dependence goes too far, wrong attitudes begin to make an appearance among those responsible for financial management in the States as well as the Centre."[43] In the States excessive dependence on the Centre tends to produce irresponsibility and operational inefficiency. At the Centre dominant financial power in relation to States gives central authorities exaggerated notions of their importance and knowledge and does not allow sufficient place to the point of view of the States. It is important, therefore, the Study Team of the Administrative Reforms Commission suggested, that "the degree of financial dependence of the States on the Centre should be reduced to the minimum because that minimum would be adequate from the point of view of giving the Centre controlling powers in the context of national integration."[44]

But the main focus of study in the causes of the ascendancy of powers of the Union *vis-a-vis* the States is the Planning Commission. Though not a creation of the Constitution, not even endowed with a statutory sanction, this extra constitutional authority has assumed the role of the architect of India's destiny. The Five-Year Plans have reduced the federal structure to almost a unitary system and the authority of the States has been brought to a marginal phenomenon. Planning for purposes of economic development, remarks Santhanam, "practically superseded the federal constitution so far as States were concerned but this supersession was not legal or constitutional but was by agreement or consent."[45] Planning has been comprehensive and it has covered all the sphere of activities of both the Union and the States. In fact, it has even covered the sphere of literature and sports. Under educational planning, grants have been given for establishing gymnasia, or cricket coaching, etc. "So the planning may in some sense be called totalitarian, but for the evil association of the world totalitarianism."[46]

Planning and federalism make uneasy partners and the emphasis on the former has profound effects on Union-State financial relations. The Planning Commission is a centrally created, centrally financed and a centrally controlled body. Till recently, half the number of its members were the nominees of the government. The Prime Minister has been its Chairman and the Union Minister of Planning, its Vice-Chairman, except during certain years. The Janata Party Government reconstituted the Planning Commission with a new Vice-Chairman and two new full time members. The three Cabinet Ministers—the Finance Minister, the Defence Minister and the Minister for Home Affairs— were all included, thus, supplementing economic expertise with political backing. Mrs. Indira Gandhi reversed the process initiated by Morarji Desai and appointed in 1980 the Planning Minister as the Commission's Vice-Chairman. The position was again reversed when National Front Government came into power in 1989 and continues to be so till now. But at no stage now or before, the States have been represented on the Commission and it accounts for the Commission's centralised approach.

The Constitution-makers had visualized planning as a joint venture and consequently included "Economic and Social Planning" in the Concurrent List. The importance of subjects included in the State List in developmental planning is brought about by the fact that more than 60 per cent of the expenditure of the total expenditure of planning in all the Five-Year Plans is on all such subjects. But during all these years the role of the Centre in the formulation and execution of plans "became paramount and that of the States quite subsidiary."[47] It is true that partnership between the Centre and States has become more real in successive exercises and the Planning Commission has taken due notice of this important fact. In shaping the Plan at different stages and giving it a final form the National Development Council—a representative body of the States Chief Ministers—is consulted and its approval is sought. But the role of the National

42. G. Ramachandran, "Centre-State Relations," (*Paper contributed to the National Convention of Union-State Relations*, 1976), pp. 231-32.
43. Report of the Study Team on "Centre-State Relations," *Administrative Reforms Commission*, Vol. 1, 1968, p. 23.
44. *Ibid.*
45. Santhanam, K., *Union-State Relations in India*, p. 42.
46. *Ibid.*
47. Venkatrangaiya, M., and Shiviah, M., *Indian Federation* p. 107.

Development Council is only formal. It has neither the time nor the expert knowledge so essentially required to scrutinise the Plan as formulated by the Planning Commission.[48]

In addition to the schemes included in the State Plan there are some outside them known as "Centrally sponsored schemes." These schemes are sponsored by the Centre and executed by the State Governments under the technical guidance and supervision of the appropriate Ministries of the Union Government. In the beginning the Centrally sponsored schemes were just a few but now their number has sufficiently multiplied. They deal with subjects enumerated in the State List with the result that the supervision and control of the Union Ministries has penetrated into the State Ministries. "To this extent the result, for all practical purposes, is to make such subjects concurrent or central by the central donor."[49] The Forty-second Amendment transferred education, forests, population control and family planning and a few more subjects to the Concurrent List.

Article 365 of the Constitution gives a general power to the Union Government that if a State Government failed to give effect to, or comply with any directions given in the exercise of its executive power, the President may declare that a situation had arisen in which the Government of the State cannot be carried on in accordance with the Constitution. This provision is a paradise for the Union Government to assert its authority and bring the defaulting State Governments under its unitary control. The satisfaction of the President that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution is final and conclusive.

Article 355 confers a duty on the Union Government to protect the States from external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. If the President either on a report from the Governor of a State or on his own satisfaction believes that the State cannot be governed in accordance with the provisions of the Constitution, he may by proclamation assume the functions of the State executive and declare that the powers of the State Legislature shall be exercised by or under the authority of Parliament. But Governors in quite a number of instances abused this power vested in them under Article 356 and recommended the imposition of the President's rule under suspect circumstances. A provision included in the Constitution (Article 355) charging the Union to maintain integrity of a constituent unit of the federation has very often been used to coerce a State Ministry when it did not belong to the same party or when central leadership desired to improve its party's image in the State or even to remove dissensions and replace it by another leader to become the Chief Minister. Since 1950 the President's rule, excluding its imposition in one single stroke on nine States in April 1977 and once again, in February 1980, has been imposed on different States for more than eighty-four times. Save a few occasions, the action taken on the defaulting States can be described as political and having no constitutional justification.

The Governor, therefore, is not an inert cypher. He occupies a pivotal position in the State Government as an instrument of Central vigilance and control. He is appointed by the President but in terms of constitutional practice he is actually appointed by the Prime Minister and retains office at his pleasure. It is, under the circumstances, not difficult to appreciate that a Governor may become suspect of acting under the pressure of the Union Government in relation to his functions in the State of which he is the Head. When the Party in power in a State is different from the party in power at the Centre, the Governor and his Council of Ministers are likely to pull in different directions if the interests of the Union and the State differ. The Union Government may even use the Government for influencing or controlling the policy of the State Government and if the Governor fails to impress the State Ministry with his directions from the Union Government, the President may on his report take over administration of the State notwithstanding the majority it commands in the State Legislature. It happened in 1970-71 in the States with non-Congress Governments and in 1976 in Tamil Nadu with DMK Party in office. Early in 1991, the DMK Government was again dismissed by the President. Normally, the President is moved to action under Article 356 on the report of the Governor. But in this case the President dismissed the Ministry without having re-

48. Report of the Study Team on Centre-State Relations, *Administrative Reforms Commission*, Vol. 1, pp. 102-04.
49. *Ibid.*

ceived any report from the Governor for such an action. Though within the bounds of law, the action of the President was widely criticised and was deemed even suspect. It damaged the dignity and office of the President.

Then, the Governor can withhold assent to a Bill passed by the State Legislature or to reserve it for the considertion of the President. "On what ground then except that of the Union Government's discretion," asked Kogekar, "can the Governor stultify the Legislature's Power ?"[50] Acting on the advice of the Prime Minster, the President may return the Bill for reconsideration by the State Legislature for reasons stated or even veto it without assigning any r easons.To be safe, it may be pigeonholed as the Constitution does not prescribe time limit for Presidential consideration.

The constituent units have no independent power of amending the constitution and the process involved therein, except for a few specified matters in Article 368 when ratification by Legislatures of at least half the number of States is necessary to render the amendment valid. The law of Parliament may even change the political map of India. Whenever a change in the name, areas or boundaries of a State is proposed to be altered, the President simply ascertains the views of the Legislature of a State or States concerned which must be expressed within the period specified by the President. The views of the States or State Legislatures concerned are not binding on the President. Even a decision abolishing the Legislative Council in a State, if it has one, or for its creation in a State without one, depends on the law of Parliament.

The scheme of distribution of subjects between the Union and the States follows essentially the pattern of the Government of India Act, 1935, and it is heavily tilted in favour of the Union. If both the Union and a State legislate on a matter contained in the Concurrent List and if the law made by the State Legislature is repugnant to any provision of the law made by Parliament on the same subject, the Union law supersedes the State law. Parliament is also empowered, under Article 249, to legislate on any matter in the State List, if the Council of States (Rajya Sabha) passes a resolution by a two-thirds majority declaring a particular subject or subjects to be of national interest. When the Legislature of one or more States determine by a resolution that Parliament should legislate on a particular matter in the State List, Parliament can make laws with respect to that particular matter or matters.[51] Finally, Article 253 empowers Parliament to pass legislation implementing any treaty, agreement or convention with another country or any decision made at any international conference, association or other body.

Then, there is the Election Commission established under Article 324. It is a centralised election machinery which is required to surperintend, direct and control elections not only to Parliament but also to the State Legislatures. There is also the Comptroller and Auditor-General, appointed by the President, who keeps careful vigilance not only on the finances of the Union but also of the States. As Comptroller, he controls the issue of public money, his duty being to satisfy himself that no money is paid out of the exchequer without proper legal authority. As auditor, he audits the accounts and reports annually to the President or Governors of States, as the case may be.

Proposals to Remove the Imbalances

The working of the Constitution, therefore, establishes that since 1950 many events that had occurred have a direct or indirect bearing on the Centre-State relations. Presenting the 1961 budget to the Tamil Nadu State Assembly, C. N. Annadurai said, "There has been a considerable change in the matrix of Centre-State financial relations since the provisions of the Constitution in this regard were settled. There have been a number of new trends and developments which could not have been visualised when the Indian Constitution was framed.....Through a new institution (Planning Commission) which was beyond the ken of the architects of the Constitution, the Centre has acquired still more large powers, causing concern about the position of the States." He emphasised the need for setting up a high-powered Committee to examine the working of the Constitution and for re-allocating powers, if necessary, between the Union and the States. Annadurai had earlier expressed the view that the powers which strictly came under the State sphere were being slowly taken over by the these Centre, "We must correct this," he urged, "and leave thee powers to the States."

It was in this context that the Tamil Nadu Government set up a committee, under the chair-

50. "Some Characteristics of the Indian Constitution," *The Indian Journal of Political Science,* April-June, 1950, p. 62.
51. Article 252 (2).

manship of Dr. P. V. Rajamannar.[52] The terms of reference of the committee, which reflected the DMK Government's policy, were to consider the entire question regarding the relationship that should subsist between the Centre and the States in a federal set-up and to examine the existing provisions of the Constitution and to suggest measures necessary for augumenting the resources of the States without prejudice to the sovereignty and integrity of the country as a whole. The Committee submitted its report in May 1971. The recommendations of the Committee amounted to a demand for rewriting many of the basic provisions of the Constitution, though it disclaimed any intention to disturb the essential framework of the Constitution. The Committee, accordingly suggested a series of changes that would divest the Centre of a range of fiscal, legislative, regulatory and emergency powers. In federalism, the Committee observed, the national and State Governments exist on the basis of equality and neither has the power to make inroads on the definite authority and functions of the other unilaterally. Their model was the United States Constitution.

The Centre-State relations became the subject of investigation by the Administrative Reforms Commission in the mid-sixties. In order to probe thoroughly the various issues involved in this relationship the Commission appointed a Study Team headed by M.C. Setalvad, the former Attorney-General of India. On the basis of the report of the Study Team, the Commission submitted its own report on June 19, 1969. Referring to the controversies that had arisen between the Centre and the States, the Commission observed, "but these controversies pertain mostly to matters administrative and financial and not to constitutional issues." Eminent political leaders of various political parties that appeared before the Commission emphasised their faith in the Indian unity, though they argued for more autonomy and initiative for the States. The Commission, accordingly, did not think it necessary to suggest any amendment to the Constitution. They, however, made recommendations to the delegation of more financial and administrative functions and powers to the States with the twin objectives of making the relations between the Centre and the States more smoother and introducing efficiency and economy in the administration of the Union and State Governments. The Commission believed that the amendment of the Constitution was not a solution of the problems of Centre-State relationship. It should be sought "in the working of the provisions of the Constitution by all concerned in the balanced spirit in which founding-fathers intended them to be worked."

The Union Government completely ignored the Rajamannar Committee Report, but accepted the view of the Administrative Reforms Commission. The Government felt that the existing provisionsof the Constitutionwere adequate to meet any situation or resolve any problem that might arise between the Centre and the States. It was the firm conviction of the Government that the basic scheme of the Indian Constitution was a federation with a strong Centre, and the doctrine of a nebulous and weak Centre, as envisaged in the Rajamannar Committee Report, ran counter to the concept of the powers of the Union Government accepted by the Constituent Assembly. However, the Government thought that there was room for strengthening of the financial powers of the States and steps were taken in that direction. Decentralization was one of the two items on the March 1977 poll manifesto of the Janata Party. The Union Commerce Minister, Mohan Dharia, declared on June 6, 1977 at Madras that the Janata Party Government which stood for decentralization of powers to "ensure real power lay with the people" would give more powers to the States to make them strong. Once this was achieved there would be no need for any regional party to raise the State autonomy demand. But nothing happened during three years of Janata Lok Dal rule. Mrs. Gandhi's Government adhered to the old stand, although decentralization remained an unceasing dogma of every Government. Compelling reasons, however, influenced the decision of the Government of India when Prime Minister Indira Gandhi announced in March 1983 the appointment of Sarkaria Commission to review the Centre-State relations.

Sarkaria Commission Report

The three-member Commission, consisting of Justice Ranjit Sigh Sarkaria, a retired Judge of the Supreme Court (Chairman), B. Sivaraman and S.R. Sen (Member) on Centre-State relations, submitted its Report, covering 5,000 pages, to the Prime Minister on October 20, 1987. The Commission was appointed on June 9, 1983 at the height of the Akali agitation in Punjab. It was initially given one year to complete its work,

52. Dr. A Lakshmana Swami Mudaliar and P. Chandra Reddy were its two other members.

but its term was extended four times until October 31, 1987 to report on the entire gamut of the Centre-State relations. The summary of the Report was officially released on January 30, 1988.

The Sarkaria Commission has refrained, in the main, from making any radical recommendations on institutional structures. It outright rejected the demand for curtailing the powers of the Centre and maintained that a strong Centre is necessary to preserve national unity and integrity of the country. In its view the fundamental provisions of the Constitution have done reasonably well and withstood the stresses and strains of the heterogeneous society in throes of change and, consequently, it does not find any need for drastic changes.

In the financial sphere also the Commission did not see any justification for major modification in the basic scheme of the Constitution dividing the fields of taxation between the Centre and the States. It has, however, favoured amendments to the Constitution to provide for sharing of corporation tax and levy of consignment tax and tax on advertisements in broadcasting.

The Commission has, in fact, dealt with financial relations between the Centre and the States in detail. It has rejected almost all the suggestions to shift the taxation powers of the Centre to the States. Some of the subjects suggested for such shifting are terminal taxes on goods and passengers by railways, estate duty, banking, etc. The suggestion to provide for levy of additional sales tax in lieu of excise has also been rejected. Regarding agricultural income tax, the Commission has concluded that the opinions are divided and, accordingly, the matter should be examined in depth. The Commission is also not in favour of suggestion that devolution of funds to the States would be made automatic. It has recommended that an expert committee should be set up to examine taxation reforms and resource mobilization.

The Commission has observed that the present division of functions between the Finance Commission and the Planning Commission is reasonable and should continue. The terms of reference of Finance Commission, however, be drawn up in consultation with the State Governments. Similar expert bodies should be set up at the State levels also, the Commission proposed. Observing that the need for national planning is undisputed, the Commission observed that planning and implementation should be a cooperative process between the Centre and the States. The Commission is not in favour of granting of an exalted autonomous status to the Planning Commission. The Commission also recommended that the loan grant pattern of Central assistance should be reviewed and the number of centrally sponsored grants for projects should be kept to the minimum.

The Commission felt that the supremacy of Parliament envisaged in Articles 246 and 254 is essential and needs no modification. The only suggestion given in this respect is that residual matters other than taxation could be in the Concurrent List. Without directly referring to the Anandpur Sahib resolution the Commission expressed the view that there should be no limiting of the powers of the Union. Various suggestions asking for the transfer of subjects to the State or Concurrent List have been rejected. Transfer of subjects like preventive detention, education, labour, and electricity, the Commission says, could disturb the basic scheme of the Constitution and, therefore, is uncalled for. The Commission has, however, recommended a process of consultation by the Centre on all the Concurrent subjects, which is not being done at present.

The Commission has made a strong case for inter-State Council, which it names inter-Governmental Council, under Article 263. The Council could, however, be used only for the purposes mentioned in the aforesaid Article. The National Development Council, the Commission recommends, should be retained and the Zonal Councils activated.

On the deployment of Central forces, it has been recommended that the Union Government should have full powers to decide on such deployment and the State concerned should cooperate. The deployment could be made regardless of the wishes of the State Government, if necessary. However, there should be no change in the relationship between the Union armed forces and the State civil authorities. The Centre should consult and seek co-operation of the State Government before declaring a particular area within the State as a "disturbed" one.

The Commission has rejected all suggestions to modify the role of the Council of States (Rajya Sabha) and the Centre's power to the reorganisation of the States. The Commission has emphatically suggested the retention of the existing provisions in the Constitution. No change is also necessary to amend the procedure laid down in Article 368 in relation to the State of Jammu and Kashmir. While reiterating that the suprem-

acy of the Union in the executive field should remain intact, it has recommended that more extensive and generous use of Article 258 should be made to decentralize Central powers.

The Commission has categorically rejected the demand for autonomy for radio and television. The Commission has upheld the Union Government's contention that broadcasting should remain with the Centre and that the present moment was not appropriate for granting autonomy to the two mass media. It should, however, he ensured, the Commission observed, that there should be decentralisation to a reasonable extent in the day-to- day operations of the radio and the television, and use of simple Hindustani for broadcasts is encouraged. It suggested that Hindi used in broadcasts should be enriched by assimilating common words from Hindustani and other languages referred in Article 351 (directive for development of Hindi language) Eighth Schedule.

The Commission said effective steps should be taken to uniformly implement the "three language formula" in its true spirit in the interest of the unity and integrity of the country. The Commission noted that in the process of developing Hindi, it is neither desirable nor necessary to replace commonly understood terms by difficult Sanskritised words. The Commission said that Government service is an important avenue for the educated in India. Proficiency in a particular language need not be insisted upon at the time of recruitment to ensure that language is not used as a factor to create difficulties in recruitment or subsequent career in the service.

The Commission, however, gives to state language primacy in the transaction of governmental work. The work of the Union and State Governments, which directly affects the local people, must be carried out in the local language. The Commission has observed that this is even more important in a welfare state.

It is, therefore, necessary that all forms, applications, letters, Bills, notices etc. are available in the local language as well as the official language. This is of equal relevance to State Governments which have sizeable linguistic minorities concentrated in certain areas. The Commissioner of Linguistic Minorities should be activated.

On civil services, the Commission said that there should be no move to disband the all-India services as it would undermine national integrity. The Union Government should persuade the States to agree to the constitution of all-India services for education, engineers, medical and health as recommended by the Estimates Committee. It also suggested that after creating a pool of officers from the Centre and States in agriculture, cooperation and industry, all-India services in these sectors could be set up.

Emphasising the need for further strengthening of th services through periodical dialogue between the Union and the States, there should be an element of compulsion in the matter of deputation of officers of all-India services to the Union. Every all-India service officer, whether a direct recruit or promotee, should be required to put in a minimum period under the Union Government and for this purpose, the minimum number of spells of deputation to Union should be laid down for direct recruits and promoted officers separately.

The Commission recommended that all-India services should be further strengthened. This could be achieved through well-planned improvement in selection, training, deployment, development and promotion policies and methods. The present accent on generalism should yield place to greater specialisation in one or more areas of public administration.

The Commission urged the Union Government to dissuade State Governments from using the powers of transfer, promotion, posting and suspension of all-India services in order to "discipline" them. The Commission is of the view that no change is necessary in the present disciplinary procedures and rules relating to all- India service officers, except in the matter of suspension.

The Commission suggested the setting up of an advisory council for personnel administration of the all-India services with the Union Cabinet Secretary as chairman. The advisory council would advise the Union and State Governments. It should meet periodically and regularly and suggest solutions to the problems offered to it by the Union and State Governments.

The Sarkaria Commission recommended that the institution of Governor must stay, but has given in its report comprehensive guidelines for appointment of Governor. It says that a politician from the ruling party at the Union should not be appointed as Governor of a State which is being ruled by some other party or combination of other parties. It has been suggested that Article 155 of the Constitution should be suitably amended to prescribe consultations with the State Chief Min-

ister on the appointment of the Governor. The Commission has stipulated that a person to be appointed as a Governor should satisfy the following criteria :—

He should be eminent in some walk of life; he should be a person from outside the State; he should not be too intimately connected with the local politics of the State; and he should be a person who has not taken too great a part in politics generally, and particularly in the recent past. The Commission has recommended that the Vice-President of India and the Speaker of the House of the People may be consulted by the Prime Minister in selecting a Governor. The consultation should be confidential and not a matter of constitutional obligation.

The Governor's tenure of office of five years in a State should not be disturbed, except very rarely and that, too, for extremely compelling reasons. The Commission has recommended that as a matter of convention, the Governor should not on demitting his office be eligible for any other appointment of office of profit under the Union or a State Government, except for second term as Governor or election as Vice-President of India. Such a convention should require that after quitting or laying down his office, the Governor shall not return to active partisan politics. The Commission has also recommended that a Governor should, at the end of his tenure, irrespective of its duration, be given reasonable post-retirement provisions for himself and for his surviving spouse. The aim of the Commission is to make apolitical person as Governor.

Article 356 of the Constitution, the Commission recommends, should be invoked for Central intervention in States very sparingly and only as a measure of "last resort." The Centre should step in only when all available alternatives fail to prevent or rectify a breakdown of constitutional machinery of the State. Before taking action under Article 356, any explanation received from the State Government should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences. The Commission has suggested that when an "external aggression" or "internal disturbance" paralyses the State administration creating a situation drifting towards a potential breakdown of the constitutional machinery of the State, all alternative courses as available to the Union under Article 356 should be exhausted to contain the situation.

In a situation of political breakdown, the Governor should explore the possibilities of having a government enjoying majority support in the State Assembly. If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one, to continue as a care-taker government provided the Ministry was defeated solely on a policy issue. The Governor should then dissolve the Assembly, leaving the resolution of the constitutional crisis to the electorate. During the intervening period, the care-taker government should be allowed to carry on the day-to-day government but prevented from taking any policy decision.

The Commission has pointed out that if these important ingredients were absent, it would not be proper for the Governor to dissolve the Assembly and install a care-taker government. The Governor should then recommend proclamation of President's rule, but without dissolving the Assembly.

The Commission has recommended that every proclamation be placed before each House of Parliament at the earliest, in any case before the expiry of the two-month period contemplated in Clause 3 of Article 356. The State Assembly should not be dissolved either by the Governor or President before Parliament considers the proclamation. Article 356 should be suitably amended to ensure this. The Commission has also recommended that all material facts and grounds on which Article 356 (I) is invoked should be made an integral part of the proclamation issued under the Article.

The Commission is of the view that normally, the President is moved to action under Article 356 on the report of the Governor. The report of the Governor is placed before each House of Parliament. This report of the Governor which is crucial in the political life of the State concerned should be a "speaking document," containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.

The Commission is of the view that when a resolution passed by the Legislative Assembly of a State for the abolition or creation of a Legislative Council in the State is received, the President shall cause the resolution to be placed, within a reasonable time, before Parliament together with the comments of the Union Govern-

ment. Parliament may accept or reject the request contained in the resolution. If the resolution is adopted by Parliament, the Union government shall introduce necessary legislation for implementation by amending the Constitution, if necessary.

A major recommendation of the Commission relates to time-bound completion of the consultative process for appointment of High Court Judges. The Commission says that Article 217 relating to appointment and conditions of office of a Judge of a High Court should be amended and another clause be inserted. The clause suggested by the Commission says that : "The President may, after consultation with the Chief Justice of India, make rules for giving effect to the provisions of clause 1 of the Article, and in order to ensure that vacancies in the posts of Judges in the High Courts are promptly filled in, these rules may prescribe a time schedule within which the various functionaries having consultative role in the appointment of Judges under the Article shall complete their part of the process."

The Commission has come out against the transfer of Judges of High Courts without their consent. It has been recommended that the convention that High Court Judges were not transferred without their consent should continue to be observed. The Commission also felt that the advice given by the Chief Justice of India regarding a proposal to transfer a Judge from one High Court to another, after taking into account the latter's reaction and the difficulties, if any, should as a rule of prudence be invariably accepted by the President and seldom departed from. It also felt that as a matter of healthy practice the Chief Justice of India should before formulating an opinion in his individual judgment as to the proposed transfer of a Judge from one High Court to another, take into confidence two senior Judges of the Supreme Court and obtain their views.

The Commission has also found a case for providing safeguards against misuse of powers relating to appointments of Commissions of Inquiry. It does not, however, find it necessary to amend the Constitution for the purpose. In its opinion the fact that power is capable of being misused, is no ground for amending the Constitution.

The Commission has suggested that the safeguards can be :

That no Commission of Inquiry against an incumbent or former Minister of a State Government on charges of abuse of power or mis-conduct shall be appointed by Union Government unless both the Houses of Parliament, by resolution of majority of members present and voting, require the Union Government to appoint such a Commission.

No Commission of Inquiry shall be appointed to inquire into the conduct of a Minister (incumbent or former) of a State Government with respect to a matter of public importance touching his conduct while in office unless the proposal is first placed before the Inter-State Council (which the Commission designates as inter-governmental Council) and has been cleared by it.

Appropriate safeguards on these lines be provided in the Commissions of Inquiry Act, 1952 itself against the misuse of this power, while appointing a Commission to inquire into the conduct of a Minister or Ministers of a State Government.

The Commission suggested the formation of a Standing Committee for the Union Territories. All matters which need to be sorted out between the Central Government and the Union Territory with a Legislature may be dicussed by the Standing Committee. The Committee may have the Union Home Minister as Chairman and the Lieutenant-Governor and Chief Minister of the Union Territory as members. When a matter concerning a Union Ministry other than Home Affairs comes up before the Committee, the Central Minister concerned may be associated. But the Standing Committee may not deal with matters which can appropriately be discussed in the Zonal Council or in the National Economic and Development Council.

The Sarkaria Commission, to sum up, does not favour structural changes, regards the existing constitutional scheme and provisions relating to the institutions basically sound, not only to preserve and protect the unity and integrity of the country, but also to coordinate a uniform, integrated policy on issues that concern the nation as a whole. The distribution of powers, between the Union and the States, made by the Constitution reconciles the imperatives of a strong Centre in a plural society with the need of State autonomy, the Commission noted. At the same time, the Sarkaria Commission makes out strong case in the interest of harmony for changes in the functional or operational aspects, be it with regard to the appointment of Governors, use of Article 356, the High Court Judges especially relating to their

appointment and transfer from one High Court to another, the setting up of the Inter-Governmental Council (Inter-State Council provided in Article 263) for resolving Centre-State problems, the National Development Council to get constitutional status, enlarging financial resources of the State, restraints on Central law making on Concurrent List subjects and the role of the Planning Commission.

All this means rejection of not only the Akali Dal's demands as enshrined in the Anandpur Sahib resolution, CPI(M)'s demand for greater autonomy, but also the philosophy behind the Telugu Desam's position that the Centre is a myth. The Commission has also rejected the suggestions of the West Bengal Government, CPI(M), the DMK and the AIADMK for abolishing the post of Governor or doing away with the all-India Services. Whereas in the appointment of Governor, it has recommended that the Constitution should formally stipulate that the Centre must consult the Chief Minister of a State before appointment, the Commission has made concrete suggestions regarding the exapansion of All-India Services and strengthening of the personnel management.

The rationale of the Sarkaria Commission is clear. It wants an element of trust, mutual accommodation and understanding to impregnate in the dealings of the Centre and the States the lack of which, it has impliedly conceded, had led to distortions in the last forty years of the life of Independent India. The Commission Report on the whole vindicates the stand taken by the Congress (I) in its memorandum, though it suggests flexibility (in the Centre-State dealings) of an order that had not been evident in the past under the Congress rule.

All the political parties, however, have not taken kindly the recommendations of the Sarkaria Commission, well argued and balanced as they are. The United Akali Dal Leader and former Pubjab Chief Minister Prakash Singh Badal described the report as dishonest. Ramkrishna Hegde, former Chief Minister of Karnataka State, accused the Commission of adopting "one-sided approach" and regretted that it should have marred its work by pronounced centrist bias. CPI(M) General Secretary, E.M.S. Namboodiripad, said that the Sarkaria Commission had been guided by the politics of Congress (I) and the Bharatiya Janata Party which advocated a strong Centre in the name of national unity, thus, negating State autonomy leading to tensions between the Centre and the constituent States.

The Home Minister told the Parliamentary Consultative Committee attached to his Ministry on July 16, 1988, that the Centre was keen on eliciting the opinion on the recommendations of the Sarkaria Commission from the State Governments, Members of Parliament and others before taking any decision on the serious issues of Centre-State relations. But no action was taken by the Congress(I) Government on any matter. Nor did the succeeding National Front and Samajwadi Janata Governments make any serious attempt. The only creditable achievement had been the setting up of the Inter-State Council under Article 263 of the Constitution for which a strong case was made by the Sarkaria Commission.

The Inter-State Council met in October 1990 and appointed a Sub- Committee to consider the recommedations of the Sarkaria Commission. The first meeting of the Sub-Committee was held on September 24, 1991 and some concrete suggestions were produced in the sphere of legislative relations between the Centre and the States. The most important of them was the acceptance of the Sarkaria Commission's recommendation providing for extensive consultations with States before the Centre legislates on any subject included in the Concurrent List. The Prime Minister P.V. Narasimha Rao, addressing the concluding session of the two-day conference of Governors, December 27-28, 1991, declared that the future Centre-State relations would be based on a spirit of co- operation with States advising the Centre on matters concerning them. He also explained that the National Development Council (NDC) had constitued a Standing Committee to go into the question of Centre-State relations in its entirety.

The role of the Inter-State Council and its Sub-Committee assumes a crucial importance in view of the stengthening of secessionist tendencies in the three border States of Assam, Punjab and Jammu and Kashmir and the growth of centrifugal forces elsewhere in the country. Much of the restiveness of the States could be traced to the fact that the resources of the States have not grown commensurate with their added responsibilities as constituent units of the Welfare State, which has increased their reliance on the Centre even in the sphere earmarked for them. This has been compounded by the blatant misuse of office of the Governor to dismiss State Governments found inconvenient by the Party in office at the

Centre and the denial of any role to the States in deciding the criteria for devolution of funds.

Besides the alarming happenings in Kashmir and Punjab, the inter-caste communal tensions building up elsewhere, the deepening economic and social disparities and the regional imbalances emerging from time to time, there is a cause of real concern. Certain foreign developments deepen the fears about the future of the Indian federation. If the once mighty Soviet Union can be reduced to a mere Commonwealth of twelve Sovereign and Independent Republics, how can it be taken for granted that the foundation of the Indian federation will remain unshaken. In a significant statement Prakash Singh Badal, President of the moderate faction of the Akali Dal and a former Chief Minister of Punjab, sounded a note of warning lest India goes the Soviet way and demanded that India should be decalred a Commonwealth of autonomous States and all the autonomous States be given full constitutional rights to pursue their regional, ethnic and religious identities.[53]

The very thought whether India as a federation will survive may appear blasphemous, but considering the unseemly happenings all over the country the need to correct the distortions in the Indian federal set up has become imperative. It is, indeed, unfortunate that no government and no political party has taken a decisive step in that direction. There have been only half-hearted attempts to tackle this problem of restructuring the Centre-State relations. In this context the observation of Rasheeduddin Khan, a political scientist, that "There is a historic warning focus in India, to put our house in order, before accumulated problems erode and dismantle our unique federal identity" is significant.

In his study of Indian federalism,[54] Rasheeduddin Khan, not only places the problem in the right perspective but spells out a design for change which will correct the imbalances in the Indian Federal set-up. His plan has four major aspects each of which calls for close study. They are : territorial re-organisation of the existing States; recasting Centre-State relations on a rational and co-operative basis; activisation of the Panchayati Raj and Nagarpalika system at the grassroot level; and, building a consensus among the people and the political parties on the four "critical value" of the Indian Republic—democracy, secular polity, social justice and federal-nation building.

The stress laid by the Prime Minister P.V Narasimha Rao at the Governors' Conference, December 27-28, 1991 on need to foster the cooperative spirit in working the federal principle is a welcome step in the right direction. He made a sound appeal for the revitalisation of the co-operative spirit. The maintenance of a free and pluralised society and the formulation and implementation of public policy on a consensual basis can be assured through a genuine devolution of powers and responsibilities to the lowest levels of governmental organisation and through the establishment of a system based on a true co-operative federal spirit.

The Republic of India

The Preamle to the Constitution declares that India is a sovereign democratic Republic. The Indian Independence Act, 1947, contained the constitutional relationaship of the Crown of Britain and the Dominion of India by providing, that the Governor-General of India would be appointed by the King and he represented His Majesty for the purpose of the Government of the Dominion. Free India had two Governor-Generals—Lord Mountbatten and C. Rajagopalachari. The 1950 Constitution brought to an end this constitutional relationship and with its inauguration India became completely independent and sovereign. The Objectives Resolution of the Constituent Assembly contained the words "Independent and Sovereign." Later on the word "Independent" was dropped to avoid tautology.

It has been argued that the word "Democratic" used before the word "Republic" is redundant. But really it is not so, for democracry does not involve the existence of a republican form of government. It may be obtainable under hereditary monarchy as well, as in Britain. A republican government, according to Madison, "derives its power directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period or during good behaviour. It is essential in such a governnment that it be derived from the great body of the society, not from an inconsiderable proportion, or a favoured class....." The President of India is indirectly elected by the representatives of the people for a

53. Speech delivered at a public meeting at the historic Jor Mela at Fatehgarh Sahib in Patiala district on (now itself a district) December 27, 1991.
54. Rasheeduddin Khan, *Federal India: A Design for Change.*

period of five years. The Council of Ministers, which aids and advises the President, is constituted from the party or parties commanding majority in Parliament. Though appointed for a period of five years, Ministry remains in office so long as it can retain the confidence of the representative Chamber of Parliament, House of the People, elected by adult franchise. The expression 'democratic republic', therefore, does not only emphasise the elective principle governing the head of the State, but it also provides the means for the realisation, for all citizens of India of justice, liberty, equality and fraternity, the four pillars of democracy. In other words, the Preamble establishes in form as well as in substance a government of the people, for the people and by the people.

Parliamentary Democracy

The Constitution establishes a parliamentary system of government both at the Centre and in the States. It was rather a foregone conclusion that the new Indian State would be a parliamentary democracy. From the British, educated Indians learned the principles of parliamentary democracy and demanded for their own country the same political institutions as they had in Britain. The Congress leaders, in fact, had always couched their demands before Independence in terms of parliamentary democracy. The Commonwealth of India Bill and the Nehru Committee Report both proposed a parliamentary system of government for free India as did the Sapru Report in 1945. The Draft Constitution of Free India published by the groups of the Left, the Centre and Rights—those of the Marxist, M. N. Roy, of the Socialist Party, and the Hindu Mahasabha, a communal party—all envisaged a parliamentary system of government for the constitution of India.

The British Government had persistently rejected the Idian demand for establishing parliamentary institutions on the British model on the ground that they were neither suited to nor were desirable for India. The reforms introduced from time to time for the governance of the country were always halting, yet rudiments of responsible government were always there and the legislatures had attracted among their members many statesmen unrivalled for their deep learning and debating skill. In the early years of the twentieth century, the Central Legislature had the distinction of having leaders of the stature of Gopal Krishna Gokhale, Surendranath Banerjea and V. S. Srinivasa Sastri. Under the Montagu-Chelmsfofd reforms, it included eminent men like Vithalbhai Patel, Motilal Nehru, Madan Mohan Malaviya, M. A. Jinnah and S. Srinivasa Iyengar. At a later stage veterans like Bhulabhai Desai and S. Satyamurthi. By 1947 the British constitutional practices had taken roots in India and after Independence the Governor-General's Executive Council functioned as a cabinet.

It was, therefore, not surprising that at the time of framing the constitution if the Assembly took inspiration from Britain. Jawaharlal Nehru,Sardar Vallabhbhai Patel, B. R. Ambedkar, K.M. Munshi, Alladi Krishanswami Ayyar and N. Gopalaswami Ayyangar, who dominated the Constituent Assembly and were the architects of the constitution, were admirers of the British system of government. Why, said Munshi, in the Constituent Assemby, should India turn its back on a hundred-year-old tradition of Parliamentary government.[55] Speaking in the House of the People (Lok Sabha) on March 28, 1957 Jawaharlal Nehru said, "We chose this system of parliamentary democracy deliberately; we chose it not only because to some extent we had always thought on those lines previously, but because we thought it in keeping with our own old traditions, not the old traditions as they were, but adjusted to the new conditions and new surroundings. We chose it—let us give credit where credit is due because we approved of its functioning in other countries, more especially in the United Kingdom."

Parliamentary system is both responsible and responsive. There is both a daily and periodic assessment of the responbsibility of government. It can meet the crisis in the social and political life of the nation swiftly, adequately and effectively as there is no working at cross purposes between the executive and legislative wings of the government. The system, therefore, secures swiftness in decision and vigour in action and enables the Government to press through such legislation as it thinks it is needed, and can conduct both domestic and foreign policy with the confidence that its majority will suppport, it against the attacks of the Opposition. The Ministers being in constant touch with the Opposition as well as in still closer contacts with the members of their own party can feel the pulse of the

55. *Constituent Assembly Debates*, Vol. VII, pp. 284-5.

legislature and through it the ebb and flow of the public opinion. The Government under such a system cannot act arbitrarily as everyday is a day of reckoning in the life of parliamentary government.

India in the Commonwealth

Though India had decided to be Republic and it ended all constitutional relationship with the British Monarch, yet in 1949 the Constituent Assembly decided that India would continue her membership of the Commonwealth, whose head the British Monarch was. India was, therefore, the first nation to reconcile the incompatibles of the repulicanism and Monarchy. This she did at a time when Ireland was breaking away from the Commonwealth and was proclaiming itself as a republic in reaction, primarily, to the unpleasant symbol of Monarchy.

India's membership of the Commonwealth was agreed to at a special meeting of the Commonwealth Prime Ministers, held in London in late April, 1949. This decision was embodied in a declaration of the conference and was ratified by the Constituent Assembly of India in a resolution moved by the Prime Minister. Nehru explained that in this resolution "nothing very much is said about the position of the King except that he will be a symbol." The King, he explained, had no function at all. He had a certain status. The Commonwealh as such "is not a body, if I may so; it has no organisation through which to function and the King also can have no functions," added the Prime Minster.

There was a spate of criticism on India's membership of the Commonwealth. It was argued that acceptance of the King as Head of the Commonwealth was incompatible with the Republic status and the sovereign character of India. Some regarded this membership as a great betrayal and the greatest mistake committed by the Congress Party after the partition of India. This accusation has since been repeated so often. The Communist Party of India had been severe in attack. A resolution was moved in the Council of States (Rajya Sabha), on December 7, 1956 urging India's withdrawal from the Commonwealth. The Election Manifesto of the Hindu Mahasabha declared in 1957 that there was "no other alternative for a self-respecting nation but to sever its incogruous connection with the Commonwealth."

The Commonwealth agreement of April, 1949 was really an instrument of compromises. It was a kind of improvised political device intended to reconcile two apparently inconsistent factors, namely, India's decision to adopt a republican form to and continue membership of the Commonwealth. But the agreement has no legal significance. It is extra-constitutional. "It is an agreement by free will," as Nehru said, "to be terminated by free will." It has not even the formality which normally accompanies treaties, he added. "By remianing within the Commonwealth, India has the right to be represented at the Commonwealth Conferences, and the right to be consulted and kept informed on Commonwealth matters. Decisions at Commonwealth Conferences are not binding on her against her will. No treaty with a foreign power, and no declaration of war by a member of the Commonwealth is binding on India without her express consent." In the course of a broadcast from the All India Radio, New Delhi, on May 10, 1949, the Prime Minister asserted that the Commonwealth "is not a super-State in any sense of the term. We have agreed to consider the King as the symbolic head of this free association. But the King has no function attached to that status in the Commonwealth. So far as the Constitution of India is concerned, the King has no place and we shall have no allegiance to him.." Vallabhbhai Patel also expressed exactly the same opinion at a Press Conference on April 28, 1949. But whatever be the legal position of the Commonwealth Agreement and the advantages flowing from such membership, it cannot be denied that India's membership of the Commonwealth and accepting the King or Queen as a symbol of free association, is a constitutional anomaly in a Republic. Robert G. Menzies, leader of the Opposition in Australia, correctly remarked on April 28, 1949, "how a nation can become Republic by abolishing allegiance to the Crown and at the same time retain membership of a united Commonwealth which is and must be basically a Crown Commonwealth is a complete mystery."

The Commonwealth is not a relationship between India and Britain. It is a relationship between India and fifty other countries of the world of which Britain is only one. Britain is no longer the leader of the Commonwealth, though she remains important because of her historical role. Nehru saw the great possibilities of a multiracial Commonwealth, the value of a meeting place for nations. Intervening in the debate on the resolution of the Communist Members of the Council of States (Rajya Sabha) urging upon the

Government to withdraw from the Commonwealth, Nehru analysed the reasons and advantages which accrued to India from her membership. He asserted that it has been the privilege and policy of India "to be a bridge between countries and not to break bridges that already exist." India, he added, "does not want to break her links, nor does she desire now, with the outside world. In fact, she wanted and still wants to strengthen and develop them."

Nehru was, as President Fakhruddin Ali Ahmed said, "the builder of the Commonwealth." He paved the way for new republican countries to join the Commonwealth on a footing of equality and reap the benefits of a mutual consultation and co-operation, avoiding all causes of tensions. As in Nehru's days, India continues to value the Commonwealth link not merely because of past associations, "but because it has the capacity to advance the larger world causes to which India is committed—world-peace, internal understanding and developmental co-operation among the peoples of the world and the elimination of the causes of tensions among nations." The Commonwealth, in sum, is an essay on international understanding and co-operation and remarkable experiment in international living and free and voluntary association among fifty nations "based on mutual respect, a sincere desire to understanding each other's viewpoints and problems and co-operation in common interests of their people."[56] Addressing the opening session of the Commonwealth Prime Ministers' Conference on June 8, 1977, Morarji Desai said, "In participating in this great momentous meeting, I have only one desire and one ambition, and that is to ensure that we bring to bear on our problems a common urge to come together rather than to drift apart." The Prime Minister of India added that as he looked around the table he could not help feeling that "We are a United Nations in miniature" and expressed the view that in course of time, "this institution will set a pattern for the formation of Commonwealth of nations, reflecting a veritable mirror of the world. It is that hope and that aspiration to which I cling with all sincerity of conviction and it is that ideal which gives me strength in sustaining my attachment of this great institution."[57]

A Secular State

A secular State is primarily devoted to political order and freedom and pursues policies in promoting economic stability and welfare of the people. It is a system of government which is conducted in conformity with the needs of the world on the basis of fundamentals and methods provided for modern civilisation by science or technique. A secular State is not to be guided in the performance of its functions and discharge of duties by the teachings of any religious faith or creed practised within its territories, no matter what the numerical strength of its followers may be. A secular State does not allow its resources and prestige to be utilised for the propagation of any particular religion. It allows freedom of religion to all, provided such freeedom is exercised subject to law and morality. According to P.B. Gajendragadkar, secularism is the pragmatic approach to the problem of society. It is not anti-God or anti-religion. "So long as religions keep themselves within their bounds," the State "does not seek to interfere with them."[58] Nehru objected strongly to any efforts to perpetuate "a complete structure of society.....by giving it religious sanction and authority." He desired that State which "protects all religions, but does not favour one at the expense of others and does not itself adopt any religion as the State religion." He described the decision of the Pakistan Constituent Assembly in November 1953, to make Pakistan an Islamic Republic as "a medieval conception.....totally opposed to any democratic conception."

The secular basis of India is a revolutionary departure from the traditional approach to the problems of political obligation. Nehru was a leading champion of the concept of the secular State and, to use the words of Chester Bowles, creation of India as a secular State may in time to come would "be accepted as one of his greatest achievements,"[59] Nehru had a deep aversion to the intrusion of religion in the politics of a country and it had been his constant concern to transform

56. Inaugural address at the Twenty-first Commonwealth Parliamentary Conference held at New Delhi on October 28, 1975. *The Times of India,* New Delhi, October 29, 1975.
57. *The Times of India,* New Delhi, June 9, 1977.
58. Address on "Secularism and the Indian Constitution." *The Times of India,* New Delhi, November 23, 1965. Also refer to the proceedings of the seminar on "Secularism" organised by Indian Law Institute in collaboration with the Education Commission appointed by the Government of India.
59. Chester Bowles, *Ambassador's Report*, p. 104.

India from a caste-ridden society in which communalism constitued a major threat to "a national State which includes people of all religions and shades of opinion and is essentially secular as a State."[60] He declared in the House of the People that "Religion is all right when applied to ethics and morals, but it is not good if mixed up with politics."[61]

The facts of history, the events leading to the partition of India on the basis of religion and aspirations of the people to make India strong and united all combined together to make a secular approach to the problems of the new State as an indispensable condition. In a country inhabited with diverse religious beliefs and creeds, particularly when such differences coincided with differences of social organisation and customs the only answer to the question of the role of religion in the new republic was a secular State, in which every citizen would have the right to practise his own faith and possess the same social and political rights as every other citizen. The State must be neutral in all matters of religion and is not organised along religious lines.

There was originally no specific provision in the Constitution which declared that India was a Secular State. The Forty-second (Constitution Amendment) Act, 1976, inserted in the Preamble the word 'secular' and it now reads : "We, the People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens....."The three pillars of the Constitution are sovereignty, socialism and secularism and on them stands the constitutional structure which secures for all citizens justice, liberty and equality. The basis of secularism is ethics and dedication to its promotion is the striving to bring about a society of equality and justice where liberty prevails all round.

Principles of secularism are, however, embodied in the various provisions of the Constitution, especially in many Articles in Part III dealing with Fundamental Rights and in Article 325 which provides for one general electoral roll for every territorial constituency for election to either House of Parliament or either House of the State Legislature. It is expressly provided that "no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex, or any of them." The Constitution thereby abolished separate communal rolls which had plagued Indian politics since the Morley-Minto Reforms of 1909.

The part played by the national movement for freedom in promoting the idea of secularism and a secular State is shown unmistakably in the resolution passed by the Congress at its Karachi session in 1931. Having affirmed the idea of religious liberty and adequate protection to minorities the resolution emphatically asserted that "the State shall observe religious neutrality to all religions." This resolution is a key to understanding the attitude adopted by the Constitution-makers nearly twenty years later; embodying in the Constitution the guarantees of State's neutrality in the matter of religion and faith. The debates in the Constituent Assembly leave little doubt that the intention of the members was not the secularisation of the State in the sense of its complete dissociation from religion. They intended the State to observe religious neutrality by according equal treatment to all religions and religious minorities.

The Constitution of India really lacks what is regarded as the basic requirements of a secular State notwithstanding insertion in the Preamble in 1976 of the term secular. A secular State is one where there is a complete separation between the church and the State, as in the United States of America. India has no established church as in Great Britain and in some other countries, particularly Islamic. In India, all religions are placed on a footing of equality and this principle of religius equality does not make her a secular State. No doubt Nehru and many leading men of the country have described India as a secular State, but Nehru himself stated as early as 1954, that the use of the term "secular" to describe the nature of Indian State was "perhaps.....not a very happy one," and the term was being used "for want of a better word". Dr. S. Radhakrishnan observed that "the religious impartiality of the Indian State is not to be confused with secularism or atheism. Secularism as here defined is in accordance with the ancient religious traditions of

60. Speech at Aligarh in 1948, quoted in Donald E. Smith, *Nehru and Democracy*, p. 147. Contrast it with Gandhi's ideals. He wrote in his *Autobiography*, "I can say without the slightest hesitation, and yet in all humility that those who say that religion has nothing to do with politics do not know what religion means". This was Gandhi's approach to purify politics and make love and truth as its basis. *Story of My Experiments with Truth*, p. 615.

61. Speech in the House of People, September 17, 1963.

India."[62] It is significant to note that the proceedings of the Constituent Assembly show that two attempts made to introduce the word "secular" in the Constitution had failed.

Nevertheless, it cannot be said that the Indian State does not possess some characteristics of a secular State. Instead of creating a wall of separation between the State and religion "it looks on religion with benevolent neutrality and treats all of them equally. The State confers a wide freedom of religion on the individual and the religious denomination, making it subject to regulation only in the interest of social welfare and reform."[63] In regard to relations betwen the State and the individual all citizens are to be treated alike, and none is to be discriminated against by reason of his religion and faith.

The question whether India is a secular State is thus answered by Eugene Smith : "My answer is a qualified 'yes'. It is meaningful to speak of India as a secular state.....India is a secular state in the same sense in which one can say that India is a democracy. Despite various undemocratic features of Indian politics and Government, parliamentary democracy is functioning, and with considerable vigour. Similarly the secular state; the ideal is clearly embodied in the Constitution, and it is being implemented in substantial measure. The question must be answered in terms of a dynamic state which has inherited some difficult problems and is struggling to overcome them along general sound lines."[64] Of all the legacies of the British rule in India, the legacy of communalism is the most cruel. It divided India and even partition did not succeed in eliminating its ravaging effects. Of India's social diversities, that which stems from religion "has been," as Morris-Jones says, 'the best known for its profound influence in politics."[65]

There is no specific provision in the Constitution that provides against communalism or prohibits political activities by religious groups as such. Presumably the Constitution-makers did not envisage the emergence of these ugly forces in view of the marked strength of the national feeling after the achievement of Independence and the bitter experience of partition. Professor Dalme points out that in the Indian context the content of secularism stemmed from the country's concern to bury the two-nation theory that had caused immeasurable communal strife in the sub-continent.[66] But communalsim and seperatism are again the grim realities and both offer a serious challenge to the integrity of the State. The now abandoned secessionist movement of the Dravida Munnetra Kazgham (DMK), the unceasing demand of Sikh "homeland" verging on "Khalistan" as the extremists among them proclaim as the ultimate goal of the survival and glory of the Sikh Panth, and the communal poison emitted by the Jamiat-i-Islami, Vishwa Hindu Parishad and some other parties of their ilk in the North and particularly by the anti-seculars and fundamentalists, shake the indissolubility of the Union and secularism, which constitute two of the four fundamentals of the Indian Constitution. If the Constitution-makers had envisaged the emergence of these politically ugly forces, they would probably have had made specific and explicit provision to deal with them vigorously and effectively. It cannot, however, be denied that any challenge to the integrity of the Union and importation of religion into politics are against the spirit of the Constitution.

A Welfare State

The objective of the Constitution-makers was to draft a constitution of socio-economic revolution and they incorporated many provisions in the Constitution to make India a Welfare State. The basic aims of a Welfare State were clearly foreshadowed in the Preamble to the Constitution and in virtually all of Part IV containing the Directive Principles of State Policy. The Preamble was patterned along the lines of the Objectives Resolution and it is a "key to open the minds of the Constitution-makers."[67] Justice Hidayatullah said that "the Preamble resembles the Declaration of Independence of the United States, but is really more than a declaration. It is the soul of the Constitution as it lays down the pattern of the society which it states is sovereign, socialist, secular, democratic republic and secures to all its citizens justice, social, economic and political and promotes among them all fraternity assuming the dignity of the individual and

62. As cited in Ved Prakash Luthera, *The Concept of the Secular State and India*, p. 155.
63. Setalvad, M. C., "Secularism in India," Talk broadcast over the All India Radio, New Delhi, January 31 and February 1, 1963.
64. Donald Eugene Smith, *India as a Secular State*, pp. 449-500.
65. Morris-Jones, W. H., *Parliament in India*, p. 26.
67. Refer to S.C. (1960) 3S.C.R. 250, 281.

the unity of the nation."[68]

Democracy not only requires equality but also justice. The essence of justice is the attainment of happiness and good of all as distinguished from the happiness and good of individuals or even the majority of them. Justice in this sense cannot be secured unless there is a society of equals in status and opportunity. Equality of status and opportunity are not available unless all sections of the people are equally in a position and circumstances to benefit from the social order that prevails. The Indian Constitution not only prohibits discrimination on grounds of birth, sex, religion , caste and creed, but also adequately provides for the promotion of the interests of the Backward Classes and areas. It seeks to remove all inequalities created by inequalities in the possession of wealth and opportunity, race, caste and religion by providing just and human conditions of work, maternity relief, leisure and cultural opportunity to every individual, prevention of exploitation in labour and industry, free education for all and the like. The ideal of economic justice the Constitution promises to secure by directing the State policy towards equality of reward for equal work, by the distribution of ownership and control of material resources of the community so as to subserve the common good and operation of economic system in such a way that it does not result in the concentration of wealth and the means of production to the common detriment.

Jawaharlal Nehru emphasised in a speech in the Constituent Assembly on the imperative needs for India to move into the modern world of science and technology for bringing into existence a social order in which there would be rapid rise in the standards of living with equitable distribution of wealth and equality of opportunity for all to carve out a career for themselves so that all of them may live with dignity and happiness. Since Independence India has been following the path of democratic planning to estabilsh a Welfare State "by compressing the history of centuries into a few decades."[69] The Five-Year Plans placed economic development in the framework of social justice. Removal of poverty and attainment of self- reliance were the two major objectives of the Fifth Plan and so is that of the Sixth, the Seventh, the Eighth and the Ninth. Special and concerted effort has been paid to the removal of social and legal disabilities imposed under traditional caste and feudal institutions, such social evils like untouchability, bonded labour and dowry, and economic evils like the feudal zamindari system. In order to make equal opportunities to the poor and Backward Classes and areas, laws dealing with Community Service, such as, health, education, etc., have been enacted and various projects have been pursued by providing much investment. Particular attention is paid to social security for industrial workers under the Schemes of Employees State Insurance and Employees Provident Fund. The Welfare Services for the handicapped and the maladjusted have been provided either directly by the State or grants are given to voluntary welfare institutions providing such services. Concerted efforts are being made to end poverty and unemployment and it is the basic commitment of the Government. The Desai Government declared to end unemployment and poverty within a span of ten years. Mrs. Gandhi's Government was also committed to the eradication of these two social evils, but it is a slow process and cannot be solved within a specified period of time. Rajiv Gandhi's Government was wedded to the programme of carrying the country to the twenty-first century so that India may stand as a peer with other developed countries. But within limited resources, hefty deficit financing, mounting loans, unfavourable balance of trade, and other visible constraints especially all-round corruption at all levels of authority, it seems to be an urealistic aspiration and it proved to be so.

Universal Suffrage

The decisions analysed above were made by the Constituent Assembly with a little debate and discussion that Norman Palmer regards them "assumptions rather than decisions."[70] But two other decisions that the Assembly made entailed prolonged debates which often generated heat and even today many people, for various reasons, entertain doubts about their wisdom. The first decision related to the reorganisation of States along with linguistic lines. The decision about the linguistic States was taken against the consistent opposition of Nehru and Patel. Linguistic States have revealed the strength of regional against national loyalties and regional loyalties have shown their ugly head in various forms resulting into the fragmentation of the national

68. Hidayatullah, M., *Democracy in India and the Judicial Process*, p. 51.
69. Jagannadhan, V., "Welfare State in India," Aiyar, S.P. (Ed.), *Perspectives on the Welfare State*, p. 250.
70. Palmer, Norman, D., *The Indian Political System*, p. 105.

... The demand for regional states has no end ... remains unabated.

The introduction of adult suffrage without qualifications of any kind was the boldest step taken by the Constitution-makers and it was an act of faith they had placed in the common man. Since 1920 the Indian National Congress had demanded adult suffrage for the people of India, but the British did not concede even a fragment of it. Under the Government of India Act, 1935, only 14 per cent of the total population of the country secured franchise, women constituting a negligible portion of the total electorate. Prior to that time the electorate had been only about one-fifth as large. In the first General Elections in 1952 the number of eligible voters increased to 173 million and in the 1977 election to the Sixth House of the People (Lok Sabha) the electorate numbered 322 million. It increased to 349 million in January 1980 election to the Seventh House of the People, and 520 million to the Tenth Lok Sabha in 1991.

Nehru and others in the Constituent Assembly believed that the system of adult suffrage with direct election was the pillar of social revolution. Way back in 1935, he wrote : "an assembly selected (would) represent the people as a whole and (would) be far more interested in the economic and social problems of the masses than in the petty communal issues which affect the small groups."[71] Nehru wrote these words about Constituent Assembly, but their applicability to Legislatures is evident. A few believers of the "Gandhian constitution" pleaded in the Constituent Assembly for indirect election to the Legislature by making a village and its panchayat as the base. The Assembly members did not find it feasible. Many believed that to confine adult participation in elections to the creation of panchayats would be politically dangerous. Alladi Krishanswami Ayyar said, "The Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule, and in the full belief that the introduction of democractic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort, and the decent living of the common man." He clearly said that the only alternative to adult suffrage " was some kind of indirect election based upon village community or local bodies and by constituting them into electoral colleges .....That was not found feasible."[72]

Article 326 of the Constitution provides that elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage. That is to say, every person who is a citizen of India and who is not otherwise disqualified is entitled to be registered as a voter at any such election. Adult suffrage is the acceptance of the fullest implication of democracy and it is the most strikingg feature of India's Constitution. "In fact," K. M. Panikkar said, "it may well be claimed that the Constitution is a solemn promise to the people of India that the legislature would do everything possible to renovate and rebuild society on new principles"[73] based upon economic and material progress of the masses with a view to take them out from centuries of mental and psychological stagnation and passivity.

Adult suffrage gave a voice, indeed, power to millions of people who hithertofore had depended on the whims of others for even vague representation of their interests and redress of grievances. Now they themselves have the power to elect their representatives in whom they repose confidence and who depend upon their existence on the mandate of the people which is sought periodically. Moreover, direct elections have brought national awareness to individuals living in villages. Rural India is deeply soaked in local politics and local loyalties and both these factors have impeded the growth of national unity and progress. Direct elections based on adult suffrage were designed to supplant local loyalties and parochial considerations of caste and religion by national awareness as the electorate demonstrated to some extent in the 1977 and 1980 Parliamentary polls as well as in December 1990 and May-June 1991. Highlighting the implications of adult franchise, Panikkar said, "adult suffrage has social implications far beyond its political significance. Many social groups previously unaware of their strength and barely touched by political changes that had taken place, suddenly realised that they were in a position to wield power."[74]

The voting figures of the General Elections

71. Jawaharlal Nehru, *Unity of India*, p. 23.
72. *Constituent Assembly Debates*, Vol. XI, p. 835.
73. Panikkar, K. M., *Hindu Society at Crossroads*, pp. 63- 64.
74. *Ibid.*

so far held reflect a high degree of political awareness and popular participation. But adult franchise has not achieved what the Constitution-makers had designed to defeat. Direct elections have helped the mushroom growth of political parties and groups with local and regional roots. The local parties have promoted not only narrow loyalties and factionalism, but have abetted caste and class consciousness in the form that had not existed before. The selection of candidates and election results have usually followed religion and caste lines and all parties, irrespective of their labels and professions, blatantly indulge in these vote catching devices. The venom of cummunalism is not spared to be injected and no party can claim exception to it, even those who swear by secularism. The voting pattern, both in urban and rural areas, is the same. In constituencies where candidates belong to two different religious communities, voters are urged to cast their votes in favour of their co-religionists and appeal in the name of religion is as forceful today as it was in the pre-Independence period. Muslims and Sikhs claim that religion and politics for them are inseparable. Care is also taken that candidates belonging to that community, sect or caste are put up for election which constitutes the majority of the electorate in a particular constituency. Thus, the elements that help the growth of political culture have no occasion to germinate.

CHAPTER VI

Fundamental Rights

Demand for Declaration of Rights

Before the enactment of the 1950 Constitution there was no charter of fundamental rights of a justiciable nature, although the demand for such rights and their constitutional guarantees had its deep roots in the nineteenth century. It was implicit in the formation of the Indian National Congress in 1885, which wanted the same rights and privileges for Indians that the British enjoyed in their own country. The promoters of the Indian National Congress emphatically demanded an end to discrimination inherent in a colonial regime. Perhaps, the first implicit demand for fundamental rights appeared in the Constitution of India Bill, 1895. This bill, described by Mrs. Annie Besant as the Home Rule Bill, envisaged to guarantee to all citizens freedom of speech and expression, right to personal liberty, inviolability of one's house, right to property, equality before the law, equality to admission to public offices and right to petition for redress of grievances. Immediately after the publication of the Montagu-Chelmsford Report, the Indian National Congress, at its Bombay session in August 1918, demanded that the new constitution of India should contain a "declaration of the rights of the people of India as British citizens," guaranteeing equality before the law, freedom of speech and press, and protection in respect of liberty, life and property.

By the mid-twenties, Congress and Indian leaders had acquired a forceful consciousness of their rights which was influenced by various factors, especially by the experience of World War I, the deep disappointment which the Montagu-Chelmsford Reforms had caused, President Woodrow Wilson's support for self-determination and M.K. Gandhi's arrival in India and his active participation in the politics of the country. The Constitution of the Irish Free State in 1921, which contained a Bill of Rights, had also a profound effect on political thought in India. The Commonwealth of India Bill, drafted by the National Convention under the inspiration of Mrs. Annie Besant in 1925, embodied a declaration of rights more or less similar to the provisions of the Irish Constitution.

Within two years of the publication of the Commonwealth of India Bill came the announcement of the appointment of the Indian Statutory (Simon) Commission. To set a model for the Simon Commission, the Forty-third Annual Session of the Congress at Madras in 1927 resolved that the Working Committee be empowered to set up a Committee "to draft a Swaraj Constitution for India on the basis of a declaration of rights." The Nehru Committee was, accordingly, appointed in 1928, which included in its membership representatives of all the political parties. The Nehru Committee in its report included a comprehensive bill of rights and in recommending their declaration the Committee urged that "Ireland is the only country where conditions obtaining before the Treaty are nearest approach to those we have in India. The first concern of the people of Ireland was, as it is indeed with the people of India today, to secure fundamental rights that had been denied to them". Another reason why India attached importance to the declaration of the fundamental rights, in the opinion of the Committee, was the unfortunate existence of communal differences in India. "Certain safeguards and guarantees," the Committee urged, "are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment of religious and communal rights to all communities than by including them among the basic principles of the constitution." The Committee added, "It is obvious that our first care should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances."

In 1931, the Indian National Congress passed a Resolution on Fundamental Rights. In order to end the exploitation of the masses, the Resolution emphasised, political freedom must include real economic freedom of the starving millions. It was further declared that any constitution which might be agreed to on behalf of the

Indian National Congress should provide, or enable the Swaraj Government to provide, for certain fundamental rights and duties. But the British Government was in no mood to reconcile itself to this primary demand of the Indians. In fact, such a demand was unsuited to the British genius. The Simon Commission had ridiculed the idea of fundamental rights. "Abstract declarations", the Commission observed, "are useless unless there exists the will and the means to make them effective."[1]

All the same, the matter came up for consideration during the Round Table Conferences. At the Second Round Table Conference, M. K. Gandhi, the sole representative of the Indian National Congress, circulated a memorandum, *inter alia,* demanding that the new Constitution should "include a guarantee to the communities concerned for the protection of their cultures, languages, scripts, education, profession and practice of religion and religious endowments." Another memorandum on the subject was put forward jointly by the representatives of the minorities. Ramsay MacDonald, the then Labour Prime Minister, announced that he felt the need of incorporating fundamental rights in the proposed constitution of India for safeguarding the interests of the minorities. Immediately after came the National Government into power with Ramsay MacDonald as Prime Minister, but with a clear majority of the Conservatives in the Government. This made a sharp swing in the official policy. Lord Reading and Sir John Simon were vehement in opposing the inclusion of fundamental rights in the new constitution for India. The Indian representatives at the Conference could not agree amongst themselves on the basic problems of constitutional reforms and, accordingly, the issue of fundamental rights also lapsed.

The Joint Parliamentary Committee on the Government of India Bill, 1934, endorsed the observations of the Simon Commission on the demand for a constitutional guarantee of fundamental rights to subjects of British India. The Committee, however, conceded that there were some legally recognised principles which could be included in the new constitution and, accordingly, the Government of India Act, 1935, conferred certain rights and forms of protection on British subjects in India.[2]

The subject of fundamental rights came up for active consideration in the deliberations of the Conciliation Committee, also known as the Sapru Committee, appointed by the All-Parties Conference (1944-45). The Committee was of the opinion that fundamental rights were not only "assurances and guarantees to the minorities but also prescribing a standard of conduct for the legislatures, governments and the courts."[3] The Committee further said that it was for the Constitution-making body to settle the list of fundamental rights and, then, to decide about their division into justiciable and non-justiciable rights and to provide in the case of the former, suitable machinery for their enforcement. A few months more than a year later the Constituent Assembly of India began framing the Fundamental Rights and the Directive Principles of State Policy, the former justiciable and the latter non-justiciable. The most striking feature about the treatment of rights in the Sapru Report was the distinction between justiciable and non-justiciable rights.

Constituent Assembly and Fundamental Rights

The Cabinet Mission Plan conceded the demand for the Constituent Assembly as well as the need for a written guarantee of fundamental rights in the Constitution of India. It recommended the appointment of an Advisory Committee on the Rights of Citizens, Minorities and Tribal and Excluded Areas, containing the interests affected, which would prepare a list of fundamental rights and also to recommend their inclusion in the State or the Union List. By the Objectives Resolution introduced by Jawaharlal Nehru and adopted on January 22, 1947, the Constituent Assembly solemnly pledged itself to draw up for India's future governance a constitution wherein "shall be guaranteed and secured to all the people of India, justice, social. economic and political, equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality."

Two days after adopting Objectives Resolution, the Constituent Assembly elected an Advisory Committee for reporting on minorities, fundamental rights and on the tribal and excluded areas. The Advisory Committee consisted of 54 members with Sardar Vallabhbhai Patel as its Chairman. The Committee was constituted on

1. *Report of the Indian Statutory (Simon) Commission*, Vol. II, Para 36.
2. Refer to Sections 275 and 297 to 300 of the Government of India Act, 1935.
3. *Constitutional Proposals of the Sapru Committee* (1945), pp. 256-57.

February 12, 1947, with five Sub-Committees one of which was to deal with fundamental rights.[4] The draft report of the Sub-Committee was circulated to its members with the explanatory notes on various clauses prepared by B.N. Rau, Constitutional Adviser to the Constituent Assembly. These were thereafter discussed in the Sub-Committee in the light of the comments offered by the members and the final report was submitted to the Chairman of the Advisory Committee on April 16, 1947. The Advisory Committee accepted the recommendations of the Sub-Committee : (1) for division of rights into justiciable and non-justiciable rights; that is, rights enforceable by appropriate legal process and rights consisting of directive principles of state policy, which though not enforceable in courts, were nevertheless to be regarded as fundamental in the governance of the country; (2) certain rights being guaranteed to all persons and certain others to citizens only; and (3) all such rights being made uniformly applicable to the Union and the units. The Constituent Assembly adopted all these recommendations and the Constitution of 1950 contains two Chapters—Chapter III enumerating the Fundamental Rights and Chapter IV dealing with the Directive Principles of State Policy. The Constitution (Forty-second Amendment) Act, 1976, inserted a new Chapter Part IV A containing fundamental duties which are covered by Article 51A.

Some Features of the Fundamental Rights

The Constitution sets out a most elaborate declaration of human rights as compared with the Bill of Rights contained in any other existing constitution of importance. The provisions of Chapter III are detailed covering a variety of topics and some are purely the outcome of the peculiar social conditions, prevailing in India,[5] but aiming to build a new social structure on the ruins of old time-worn social order based on inequality, untouchability, status–caste and religious considerations and economic exploitation. The new social order envisaged in the Fundamental Rights is intended to help the growth of new sociological processes forging thereby an integrated homogeneous community free from exploitation of any kind and social disability of any nature.

Whereas some of the rights conferred by the Constitution are limited to citizens such as freedom of speech, assembly and cultural and educational rights, in the case of others, as equality before the law, religious freedom, etc., such a limitation does not exist; these are applicable to citizens and aliens alike. The relevant Articles of the Constitution make use of the two terms 'citizens' and 'persons' and they are indicative of the distinction between citizens and aliens. Even in the absence of such a distinction all the rights could not have been available to citizens and aliens alike, but the matter would have remained undecided until the Supreme Court had determined so.

Some of the provisions of Chapter III of the Constitution are of the nature of prohibitions and place constitutional limitations on the authority of the State, for instance, no authority of the State can deny to any person equality before the law or the equal protection of the laws; discrimination against any citizen; and no titles other than a military or academic distinction can be conferred. From the point of view of an individual, such rights may be termed as negative rights. The remaining provisions of the Chapter on Fundamental Rights, as such, can be said to contain positive rights of the individuals. In spite of this distinction no clear-cut line of division can be drawn between the two. There is, however, one important distinction between them. The provisions which impose constitutional limitation on the authority of the State are binding for all intents and purposes and any action, legislative or executive, which contravenes any of these provisions, would be void altogether. The provisions relating to individual rights, on the other hand, are subject to the regulation of the State within certain prescribed limits and restrictions so imposed cannot be held to be void unless they travel beyond those limits.

The Fundamental Rights place limitations on all kinds of authority that has either the power to make laws or have discretion vested in it. The Fundamental Rights are, accordingly, binding on the Union Government, the State Governments and the local bodies including village Panchayats, and other authorities within the territory of India. Article 12 of the Constitution defines the State, inclusively, to mean the Government and Parliament of India and the Govern-

4. The Sub-Committee on Fundamental Rights consisted of J. B. Kripalani, M. R. Masani, K. T. Shah, Rajkumari Amrit Kaur, Alladi Krishnaswami Ayyar, Harnam Singh, Maulana Abul Kalam Azad, B. R. Ambedkar, Jairamdass Daulatram and K.M. Munshi. The President of the Committee was authorised to nominate additional members.
5. Articles 15(2), 15(4), and 17.

ment and Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Ambedkar made this point clear in the Constituent Assembly. He explained that the object of the Fundamental Rights was two-fold. "First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority.....upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the Fundamental Rights are to be real, then they must be binding not only upon the Central Government, they must not only be binding upon the Provincial Government.....they must also be binding upon District Local Boards, Municipalities, even authority which has been created by law and which has got certain power to make laws, to make rules, or make by-laws."

Absolute or unrestricted rights are not possible. This is the position in Britain, although there are no constitutional guarantees of fundamental rights in that country.[6] In the United States there are no direct restrictions imposed by the First Ten Amendments which determine the American Bill of Rights. But under the doctrine of Police Power the Supreme Court has recognised the inherent power of the State to impose such restrictions on Fundamental Rights as may be deemed reasonable to protect the common good. The Constitution of India, on the other hand, imposes direct limitations on Fundamental Rights. Ambedkar, while introducing the Draft Constitution and supporting the restriction clauses, maintained, "what the Draft Constitution had done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights."[7] Courts in India cannot, therefore, question the propriety of legislation once it has been established that it is within the competence of the legislature to make such a law or in any way to modify its effect on the ground that it seeks to "unduly restrict personal liberty."[8]

The Constitution of India, thus, did not recognise the supremacy of the judiciary against the Legislature, although the Constitution gave to the judiciary the power to review legislation repugnant to the Fundamental Rights. The position before February 1967 was that Parliament would abrogate or abridge Fundamental Rights by amending the Constitution under the provisions of Article 368 and thereby override the unwholesome decision of the Judiciary simply by securing the requisite special majority, which the Congress Party had commanded in Parliament all those years. In 1961 and 1963, the Supreme Court declared that the Kerala and Madras Land Reform Acts, which provided for a ceiling on land holdings, were bad. In the wake of these declarations the Seventeenth Amendment was enacted in 1964 whereunder 44 laws passed by both the States were included in the Ninth Schedule in order to maintain them valid. A good number of writ petitions challenging the competence of Parliament to enact the Seventeenth Amendment were moved in the Supreme Court. The Supreme Court by a 6-5[9] ruling on February 27, 1967 reversed its earlier decisions[10] and declared that Parliament has no power to abridge or take away Fundamental Rights by amending the Constitution under Article 368. Chief Justice Subba Rao, speaking for the majority, declared, "The Constitution has given by its scheme a place of permanence to the fundamental freedoms. In giving to themselves the Constitution, the people have reserved the fundamental freedoms to themselves. Article 13 merely incorporates that reservation. The importance attached to the fundamental freedoms is so transcendental that a bill enacted by a unanimous vote of all the members of both Houses (of Parliament) is ineffective to derogate from its guaranteed exercise....." The Court rejected the Government's argument that if the power to amend the Constitution was not all-comprehensive, no way would be left to change the structure of the Constitution or to abridge the Fundamental Rights even if the whole

6. *Liversidge* v. *Anderson* (1942).
7. *Constituent Assembly Debates*, Vol. VIII, p. 41.
8. *Lakhinarayan* v. *Prov. of Bihar* (1949). Also refer to *Gopalan* v. *The State of Madras.*
9. *Golak Nath and Others* v. *State of Punjab, All India Reporter,* 1967, Supreme Court 1943. The majority opinion was expressed by two separate judgments; one by the Chief Justice Subba Rao for himself and Justices J. C. Shah, S. M. Sikri, J. N. Shelat, and C. A. Vaidialingam, and the other by Justice M. Hidaytullah. The dissenting Justices were Wanchoo, Bhargava, Bachawat, Ramaswami and Mitter.
10. *Shankar Prasad Singh Deo and others* v. *Union of India and Others, All India Reporter,* 1951, Supreme Court 458; and *Sajjan Singh* v. *The State of Rajasthan, All India Reporter,* 1965, Supreme Court 845.

county demanded such a change. It was declared that "this visualizes an extremely unnforceeable and extravagant demand; but even if such a contingency arises, the residuary power of the Parliament may be relied upon to call for a Constituent Assembly for making a new Constitution or radically changing it."

The resultant position was that the amendment of the Fundamental Rights was not forbidden, but the Supreme Court reserved to itself the power of determining in each specific case whether the amendment in question took away or abridged those rights contained in Part III of the Constitution. Thus, the precariously balanced six to five decision established the supremacy of the Judiciary so far as Fundamental Rights were involved. The Supreme Court of India, like its counterpart in the United States, assumed the role of a super legislature because what is taken away by the Justices from Parliament is taken away from the people.

The Constitution (Twenty-fourth Amendment) Act, 1971, was enacted to get over the difficulty created by the *Golak Nath* case. The amendment empowered Parliament to abrogate any of Fundamental Rights including the right, under Article 32, to move the Supreme Court for the enforcement of Fundamental Rights. The validity of this amendment was questioned in the Supreme Court through a series of writ petitions. In *Kesavananda Bharati* v. *The State of Kerala* the Court reversed the *Golak Nath* case judgment by upholding the validity of the Twenty-fourth Amendment and thereby restored the supremacy of Parliament in regard to legislation on Fundamental Rights, a position that existed prior to 1967. But the Court also ruled that Parliament cannot alter the basic structure or framework of the Constitution. What exactly did the basic structure mean, the Court said nothing about it. The Thirty-fourth Amendment enacted in 1974 put out of the pale of judicial review a bunch of laws designed to alter the structure of the ownership of agricultural land and tenurial relations. The Thirty-ninth Amendment (1975) sought to amend the Ninth Schedule of the Constitution so as to bring within its scope 38 Central and certain State enactments and thereby protecting them from challenge in any court of law on the ground of violation of any of the Fundamental Rights.

Soon in the wake of the Thirty-ninth Amendment came the Fortieth in May, 1976, which provided for addition of 64 Central and State laws in the Ninth Schedule with a view to protecting them from challenge in the courts on constitutional grounds. By including these nine Central Acts and fifty-five State laws in the Ninth Schedule, the new doctrine of the Congress Government that the Directive Principles of State Policy should prevail over Fundamental Rights was reaffirmed in no uncertain terms.

The President of the Indian National Congress appointed the Swaran Singh Committee on Constitutional Reforms early in 1976. The Committee suggested that primacy of the Directive Principles of State Policy must be proclaimed once for all and no law giving effect to Directive Principles should be called in question on the ground of infringement of any of the Fundamental Rights. The Constitution (Forty-second Amendment) Act, 1976, was mainly based on the recommendations of the Swaran Singh Committee Report.

The Janata Party, formed just before the Parliamentary elections held in March 1977, pledged in its manifesto "to rescind the 42nd Amendment." The electorate reposed their confidence in the Janata and the Party assumed office on the 25th March. In the April session of Parliament the Government introduced the Constitution (Forty-third Amendment) Bill seeking to repeal, *inter alia*, Article 31-D. The Bill was passed in the House of the People but before the Council of States could consider it, the Bill was virtually withdrawn. The Janata Government apprehended that the Bill might be overthrown by the Council of States where the Congress Party still commanded a massive majority. However, as a result of consensus between the Prime Minister and leaders of the Opposition parties the Constitution (Forty-third Amendment) Act, 1977, *inter alia*, omitted Article 31-D, saving the laws in respect of anti-nationl activities, and anti-national associations, and Article 32A, constitutional validity of State laws not to be considered in proceedings under Article 32. Thereafter, consensus was also reached on the provisions of the Forty-fourth Amendment Bill and it became an Act of Parliament in 1978. Though a comprehensive Act, the Forty-fourth Amendment did not rescind the provisions of Article 368 Sections 4 and 5; the former debarring the courts to question on any ground the validity of any amendment (including the provisions of Part III) and the latter declaring that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of "this Constitution under this arti-

cle."

The supremacy of Parliament, thus, remained unchallenged, though the decision in the *Kesavananda Bharati* case and reaffirmed in *Indira Gandhi* v. *Raj Narain* still prevailed. The validity of the Forty-second Amendment was questioned through various writs and the Supreme Court in the *Minerva Mills* case struck down in May 1980 Sections 4 and 55 of the Amendment incorporated in Articles 31-C and 368 (4) (5) of the Constitution. The Court held that giving boundless and unchallengeable power to Parliament is violative of the basic structure or essential features of the Constitution and, accordingly, void in terms of the *Kesavananda Bharati* judgment of April 24, 1973.

Another important feature of the Fundamental Rights is that there is a special constitutional provision (Article 32) for their enforcement. The right to move the Supreme Court for the enforcement of Fundamental Rights is itself a guaranteed right under Article 32. A citizen whose rights have been infringed by any public authority in India can move the Supreme Court by appropriate proceedings for the enforcement of his rights and the Court is empowered to issue directions or orders including writs in the nature of *Habeas Corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* whichever may be appropriate. The State High Courts have also the power of issuing writs under Article 226 and enforce rights in the same manner within the limits of their respective jurisdictions. Thus, the constitutional remedies after the enforcement of Fundamental Rights are made available to every citizen and within his easy reach. But during the operation of emergency, under Article 352, the President may by order suspend the right to move any court for the enforcement of any rights mentioned in the Presidential order except the rights conferred by Articles 20 and 21—protection in respect of conviction for offences, and protection of life and personal liberty.

Fundamental Rights can also be restricted or suspended. Article 33 provides that Parliament may by law determine to what extent any of the rights conferred by Part III shall, in their application to members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and maintenance of discipline among them. The special feature of the Indian Constitution is that the provisions of Article 33 apply not only to the Armed Forces but also to the ordinary police and the civil employees in the defence establishment as also the office bearers of their Unions.

Rights relating to freedoms as contained in Article 19 may be suspended during the period when the Proclamation of Emergency is in operation. Article 358 (1) provides that while a Proclamation of Emergency is in operation, "nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provision contained in that Part (Part III—Fundamental Rights) be competent to make or to take." But any law so made, shall to the extent of incompetence, cease to have effect as soon as the Proclamation of Emergency ceases to operate. If the Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such action may be taken, under Article 358 (1) in relation to any State or Union Territory in which the Proclamation of Emergency is not in operation, if the security of India or any part thereof is deemed to be threatened by activities in that part of the territory of India in which the Proclamation of Emergency is in operation.

The Janata Party's 1977 election manifesto stated that the right to property would be removed from the Chapter on Fundamental Rights and made "a legal right enforceable in a court of law." In fulfilment of its election commitment, the Constitution (Forty-fourth Amendment) Act, 1978, abolished the right to property as a Fundamental Right[11] and, accordingly, omitted the subheading "Right of Property" occurring after Article 30 and Article 31 which guaranteed to every person the right not to be deprived of his property except by authority of law. Omission of right to property from Part III of the Constitution does not affect the right of a citizen to acquire, hold or dispose of property.[12] Nor can it be acquired except by the authority of law. The only difference that its omission from the Chapter on Fundamental Rights makes is that while under the omitted constitutional provision the right to property could be adversely affected by a constitutional amendment in accordance with the prescribed procedure whereas now the right to prop-

11. Section 6.
12. Article 300A inserted by the Constitution (Forty-fourth Amendment) Act, 1978, S. 34.

erty can be modified by a law passed by Parliament in accordance with the procedure adopted for ordinary laws. The sanctity hitherto attached to the right to property as an inalienable right, therefore, disappears by its omission from the Chapter on Fundamental Rights.

There are no natural or unenumerated rights under the Indian Constitution. The Supreme Court has definitely held that unless there is an express provision in the Constitution with which the Act of a Legislature conflicts, it cannot be held to be void merely on the ground of its being inconsistent with what the court considers to be the spirit of the Constitution.[13] In other words, a right which has not been enumerated and expressly declared to be a Fundamental Right in Part III of the Constitution is not a Fundamental Right.[14] It does not, however, mean that there are no rights apart from those included in the Fundamental Rights. But all such rights are ordinary rights and not Fundamental Rights and they cannot be enforced in the Supreme Court under Article 32 or in the State High Courts under Article 226. The legal remedies provided under Article 32 are only applicable to Fundamental Rights.

During the past few years the Supreme Court has widened the scope of basic human rights by adopting a pro-active approach and entertaining public interest litigation coming before it from any source, even an item published in a newspaper or submission made through a mere letter. In spelling out the Directive Principles of State Policy, the framers of the Constitution had laid down the broad contours of just social order, but it was left to the political process and the judicial system to fill in the gaps. The political process had been slow, tardy and haphazard, although it had been instrumental in introducing a certain amount of change. The judicial system had tended to reserve its attention and energies for those who could pay to seek redress for the damage done to them for infringement or violation of their rights. The poor had no access to the courts. The legal system has become so costly that the poor people are priced out of the legal system. By entertaining public interest litigation the Supreme Court has opened the portals of justice for the poor enforcing their fundamental right to live with human dignity.

Finally, there are the Directive Principles of State Policy as contained in Chapter IV. In considering the question of fixing the Fundamental Rights and incorporating them into the Constitution, the Advisory Committee appointed by the Constituent Assembly, came to the conclusion that the Fundamental Rights should be divided into two parts—the first justiciable and the other nonjusticiable. The non-justiciable rights are put under the heading Directive Principles of State Policy and according to Article 37 they are not enforceable by any court, "but the principles laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws." To put it in a more matter of fact language, whereas the Fundamental Rights are in effect, injunctions prohibiting Government from doing certain things, the Directive Principles are affirmative instructions to Government to do certain things.

Whatever be the legal nicety between the Fundamental Rights and the Directive Principles of State Policy, the Constitution of India, as Granville Austin says, is "a social document, the majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement."[15] The core of the commitment to the social revolution lies in Parts III and IV, in Fundamental Rights and in the Directive Principles of State Policy. Both together constitute the conscience of the Constitution. They had their roots in the struggle for independence and were included in the Constitution in the expectation that one day the tree of true liberty and justice would bloom in India. The Fundamental Rights and the Directive Principles connect India's future, present and past "adding greatly to their significance of inclusion in the Constitution, and giving strength to the pursuit of the social revolution in India."[16]

SOME SPECIFIC FUNDAMENTAL RIGHTS

The Right to Equality

The right to equality guaranteed in Part III of the Constitution has no socialist implication. It is essentially negative in character and is intended to remove the social and civic disabilities

13. *A. K. Gopalan* v. *State of Madras.*
14. For example Chapter IV incorporating Article 300A carries the Heading "Right to Property."
15. Granville Austin, *The Indian Constitution : The Cornerstone of a Nation,* p. 50.
16. *Ibid.*

from which the masses of India had suffered all through these ages. Democracy can only exist and flourish amongst a society of equals and the Indian Constitution makes social and civic equality as the bedrock of Indian polity. It guarantees equality of all persons before the law, prohibits discrimination on grounds of religion, race, caste, sex or place of birth as between citizens, grants to all equality of opportunity in the matter of public employment, and abolishes untouchability on the one side and titles on the other.[17] Citizens may not be denied admission to educational institutions maintained by the State or receiving aid out of State funds on the grounds only of religion, race, caste, or language. Minorities may establish their own schools and government may not discriminate against them in making grants on the grounds of religion, race or language.

The Supreme Court bench consisting of Justice O. Chinnappa Reddy, Baharul Islam and A. P. Sen held in *Randhir Singh's* case that the "right to equal pay for equal work" is a fundamental right and enforceable as such. The Court ruled that construing Articles 14 (right to equality before the law) and 16 (right to equality of opportunity in matter of job opportunity and public appointment) in the light of Article 39 (d)—that there is equal pay for equal work for both men and women—the principle of equal opportunity for equal pay is deducible from those Articles and may properly be applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

Some exceptions are, however, inevitable and the Constitution sets out these exceptions. A legislature may make laws with special provisions for women and children. The Constitution (First Amendment) Act, 1951, further provided that "Nothing in this Article (15) or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes." Another exception made is with regard to the equality of opportunity in public employment. Parliament may confine employment under State or local authority to residents. A State may also provide for the reservation of appointments or posts for members of backward classes, which, in the opinion of the State, are not adequately represented in the services under the State. Offices connected with religious or denominational institutions may be reserved for the adherents of a particular religion or belonging to a particular denomination.

The right to equality, therefore, aims at protecting citizens against discriminatory treatment by the State in the fields of administration and legislation, to advance the uplift of the socially backward classes even to the exception of granting them special privileges for removing other and cruder forms of social inequality. Such social customs and disabilities as enforced segregation of the so-called untouchables at wells, in streets, schools and places of worship are declared illegal. In fact, the Constitution bans all kinds of untouchability specified and unspecified and uplifts more than 50 million untouchables from their age-old degraded social status. The right to equality, in sum, fosters the social revolution by creating a society egalitarian to the extent that all citizens are to be equally free from coercion or restriction by the State, or by the society privately. Liberty is no longer the privilege of the few, but a social content and right of all, high and low, men and women irrespective of religion, caste and creed.

The Right to Freedom

The right to freedom is covered by Articles 19 to 22 and embraces the classical liberties of the individual. Of these, Article 19 is the most important as it originally guaranteed six fundamental rights, which may be described as six freedoms, *viz.*, (a) freedom of speech and expression; (b) freedom of assembly; (c) freedom of association; (d) freedom of movement; (e) freedom of residence and settlement; and (f) freedom of property,[18] and (g) freedom of profession, occupation, trade or business. All these freedoms are the most important ingredients of human happiness and progress, as without them no individual can rise to the full stature of his personality. The Preamble of almost every Constitution epitomises these freedoms and declares them as its objectives. For instance, the Preamble to the Constitution of the United States, *inter alia,* declares "to secure the blessings of liberty to ourselves and to our posterity." The Preamble to the Indian Constitution declares that one of its objectives is

17. Articles 17 and 18.
18. Freedom of Property as contained originally in sub-clause (f) has been omitted by the Constitution (Forty-fourth Amendment) Act, 1978, S. 2.

to secure to all citizens "Liberty of thought, expression, belief, faith and worship."

Article 19 may be divided into two parts. The first is the declaration of rights. The second part contains limitations [clauses (2) to (6)] each governing one or more clauses of the first part. Consistent with the theory that rights can never be absolute, the Constitution imposes specific limitations on their exercise and enjoyment. This is an improvement on the American Constitution which leaves the determination of restrictions and adjustment of conflicting interests of the individual and society to the courts. The Constitution of India defines the scope of limitations and authorises the State to restrict the exercise of freedoms guaranteed by Article 19 within the restricting clauses of the Article. It has been maintained that these limitations are, in fact, a partial justification of the American doctrine of Police Power.

The limitations imposed on the freedom of speech and the right to property were substantially modified by the Constitution (First Amendment) Act, 1951. The scope of the freedom of speech under the original provision was exceptionally wide. There were only four reservations restricting this right, *viz.*, laws relating to libel, slander and defamation; contempt of court; decency or morality; and security of the State. Thus, "public order" was not one of the purposes for which the freedom of speech could be restricted. Similarly, incitement to an offence was not made one of the objects to restrict the freedom of speech. The Supreme Court held in a series of cases that a law restricting the freedom of speech and not relating to defamation or contempt of court and not involving offences against decency or morality would be *ulta vires* unless it related to any matter which undermined the security of, or tended to overthrow the State. The 1951 Amendment added three more reservations to existing list contained in Article 19(2). The new reservations were : (1) friendly relations with foreign states; (2) public order; and (3) incitement to an offence. With the inclusion of these three additional reservations the right to freedom of speech was considerably curtailed and the scope of interference appreciably widened, provided the courts could be satisfied about the reasonableness of restrictions. By reasonable restrictions, the Supreme Court meant restrictions which are not excessive in nature and beyond what is required in the interests of the public. The Supreme Court also held that "the determination by the Legislature of what constitutes a reasonable restriction is not final or conclusive; it is subject to supervision by this Court. In the matter of Fundamental Rights the Supreme Court watches and guards the rights guaranteed by the Constitution and in exercising its functions it has the power to set aside the Act of the Legislature if it is in violation of the freedoms guaranteed by the Constitution."[19]

The Constitution (Sixteenth Amendment) Act, 1963, added the "Sovereignty and integrity of India" as one of the grounds in the interests of which Legislatures could impose reasonable restrictions on freedom of speech and expression, assembly, and forming of associations, or unions. Asoke K. Sen, the Law Minister, while moving a motion to refer the Constitution (Sixteenth) Amendment Bill to a Joint Committee of Parliament, said in the House of the People on January 22, 1963 that powers were also being taken to impose restrictions on those individuals or organisations who wanted to make secession from India as political issues for the purposes of fighting elections. This, he maintained, had become necessary as some decisions of the Supreme Court made it clear that Article 19 of the Constitution in its present form was not enough to ban secessionist activity. He further said that it was also being provided that any persons who wanted to stand as a candidate for a seat in the Assembly in a State or in the House of People or a State Council or the Council of States should take an oath, pledging himself to uphold the sovereignty and integrity of India. This would ensure that no candidate would make secession a political issue in the elections. Furthermore after elections, every member would have to take another oath, pledging himself to the same thing, namely, upholding the sovereignty and integrity of India.

Similarly, sub-clauses (b) and (c) of Article 19 (1) confer the freedom to assemble peaceably and to form associations or unions. The freedom to speech is complimentary to the freedom to assemble and the freedom to form associations or unions. The Sixteenth Amendment, however, restricted their scope. Clauses 3 and 4 of Article 19 empower the State to make any law imposing, in the interests of sovereignty and integrity of India or public order or morality reasonable restrictions on the exercise of these freedoms.

Other rights guaranteed by Article 19 may

19. *Chintaman Rao* v. *The State of Madhya Pradesh*, A.I.R. 1954 S.C., 118.

be briefly stated. The right to move freely is the right of movement unchecked and unrestricted anywhere within the territory of the Indian Union, subject to such restrictions as are imposed by any existing law or such as the State may in future impose in the public interest or to safeguard the interests of any Scheduled Tribes. In times of emergency, such as war, every citizen cannot claim as a matter of right access to places considered of military or strategic importance. Similarly, when an epidemic spreads in one part of the country, people may be prohibited by law from entering or leaving the affected area in the interest of public health. The freedom of movement also does not take away the right which law gave to the Government to extern any person from any part of the country for a particular period in the interests of maintenance of law and order,[20] as also to detain any person for sufficient grounds if the public interest demanded it.[21]

Allied to the right of free movement is the right to reside and settle in any part of the territory of India. This right is limited by reasonable restrictions in the interests of general public or for the protection of the interests of Scheduled Tribes.

Finally, the right to practise any trade or profession is subject to the right of the State to prescribe professional or technical qualifications to enable a citizen to become a lawyer or an engineer. This restriction is natural and necessary. The Constitution (First Amendment) Act, 1951, further empowered the State to reserve to itself the right to carry on any trade, business, industry or service either directly or through State controlled corporations to the complete or partial exclusion of private citizens. The purpose of the amendment was explained by the Law Minister during the course of debate on the Amendment Bill. He said that the State Governments would gradually take to nationalization; hence it was necessary that the Constitution should be amended to provide authority for the same. Article 19(6) was, therefore, amended to avoid the adverse implications of this decision as far as State trading was concerned. The reasonableness of any law permitting nationalization of any trade or business cannot be a subject of judicial review.[22]

It will, therefore, be obvious that under the amended Clause (6) of Article 19 the restrictions on the right of carrying on any trade or profession, etc., fall into three classes : (a) reasonable restrictions imposed under the general power in the interest of the general public; (b) restrictions in the form of professional or technical qualifications; and (c) any law relating to carrying on trade or business or industry or service by the State or corporation owned or controlled by the State. Restrictions imposed in the interests of general public give a very wide scope for interference and can include all matters affecting public welfare, such as, public safety, public health, public morals, etc. Reasonable restrictions include "prohibition", having regard to the exceptional circumstances which involve patent and widespread danger to the community. It may, accordingly, prohibit a citizen from carrying on a particular trade, business or profession.[23] The State may also create a monopoly in relation to any trade which is liable to cause injury to the public,[24] or any trade in commodities essential to the life of the community.[25]

Life and Liberty as Rights

The rights guaranteed in Articles 20, 21 and 22 relate to the individual's personal liberty and collectively come under the sub- heading "Right to Freedom." These rights strengthen the liberties conferred on citizens under Article 19. Article 20 deals with certain Fundamental Rights of a person accused of a crime and embodies certain important principles of criminal jurisprudence, Clause (1) of the Article embodies the principle that no one should be made to suffer any punishment for an offence under any law not in force at the time of the commission of an offence. Similarly, no person shall be subject to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Clause (2) of the same Article embodies the fundamental principle that no one should be placed in jeopardy twice for the same offence. The principle underlying this clause is the same as underlies the "double jeopardy" clause of the American Constitution,though the words used are different. Clause (3) gives effect

20. *N.B. Khare* v. *State of Delhi*, 1950.
21. *A.K.Gopalan* v. *State of Madras*, 1952.
22. *Saghir Ahmed* v. *State of U.P.*, A.I.R., 1954 S.C 224; *Ramchandra Palai* v. *State of Orissa*, A.I.R. 1956 S.C. 298.
23. *Commr. Narendra* v. *Union of India*, A.I.R. 1960 2 S.C. 375.
24. *Cooverji* v. *Excise Commissioner*, A.I.R., 1954 S.C. 220.
25. *P.T. Society v. R.T.A.* 1960 S.C. 801.

to the principle that no one should be compelled to give evidence against himself in a criminal case. This clause follows the language of the Fifth Amendment of the Constitution of the United States, though the rule laid down in the Indian Constitution is "narrower than the American rule as expanded by interpretation."[26]

The Constitution (Forty-fourth Amendment) Act, 1978, prohibited the suspension, by Presidential Order, during the operation of the Proclamation of Emergency, the right to move the Supreme Court by appropriate proceedings, including the writ of *habeas corpus*, for the enforcement of rights conferred by Article 20—protection in respect of conviction for offences.[27] Nor has the State the power to make any law or take executive action restricting, abridging or abrogating the rights guaranteed under Article 20.[28]

Article 21 guarantees to every person the most essential of all rights, the right to life and personal liberty, which the Article says cannot be taken away except according to procedure established by law. The Constitution permits the continuance of preventive detention, but only in accordance with the laws providing for it. This Article is not intended to be a constitutional limitation upon the powers of the legislatures. The object is simply to serve as a restraint upon the Executive so that it may not proceed against the life or personal liberty of the individual save under the authority of some law and in conformity with the procedure laid therein. The procedure so laid down must be in conformity with Article 22 of the Constitution.

The phrase "established by law" means enacted by law and the word "law" means State-made law. No person can, accordingly, claim that the procedure prescribed by law does not conform to the principles of natural justice. Explaining the implications of the phrase "established by law", Justice Das observed that Article 21 defines the ambit of the right to life and personal liberty.[29] It is not an absolute right but is a qualified right "a right circumscribed by the possibility or risk of being lost according to the procedure established by law. It is for Parliament to enact a law changing the procedure and once it is changed that procedure becomes the procedure established by law. When a person is deprived of liberty otherwise than procedure established according to law, it is only then the courts will interfere. It is not for the courts to determine whether the law is reasonable or not.[30]

From 1950 to 1977, the Supreme Court took the view that Article 21 is a protection only against executive action which does not have the warrant of law behind and, therefore, if there was a law, it is good enough. It may prescribe any procedure. So long as it prescribes some procedure, it would meet the requirements of Article 21, But in *Maneka Gandhi's* case, the Supreme Court decided for the first time that the procedure to meet the test of Article 21 must be reasonable, fair and just. Just any procedure will not do. It must satisfy the test of reasonableness. The Court held that the concept of reasonableness runs like a golden thread through the entire fabric of the Constitution. Article 14, which guarantees equality before the law, also postulates reasonableness and non-arbitrariness; Article 19 contemplates reasonableness and so also does Article 21.

During the operation of the Proclamation of Emergency the right to move the Supreme Court by appropriate proceedings for the enforcement of the right to the protection of life and liberty conferred by Article 21 cannot be suspended. By inserting this provision the Constitution (Forty-fourth Amendment) Act, 1978, nullified the effects of the Supreme Court decision during the Emergency in what came to be known as the *Habbeas Corpus* case (*A. D. M. Jabalpur* v. *S. S. Shukla* 1976 (supp.) SCR, 172). In this case the court ruled that in view of the Presidential Order under Article 359 of the Constitution suspending the enforcement of Fundamental Rights no person had any *locus standi* to move any writ petition for *habeas corpus* or any other writ, or order or direction to challenge the legality of an order of detention on the ground that the Order was not under or in compliance with the statute or was illegal or was vitiated by *mala fides*, factual or legal, or was based on extraneous considerations. Justice H. R. Khanna dissented from the majority opinion of the Court.

Article 22 of the Constitution gives certain constitutional rights to arrested persons and also lays down certain fundamental rules with regard

26. Basu, Durga Das, *Commentary on the Constitution of India, op. cit.*, p. 149.
27. Article 359 (1).
28. Article 359 (1A).
29. A.I.R. 1950 S.C. p. 114.
30. *Ram Singh* v. *State of Delhi*, (1951) S.C.R., 451.

to preventive detention. It may, however, be noted that provisions relating to preventive detention are peculiar inasmuch as the Constitution of India permits resort to preventive detention even in peace time. In other democratic countries preventive detention is usually a method resorted to in emergencies like war. Preventive detention in India for reasons connected with the security of the State, or the maintenance of public order, or maintenance of supplies and services essential for the community, is on the Concurrent List[31] but preventive detention for reasons connected with defence, foreign affairs, or the security of India is within the exclusive competence of Parliament.[32]

The first two clauses of Article 22 deal with detention under the ordinary law and prescribe the procedure when a person is arrested. It ensures : (i) right to be informed of the grounds of arrest; (ii) right to consult and to be defended by a legal practitioner of his choice; (iii) right to be produced before a magistrate within twenty-four hours; and (iv) freedom from detention beyond the specified period of twenty-four hours except by order of the magistrate.

The remaining clauses of this Article relate to preventive detention. Detention can be of two types : punitive and preventive. A preventive detention is intended to detain a person, without trial and without any charge of commission of an offence. It is a measure to intercept a person as a matter of precaution before he actually commits an offence. No offence is proved nor any charge is formulated, but there is a strong suspicion or reasonable probability that the individual commits or is likely to commit acts prejudicial to the welfare of the society, the security of the State and the stability of the Government established by law. It is not a criminal conviction which can only be warranted by legal evidence. The person under detention (detenu) is not given immediately on his arrest reasons for such arrest and detention. Neither he has any right to consult a lawyer, nor is he to be produced before a magistrate within twenty-four hours. Provisions of clauses (1) and (2) of Article 22 do not apply to a person arrested or detained under any law providing for preventive detention as also to any person who for the time being is an enemy alien.

Preventive detention legislation contemplates executive action for holding a person in custody for indefinite period without trial. The specific heads of prejudicial activities for which preventive detention can be effected are contained in List I, Entry 9 and List III, Entry 3, of the Seventh Schedule to the Constitution. The sole justification for arrest is the satisfaction of the competent administrative authority or suspicion of reasonable probability of the detenu committing or likely to commit an act which may either cause harm to society or endanger the security of the State. Such detention is outside the reach of Article 19(1) (d) which guarantees the right to all citizens to move freely throughout the territory of India.

Article 22 clauses (4) to (7), however, provide safeguard against the rigours of preventive detention :

(1) detention canot last for more than three months, except on the report of the Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judge of the High Court, has reported before the expiration of three months that there is in its opinion sufficient cause for such detention;[33]

(2) the period of detention can in no case exceed beyond the maximum period prescribed by law made by Parliament;

(3) the detaining authority shall, as soon as may be, communicate to the detenu the grounds on which the detention has been made and shall afford him the earliest opportunity of making a representation against the order of his detention.

(4) the communication conveying the grounds of detention shall contain facts, except those that cannot be disclosed for reasons of public interest;

(5) Parliament may by law prescribe the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for detention without obtaining the opinion of the Advisory Board;

(6) the maximum period for which any person in any class or classes of cases may be detained under any law providing for detention;

(7) the procedure to be followed by an Advisory Board in an inquiry.

Right against Exploitation

Articles 23 and 24 come under the subheading right against exploitation. Article 23 categorically prohibits all traffic in human beings

31. Article 246, Seventh Schedule, List III, entry 3.
32. *Ibid.*, List I, entry 9.
33. Article 22(4) substituted by The Constitution (Forty-Fourth Amendment) Act, 1979, S. 3.

and *begar* and other similar forms of forced labour. Traffic in human beings is evidently a very wide expression and would embrace not only the prohibition of slavery and bonded labour but also traffic in women for immoral or other purposes. Contravention of this prohibition has been made an offence punishable in accordance with law. The Constitution-makers had in mind the widespread evil custom of forced labour without remuneration or just a nominal remuneration verging on pittance prevalent in the country since ages. The National Survey Organisation, commissioned by the Planning Commission, had estimated the bonded labour in the country at 3.45 lakh. Of this number 2.14 lakh had been identified and 1.75 lakh of them had been rehabilitated. The responsibility of rehabilitating the bonded labour lay with the State Governments, but the Labour Minister told the House of the People (Lok Sabha), on March 23, 1987 that the State Governments were not responsive and, therefore, an exact estimate of the existence of bonded labour and their rehabilitation was not possible to give.

Clause 2 of Article 23, however, provides for the power of the State to impose compulsory service for public purposes. The expression public purposes has nowhere been defined, but it must include an object or aim in which the general interest of the community, as opposed to particular interst of individuals, is directly and vitally concerned.[34] The expression "public purpose", as Ambedkar explained to the Constituent Assembly, "includes any object or aim in which the general interest of individuals is directly or vitally involved.[35] Compulsory service for public purposes necessarily includes military service as it is a service for a public purpose to maintain the sovereignty and integrity of the country. In *Dulal Samanta* v. *District Magistrate, Howrah*, the Calcutta High Court held that the "conscription for police or military service is neither *begar* nor traffic in human beings and is, therefore, not hit by Article 23."[36] In *Atma Ram* v. *State of Bihar* it was held that the provision in the Bihar Finance Act, 1950, making it obligatory on owners of motor vehicles to collect rent and taxes imposed on freights was within the exception of Article 23 (2) which allowed the State to impose compulsory service for public purposes.[37]

Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Here the Indian Constitution goes ahead of the American Constitution wherein there is no express prohibition against the employment of children in any factory or mine or in other hazardous occupations.

Right to Freedom of Religion

The Preamble to the Constitution expresses a resolve of the people to constitute India into a Sovereign Socialist Secular Democratic Republic[38] in order to ensure, among other things, "Liberty of thought, expression, belief, faith and worship." The secular principle thus accepted by the people of India was made fundamental and enshrined in Part III of the Constitution as contained in Articles 25 to 28. These rights have a wide scope and include both the personal and social aspects of religion and are equally enjoyed by all persons living in India, citizens and aliens. The Constitution guarantees to all personss freedom of conscience, and to profess,[39] practise and propagate any religion subject to the prescribed limitations of public order, morality and health and other provisions of Part III. The Constitution, as such, does not only guarantee the freedom of religious faith and belief but it protects also acts done in pursuance of religion and this is made clear by the use of expression "practice of religion." All rituals, ceremonies, observances and modes of worship which are considered as integral part of a religion are permitted to be practised unhindered provided they do not offend any of the prescribed limitations.

But religious freedom and freedom of conscience do not diminish in any manner the regulatory power of the State given to it by the provisions of the Constitution. Religious freedom stands harmoniously with other Fundamental Rights. Religious institutions[40] being on the Con-

34. *State of Bihar* v. *Kameshwar Singh*, A.I.R. 1952 S.C. 252.
35. Refer to *Constituent Assembly Debates*, Vol. VIII, pp. 809-10; as also to *State of Bihar* v. *Kameshwar Singh*, A.I.R. 1952 S.C. 252.
36. A.I.R. 1958 Cal. 265.
37. A.I.R. 1954 Pat. 359.
38. Substituted by the Constitution (Forty-second Amendment) Act, 1976, for the words "Sovereign Democratic Republic."
39. The wearing and carrying of *Kirpans* (Swords) is deemed to be included in the profession of the Sikh religion. Article 25 Explanation I.
40. Seventh Schedule, List III, Entry 28.

current List, the right of freedom to religion does not, accordingly, prevent the State Legislatures to enact any law regulating or restricting any economic, financial, political or other secular activity of a religious body, nor render invalid laws throwing open public religious institutions formerly reserved for a section of the adherents of any one of the Hindu, Sikh, Jain, or Buddhist religions, to all adherents of that religion. Similarly, religious freedom is no bar to social welfare and reformatory legislation, though the Muslim Women (Protection of Rights on Divorce) Act, 1986, is a retrograde and discriminatory measure.[41]

Since the provision of Article 25 is analogous to the first amendment to the United States Constitution and certain articles in other Commonwealth Constitutions, the Supreme Court of India has largely based its reasonings on judgments delivered by apex courts in those countries. In the National Anthem case the Supreme Court decided in August 1986 (*Bijoe Emmanuel* v. *State of Kerala)* that the expulsion of three school students[42] for not singing the National Anthem was violative of Article 25 of the Constitution. It was held by the Supreme Court in 1958 that Article 25 embodied the principle of tolerance which has throughout been the characteristic feature of the Constitution and emphasised the secular motive of the Republic.

Underlining the same sentiments, the Supreme Court judgement in the instant case stated," Article 25 is an Article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity[43] under the country's constitution. This has to be borne in mind in interpreting Article 25." The judgment also held that the Court cannot go into the reasonablemess of a particular religious belief or practice. The question is whether the belief is held genuinely and conscientiously. If it is genuinely held, practices which do not violate public order, morality and health cannot be banned.

The judgement makes a third crucial point to be considered when Fundamental Right to freedom of conscience and religion is invoked. It says that the act complained of as offending the right must be examined to discover whether such act is to protect public order, morality or health and whether it is authorised by law made to regulate or restrict any economic, political or secular activity which may be associated with religious practice or to provide for social welfare and reform.

A large volume of cases decided by the Supreme and High Courts on Article 25 raise the question whether a particular practice is a part of religion or not. A government employee in the State of Uttar Pradesh, for instance, claimed that taking a second wife is part of his religion and a service rule banning it violated Article 25. The Allahabad High Court rejected the plea. The same High Court had held in the case of a Muslim that taking four wives is not part of Islam, though the personal law allows a Muslim male to do so. The Bombay High Court has held that polygamy is not a part of Hindu religion. The Kerala High Court has held that a student cannot claim freedom of conscience to come in improper dress in the college against the college rules. A Hindu lady who refused to produce her photograph for identification purpose claimed the right to freedom of religion, but the Calcutta High Court rejected the defence.

The Supreme Court has held that the Tandava dance in processions or public places by Anand Margis carrying lethal weapons and human skulls was not an essential rite. In a recent case relating to the shifting of Muslim graves in Varanansi, the Court held that there was nothing in Islam which prohibits the shifting of graves.

Even the right to practice religion is not absolute and is subject to public order, morality and health empowering the State to make laws restricting, economic, political or secular activity, though such activity may be associated with religious practise, the Supreme Court has held. The State has the power to legislate for social

41. The Act denied to divorced Muslim women the right to seek maintenance from their husbands under Section 125 of the Criminal Procedure Code.
42. The students belonged to Jehvoh Witnesses; a religious group founded in the United States in 1872, by Charles Taze Russel. The Jehvoh Witnesses believe that the world power and political parties are unwitting allies of Satan. They refuse to vote, run for public office, serve in the armed forces, salute the flag, stand for the national anthem or recite pledge of allegiance. They interpret the Bible literally and had at one time come to the conclusion that Jesus Christ would return in 1874 and millions of people living in the 1940's would never die.
43. Jehvoh Witnesses in the United States had taken 45 cases to the Supreme Court and have won significant victories for the freedom of religion and speech. Canada, Australia and Great Britain have also to cope with tricky legal questions raised by them.

welfare and reform and any such legislation may extend even to some interference with the practice and propagation of religion. For instance, on the vexing question of religious processions, which often end in bloody riots, the Supreme Court has repeatedly granted powers to the authorities to control or even ban such activities. In the Varanasi graves case, it reiterated in 1984 that "the exercise of fundamental rights is not absolute and must yield to maintenance of public order."

All religious denominations are guaranteed autonomy, the right to establish institutions, and the right to acquire and deal with property, but only subject to public order, health and morality. No one can be compelled to pay taxes for the propagation or maintenance of any religion and religious instruction is not to be given in schools and colleges wholly maintained out of government revenues. But religious instruction may be imparted in private institutions receiving a grant from public funds or recognised by the State provided no pupil is given religious instruction or made to attend religious worship in a building attached to the institution without his consent, or, if he is a minor, his guardian's consent.

Cultural and Educational Rights

Apart from individual's rights and freedoms, the Constitution recognises and guarantees certain non-political rights of the religious, cultural and linguistic minorities, groups or sections of the people. Article 29 guarantees to every minority or section of the people to preserve its language, script and culture notwithstanding the provisions of Article 343 under which the official language of the Union shall be Hindi in Devanagari script. Clause (2) of the same Article provides that no citizen may be denied admission to State and State-aided educational institutions on the grounds only of religion, race, caste or language. Article 30 guarantees to all minorities whether based on religion or language the right to establish and administer their educational institutions and the State shall not discriminate against them in making grants on grounds of religion, race or language.

There is implicit in the right conferred by Article 30(1) the right to impart instruction in their own institutions to the children of their own community in their own language. To deny it is tantamount to depriving it of the right conferred by Artcle 29(1) which guarantees to conserve language or script of a minority community and the right to establish and administer educational institutions of their choice under Aricle 30(1). Article 30 came for discussion in Kerala Education Bill, 1957. Since this Bill, which was reserved for the consideration of the President, imposed serious limitations on the right of the minorities in the administration of their institutions aided and recognised by the Kerala Government, the President referred some of the provisions of the Bill to the Supreme Court for its advisory opinion. The Court expressed the opinion that the minority community "can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its own choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Article 30(1)....." There is no constitutional right, the Court remarked, to receive State aid. "If the State does grant aid, it cannot impose such conditions (*e.g.*, that the State will acquire the institution or will take over the management if certain things are not done) as will deprive it of its right under Article 30 (1). The State cannot take over the management of schools established by minority communities on the plea that it (State) seeks to do so or introduce free and compulsory education as required by Directive Principles." The object can be fulfilled through the State-owned or State-aided institutions, the Court said :[44]

A special Constitution Bench of the Supreme Court declared on April 26, 1974 that the provisions of the Gujarat University Act, 1949, as amended in 1972, governing the affiliation of minority colleges, transforming them into constituent colleges of the University, regulating the appointment and service conditions of the staff and providing for arbitration of disputes, violated the fundamental right of the minorities to administer educational institutions of their choice.[45] The Supreme Court, thus, reaffirmed the rights enshrined in Articles 29 and 30. "There can be no surrender of constitutional protection of the right of minorities to popular will masquerading as the common pattern of education," Justice Mathew remarked. This ruling by the Court followed two writ petitions filed by the Ahmedabad

44. A.I.R. 1958 S.C. 856.
45. A.I.R. 1974 S.C. 1389.

St. Xavier's College Society and others.

But in its judgment on November 17, 1986, the Supreme Court declared as "discriminatory and void" Section 12 of the Delhi School Education Act which exempts unaided minority institutions from the provisions of the Act (Sections 8 to 11) dealing with the terms and conditions of employees of recognised private schools". The Bench held that "regulatory measures which are designed towards the achievement of the goal of making the minority educational institutions effective instruments for imparting education cannot be considered to impinge upon the right guaranateed by Article 30(1) of the Constitution." The Court ruled that the requirement (prescribed by Section 10) is a permissible regulation aimed at attracting competent staff and consequently at the "excellence of the institution." The provisions of the Act made applicable to unaided minority educational institutions by this judgment related to payment of scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits, etc. to the employees of recognised private schools at rates not being less than those allowed to the employees of the corresponding schools run by the Government authority.

The Constitution (Forty-fourth Amendment) Act, 1978, inserted a new Clause 30 (1A) after Article 30 which ordained that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, the State shall ensure that the amount fixed by or determined by such law for the acquisition of such property "is such as would not restrict or abrogate the right guaranteed in Article 30" —Right of minorities to establish and administer educational institutions. Whereas the amendment conceded to the State the power to acqurie property of an educational institution established and administered by a minority, it is obligatory for the State to ensure that the amount fixed for compensation of that property is adequate enough so that it may enable that minority to establish and administer a similar institution at an other location.

Right to Property

The consensus reached between the Government and the Opposition parties on April 20, 1978 on deleting the right to property from Chapter III on Fundamental Rights and giving it a statutory status was reflected in the Constitution (Forty-fourth Amendment) Act, 1978, by inserting a new Chapter IV with the heading Right to Property and incorporating Article 300-A which ordains that "No person shall be deprived of his property save by authority of law." Section 5 of the Amendment omitted the sub-heading "Right to Property" occurring after Article 30. Article 31A and Article 31C have been suitably amended as to omit all references to the right to property. Similarly, Section 2 omitted Sub-cl-(f) in Article 19(1) that read "to aqcuire, hold and dispose of property." This change does not in any way affect the right of a citizen to hold, acquire or dispose of property except that under the omitted provisions the right to property could be adversely affected only by a constitutional amendment and in accordance with the procedure prescribed under Article 368, whereas under Article 300–A the right to property can be modified by a law passed by Parliament in accordance with the procedure adopted for enactment of an ordinary law. But it does affect the sanctity of property as an inalienable basic right.

The Constitution, however, retains Articles 31A and 31B–saving of laws providing for acquisition of estates, etc., and validation of certain Acts and Regulations. The effects of both these Articles are very wide and were intended to validate the acquistion of zamindaries on the abolition of Permanent Settlement without interference from Courts.

Article 31A provides that no law, past or future, affecting rights of any proprietor or intermediate holder of any estate or taking over the management of property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or the extinction or modification of any rights of managing agents, secretaries or treasurers, managing directors or managers of corporations or any voting rights of shareholders, or extinction or modification of rights under mining leases and other similar agreements regarding any mineral or mineral oil or the permanent termination or cancellation of any such agreement, lease or licence shall be deemed void on the ground that it is inconsistent with, or takes away or abridges any of the rights by Article 14 or Article 19. If any law is made by the legislature of a State, the provisions of Article 31A shall not apply unless it had been reserved for the consideration of the President and received his assent.

The Constitution (Seventeenth Amendment) Act, 1964, added another provision to Article 31A. It provided that where any law makes

any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within ceiling limit applicable to him for the time being or any building or structure standing thereon unless the law relating to the acquisition of such land or structure, provides for payment of compensation at a rate which shall not be less than the market value of such a property.

Article 31B was inserted to save the Acts, and Regulations specified in the Ninth Schedule of the Constitution notwithstanding any decision of a court or tribunal that any of these Acts, Regulations or provisions is void on the ground that it takes away or abridges or is inconsistent with any of the Fundamental Rights as contained in Part III of the Constitution. This Article, however, reserves the power of the competent Legislature to repeal or amend any of the Acts or Regulations included in the Ninth Schedule.

Article 31C inserted by the Twenty-fifth Amendment Act, provided that no law passed to give effect to the Directive Principles of State Policy in Article 39 Clauses (b) and (c) would be deemed to be void on the ground that it was inconsistent with, took away or abridged any of the Rights conferred by Articles 14, and 19, and no law containing a declaration that it was for giving effect to such policy would be called in question in any court that it does not give effect to such policy. When such a law was made by the State Legislature, the provisions of Article 31C would not apply unless such law having been reserved for the consideration of the President has received his assent.

In *Keshavananda Bharati* case the Supreme Court allowed the Directive Principles of State Policy as contained in Article 39 Clauses (b) and (c) to override the Fundamental Rights. But the Court also held that any law declared by Parliament to give effect to these two Directive Principles would be subject to judicial review in order to determine whether the law did in fact achieve that objective. To nullify this effect of the Supreme Court's ruling, the Constitution (Forty-Second Amendment) Act, 1976, amended Article 31C and established the primacy of the Directive Principles. The Supreme Court struck down in the *Minerva Mills* case Article 31C as it changed the basic structure of the Constitution in terms of the *Kesavananda Bharati* case.

Right to Constitutional Remedies

Article 32 guarantees to every citizen the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights. And for that purpose the Supreme Court is given general powers to safeguard the Fundamental Rights as well as the power to issue directions or orders or writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* whichever may be appropriate, for the enforcement of any of the Fundamental Rights. A right without a remedy is a meaningless formality. Ambedkar described in the Constituent Assembly that remedies provided in Article 32 are "'the heart and soul of the Constitution." Before 1978, enforcement of rights, as mentioned in the Presidential Order. could be suspended, under Article 359, when a Proclamation of Emergency was in operation. The Presidentail Order could also suspend the enforcement of Articles 20 and 21. The Forty-fourth Amendment Act amended Article 359 to the extent that enforcement of rights guaranteed under Articles 20 and 21 cannot be suspended even during the operation of Emergency.

Hitherto resort to the suspension of the enforcement of Fundamental Rights had been made in the event of actual aggression. But lately it has been used for economic offences too on the ground that such offences constitued as serious a threat to the security of the country as an external aggression or internal disturbance and deserved to be dealt with on the same basis. Enforcement of Fundamental Rights for economic purpose was suspended by the Presidentail Order on November 16, 1974 in the case of persons detained under the Maintenance of the Internal Security Act, 1971 as amended by the Ordinance of September18,1974, and subsequently on December 23, 1974 under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

The Constitution (Forty-second Amendment) Act, 1976, debarred the Supreme Court, under the newly inserted Article 32A, from considering the constitutional validity of any State law in any proceedings under Article 32 unless the constitutional validity of any Central law was also an issue in such proceedings. Article 32A was, however, omitted by the Constitution (Forty-fourth) Act, 1978.

Application of Rights to Armed Forces

One of the points that came at an early stage for consideration was the extent to which Fundamental Rights would apply to the members of the armed forces. By virtue of their nature of service and position, they had necessarily to be subject to a conduct and discipline not entirely consistent with the exercise of fundamenal rights as they would apply to an ordinary citizen. This fact was realised at the preliminary stages in the discussions of the Sub-Committee on Fundamental Rights. K. M. Munshi had provided in his draft that Union legislature by law be entitled to determine to what extent any of the fundamental rights should be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of the public order to ensure the fulfilment of their duties and the maintenance of discipline. Munshi's reservation was accepted and adopted by the Advisory Committee and finally adopted by the Constituent Assembly with a minor verbal change suggested by Ambedkar.

Article 33 of the Constitution provides that Parliament may by law determine to what extent any of the rights conferred by Chapter III on Fundamental Rights shall, in their application to the members of the Armed Forces; or the members of the Forces charged with the maintenance of the public order; or persons employed in any bureau or other organisations established by the State for purposes of intelligence or counter-intelligence; or persons employed in, or in connection with the telecommunication systems set up for the purpose of any Force, bureau or organisation of the members of the Armed Forces or for purposes of intelligence or counter-intelligence be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Indemnity to Public Servants

At the revision stage, the Drafting Committee introduced a new Article 34 providing for indemnity to poublic servants and others for any action taken by them for maintenance or restoration of order in any area where martial law was in force. Justifying the need for such a provision, the Drafting Committee observed that the fundamental rights as contained in Part III might prevent validation by the legislature for acts done during the period when martial law was in force and also prevent the indemnifying of persons in the service of a Union or a State or other persons in respect of actions taken by them during such period.

In the Constituent Assembly when Article 34 came for consideration a number of amendments were proposed and of these one moved by Shibban Lal Saxena sought deletion of the Article on the ground that it might lead to excesses by officers working in the martial law area in the hope of indemnification by an Act of Parliament. Ambedkar replying to the debate maintained that if Article 34 was not included, the administration of martial law would not be possible.

The Assembly rejected the amendments and adopted Article 34. It provides that Parliament may by law, notwithstanding the provisions in Part III relating to the Fundamental Rights, indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in that area.

Legislation to Give Effect to Rights

Article 35 empowers Parliament to make laws with respect to any matter under Clause 3 of Article 16 (requirements as to residence to classes or class of employment or appointment); Clause 3 of Article 32 (empowering any court to exercise jurisdiction with respect to enforcement of Rights); Article 33 (modification of Rights in their application to Armed Forces); and Article 34 (restrictions on Rights while martial law is in force in any areea). Parliament has also the power to prescribe by law punishment for those acts which are declared to be offences under Part III in case of their violation. Clause (b) of Article 35 provides that in case ofActs already in existence which provide punishment for breach of fundamental rights, unless and until Parliament makes another provision, such laws would continue in operation.

NATURE OF FUNDAMENTAL RIGHTS

Rights not Sacrosanct

The Fundamental Rights were intended to serve three important purposes, namely, (i) to prevent the Executive from acting arbitrarily; (ii) to ensure some amount of security and protection to various types of minorities; and (iii) to promote and foster social revolution by establishing the conditions necessary for achieving justice, social, economic and political. But the Supreme Court,

some eminent jurists and teachers in Political Science as well as quite a few prominent public men considered the rights contained in the Chapter on Fundamental Rights (Part III) as immutable and transcendental. In a series of judgements the Supreme Court described them as "paramount", "sacrosanct,"[46] "rights reserved by the people",[47] "inalienable and inviolable"[48] and "transcendental."[49] The immutability and permanence of the Fundamental Rights were sought to be established first on the reasoning that these rights are rooted in the doctrine of natural law and were, therefore, 'natural rights' as expressed in the traditional parlance and, secondly, on the ground that they have been given a place of permanence by the Constitution within its scheme.[50]

But the Fundamental Rights as contained in Part III of the Constitution, are neither rooted in the doctrine of natural law nor are they based on the theory of 'reserved rights'. They are conferred rights and embody the social values of the present generation. As the social values are not static, the Fundamental Rights are subject to changes and modifications in order to fulfil the aspirations of man in the context of his changed conditions and the environment in which he lives. Even the Supreme Court admitted in the *Gopalan* case that the provisions of Part III of the Constitution strike a balance between a written guarantee of individual rights and the collective interests of the community.[51] Justice J. M. Shelat of the Surpeme Court observed in a lecture delivered on December 18, 1966, that a study of the provisions of Part III "will at once show that while laying down the various fundamental rights of citizen, they also effectuate a reconciliation between them and the general needs and welfare of the society and the nation. By so doing, Part III leaves the door ajar for the functional working of the Constitution in future." The provisions of Part III themselves provide," Justice Shelat explained, "that these Fundamental Rights must yield to reasonable restrictions, the imposition of which may become necessary to satisfy the changing necessities and situations which might arise from time to time."[52]

It was, therefore, not the intention of the Father-framers to render the rights sacrosanct otherwise they would not have ventured to strike a balance or effectuate a reconciliation between them and the needs and welfare of society. Rights are dynamic realities and they have never been intended to be impediment to progress, development and advancement. They are conferred in fulfilment of the aims of the new social and economic order envisaged in the Directive Principles of State Policy set out in Part IV of the Constitution. But not in the manner in which the Constitution Forty-second Amendment had done by not even leaving a hazy line of demarcation between the Fundamental Rights and the Directive Principles and, thus, riding roughshod over the intentions of the Constitution-makers. The Amendment was, in fact, designed to personify the absolute authority of the Executive by removing all limitations on the amending power of Parliament and depriving the Courts of their jurisdiction to call in question any amendment of the Constitution. Speaking for himself and Justices Gupta, Untwalia and Kailasam in *Minerva Mills* case, Chief Justice Chandrachud observed, "Our Constitution is founded on a nice balance of power among the three wings of the State, namely, the Executive, the Legislative and the Judiciary. It is the function of the Judges, nay their duty, to pronounce on the validity of laws. If Courts are totally deprived of that power, the fundamental rights conferred upon the people will become mere adornments because rights without remedies are as writs in water."

46. *A.N. Gopalan* v. *State of Madras* (1950). S.C. J. (1950) S.C.R. 88, p. 198.
47. *State of Madras* v. *Champakam Dorairajan* (1951) *S.C.J.* 313 (1951) *S.C.R.* 825.
48. *M.S.M. Sharma* v. *Shri Krishan Sinha* (1959) *S.C.J. 925,* (1959) *I.S.C.R.* (Supp.) 806.
49. *Ujjam Bai* v. *State of U.P.* (1963) *I.S.C.R.* 778; A.I.R. 1963 S.C. 1621. (1967) 2 S.C.J. 486 pp. 498-99.
50. *Golak Nath and others* v. *State of Punjab.*
51. Refer to Shetty. K. P. Krishna, *Fundamental Rights and Socio-Economic Justice in India,* p. 19.
52. Rajendra Prasad Endowment Lectures, *The Spirit of the Constitution* (Bharatiya Vidya Mandir 1967), p. 31.

CHAPTER VII

Directive Principles of State Policy and Fundamental Duties

Beau Ideal in the Constitution

If the Preamble is the key to the understanding of the Constitution or to open the mind of its makers, the Directive Principles of State Policy, as enshrined in Part IV, are its beau ideal. It is here that the Constitution-makers poured their mind by setting forth the humanitarian socialist principles which epitomised the hopes and aspirations of the people and declared them as fundamental in the governance of the country. They are affirmative instructions from the ultimate sovereign to the State authorities, which are the creature of the Constitution established by them, to secure to all citizens justice – social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation.[1]

It is the duty of all the authorities of the state to direct their activities in such a manner so as to secure the high ideals set forth in the Preamble and copiously analysed and enshrined in Part IV of the Constitution. The Directive Principles of State Policy are an amalgam of diverse subjects embracing the life of the nation and include principles which are general statements of social policy, principles of administrative policy, socio-economic rights, and a statement of the international policy of the country. B.R. Ambedkar told the Constituent Assembly that every Government, Central, State and local "shall be on the anvil, both in the daily affairs and at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government..... While we have established political democracy it is also the desire that we should lay down as our ideal economic democracy..... There are various ways in which people believe that economic democracy can be brought about, we have deliberately not introduced in the language that we have used in the Directive Principles something which is fixed or rigid. We have left enough room for the people of different ways of thinking, with regard to the reaching of the ideal of economic democracy. Our object in framing the Constitution is two-fold : (i) to lay down the form of political democracy, and (ii) lay down that our ideal is economic democracy, and also to prescribe that every Government, whatever is in power, shall strive to bring about economic democracy ....."[2]

The idea of making a constitutional declaration of social and economic policy is the recognition of the ideal of a service State in place of a regularoty State which found expression in the 1931 Karachi resolution of the Indian National Congress. The Karachi resolution held that in order to end the exploitation of the masses, political freedom should include economic freedom. Most of the members of the Constituent Assembly, and especially the select group in the Fundamental Rights Committee, were quite familiar with the political thinking at that time, the practice that the United States of America had of late adopted and the manner in which the Federal and State Governments had begun playing an every increasing role in the nation's social and economic life. They had also closely watched the fact that most of the new Constitutions that came into being after World War I, particularly of Germany and East European countries, had recognised that one of the chief

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1. The Constitution (forty-second Amendment) Act, 1976, adds in the Preamble to the Constitution "integrity" after "unity" and it now reads "unity and integrity of the Nation."
2. *Constituent Assembly Debates*, Vol. VII, pp. 494-95.

functions of the State must be to foster and secure the social well-being of citizens and the economic prosperity of the nation.[3] The Irish Constitution, too, had greatly impressed the wide range of members of the Constituent Assembly. The long-standing affinity of the Indian National Congress with the Irish Nationalist Movement made the example of constitutional declaration expressed in the Irish Directive Principles of State Policy especially attractive to the Congress Assembly members, particularly the socialist-wing within its fold. But the most weighty support came from B.N. Rau, the Constitutional Adviser to the Constituent Assembly, Alladi Krishnaswami Ayyar, B.R. Ambedkar and K.T. Shah. Of the four, B.N. Rau was the most influential. He emulated in his *Constitutional Precedents* the Irish example of distinguishing between justiciable and non-justiciable rights. His *Precedents*, during the actual drafting of the Directive Principles, supplied the members of the Sub-Committee on Fundamental Rights with at least five of the original twelve provisions and the preamble of the Principles.[4]

Directive Principles and Fundamental Rights

With the precepts set out in the Directive Principles, which were the offspring of the Objectives Resolution, few if any members of the Constituent Assembly disagreed. Almost the only critical voices were those of members who believed that the provisions of the Directive should be justiciable if they were to be adequate to their task, and those of a few members who had, "a quarrel" with a particular provision within the Principles. T.T. Krishnamachari, who described the Directive Principles as "a veritable dustbin of sentiment.....sufficiently resilient as to permit any individual of this house to ride his hobby horse into it," could find few supporters. But Krishnamachari himself became less critical some two months after giving his speech on his appointment as a member of the Drafting Committee.

The initial approach of the Sub-Committee on the Fundamental Rights was to make no distinction between positive obligations and negative liberties as it was deemed to reflect the national demand. But immediately after the Sub-committee had drafted the negative rights, its members began talking of a section of non-justiciable rights. At the meeting held on March 31, 1947 it was decided to include the "Directive Principles of the Social Policy", as they were then called, with a preamble explaining that they were for the general guidance of all the authorities of the government and were not enforceable in any court. Thus, the break with the Fundamental Rights weas made.

But B.N. Rau suggested that it was to be occasionally necessary for the State to invade private rights in the discharge of one of its fundamental duties, as for example, to raise the nation's standard of health, of living, etc., and the Fundamental Rights being justiciable and the Directive Principles being without any legal force, the private right might override the public weal. He, accordingly, recommended for the careful consideration of the Sub-Committee whether "the Constitution might not expressly provide that no law made and no action taken by the State in discharge of its duties under Chapter III of Part III (Directive Principles in his Draft of the Constitution he submitted to the Drafting Committee) shall be invalid by reason of its contravening the provisions of Chapter II (Fundamental Rights)." [5] Rau's suggestion did not receive a favourable response and the Directives as finally incorporated in the Constitution are distinctly demarcated from the Fundamental Rights so far as their enforcement is concerned.

The Fundamental Rights are justiciable and Article 32 of the Constitution guarantees to all citizens the right to move the Suprement Court for their enforcement in case of violation or their abridgement by any authority of the State. It means that the Fundamental Rights are mandatory whereas the Directive Principles are declaratory as they have expressly been excluded from the purview of the courts. If any authority of the State does not take any positive action in promoting the objects set forth in the Chapter on the Directive Principles no action can be taken

3. Agnes Headlam Morley, *The New Democratic Constitutions of Europe*, p. 264.
4. Compare with the text of the Directive Principles as they were first presented to the Constituent Assembly in August 1947.
5. Rau, B.N., Notes on Certain Clauses of his Draft Constitution dated October 7, 1947, Shiva Rao, B., *The Framing of India's Constitution*, Vol. II. Also refer to Rau, B.M., *India's Constitution in the Making*, p. 333.

against that authority in a court of law. But the courts are bound to declare as void any law or executive action if it violated or infringed any of the provisions of the Chapter on Fundamental Rights. In case of conflict between the two, the Fundamental Rights shall prevail.

Conflicts between the Directive Principles and Fundamental Rights may arise due to several reasons and one of the important reasons is the presence of Clause 2 of Article 13 which stipulates that "The State shall not make any law which takes away or abridges the rights conferred by this Part (Part III Fundamental Rights) and any law made in contravention of this clause shall, to the extent of contravention, be void." It meant, till the enactment of the Twenty-fourth Amendment, and, finally, the Forty-second Amendment, that the State could not, while implementing Directive Principles, make laws in contravention of the Fundamental Rights. Nor could a citizen invoke the sanction of the Directive Principles in support of his claims under the Fundamental Rights. Jawaharlal Nehru was not oblivious of conflicts to arise between the Directive Principles and the Fundamental Rights. Speaking on the Constitution (First Amendment) Bill, he pointed out how such a conflict could arise. He observed, "The Directive Principles of State Policy present a dynamic move towards a certain objective. The Fundamental Rights represents something static, to preserve certain rights which exist. Both again are rights. But somehow and sometime it might so happen that, that dynamic movement and that standstill do not quite fit into each other."[6]

The Judiciary resolves such conflicts. The Supreme Court till recently took a firm stand that the Directive Principles could not override the Fundamental Rights and they must conform to and run subsidiary to the latter. *The State of Madras v. Champakam Dorairajan* was the first case decided by the Supreme Court in this respect. The Supreme Court upholding the decision of the High Court of Madras in the instant case ruled that the Chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any legislative or executive act or order except to the extent provided in the appropriate Articles in Part III. In an analogous case the *State of Madras v. C.R. Srinivasan* the Supreme Court held that the Directive Principles of State Policy being non-justiciable could not override a Fundamental Right. As a result of these judgments and as also the one in *B. Venkataraman* v. *The State of Madras*, the Constitution (First Amendment) Act, 1951, was enacted and a new Clause 4 was inserted in Article15. It provided, "Nothing in this Article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes." Despite this amendment the courts continued to emphasise the subordinate character of the Directive Principles.

But a change in the attitude of the Supreme court was discerned in the *State of Bihar v. Kameshwar Singh* and *Bijoy Cotton Mills Ltd.* v *The State of Ajmer*. In the first case the validity of the Zamindari Abolition Act was questioned on the ground that it violated the guaranteed Fundamental Right to property. Justice M.C. Mahajan speaking for the Court upheld the validity of the Zamindari Abolition Act on the reasoning that the implementation of the Directive Principles set out in Article 39 was such a public purpose. It was held that the Zamindari Abolition Law, which intended to do away with the concentration of large tracts of land in the hands of a few individuals and benefits large number of tenants must be deemed to be for the public purpose. In *Bijoy Cotton Mills Ltd.* v. *The State of Ajmer* the Court did not subscribe to the view that the Minimum Wages Act unreasonably restricted the right of the employers. In a unanimous judgment delivered by Justice Mukherjee, the Court ruled that "securing of living wages to labourers, which ensure not only bare physical subsistence but also maintenance of health and decency, is conducive to the general interest of the public. This was one of the Directive Principles of State Policy embodied in Art. 43 of our Constitution" and, therefore, a reasonable restriction on the employers' right to carry on business could be imposed by the State.

In *M.H. Quereshi v. The State of Bihar,* the Supreme Court was called upon to give its decision on the validity of Bihar, Uttar Pradesh and Madhya Pradesh laws which banned the slaughter of certain animals including cows. Chief Justice S.R. Das, who delivered the opinion of the Court, held that the State cannot make any law which takes away or abridges the rights con-

6. *Lok Sabha Debates* (1951). II. Cols. 8822-3.

ferred by Chapter III of the Constitution which enshrines the Fundamental Rights. "The Directive Principles cannot override this categorical restriction imposed on the legislative power of the State. A harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the directive principles but it must not do so in such a way that its laws take away or abridge the Fundamental Rights for otherwise the protective provisions of chapter III will be a mere rope of sand." This decision is almost reminiscent of *Champakam Dorairajan* case, although the Court introduced the doctrine of harmonious interpretation or construction as a technique of interpretation.

'*In re on the Kerala Education Bill*, 1957,' the Supreme Court was called upon to give its opinion, *inter alia*, on the relationship between the Fundamental Rights and the Directive Principles. Chief Justice S.R. Das, speaking for the Court held that "although this legislation may have been undertaken by the State of Kerala in the discharge of the obligation imposed on it by the Directive Principles it must nevertheless subserve and not override the Fundamental Rights. The Directive Principles have to conform to and run subsidiary to the Chapter on Fundamental Rights." This opinion reiterated the views expressed in the Cow Slaughter case without reintroducing any new innovation in the application of the doctrine of harmonious construction.

But there was a change in judicial thinking and the first indication of it was noticed in the statement of Justice Mudholkar in *Sajjan Singh v. State of Rajasthan*. In this case, the argument before the Supreme Court was that if the Fundamental Rights were not made subject to the amending process of the Constitution there was a danger that the much needed dynamic change or development in the Indian society would be hampered. Though he did not dismiss the argument advanced as of no consequence, he expressed the opinion that even if the Fundamental Rights were taken as unchangeable, the much needed dynamism could be achieved by properly interpreting the Fundamental Rights in the light of the Directive Principles. He observed that the Directive Principles "are also fundamental in the governance of the country and the provisions of Part III of the Constitution must be interpreted harmoniously with these principles." Two important points may be noted in the opinion expressed by Justice Mudholkar, although he also envisaged the application of the doctrine of harmonious construction. He takes cognisance of the fundamental nature of the Directive Principles and in case of conflict between the Fundamental Rights and the Directive Principles suggests to resolve it by interpreting the former in the light of the latter. His approach in resolving the conflict is to ensure dynamism in the socio-economic structure in the Indian society. To interpret the Fundamental Rights in the light of the Directive Principles is "definitely to give new meaning, new content and new dimension to the former so that not only the latter could be implemented fully and effectively but the former could find themselves in tune with the changed conditions and the new social order brought about by implementation of the Directive Principles."[7]

The majority opinion in the *Golak Nath* Case rejected the government argument that if Parliament was not given the power to amend the Constitution it would be difficult to implement the Directive Principles and there would be a revolution in the country. The Court declined to take a decision on this hypothetical situation and held : "if it is the duty of Parliament to enforce the Directive Principles it is equally its duty to do so without infringing the Fundamental Rights. The Constitution-makers thought it could be done and we also think that the Directive Principles could reasonably be enforced with the self-regulatory machinery provided by Part III of the Constitution." Proceeding further, Chief Justice K. Subba Rao said, "Nor can we appreciate the argument that all the agrarian reforms which Parliament in power wants to effectuate cannot be brought about without amending the Fundamental Rights". It was in this context that the Chief Justice observed, "The Fundamental Rights and the Directive Principles of State Policy enshrined in the Constitution formed an 'integrated scheme' and was elastic enough to respond to the changing needs of the society."[8]

The doctrine of "integrated scheme" enun-

7. Shetty, R.P. Krishna, *Fundamental Rights and Socio-Economic Justice in the Indian Constitution*, p. 103.
8. *Golak Nath v. State of Punjab* (1967) 2 S.C.J. 436

ciated by Chief Justice Subba Rao admits two important results. In the first place, since Part III and Part IV of the Constitution form an integrated scheme they, undoubtedly, stand on a footing of equality and, therefore, the theory of subordination enunciated by the Supreme Court in *Champakam Dorairajan* case and reiterated in the *Cow Slaughter* case and the *Kerala Education Bill* stands completely repudiated. Secondly, the doctrine of "integrated scheme" established the elasticity of the Fundamental Rights and Fundamental Rights, as such, must respond to the changing needs of the society reflecting the aspirations of the people. The Directive Principles of State Policy are the conscience of the Constitution and the reservoir of the people's aspirations. Fundamental rights can, therefore, never be static. They change in their content with the changing needs of the society and justify their dynamism. It is, accordingly, clear that the doctrine of "integrated scheme" and the theory of "elasticity" of Fundamental Rights establish that Fundamental Rights must be interpreted in the light of the Directive Principles so that the State may be able to carry out its socio-economic obligations imposed on it by the Preamble and Part IV of the Constitution. The Constitutional duty of the State is spelt out in Article 38 which is the keystone of the Directive Principles. It is the star by which the Government is required to chart its course.

If the provisions contained in Part III cause hindrance in the discharge of a constitutional duty, as cast upon it by article 37, the government must strive to remove those hindrances and both the Twenty-fourth and Twenty-fifth Amendments of the Constitution sought to do it. The Constitution (Twently-fourth Amendment) Act, 1971, set up a mechanism for amending the Constitution and thereby removed the hindrance that the *Golak Nath* case had created. It also amended Article 13 by inserting a new Clause (4) which provided that nothing in this Article shall apply to any amendment of this Constitution. The Constitution (Twenty-fifth Amendment) Act, 1971, deleted the word "compensation" occurring in Article 31(2) and substituted it by the word "amount." It also inserted Clause (2B) in the same Article thereby nullifying the effect of the judgment in *Bank Nationalisation case*. Another new Article 31-C was inserted providing that no law seeking to enforce the Directive Principles of State Policy in clauses (b)[9] and (c))[10] of Article 39 would be held invalid on the ground that it involved any of the Fundamental Rights conferred by Articles 14, 19 or 31. Moreover, declaration in the clauses (b) and (c) of Article 39 would render such law immune from challenge in any court. The amendment also provided that no law containing such a declaration could be called in question on the ground that it did not in point of fact promote the Directive Principles of State Policy. The State Legislatures were empowered to enact such laws as ordained by Article 31C with the proviso that such laws after passing from the State Legislature should be reserved for the consideration of the President.

Explaining the import of the contents of the Twenty-fifth Amendment, V.R. Krishna Iyer (afterwards a Judge of the Supreme Court) remarked that it introduced the new Article 31C whereby a marriage between the most vital Directive Principles and the most potent Fundamental Rights has been effected. A harmony has been established by this provision that no law made to give effect to the Directive Principles specified in Clauses (b) and (c) of Article 39 shall be deemed to be void on the ground that it takes away any of the Fundamental Rights guaranteed by Articles 14, 19 and 31."[11] The Supreme Court in the *Kesavananda Bharati* case upheld Article 31C recognising the competence of the Legislature of enacting laws to give effect to the Directive Principles in Clauses (b) and (c) of Article 39, but struck down the provision that "no law containing a declaration that it is for giving effect to such policy shall be called in question in any court that it does not give effect to such policy." The Court also ruled that though by Article 368 Parliament is given powers to amend the Constitution, that power cannot be exercised so as to alter the basic structure of the Constitution.

To nullify the effect of the *Kesavananda*

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9. Clause(b) Provides, "that the ownership control of the material resources of the community are so distributed as best to subserve the common good."
10. Clause (c) provides, "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."
11. Aiyar, S.P. and Raju, S.V. (Eds) *Fundamental Rights and the Citizen*, p. 110.

Bharti case the Constitution (Forty-second Amendment) Act, 1976, amended Article 31C by providing that no law giving effect to the policy of the State towards securing all or any of the Directive Principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Articles 14, 19 or 31.[12] As a measure of abundant caution Article 368 was also amended by inserting Clauses (4) and (5) debarring the courts from questioning the validity of amendments made and bestowing upon Parliament powers without any limitation to amend any provisions of the Constitution.

The validity of the Forty-second Amendment was questioned in the *Minerva Mills* case. On May 9, 1980 the Supreme Court applied the ruling in the *Kesavananda Bharati* case and held unanimously that Section 55 of the Forty-second Amendment was void. It also held by a majority of 4 to 1[13] that section 4 of the Act amending Article 31C which exempts from challenge any law which enforces any of the Directive Principles on the ground that it violates Article 14 or Article 19 is also void because it "damages the basic essential features of the Constitution and destroys its basic structure." Justice Bhagwati in his dissenting judgment held that the amended Article 31C, "far from being damaging the basic structure of the Constitution strengthens and reinforces it by giving fundamental importance to the rights of the members of the community as against the rights of a few individuals and furthering the objective of the Constitution to build an egalitarian social order where there will be social and economic justice for all....."

The *Minerva Mills* case established the supremacy of the Fundamental Rights and every legislation or constitutional amendment made in furtherance of the Directive Principles is subject to the scrutiny of the courts to determine whether it is violative of the Fundamental Rights, particularly, Articles 14 and 19.

No less a person than Justice Frankfurter of the United States, whom Rau had consulted, was of the view that the Directive Principles should prevail in case of a conflict with the Fundamental Rights and this should be secured by an express provision in the Constitution. Rau's suggestion did not receive a favourable response then and "wisely", as A.G. Noorani remarks, the constitution-framers made Fundamental Rights "justiciable in explicit terms and directive principles non-justiciable as explicity. A chastened B.N. Rau himself came to regard the directives rather like the Instrument of Instructions issued to Governors."[14]

But perusal of debates on the Directive Principles in the Constituent Assembly reveals a few important facts. Firstly, the Directive Principles had been made unenforceable not to render them ineffective or that they should remain like a cheque on a bank payable at the convenience of the bank, as Prof. K.T. Shah believed them to be if not made justiciable within a specified time limit. The intention was, as Ambedkar explained to the Constituent Assembly, that " in future both the legislature and the executive" should not merely pay lip-service to these principles but they should be made "the basis of all legislative and executive function that they may be taking hereafter in the matter of governance of the country." It was not an attempt, he added, to incorporate in Chapter IV, the positive mandates to the State and prescribe the manner in which those mandates were to be realised. The Directive Principles were intended to impart continuity to the national policies and their flexibility made it possible for the parties of the Right and the Left to strive in their own way to reach the ideals of social and economic democracy whenever they would get an opportunity to form the Government after having received the verdict of the people at the polls, he emphasised. [15]

Secondly, positive emphasis has been laid on the fundamental nature of the Directives so that an express duty may rest on the State to adequately discharge its constitutional obligations. The aim of the Constitution-makers was to establish a state which should be a democracy not

12. The Constitution (Forty-fourth Amendment) Act, 1978, has dropped Right to Property from Chapter III-Fundamental Rights.
13. Cheif Justice Y.V. Chandrachud, Justices A.C. Gupta, N.L. Untwalia, and P.S. Kailasam. Justice P.N. Bhagwati dissented.
14. Noorani, A.G., "Reviewing Fundamental Rights", *Indian Express*., New Delhi, September 4, 1980.
15. *Constituent Assembly Debates*, Vol. VIII, p. 382.

only in the political area where legislative authority is based on adult franchise and the executive is parliamentary, but also to promote a Welfare State, where social and economic democracy must also prevail. The Directive Principles establish the conditions necessary for its achievement. Article 36 lays down that the State "shall strive to promote the welfare of the people." Ambedkar explained that the word "strive" had been purposely used 'because their intention was that however adverse the circumstances that stand in the way of government in giving effect to these principles and however impropositious the time might be they should always strive for the fulfilment of the Principles. Otherwise it would be open to the government to say that circumstances were not good and the finances were so bad that they could not implement them."[16]

The Constitution-makers, therefore, vested in the people of India the power and the means to compel the Government of the day to implement the Directive Principles or even at a time when it is not financially and administratively possible for it to do. The Constitution established a parliamentary system of government. The mechanism of such a system enables the citizens to watch, and scrutinise the acts of the Government and assess the impact of its performance on the body politic of the country and on the well-being of the common man. At the time of the General Election people measure Government's success or failure in the light of the achievements and fulfilment of the goals prescribed by the Constitution. To ignore the Directive Principles is to ignore the substance provided in the Constitution, hopes held out to the nation and the very ideals on which the constitution is built. If the government, irrespective of its party label, pursues a policy which is in accordance with the Principles enunciated in the Constitution and caters to their sense of justice, the electorate will endorse its policy and allow it to continue in office. otherwise, they will repose their confidence in another party. Parliamentary system accepts alteration in government and the vigilant public opinion is the sanction behind it. It is for this reason that the Constitution-makers deliberately introduced in the language they have used in the Directive Principles something which is not fixed or rigid . They have left enough room for the the people of the different ways of thinking to go to the electorate and persuade them that their policy and programme are the best way of reaching economic democracy; the fullest opportunity for all people to act in the way they want to act.

Finally, the Directive Principles of State Policy, according to the framers of the Constitution, are like the instrument of instructions flowing the from the sovereign people to the state directing them to do certain things. These directions are as much binding on the Legislature and on the Executive as they are on the Judiciary. All these wings of the Government are its component parts and they collectively express the will of the State. It is, therefore, the duty of the Judiciary to safeguard the Directive Principles from the vicissitudes of the fortune of the political parties that come and go out of office from time to time. As the Directive Principles are intended to impart continuity to the national policies, as they represent the deliberate wisdom of the nation through the Constituent Assembly, it is for the courts to see that this continuity does not become the plaything of party politics and, consequently, retard the progress of their fulfilment. Moreover, many of the Fundamental Rights are subject to reasonable restrictions in the interests of public. In interpreting these rights, which are justiciable, the Constitution-makers had imposed on the courts a duty to lay down the canons for determining what is "reasonable" and a "public interest" and while doing so due emphasis must be placed on the Directive Principles as the Constitution holds them fundamental in the governance of the country. This path was set in *Kameshwar Singh* and *Bijoy Cotton Mills* cases. In both these cases the Supreme Court laid down two rules of construction : (*i*) that in case of conflict between the right of the individual and laws aiming to implement socio-economic policies in pursuance of the Directive Principles greater weight should be given to the latter; and (*ii*) that every socio-economic legislation enacted in pursuance of the Directive Principles should be construed as one purporting to "public interest" or as a "reasonable restriction" on the Fundamental Rights. Justice Mudholkar applied the same approach in *Sajjan Singh* case when he enunciated the doctrine of "dynamism," and the theory of "elas-

16. Ibid, Vol. VIII, pp. 594-95.

tic" Fundamental Rights, as enunciated by Chief Justice K. Subba Rao in the *Golak Nath* case, implies the same principle or rule of construction. All of them are not only in consonance with the provisions of the Article 37 of the Chapter on the Directive Principles of State Policy but in complete conformity with the intentions of the Constitution-makers as well as which find their echo in the Preamble to the Constitution.

What Directives Have Wrought

The significance of the Directive Principles, as said earlier, was appreciably realised by almost all the members of the Constituent Assembly. They firmly believed that certain social values especially those related to economic rights, embodied in Part III of the Constitution, were meaningless to large sections of the people if poverty, with all its attendant evils of economic and social distress was to haunt them at every step and account for their inexplicable sufferings. Their primary concern was to usher in a new social order in which justice, social, economic and political shall inform all institutions of the national life. For the fulfilment of this objective the State has been charged to make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want.[17] These are the minimum requirements of civilised existence and it is the foremost duty of every State, whatever be its label, to ensure that all these basic necessities of life are available to all individuals. The pith of the Directive Principles has a deep impact on a democtraic set-up. If democracy is to survive, it must establish and nurture a society resting on social justice. This is the only peaceful and evolutionary method otherwise the answer is revolution. The Constitution-makers adopted the former by playing the role of a constitutional reformer and "attired the aspirations of the people with a constitutional role." The result was the establishment of the socio-economic justice in the Preamble of the constitution, which is to be implemented by the State to achieve the goal.[18]

The Supreme Court in its judgement related to conditions of workers in Asian Games (1982) projects heralded a silent legal revolution. It clothed million of workers in the factories, fields, mines and project sites with basic human dignity. They got fundamental rights to minimum wages, drinking water, shelter, creches, medical aid and safety in their respective professions. Justice P.N. Bhagwati and Baharul Islam, who delivered the judgement, strongly defended the public interest litigation and criticised lawyers, journalists and "self-styled human rights activists" who thoughts that by entertaining such cases the highest court in the land was simply wasting its time. The judgment said that the public interest litigation was a co-operative effort on the part of the petitioner, the authorities and the Court. The State, which is usually the respondent must welcome it as it would give it an opportunity to right the wrong.

But the Directive Principles have been sceptically received by some eminent authorities. K.C. Wheare has doubted "whether there is any gain, on balance, from introducing these paragraphs of generalities into a constitution."[19] He is of the view that a Constitution should include only those provisions which can be capable of enforcement and are obligatory on the State. Ivor Jennings has been unduly severer in his criticism. He said,"the ghosts of Sidney and Beatrice Webb Stalk through the pages of the text. Part IV of the Constitution expresses Fabian Socialism without the Socialism, for only the nationalisation of the means of production, distribution and exchange is missing; but nationalisation for the Fabians was a means to an end and not an end itself; the end is quite adequately expressed in the Constitution." Jennings also questioned the reasonableness of inserting in a constitution a collection of political principles which "obviously derive from English experience in the nineteenth century and are deemed to be suitable for India in the middle of the twentieth century." He added that the ideas expressed in Part IV would survive for a generation and some of them may even survive for longer period. "The question whether they are suitable for the twentieth century, when the Constitution may still be in operation, cannot be answered, but it is quite probable that they will be entirely outmoded."[20]

The Communists in India have also been

17. Article 41.
18. Shetty, K.P. Krishna, *Fundamental Rights and Socio-Economic Justice in the Indian Constitution*, p.108.
19. Wheare, K.C., *Modern Constitutions*, p. 69.
20. Jennings, W.I., *Some Characteristics of the Indian Constitution*, p. 31.

harsh in assessing the utility of the Directive Principles. Tushar Chatterji, a Communist Member of Parliament, moved a resolution in the House of the People, urging for the appointment of a 15-member Parliamentary Committee to inquire into the implementation of the Directive Principles embodied in the Constitution. While moving his resolution, Tushar Chatterji catalogued the failures of the government and maintained that the common people did not feel any difference from the State of affairs that existed today. "Several problems", he maintained, "like food, education and health still remained unsolved while the life of the common people had become more burdensome and difficult. They could not but feel that these solemn declarations in the Constitution were not directives but only 'decoratives' in the Constitution."[21]

Many of the points raised by Tushar Chatterji, way back in 1958, are correct and the gap between the poor and the rich has become more wide. But it cannot also be denied that the problems of eradication of poverty, achieving full employment, appreciably raising the living standard and equitable distribution of national wealth are colossal indeed, and no government, whatever be its complexion can achieve miracles. It will take several decades to achieve the goal set in the Directives and establish a Welfare State wherein social and economic democracy would prevail.

It cannot, however, be overlooked that the policy of the government from the beginning of India's republican career has been shaped according to the Directive Principles and every decision of the Planning Commission has been guided or coloured by these Principles. This is more than evident in the social, labour and economic legislation undertaken by the government and its industrial, agricultural and taxation policies. The Taxation Enquiry Commission, 1953-54 was asked to examine the tax structure and to suggest measures to reduce the inequalities of income and wealth, analyse their effects on development of the productivbe enterprises and on the inflationary process. The Industrial (Development and Regulation Act) 1954, and the establishment of the Monopolies Inquiry Commission in 1965 were aimed to achieve the objective outlined by the Taxation Inquiry Commisssion in terms of its reference. The Monopolies Commission made probing inquiries into the causes and extent of concentration of economic power in private hands, the factors responsible for monopolistic tendencies in the national economy and their social consequences. It recommended the constitution of a permanent body "with the duty and responsibility of exercising vigilance, and for taking action to protect the country against dangers of concentrated economic power, consumers' co-operatives, etc." and recommended that appropriate legislation should be enacted accordingly. The Government acted promptly in accepting and implementing the suggestions of the Monopolies Inquiry Commision. This is not a complete picture, but it is suggestive of the various steps taken at the Union level in realizing the content of the Directive Principles.

At the State level, legislation to abolish intermediaries and Zamindari systems and land reforms was enacted in the early years of 1950 and, today, land, both urban and rural, is subject to ceilings and the surplus land as a result thereof has gone to the weaker sections of the community , though its pace is inexplicably slow in some States. In pursuance of the Directive Principles to organise village panchayats and to promote cottage industries in order to ensure decentralised and composite democracy in the form of self-governing village communities requisite legilsation was passed and adequate funds provided. While initiating the debate in Parliament on the economic policy in India, C.D. Deshmukh, the then Finance Minister, declared that whereas the development of major industries must continue in national interest, it was necessary to develop small-scale and village industries "with great opportunities for employment and more and more chance of improving the resources of the population." Prime Minister Nehru, intervening in the debate, reaffirmed the policy of his Government of bringing about a casteless and stateless society through the peaceful and cooperative method. He asserted that the biggest private sector in the country was "the private sector of the peasant with his small holdings."

The Janata Government was wedded to the Gandhian way of life and a decentralized and composite democracy was the first item on its agenda. The national development plan for 1977-78 was, accordingly, recast with an allocation of as much as 30.4 per cent of the funds for agriculture and allied services and provision of schemes to create 2.5 million jobs. Announcing the new thrust of the Government on farming and rural infrastructure, the Finance Minister,

H.M. Patel, explained to the House of the People during his Budget speech that the entire plan strategy was oriented towards according primacy to agriculture, priority to rural development and eradication of the unemployment within a time limit. "The Sixth Five Year Plan of Rs. 97,500 crores expected the economy to grow at 5.2 per cent per year and at the higher rate of 5.5 per cent in the 10 years thereafter and bring down the percentage of people below the poverty line from the existing 48 to 30 by the end of the sixth Plan period. Employment will increase at a rate faster than the growth in the labour force."

The principle of international peace and security enshrined in Article 51 finds its full expression in the external policy of India. Jawaharlal Nehru's doctrine of dynamic neutrality, India's deep faith in co-existence, her advocacy of *Panch Sheel* and acceptance of those lofty ideals of peace and mutual tolerance by the major countries of the world is the greatest contribution which Independent India can claim. India has, indeed, saved the world from disaster. Michael Foot wrote, in 1955, "power corrupts and the world owes Independent India an immense debt for helping to save us from the corruption of power on an international scale which might so easily have led us to disaster."[22] The five principles : (1) mutual respect of each other's territorial integrity and sovereignty; (2) non-aggression; (3) non-interference in each other's internal affairs for any reasons, either of an economic, political or ideological character;[23] (4) equality and mutual benefit; and (5) peaceful co-existence—contained in the *Panch Sheel*—helped to outlaw from the minds of the Heads of the great States the possibility of war, little, of course, knowing that one of the signatories to the *Panch Sheel* would, become an aggressor. Addressing the Constituent Assembly at mid-night on August 14, 1947, Rajendra Prasad said, "we have only one ambition and that is to make our contribution to the building of peace and freedom for all." India has striven to hold steadfast to this spirit which inspires the last of the Directives, though herself victim of four wars. Her recent normalisation of diplomatic and trade relations with these neighbouring countries reiterates India's dedication to international peace and security.

Classification of the Directive Principles

The first two Articles (36 and 37) of the Chapter on Directive Principles of the State Policy are general in character and deal with definitions, legal effects and objectives. The remaining Articles may, for purposes of clarity, be grouped into three distinct categories : (i) those that aim to shape India into a Welfare State; (ii) those that aim to shape India into a Gandhian State; and (iii) those that aim to promote international peace.

(i) Article 38 (1) provides that the State shall promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life. Clause (2, inserted by the Forty-fourth Amendment, provides that the State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Thus, promotion of the welfare of people, both residing in urban and rural areas and engaged in different vocations is the objective which the Constitution sets forth by striving to secure a social order where justice, social, economic and political, shall prevail. Welfare and justice are, accordingly, the twin object of the Constitution. Article 39 then, proceeds to particularise some of the methods by which the object of general welfare, through justice, can be obtained and the basis of the new social order established. This Article finds adequate support from the provisions about a casteless and classless society. With this end in view the State shall direct its policy in securing :—

I. (a) adequate means of livelihood for all citizens, men and women equally;
   (b) distribution of wealth so as to subserve the common good;
   (c) the operation of the economic system which does not result in the concentration of wealth and means of production to the common detriment;
   (d) equal pay for equal work for both men

22. *The Tribune*, Ambala Cantt, August 15, 1955.
23. An Amendment to Clause 3 was made to the *Panch Sheel* in the joint declaration signed in the Moscow by the Prime Ministers of India and the Soviet Union. The original Clause 3 read : "Non-interference in each other's affairs". The amendment added the following words : "for any reasons, either of an economic, political or ideological character.

and women;[24]

(e) protection of adult and child labour;

(f) the Forty-second amendment altered the original clause, which read : "protection of child and youth against exploitation and against moral and material abandonment,"to emphasise the constructive role of the State with regard to children. It now provides that the "children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

(g) provision of work and education for all people, relief in case of unemployment, old age, sickness and disablement and in other cases of undeserved want;

(h) just and humane conditions of work and maternity relief;

(i) a living wage and decent conditions of work for all workers, agricultural, industrial or otherwise as to ensure to them sufficient leisure and enjoyment of social and cultural opportunities;

(j) to secure the participation of workers in the management of undertakings or other organisations engaged in any industry. (This provision was inserted by the Forty-second Amendment as Article 43A);

(k) free and compulsory education for all children until they reach the age of fourteen years;

(l) raising the level of nutrition and the standard of living and the improvement of public health;

(m)to secure that the operation of the legal system promotes justice, on a basis of equal opportunity and in particular, to provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other diabilities. (This provision was inserted by the forty-second Amendment as a new Article 39A); and

(n) to endeavour to secure for the citizens a uniform civil code throughout the country.

II. Some of the Directive Principles are in accordance with and conform to the Gandhian way of life and fulfil the requirements of Gandhi's conception of the State. These Directive Principles enjoin that :

(a) the State shall take steps to organise village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government;

(b) the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas;

Both these provisions aim at *Sarvodaya* or pure socialism as Prof. S.N. Aggarwal called it.[25] *Sarvodaya* is the Gandhian technique of decentralised economy and composite democracy in the form of self-dependent and self-governing village communities or panchayats.

(c) to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and the Scheduled Tribes in order to protect them from social injustice and all forms of exploitation;

(d) to bring about prohibition of consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health;

(e) to take steps to organise agricultural and animal husbandry on modern and scientific lines and,, in particular take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and drought cattle;

(f) to protect and improve the environment and safeguard the forests and wild life of the country, (This provision has been inserted by the Forty-second amendment as Article 48A);

(g) to protect, preserve and maintain places of national and historical importance; and

(h) to take steps to separate the judiciary from the executive; and to secure for citizens a

24. Refer to the Supreme Court judgement in the writ petition of constable Randhir Singh. Justices O. Chinnapppa Reddy amd Baharul Islam allowed the writ petition and ruled that the right to the "equal pay for equal work" is a fundamental right and enforceable as such.

25. "Socialism and Sarvodaya", *The Hindustan Times*, New Delhi, January 1, 1955.

uniform civil code throughout the country.

III. In the international field India shall strive:
  (a) to promote international peace and security;
  (b) to maintain just and honourable relations between nations;
  (c) to foster respect for international law and treaty obligations; and
  (d) to encourage settlement of international disputes by arbitration.

FUNDAMENTAL DUTIES

Need for Inclusion in the Constitution

Incorporation of a charter of Fundamental Duties in the Constitution is one of the important features of the Constitution (Forty-second Amendment) Act, 1976. The Swaran Singh Committee on constitutional reforms, appointed by the Congress President, was asked in a resolution of the All-India Congress Committee, passed at its meeting in New Delhi on May 29, 1976 to formulate proposals to fill what was widely considered a historical lacuna to India's charter rights. Within the Congress the sentiment was fairly strong that the Constitution-makers went, in the first flush of Independence, to great lengths to articulate the citizen's fundamental rights in the Constitution but overlooked the need to prescribe the corresponding fundamental duties and obligations. The political crisis that strained the Indian democratic system in the last sixties and again in 1974 and 1975 was one of the compelling reasons to necessitate the inclusion of what the Constitution-makers had in their wisdom omitted, although there was some suggestion at the time when the Constitution was drafted that his important aspect should not be ignored.

Nor is the issue of enumerating the citizen's fundamental duties to society and State in a Constitution totally without a precedent. Nearly fifty countries, as Vinod Sethi enumerated, have incorporated duties in their constitutions,[26] and Japan is one of them whose basic document was consulted by the makers of the Indian Constitution. The Japanese Constitution spells out explicitly some of the citizen's countervailing duties in the same breath as his Fundamental Rights. "Rights and Duties of the People" are enshrined in Chapter III of the Constitution.

The Swaran Singh committee proposed an 8-Point code of "fundamental duties" which, after due process of public consultation, were proposed to be enshrined in the Constitution. The proposed duties were :

(1) To respect and abide by the Constitution and the laws.
(2) To uphold the sovereignty of the Nation and to function in such a way as to sustain and strengthen its unity and integrity.
(3) To respect the democratic institutions enshrined in the Constitution, and not to do anything which may impair their dignity or authority.
(4) To defend the country and to render national service including military service when called upon to do so.
(5) To abjure communalism in any form.
(6) To render assistance and co-operation to the state in the implementation of the Directive Principles of State Policy, and to promote the common good of the people so as to subserve the interest of the social and economic justice.
(7) To abjure violence; to protect and safeguard public property and not to do anything which may cause damage and destruction to such property.
(8) to pay taxes according to law.

Duties Analysed

The Constitution (Forty-second Amendment) Act, 1976, inserted a new Chapter Part IV-A and listed in Article 51A the following ten duties—

"(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
(c) to uphold and protect the sovereignty, unity and integrity of India;
(d) to defend the country and render national service when called upon to do so;
(e) to promote harmony and the spirit of commonbrotherhood amongst all the

26. "The Fundamental Duties", *Indian Express*, New Delhi, September 30, 1976.

people of India transcending religious, linguistic and regional or sectional diversities; to renonunce practices derogatory to the dignity of women,

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and abjure violence,

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement."

The Fundamental Duties inscribed in the Constitution are a mixed bag of expectations and exhortations. Quite a good number of these items are those which are enforceable today even without their being specifically incorporated in the Constitution. In this category fall the items to abide by the constitution, respect the National Flag and the National Anthem, to defend the country and render national service when called upon to do so and safeguard public property. To uphold and protect the sovereignty, unity and integrity of India draws sustenance from the same moral source from which the Constitution's Sixteenth or anti-sessionist amendment itself stems.

The three most important items in the list of Fundamental Duties are those requiring the citizens to respect the ideals of the Constitution and the institutions it establishes, to promote harmony and the spirit of common brotherhood amongst all the people of India professing different religions, speaking different languages, practising different customs and inhabiting different parts of the country, and to safeguard the public property and to abjure violence. These are clearly intended to meet certain specific political threats that democracy in India has to contend with.

The Indian Charter of Fundamental Duties is unique to include the duty to develop the scientific temper, humanism and the spirit of inquiry and reform. It has been incorporated to eradicate superstitions in which India is deeply soaked and to remove the bane of religious fanaticism, regional chauvinism and linguistic frenzy which have ever plagued India and retarded her unification into a cohesive society. The duty to renounce practices derogatory to the dignity of women and to preserve the rich heritage of India's composite culture are two other moral codes to ennoble the society. These are, in fact, homilies to be taught in schools and colleges rather than to be incorporated in the Constitution as Fundamental Duties.

CHAPTER VIII

The President

The Nature of the Union Executive

One of the important questions to engage the attention of the Constitution-makers related to the nature of the Executive. Ambedker observed in introducing the constitution in the Constituent Assembly : "A student of constitutional law, if a copy of a constitution is placed in his hands, is sure to ask two questions. Firstly, what is the form of Government that is envisaged in the Constitution; and secondly, what is the form of the Constitution ? For these are the two crucial matters which every constitution has to deal with."[1] From the earlier stages of the discussion on the principles of the new constitution there was an overwhelming opinion in favour of the parliamentary system of government.[2] In the Memorandum on the Principles of the Union Constitution,[3] submitted by Alladi Krishnaswami Ayyar and N. Gopalaswami Ayyangar, for the consideration of the Union Constitution Committee, it was specifically suggested that the Executive "power of the federation will, subject to the provisions of the constitution, be exercised by, or on the authority of a Council of Ministers, to be called the Cabinet, which will be collectively responsible to the House of Representatives."[4] It may, however, be noted that at this stage it was contemplated to confer certain special powers on the President. In his Memorandum on the Union Constitution and Draft Clauses prepared by the Constitutional Adviser (May 30, 1947) for the use of the Union Constitution Committee, it was provided that "there shall be a Council of Ministers, with the Prime Minister at the head, to aid and advise the President in the exercise of the functions, except in so far as he is required by this constitution to act in his discretion." The President was also to be vested with specified special responsibilities in the exercise of his functions and where any special responsibility of the President was involved, he exercised his discretion as to the action to be taken. But to safeguard against the arbitrary use of discretionary authority by the President, the Constitutional Adviser had provided for the creation of a Council of State, a kind of Privy Council. This was a system of checks and balances designed to prevent both the President and the Ministry from resorting to an arbitrary use of untrammelled authority.

This matter was considered by the Union Constitution Committee on June 8 and 9, 1947. The Committee generally agreed that the Union Executive should be of the parliamentary type and that the President should have no special responsibilities as suggested by the Constitutional Adviser in his Memorandum and that he should exercise his powers, including the power to dissolve Parliament, only on the advice of his Ministers. This recommendation of the Committee also made the Constitutional Adviser's proposal for the setting up of the Council of State infructuous.

When the Report of the Union Constitution Committee came up for consideration before the Constituent Assembly, there was general agreement for establishing a parliamentary executive. The critics of such a system of government, Kazi Syed Karimuddin and Hussain Imam, however, moved an amendment proposing a non- parliamentary executive. Hussain Imam thought that the system of government obtaining in the United States of America, was "more democratic and based on better and sounder principles" than the parliamentary system of the British type. The Constituent Assembly finally accepted the principle of a parliamentary executive collectively responsible to the representative chamber of Parliament and the Drafting Committee based the Draft Constitution on this concept.[5]

1. *Constituent Assembly Debates*, Vol. VII, pp. 31-32.
2. Refer to the questionnaire issued by the Constitutional Adviser, B. N. Rau, to the Members of the Central and Provincial Legislatures, March 17, 1947. *The Framing of India's Constitution, Select Documents, op. cit.* Vol. II, pp. 434-51.
3. Circulated to the Members of the Committee on June 4, 1947.
4. *The Framing of India's Constitution, Select Documents, op. cit.*, Vol. II, p. 546.
5. *Constituent Assembly Debates*, Vol. IV, p. 921.

In the Draft Constitution of February, 1948, there was a provision made for an Instrument of Instructions, as embodied in the Government of India Act, 1935, for Governors alone. The Drafting Committee decided, on further consideration, to remedy the omission and provide one for the President too. Accordingly in October 1948, the Committee gave notice of an amendment to Article 62 of the Draft Constitution, proposing to add a new clause : "In the choice of the Ministers and the exercise of his other functions under this Constitution the President shall be generally guided by the instructions set out in Schedule III-A...."

Ambedkar's amendment adding a clause in the Constitution for an Instrument of Instructions to guide the President in the exercise of his functions was accepted by the Constituent Assembly. On October 11, 1949, however, when the new Schedule III-A containing the Instrument of Instructions was due to be considered by the Assembly, T. T. Krishnamachari expressed the desire of the Drafting Committee that the proposal for the inclusion of the Instrument of Instructions to the President should be dropped. He also moved that a similar Instrument already included in the Draft Constitution for Governors as the Fourth Schedule, should be omitted and also the consequential clause.

The Drafting Committee appeared to have been persuaded by Jawaharlal Nehru to accept the view that the Council of Ministers should be collectively responsible to the representative chamber of Parliament and, under the circumstances, it would be impolitic to confer on the President, through the Instrument of Instructions, powers that might give him an effective voice in the formation of the Council of Ministers or in moulding the policies of the government. Alladi Krishnaswami Ayyar forcefully put this point in the Constituent Assembly. This view was accepted and the proposal to omit the Instrument of Instructions and the related clause was approved.

The President of India

The Constitution provides for a President of India and the executive power of the Union including the Supreme Command of Defence Forces is vested in him. But the executive power of the Union vested in the President must be exercised in accordance with the Constitution and the Constitution prescribes that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions and the advice so tendered is binding on the President.

It is significant to note that the Constitution simply creates the office of the "President of India." Nowhere does it say that the President is either the head of the State or the head of the Executive. The omission is deliberate. The Union Constitution Committee proposed to call the President the "Head of the Federation,"[6] but the Drafting Committee omitted both the words 'Head' as well as 'Federation' and created the President of India. When this article of the Draft Constitution was being discussed in the Constituent Assembly Prof. K. T. Shah moved an amendment that "the Chief Executive and Head of the State in the Union shall be called the President."[7] Ambedkar opposed it and said, "His (Shah's) amendment, if I understood him correctly, is fundamentally different from the whole scheme as has been adopted in the Draft Constitution. Prof. Shah uses the words 'Chief Executive and the Head of the State.' I have no doubt about it that what he means by the introduction of these words is to introduce the American presidential form of executive but not parliamentary form of executive which is contained in the Draft Constitution."[8]

The Constitution, therefore, establishes a parliamentary form of government and the head of the State is a necessary adjunct of such a system no matter whether he is a King or a President. The real functionaries are the responsible Ministers who make and run the government. Jawaharal Nehru told the Constituent Assembly, "We want to emphasise the ministerial character of the Government, that power really resided in the ministry and in the legislature and not in the President as such."[9]

Demand for Presidential System

Although the Constitution established a parliamentary system and it had been working at the Centre and the States, eminent opinion in the country veered round the Presidential system, especially after the 1967 General Election and its advocates were many. Even K. M. Munshi, who

6. Report of the Union Constitution Committee, July 4, 1947. *The Framing of India's Constitution, Select Documents, op. cit.*, Vol. II, p. 578.
7. *Constituent Assembly Debates*, Vol. VII, p. 969.
8. *Ibid.*, p. 974.
9. *Constituent Assembly Debates*, Vol. VII, p. 734.

was one of the 7-man Committee which drafted the Constitution and most eloquently championed the cause of parliamentary democracy in the Constituent Assembly, expressed the opinion in 1967, that if he were to frame a constitution for the country again he would favour the Presidential system as in the United States. He said, "Those of us who supported the British Cabinet system, to which we were accustomed, thought that it would work effectively in India, but I must confess that we have failed to evolve the two-party democratic tradition necessary to support the Cabinet system.....The Cabinet system of Government has not been a success.....We are heading towards a situation in which either the presidential system or military rule would become inevitable."[10] K. S. Hegde, Chief Justice of the Delhi High Court and afterwards a Judge of the Supreme Court, said on April 15, 1967, that the Constitution should be reshaped to provide, among other things, for the Presidential form of Government for the multiplicity of political parties might soon lead India to conditions similar in pre-de-Gaulle France."[11] Madhu Limaye, then a Member of Parliament, speaking on "Future of Parliamentary Democracy in India," observed that many people in India were doubting whether democracy was successful in India. Some were thinking whether the Presidential form of Government, "would not be better than the present Parliamentary form of Government." Limaye was of the opinion that adoption of Presidential form of Government "involving separation of executive and legislative functions might foster national feeling during the election of the President and may also help the emergence of two strong contending parties or a coalition of parties."[12]

There is, however, no denying the fact that the democratic instinct of Indians had proved immature. The bane of defections that followed in the wake of 1967 General Election and the most reprehensible manner in which the non-Congress Opposition parties indulged, both inside and outside the Union and State Legislatures, vulgarised politics and seriously undermined the future of parliamentary democracy in India. Elections to the Sixth House of the People in March 1977, the polarisation of the political parties and the emergence of responsible Opposition,and its leader having been given an official recognition and status seemed to augur well and set a bright future for the smooth functioning of parliamentary democracy. But the old game of defections was again allowed to pollute politics and the Janata ruling party played the major role. The Executive Committee of the Janata Party at a meeting held on April 24, 1977, decided that members of the Council of States (Rajya Sabha) and the State Assemblies desiring of joining the Party would be admitted "without any condition or reservation."[13] Indians are proverbial worshippers of the rising sun and when the power hungry politicians got the cue from the ruling party, they *en masse* deserted the parties on whose tickets they had been elected and the nefarious game of defections had then a full swing.

Vayalar Ravi, a former Congress Working Committee member, told newsmen at Trivandrum on May 10, 1977 that a move to convene a Constituent Assembly was initiated during the period of Emergency and a bill to introduce the Presidential system of government got ready by Mrs. Gandhi's Government. Sanjay Gandhi, the Prime Minister's son, was the prime force behind these, he disclosed, which were, however, scotched by the opposition within the Congress Party.[14] The Prime Minister, Mrs. Gandhi, stoutly contradicted the information, that had trickled out to the press, when the matter was raised in Parliament. It is on record now that in October 1975 a demi-official paper, "A Fresh Look at Our Constitution : Some Suggestions", advocating a Presidential system was circulated and sent to the Judges as well.[15] In 1976, several Pradesh Congress Committees advocated the setting up of a Constitutent Assembly. The move was abandoned and, instead, the Forty-second amendment was adopted in December 1976.

10. As reported in *The Hindustan Times*, New Delhi, January 28, 1967.
11. Seminar organised by the Bar Association of India. *The Indian Express*, New Delhi, April 17, 1967.
12. Meeting organised by the Progressive Group, Bombay, September 2, 1967. *The Hindustan Times*, New Delhi, September 4, 1967.
13. *The Times of India*, New Delhi, April 25, 1977.
14. *Indian Express*, New Delhi, May 11, 1977.
15. Justice V. R. Krishna Iyer of the Supreme Court and Justice T. U. Mehta, publicly admitted about the circulation of such a paper. On January 2, 1980, shortly after his retirement as Chief Justice of Himachal High Court, Justice Mehta recalled how in 1975 a "mysterious paper" was circulated to all judges. It suggested both a Presidential form of government and a Superior Council of Judiciary to interpret the Constitution and to supervise the performance of Judges. He expressed his belief that the cyclostyled paper was distributed by the Law Minister.

The issue remained more or less dormant during nearly three years of the Janata-Lok Dal rule. But it triggered again soon after Mrs. Gandhi returned to power in January 1980 and more particularly after the Supreme Court decision in the *Minerva Mills* case on May 9, 1980. On May 11, 1980 laying the foundation stone of a telephone exchange building at Sangareddy, the headquarters of the Medak district in Andhra Pradesh, Communication Minister C. M. Stephen said that the Supreme Court judgment (in Minerva Mills case) holding that Parliament does not have unrestricted power of amending the Constitution and that Fundamental Rights are more important than Directive Principles laid down in the Constitution "posed a new challenge to the ruling party, and we will face it."[16] Dr. Chenna Reddy, the Andhra Pradesh Chief Minister, renewed in most unequivocal terms the demand for a Presidential system on June 22, 1980 at Hyderabad in a speech delivered in the presence of the Union Law Minister Shiv Shankar. Chenna Reddy repeated its plea for the second time at New Delhi on June 7, 1980. He even spelt out the details of his scheme clearly enough. His suggestions created a furore in the Council of States (Rajya Sabha) on June 9, 1980 and anxious queries were made by the Opposition members. The Union Minister of Law and Justice, Shiv Shankar, assured the House that there was no thinking on the part of the Government to introduce a Presidential form of government in the country and "it is not necessary at this stage to do so." The Law Minister described Dr. Chenna Reddy's views as "'individual opinion" and it was a case of individual's freedom of expression.[17]

But it did not end the matter there. All the Opposition parties combined together to forestall the designs, if any, of the ruling party. Even a memorandum was submitted to the President for his intervention in checkmating the proposed changes and substituting Presidential for a Parliamentary system. Kuldip Nayar reported in the *Indian Express,* December 15, 1980, that President Neelam Sanjiva Reddy was opposed to the Presidential System of government and he reportedly told some Indian leaders, the other day that there was no possibility of the system being introduced at least for twenty months "as long as I am there" (President Reddy completed his term of office in July 1982). But the President snubbed a reporter at Hyderabad when he was asked about his views on the Presidential system and angrily replied that : "the President does not make statements." The Bharatiya Janata Party President, A. B. Vajpayee, alleged, on December 13, 1980 at Gwalior, that there was a "two-year plan" to install Mrs. Indira Gandhi as the country's President by changing the Constitution.[18] The Bharatiya Janata Party at its Bombay Session in a resolution on the political situation warned the country against the "sinister designs" of the ruling party to replace the Parliamentary system by the Presidential form of government and push India under an "authoritarian rule."[19]

When Dr. Chenna Reddy's suggestion of the Presidential system was being discussed in the Council of States,[20] the Chairman, M. Hidayatullah, characterised the suggestion of the Andhra Pradesh Chief Minister as "straws in the wind" and appealed to the members that they should not get unnecessarily agitated. The remark evoked loud protest from the Opposition, but what happened subsequently cannot be lightly brushed aside. When the Maharashtra Chief Minister A.R. Antulay, had spoken so trenchantly against the existing parliamentary system and pleaded for the need to change the system whether before a gathering of lawyers or at the session of the All India Congress (I) Committee and suggested that the Congress (I) should start a dialogue on this question and a special session of the AICC (I) should be convened to consider the issue, one cannot consider his utterances as that of a lone soldier. He even suggested holding of a referendum on the Presidential system.[21] There was certainly a powerful lobby within the Congress(I) to bring about the change and Antulay was one of the selected instruments for the propagation of an idea. Even the Law and Justice Minister, Shiv Shankar, told the House of the People that he personally felt that the Presidential form was a highly democratic form of government. Mrs. Indira Gandhi did not say anything categorical on the subject, but her observations

16. *The Tribune,* Chandigarh, May 13, 1980.
17. *The Times of India,* New Delhi, June 10, 1980.
18. *The Sunday Standard,* New Delhi, December 14, 1980.
19. *Indian Express,* New Delhi, December 14, 1980.
20. June 9, 1980.
21. *India Express, New Delhi, January 28, 1981.*

at the All India Conference of Lawyers that she inaugurated in October 1980 that why "many who swear by democracy should shy away from discussion of a matter of public importance" and her remarks at a news conference at New Delhi that the Presidential system was "democratic" in content, were significant. When many speakers in the All India Congress Committee session in December 1980 commendingly referred to the Presidential system and sought a switchover, there was not a word of disapproval by her. She smiled when a group of 25 American students from New York asked her, on January 27, 1981, about the controversy regarding the Presidential form of government. Specifically they asked whether it was ruled out forever. The Prime Minister said, she did not think there would be a Presidential form of government in the near future and added that it was, however, "everybody's case that the Presidential system was less democratic. The question was of finding out what effectively worked in Indian conditions and of obtaining peoples' participation."[22]

More recently, it had been vigorously advocated by Vasant Sathe, when Minister of Communication in Rajiv Gandhi's Government and again when the Congress was out of office in 1991. Rama Krishna Hegde, who was the critic of the Presidential system became its ardent supporter. However, the most unambiguous endorsement has come from the Bharatiya Janata Party, which adopted the Presidential form of government as part of its programme at the Vijayawada conference. Vasant Sathe later clarified that he had not advocated a switch to the Presidential system. "All I had been pleading for is that within the existing system, we should have a directly-elected chief executive who, although chosen by the people, would be responsible to Parliament. This slight change is necessary because the existing structure has proved to be weak."

In the last week of January 1987, a debate was opened by 20 eminent citizens who questioned the relevance of the Indian Constitution as an instrument of social change. The Twenty believed that the distorted functioning of parliamentary democracy was responsible for all that ailed India today and that drastic constitutional reforms were the solution. The reforms suggested ranged from direct election of the Prime Minister by the people entitled to vote (which certainly is tantamount to the Presidential system though they shied away from saying so) to proportional representation in Parliament and the State Legislatures.

The ranks of the no-changers are equally numerous and articulate. They include eminent jurists like N. A. Palkhivala, H. M. Seervai and L. M. Singhvi. The Supreme Court Bar Association is as vocal as the pro-changer lawyers. In a resolution passed at an emergency meeting on November 17, 1980 the Supreme Court Bar Association condemned the "sinister attacks" on parliamentary democracy and independence of judiciary and assailed the argument that the Prime Minister must have all the powers of the President of the United States to maintain the unity and integrity of the country.[23] Palkhivala, way back in 1979, pleaded for changes in the Constitution and argued the case for a change to the Presidential System[24], but soon there was a wavering shift in his stand. He says that he was wrong and the people who support the Presidential form are wrongly motivated and authoritarian. "When your house is on fire, you do not decide whether your bed room should be converted into a study", he says.[25] H. M. Seervai believes that the advocacy for adopting Presidential System "is mistaken and is based on general and emotional grounds."[26] Justice V. R. Krishna Iyer, talking to newsmen at Chandigarh on May 11, 1980 said that the Presidential form had a great potential for subversion of democracy in a large and diverse country like India with indigent and illiterate people. He remarked that any change from the present form of government would have to undergo the test that "it does not violate the basic structure of the Constitution."[27]

To substitute a Presidential system to a

22. *The Hindustan Times*, New Delhi, January 28, 1981.
23. As reported in *Indian Express*, New Delhi, November 18, 1980.
24. Palkhivala in his Convocation Address to the Madras University, 1979, expressed the view that a Presidential System "tailored" to meet our requirements could be introduced in our Constitution by a valid constitutional amendment without altering the basic structure. Also refer to his article "Has the Constitution Failed ?" *The Illustrated Weekly of India*, Bombay, September 16-22, 1979, and address to a seminar on "Challenge Ahead" at Calcutta on April 20, 1980. *The Times of India*, New Delhi, April 21, 1980.
25. "Case against Presidential System", *Indian Express*, New Delhi, November 20, 1980.
26. *The Times of India*, January 28, 1980.
27. *Indian Express*, New Delhi, January 28, 1981.

Cabinet system is not to amend the Constitution, as Antulay maintained, or to have a directly elected chief executive responsible to Parliament within the existing system as Vasant Sathe suggested, but to rewrite large parts of it. It is an impossible task to re-write large parts of the Constitution and to tailor them to meet the requirements of the country. The Constitution is an organic whole and it cannot be changed piecemeal. In determining the nature of the Executive, the Constituent Assembly decided that it should be of parliamentary type and in consonance with the basic principles of that system of government it had to enact other provisions which would harmonise with the parliamentary system and make it function smoothly. If the Presidential system is to be adopted and the powers and functions vested in and exercised by the Council of Ministers are to be conferred on the President as the Chief Executive, who shall be both the head of the Government and the State, corresponding changes shall have to be made in the States. One cannot think of a constitution having two diametrically opposed systems of government, one for the Union and the other for the States and that too in a federal polity. If the Presidential system is conceded at both levels, it would immediately involve the question of mode of electing the President and the Governors. Then the existing powers of the President and the Governors would have to be considered *de novo* and various other constitutional provisions, including administrative relations between the President and Parliament and the Governors and State Legislatures. They shall have to be redefined in conformity to the basic principles of the Presidential system hinging upon separation of powers. And if the principle of free and limited government is to be the *sine qua non* of such a system as it was with the Founding Fathers of the Constitution of the United States, the system of checks and balances is its *raison d' etre* and it shall have to be devised and incorporated in the various provisions of the Constitution.

The Presidential system, therefore, cannot be introduced without re-writing the Constitution. The Supreme Court ruled in the *Keshavananda Bharati* case that the basic structure of the Constitution cannot be changed. This principle was followed in *Mrs. Indira Gandhi* vs. *Raj Narain* election case and re-affirmed in the *Minerva Mills* case. The Parliamentary system of government is the foundation on which the entire machinery of Government, both at the Centre and the States, is erected. "To pick up the foundations of the Executive and Legislatures and build a new structure on new foundations is to make a new Constitution and not to amend the old one. Such purported amendment would be void under Article 368 as altering more than the basic structure of our Constitution.[28]

It is not the Constitution which has failed the people, says Palkhivala, "but it is our chosen representatives who have failed the Constitution." The structure has been "erected by architects of consummate skill and fidelity; its foundations are solid, its compartments are beautiful; its arrangements are full of wisdom and order; and its defences are impregnable from without. It has reared for immortality, if the work of man may justly aspire to such a title. It may nevertheless perish in an hour by the folly, or corruption, or negligence of its keepers THE PEOPLE", he added. But the foundations of the Constitution "have been shaken by the folly of the people, the corruption of our politicians and the negligence of the elite. In just thirty years, we have reduced the noble processes of our Constitution to the level of a carnival of claptrap, cowardice and chicanery."[29] Ambedkar poignantly remarked in the Constituent Assembly, that if the Constitution "which was given by the people unto themselves in November 1949 did not work satisfactorily at any future time, we would have to say not that the Constitution has failed but the man is vile". These words of the architect of the Constitution have proved to be prophetic. The life style of Indians during the past four decades has brought utter disillusionment. India's problem is in the crisis of character and the decline of integrity "which should be loadstar. We are in danger of fast becoming a philistine nation, a society without inspiration."[30] It is, therefore, a crisis of substance and not form, a crisis of functioning and not in structure.

Qualifications for Election as President

The Constitution requires that the President should be a citizen of India, must have completed the age of thirty-five years and be qualified for election as a member of the House

28. Seervai, H. M., "Presidential System—II Studies in Comparison", *Indian Express*, New Delhi, November 21, 1980.
29. Palkhivala, N.A. "Has the Constitution Failed ?", *The Illustrated Weekly of India*, Bombay, September 16-22, 1979.
30. Singhvi, L. M., Bhagwati Singh Mehta Memorial Lecture, Jaipur, *The Hindustan Times*, November 2, 1980.

of the People. But he must not at the time of his election hold any office of profit under any Government, Union or State or local. A person, however, is not to be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister for the Union or for any State. The President must not be a member of either House of Parliament or a State Legislature, and if he is, he must vacate his seat in that House before he enters upon his office as President. In order to prevent abuse of authority by such candidates, the Constitution vests the superintendence, direction and control for the election of President in the Election Commission which, in its turn, is subject to the control of Parliament.

Prior to the Thirty-ninth Amendment all doubts and disputes arising out of or in connection with the election of a President or Vice-President were inquired into and decided by the Supreme Court, whose decision used to be final.[31] The Constitution (Thirty-ninth Amendment) Act, 1975, deprived the Supreme Court of this jurisdiction and empowered Parliament to regulate by law, all matters relating to and connected with the election of a President or Vice-President, including the grounds on which such election could be questioned. The amendment contemplated to set up an authority or body to inquire into and decide all such disputes. The validity of the law regulating such disputes, the setting up authority or body to inquire into and the decision of that authority or body was not to be called in question in any court. The Constitution (Forty-fourth Amendment) Act, 1978, restored to the Supreme Court, its original power of inquiring into and deciding all doubts and disputes relating to the election of a President or Vice-President. The newly inserted Article 71 further provided that if the election of a person as President or Vice-President is declared void, acts done by him in the exercise of the performance of the powers and duties of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalid by reason of such a decision.

The Constitution (Eleventh Amendment) Act, 1961, inserted clause 4 in Article 71 providing that the election of a President or Vice-President shall not be called in question on the ground of existence of any vacancy for whatever reason among the members of the electoral college electing him. In other words, it is not a valid ground to contend that the existence of a vacancy in the electoral college renders the election of a President or Vice-President void or Presidential or Vice-Presidential election may not be held till the electoral college is complete for all intents and purposes.

Term of Office

The President holds office for a term of five years and is eligible for re-election. He may resign before the expiry of his term and in such an eventuality the resignation is required to be addressed to the Vice-President who shall forthwith communicate it to the Speaker of the House of the People. But the Constitution makes no provision for meeting a situation arising from the resignation of the acting President. V. V. Giri, who acted as President after the death of Zakir Hussain, expressed his desire on July 16, 1969 to resign in order to contest the Presidential election scheduled for August 16, 1969. Since the Constitution did not provide for a clear cut direction in regard to a situation where the Vice-President was acting as President, V. V. Giri resigned from the office of the Vice-President, in accordance with the advice of the Attorney-General, and addressed his letter of resignation to the President of India. Copies of the letter sent to the President's Secretariat were forwarded to the Prime Minister and the Chief Justice of India.

Mode of Election

The mode of election of the Indian President is completely different from that under the American Constitution. It is a unique election in that the representatives of the people choose the President. As Dr. Rajendra Prasad put it, "The President is elected by representatives who represent the entire population twice over, once as representatives of the States and again as their representatives in Parliament." Jawaharlal Nehru commended this as the right method to choose a good man who can efficiently and with dignity play the role as a constitutional head. If the President was to be directly elected, Nehru told the Constituent Assembly, "and yet (we) did not give him any real powers, it might become slightly anomalous" especially since "we wanted to emphasize the ministerial character of

31. Article 71 (original) provided : "All doubts and disputes arising out or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final." The Supreme Court decided under this provision the election petitions against President V. V. Giri (1970) and President Fakhruddin Ali Ahmed (1974).

the Government that power really resided in the Ministry."[32]

The qualifications prescribed are simple. Any citizen of India who has completed 35 years of age and is qualified for election as a member of the House of the People (Lok Sabha) is eligible to contest provided his nomination is backed by not less than 10 electors as proposers and at least 10 electors as supporters.

The President is elected by the members of an electoral college consisting of the elected members of both the Houses of Parliament and the elected members of the Legislative Assemblies of the 25 States. Nominated members of these Houses and the elected members of the Assemblies of the Union Territories are excluded. The Constitution lays emphasis on uniformity in the scale of representation of the different States and the parity between the States as a whole and the Union through the determination of the value of the votes based on the population of the States.

In simple language, the complicated formula would mean that the value of the vote of every elected member of the Legislative Assembly of a State is determined by dividing the population of the State by the total number of elected members of the Assembly and by 1,000, and if there is any remainder of not less than 500 after such division, then the vote of each member is further increased by one. To illustrate it :

$$\frac{\text{Total population of the State}}{\text{Total number of elected members in the Legislative Assembly of a State.}} \Big\} \text{ Divided by } 1{,}000$$

The value of the vote of an elected member of either House of Parliament is worked out by dividing the total number of votes assigned to the members of the Legislative Assemblies of all the 25 States by the total number of the elected members of both the Houses of Parliament, fractions exceeding one-half being counted as one. The Constitution also lays down that till we reach the year 2000 and a census is taken thereafter, the population for the determination of the value should continue to be the 1971 census figures.

In the election, the system of proportional representation by means of a single transferable vote is followed as provided in Article 55. The ballot is secret. The candidate who secures votes more than or equal to the quota of votes is declared elected. If at the first count no candidate is able to secure the required quota of votes, the candidate securing the least number of votes is eliminated and his votes are transferred among other candidates according to the second preference on the ballot papers of voters who gave him first preference. The process of elimination and transfer of votes continues, till such a candidate is found who has obtained the required quota of votes. Disputes, if any, about the election of the President are heard and decided by the Supreme Court.

The Presidential and Vice-Presidential Act, 1952, in its operation through the first five elections was found inadequate in many respects to cope with complex situations. The elections to the highest office became a free-for-all with non-serious candidates who did not have the capacity to put up even a symbolic fight jumping into the fray. The legislative measures taken in 1974 to curb this undesirable development and inject seriousness into the election came not a day too soon. The law now lays down that : (1) a candidate's nomination papers should be proposed by at least 10 electors and seconded by an equal number; (2) a sum of Rs. 2,500 should be deposited along with the nomination; and (3) a petition challenging an election can be filed in only by a contesting candidate or 20 or more electors jointly.

Eligibility for re-election

On the question of re-eligibility the Constitution does not impose any express restriction as to the number of terms, consecutive or otherwise, for which a person can be elected President. It simply provides that "A person who holds or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office." The Union Constitution Committee had recommended that a retiring President would not seek election beyond the second term and the Constituent Assembly accepted this suggestion. But when the Draft Constitution came under discussion, the point was made that, if there was a capable and efficient man, there was no reason why he should not be allowed to serve the country beyond two terms and, accordingly, K. C. Sharma moved an amendment for removing the restriction that the President would be eligible to hold office for two terms

32. *Constituent Assembly Debates*, Vol. IV, pp. 713-4.

only."[33] Ambedkar accepted the amendment and restriction on the eligibility for re-election was withdrawn.

Rajendra Prasad was elected the first President of India by the Constituent Assembly on January 24, 1950. He was elected for the second time under the normal working of the Constitution in 1952. In 1957, when time came for Presidential election, Nehru hoped and expected that Prasad would step down in favour of the Vice-President, S. Radhakrishnan. But Rajendra Prasad declined to do so and there was a minor crisis within Congress Party. Rajendra Prasad continued in office till 1960, the aggregate period of two terms, and in 1960, he himself announced that he would not run for the third term. A Convention was, thus, set for a two term tenure.

Impeachment

The President is liable to impeachment for violating the Constitution. The expression "Violation of the Constitution" has nowhere been defined. The manner in which impeachment proceedings take place is covered by Article 61. It provides that either House of Parliament may prefer the charge for impeaching the President by moving a resolution, provided fourteen days' notice has been given to that effect by not less than one-fourth of the total membership of the House initiating the charge of impeachment. When the House initiating the charge passes a resolution to impeach the President, the other House as a consequence thereof investigates the charge so made. But instead of making the investigation itself, the House may delegate the work of investigation to any court or tribunal appointed by the House for that purpose. The President has the right to appear in person or be represented at such investigation. If the House investigating the charge passes a resolution by a two-thirds majority of the total membership of the House that the charge has been sustained, the President is removed from his office the day on which such a resolution is passed.

No President has been impeached so far, though efforts were made twice in 1970 and 1979 for initiation of impeachment proceedings against V. V. Giri and Neelam Sanjiva Reddy respectively, but in both the cases the proposals were ultimately dropped.

Succession of Presidency

The Constitution provides for succession to Presidency after the expiration of the term of office of the President, by reasons of his death, resignation or removal. Article 62(1) states that election to fill a vacancy shall be completed before the expiration of the term of office of the President. If the office of the President becomes vacant owing to the death, resignation or removal or to any other cause before the expiry of his term, the election of a new President must be held as soon as possible, but in no case later than six months from the date of the occurrence of the vacancy.[34] In the meantime, the Vice-President acts as President till the date on which a new President enters upon his office.[35]

But the Constitution does not provide for a situation in which the offices of both the President and the Vice-President become vacant. To remedy the omission Parliament passed in May 1969, the President (Discharge of Functions) Act, providing for the discharge of President's duties in certain contingencies and putting the Chief Justice of India, or in his absence, the seniormost Judge of the Supreme Court in the line of succession. On the resignation of the Acting President, V. V. Giri, the Chief Justice of India M. Hidayatullah, succeeded Giri till the Presidential elections were held and the newly elected President assumed office. The Home Minister made it clear in Parliament that the Act in no way intended to determine succession to the Presidency. It was just to fill a vacuum if the Vice-President who can act as or discharge the functions of the President, is for any reason incapacitated or is not available.

Oath or Affirmation by the President

Every President and every person acting as President or discharging the functions of the President is required, under Article 60, before entering upon his office to make and subscribe in the presence of the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court available, an oath or affirmation in the prescribed form. The oath or affirmation demands from him :

(i) to faithfully execute the office of the President or discharge the functions of the President;
(ii) to preserve, protect and defend to

33. *Ibid.*, Vol. VII, pp. 1023-24.
34. Article 62(2).
35. Article 65.

the best of his ability the Constitution and the law; and

(iii) to devote himself to the service and well- being of the people of India.

THE VICE-PRESIDENT

The Vice-Presidency

The Constitution provides for the Vice-President and the office is modelled partly on the similar institution in the United States. Like the American Vice-President, the Indian Vice-President is the ex-officio Chairman of the Council of States (Rajya Sabha), the Upper Chamber of the Union of India. The similarity between the two offices ends here. In the United States, the Vice-President must possess all the qualifications of a President and he is elected by the same popularly elected electoral college which elects the President. The reason is obvious. The American Vice-President succeeds to the Presidency in the event of the President's death, resignation, incapacity or removal and continues in the office for the unexpired portion of his predecessor's term. The Vice-President of India, on the other hand, only acts as President in any casual vacancy in the office of the President until a new President is elected and enters upon his office, as did V. V. Giri on the death of Zakir Hussain, and B. D. Jatti on the death of Fakhruddin Ali Ahmed. The terms of office of the American President and Vice-President are identical and both are liable to removal by impeachment. The Vice-President of India is elected for a term of five years by an electoral college consisting of members of both Houses of Parliament and is liable to removal from office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People.

But the most important dissimilarity between the two offices relates to their duties and functions. The Vice-President of India is the *ex-officio* Chairman of the Council of States and he draws his salary as an incumbent of that office. In between the sessions of the Council of States he may even go abroad on a goodwill mission or on an invitation from foreign Governments, as did Radhakrishnan, Zakir Hussain, G. S. Pathak, B. D. Jatti, R. Venkataraman and Shankar Dayal sharma on many occasions. But neither he speaks for the Government nor has he any participation, either directly or indirectly, in the affairs of the Government. The Vice-President of India does need no training in administration, like his counterpart in the United States, as he fills only a casual vacancy and takes over the Rashtrapati Bhavan until the President resumes his duties or a new President is elected, in no case later than six months from the date of the occurrence of the vacancy, and enters upon his office.

A neat distinction need be made when the Vice-President acts as the President and when he is discharging the functions of the President. The Vice-President acts for the President in the event of his death, resignation or removal until a new President is elected and he enters upon his office. But when the President is unable to discharge the functions relating to his office owing to absence, illness, or any other cause, the Vice-President discharges his functions until the date on which the President resumes his duties. Radhakrishnant wice discharged the functions of the President and once Zakir Hussain when President S. Radhakrishnan fell ill and Jatti for N. Sanjiva Reddy when he went to the United States for treatment. The Vice-President, whenever, he acts as President, exercises all the powers of the President and is entitled to such emoluments, allowances and privileges as may be determined by Parliament and until provision to that effect is made, such emoluments, allowances and privileges as are specified in the Second Schedule. But when the Chief Justice of India discharges the functions of the President, as envisaged in the Presidential (Discharge of Functions) Act, 1969, his emoluments, allowances and privileges remain the same as those of the President and Parliament cannot alter them.

Election of the Vice-President

The Vice-President is elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of the single transferable vote. The voting is by secret ballot. The Vice-President must not be a member of either House of Parliament or a House of the State Legislature and if he is of either of them, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President. No person shall be eligible for election for Vice-President unless he is a citizen of India, has completed the age of thirty-five years, and is qualified for election as a member of the Council of States and he must not hold any office of profit under the Government of India or the Government of any State or any local or other authority

subject to the control of any of the said Governments. But a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

The term of office of the Vice-President is five years. But he may resign from his office before the expiry of the normal term. The letter of resignation is to be addressed to the President of India. When V. V. Giri resigned on July 20, 1969, he addressed his letter of resignation to the President of India, although he himself was the Acting President. This procedure he followed on the advice of the Attorney-General. The Vice-President may also be removed from office by a resolution passed by a majority of all the then members of the Council of States and agreed to by the House of the People. The Vice-President continues to hold office, notwithstanding the expiration of his term, until his successor enters upon his office.

Duties of the Vice-President

The duties of the Vice-President, as said earlier, are two-fold. He is the *ex-officio* Chairman of the Council of States, presides over its meetings, and draws his salary in that capacity. Though the office of the Vice-President is created by the Constitution, but he draws no salary in that capacity. When the Vice-President acts as President of the Republic or discharges the functions of the President, he ceases to perform the duties of the Chairman of the Council of States and is, accordingly, neither entitled to any salary nor allowances payable to that office. When the Vice-President acts for or discharges the functions of the President he exercises all the powers of the President and enjoys all the privileges of that office.

POWERS AND DUTIES OF THE PRESIDENT

Executive Powers

The President, unlike his counterpart in the United States, has no power of control and supervision over the Ministries of the Union Government. They are presided over by Ministers whose advice is binding on him in the exercise of his functions. The President is only a necessary adjunct of the Governmental machinery. His authority is formal, though all executive actions of the Union Government must be expressed to be taken in the name of the President. For that matter all contracts and assurances of property made on behalf of the Government of India are expressed to be made by the President and executed in such manner as the President may direct. Moreover, all officers of the Union are his officers and, consequently, his subordinates, and he has the right to be informed of all the affairs of the Union. The President also makes rules for the convenient transaction of the business of the Government of India and for the allocation among Ministers of the said business. He has the right to be kept informed by the Prime Minister of all decisions taken by the Council of Ministers and seek such other information regarding the affairs of the Government of India as he may consider necessary and expedient. The President may also ask the Prime Minister to submit for the consideration of the Council of Ministers any matter on which a decision had been taken by a Minister but which has not been considered by the Council. He may also require the Council of Ministers to reconsider the advice tendered to him, either generally or otherwise.[36]

All important appointments are made by him and they include the Prime Minister of India, other Ministers of the Union, the Attorney-General of the Union, the Comptroller and Auditor-General, Judges of the Supreme Court and the High Courts and the State Governors. Before appointing Judges, the President is bound to consult servicing Judges, and he will be bound to make these appointments on the advice of the Ministry. With regard to the appointment of the Prime Minister, the choice of the President is obvious when the Constitution enjoins that the Council of Ministers shall be collectively responsible to the House of the People. Collective responsibility can only be enforced when the Council of Ministers is a team which plays the game of politics under the captaincy of the leader of the party in majority in the House of the People. The President may have some discretion in the selection of the Prime Minister, if no single party has a majority. But even in that case it is the duty of the President to turn to a person who must be able to secure colleagues and with his colleagues he must be able to secure the collaboration of the House of the People. Following the death of Nehru, Dr. Radhakrishnan swore in G. L. Nanda, the seniormost member of Nehru's cabinet, as interim Prime Minister pending selection of a

36. Substituted by the Constitution (Forty-fourth Amendment) Act, 1978, S. 11.

new leader by the Congress Legislature Party in Parliament. He repeated it in 1966 on the death of Lal Bahadur Shastri and his decision was appreciated. Gyani Zail Singh straightway administered the oath of office to Rajiv Gandhi, when he was only a member of Parliament and had not been elected leader of the Congress Legislature Party in Parliament, after the assassination of Indira Gandhi. It was a bold decision based on the shrewd assessment of the prevailing situation, though a complete departure from the established convention. Rajiv Gandhi's landslide victory at the polls shortly thereafter fully vindicated Zail Singh's decision. In contrast, Neelam Sanjiva Reddy landed himself in a serious controversy in 1979 by calling upon Charan Singh to form the government after the fall of the Janata Government headed by Morarji Desai. Charan Singh could not face Parliament and bowed out within a few months.

Besides the appointment of high dignitaries of the State referred to above, the President has also the power to appoint the following administrative commissions : An Inter-State Council, the Union Public Service Commission and a Joint Commission for a group of States, the Finance Commission, the Election Commission, a Commission to report on the administration of Scheduled Areas, Special Officer for Scheduled Castes and Scheduled Tribes, a Commission to investigate into the condition of backward classes, and a Commission on Languages. But all this he does on ministerial advice.

The President has the power to remove his Ministers, the Attorney-General of India, and the Governors of the States. But ministerial dismissal by the head of the State is not the essence of a parliamentary system of government. No Government in Britain has been dismissed by the Sovereign since 1783 and no Monarch may today venture it, whatever be the legal opinion, unless he or she is determined to gamble in the most dangerous manner. The role of the Indian President with relation to his Ministers is identical to that of the British Monarch. Ambedker emphasised this point in the Constituent Assembly. He asserted, "Beyond the identity of names of the Heads of Governments of the Indian Union and the U. S. A., there is nothing in common between the form of government prevalent in America and that proposed in the Indian Constitution." He further added that the place of the President of India "in the administration is that of a ceremonial device on the seal by which nation's decisions are made known. He will be generally bound by the advice of the Ministers. He can do nothing contrary to their advice; nor can he do anything without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so, so long as his Ministers command a majority in Parliament." It is the Parliament's privilege to vote down the Ministry.

Military and Foreign Affairs

The Constitution vests in the President the Supreme Command of the Defence Forces, but he is expressly required to exercise this power in conformity with law. Parliament has exclusive legislative power relating to the defence forces, war and peace. Declaration of war and peace, as under the British Constitution, is an executive function, but the Indian President will not declare war or deploy the force without or in anticipation of Parliamentary sanction.

All matters affecting relations with foreign countries are within the exclusive legislative competence of Parliament[37] and, as such, executive power relating to foreign affairs is exercised by the Union and the diplomatic business is conducted in the name of the President. Diplomatic envoys and consular agents are accredited in his name. All treaties and international agreements are negotiated and concluded in the name of the President, provided they do not involve the secession of the territory, payment of money or a change in the law made by Parliament. But this power of treaty-making can be restricted by Parliament under article 53(3) (b), which provides that "nothing in this Article shall.....prevent Parliament from conferring by law functions on authorities other than the President."

Legislative Powers

The President is a component part of the Union Parliament. Article 79 provides that there "shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People." The powers vested in the President in relation to legislation are :

The President has the power to summon and prorogue Parliament and dissolve the House of the People (Lok Sabha). The power to summon Parliament is, however, subject to the condition

37. Seventh Schedule, List I, entry 14.

imposed by Clause (1) of Article 85, that is, the President must summon Parliament within six months from the last sitting of a session. If he fails to summon it within the prescribed time, there will be a breach of the Constitution. The President has also the power to summon a joint sitting of both Houses of Parliament in case of a deadlock between them over a non-Money Bill.

Power of dissolution is one of the most important features of a parliamentary government. Dissolution means the end of the life of the representative House of the Legislature and calls for a fresh election. During the last more than a hundred years in Britain there is no instance of refusal of a dissolution when advised by the Prime Minister. Nevertheless, the opinion has always prevailed in that country that the Monarch is free to disregard such an advice if he feels that the Prime Minister's right to ask for dissolution is being put to serious abuse. There had been two definite occasions during the last seventy years or so when dissolution took place at the express desire of the King.

The issue of dissolution came up for active consideration before the Constituent Assembly of India when Prof. K. T. Shah moved an amendment to Article 69 of the Draft Constitution, which corresponds to Article 85 of the 1950 Constitution, making it obligatory for the Prime Minister to give in writing the reasons for the dissolution of the House of the People. Ambedker in reply (May 18, 1949) said that if the object of Prof. K. T. Shah was that the Prime Minister should not arbitrarily ask for dissolution, the object would be served if the convention regarding dissolution was properly observed. His exposition was that before granting the Prime Minister's proposal for dissolution, the President should ascertain the feelings of the House by exploring the chances of another Ministry. If he found that "the feeling was there that there was no other alternative except dissolution, he would as a constitutional President undoubtedly accept the advice of the Prime Minister to dissolve the House." This exactly is the practice followed in Canada. Ambedkar admitted in the Constituent Assembly that in a parliamentary government there are only two prerogatives which the Head of the State may exercise. One is the appointment of the Prime Minister and the other is the dissolution of Parliament.

On December 7, 1970 the President dissolved the House of the People on the advice of the Prime Minister. In her special broadcast to the nation justifying a Parliamentary poll a good one year ahead of schedule, Mrs. Indira Gandhi declared that she needed a fresh mandate from the people in order to remove the obstacles to her socialistic and secular policies. But what was expedient for Mrs. Gandhi was not acceptable to others. Several Opposition parties protested against dissolution and even a seasoned statesman Acharya Kripalani characterised it as a major danger to democracy. In his article : *Dissolution of Lok Sabha*, he pointed out that power "is useful for serving a legitimate national cause. Power for its own sake or that of an individual is dangerous. Let the nation beware betimes."[38]

Some of the political parties which challenged the Prime Minister's right to govern as head of the minority Government challenged her right to advise dissolution and since it was the first and, consequently, unprecedented act of dissolution some odd suggestions were made. The then Jana Sangh Chief, Atal Behari Vajpayee, asked the President not to accept the Prime Minister's advice and suggested that he should tell the Prime Minister that the House "should pass a resolution recommending dissolution of it." Another suggestion made was that the President should seek an advisory opinion of the Supreme Court. Some others suggested that the President should act "independently and a national caretaker Government be formed." It was even urged that Parliamentary election should not be held before the scheduled time because of the costs and the administrative inconvenience involved therein.

All these arguments were not only irrelevant but the obvious expression of political immaturity. While it may not be mandatory for the President to accept the Prime Minister's advice for dissolution, there is no reason why the President should refuse to accept such advice, when the Prime Minister intends to receive a new mandate from the electorate which may not be available from their representatives. It is an appeal to the people, the ultimate sovereign and quite clearly the lesser sovereign (their representatives) cannot veto the larger sovereign. Mrs. Gandhi's Government had lost its moral right to stay in office when the Supreme Court struck down the Presidential Order on the de-recognition of the Princes. It was, accordingly, right and

38. *Indian Express*, New Delhi, December 31, 1970.

proper that the electorate would have been given earliest possible opportunity to give its verdict on the conduct of the Government. The constitutionality of Presidential action in dissolving Parliament was, therefore, beyond challenge. If he would have refused to the Prime Minister's advice to dissolve Parliament the President would have involved himself in active politics; the role which the Constitution never intended for him.

But dissolution of the House of the People in August 1979 dragged President Sanjiva Reddy in an ugly political controversy. The decision of the President to dissolve the House of the People on the advice of the Prime Minister, who had failed to face Parliament as commanded by the President himself, and ask Charan Singh to continue as Prime Minister, rejecting the claim of the Leader of the Opposition to form the Government on the specific understanding that he would establish his claim to majority on the floor of the House within a period of time the President might prescribe, certainly violated not only the principle he had himself once enunciated so categorically but the very conventions on which hinge the functioning of parliamentary democracy and in utter disregard of the intentions of the framers of the Constitution. The criticism was so bitter among the critics that one group, Janata Party headed by Chandra Shekhar, threatened to initiate proceedings for impeachment of the President. N. A. Palkhivala observed that the President's decision to dissolve the House of the People "is, to use the language of studied moderation, unjustified to the point of constitutional impropriety."

It is certainly the President's prerogative that he may refuse dissolution if he felt that circumstances justified such a refusal. This is evident from the provision of Article 85 (2) (b) which says that the President "may from time to time dissolve the House of the People ". The contrast is significant in the use of the word "may" here. Most of the Articles relating to the powers of the President use the mandatory expression "shall". Article 85(1) itself ordains that the President "shall from time to time summon each House of Parliament .....but six months shall not intervene between its last sitting.....and the first sitting in the next session."

But dissolution is always an exceptional remedy and President Reddy could well reject the advice tendered by Charan Singh Cabinet without proper assessment on the floor of the House whether Jagjivan Ram's claim could be sustained or not. If Charan Singh could be put in office of the Prime Minister as leader of the minority group that had defected from the Janata Party and his was not even a recognised party of the House, on the commitment that he would seek a mandate from the House "the earliest opportunity, say by the third week of August" the same principle could be applied to Jagjivan Ram when he was the recognised leader of the Opposition and the single largest recognised party of the House.

The President is empowered by Article 86 to address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of Members. But it is not mandatory. Article 87(1), however, makes it obligatory on the President that he "shall" address both Houses of Parliament assembled together at the commencement of the first session after each General Election and at the commencement of the first session of each year and inform Parliament of the causes of its summons. The President's address corresponds to the Speech from the Throne in Britain and as in that country it is used for political purposes in making pronouncements of policy of the Government, both on the domestic and foreign affairs. The address of the President as the Speech from the Throne in Britain, is the handiwork of the Prime Minister, though formally endorsed by the Cabinet in India. The President has to read it as it is. He cannot skip over any portion of the address, as was done by the West Bengal Governor Dharam Vira. The President, unlike a Governor, has no discretion to exercise and if there is presumed to be any, the Constitution Forty-second Amendment as also the Forty-fourth Amendment expressly provide that there is none.

Clause (2) of Article 86 empowers the President to send message to either House of Parliament with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all the convenient dispatch consider any matter required by the message to be taken into consideration. This power given to the President is, indeed, very wide as the message may relate to any pending Bill or to any other matter before Parliament. But such a power is incongruous in the context of a parliamentary system as established in India. It corresponds to the American President's power of sending message to Congress covering a vast range of problems indicating the needs of the government and the necessity of either amending the existing law or enacting new legislation. But

the American Presidency is not a part of the legislature and the Presidential message is a gesture to friendly legislators by the President to support his policy and initiate the required measures. The President of India stands in no such need. His advisers are a part of Parliament, chosen from it and responsible to it. They are always in Parliament to initiate new legislation or to offer amendments to the old, explain policy and defend administration, and to participate in debates. If the President sends a message on a Bill which has ministerial support, it has no use and the President unnecessarily drags himself into politics. The real power of the President, like the British Monarch, depends upon "his willingness to keep off politics." If the President sends a message contrary to and without the ministerial advice, then he ventures to interfere with the constitutional responsibility of the Council of Ministers to Parliament and obviously defies the advice tendered to him by the Council of Ministers in the exercise of his functions thereby violating the Constitution and, consequently, making himself liable to impeachment. This is not likely to happen, but no one can predict the folly of human nature.

The President is required to lay before Parliament the Budget, and Supplementary Budget, if any; the report of the Comptroller and Auditor-General of India relating to the accounts of the Government of India; the recommendations of the Finance Commission and the explanatory memorandum of action taken thereon; reports of the Union Public Service Commission; and various other reports like the report of the special officer for Scheduled Castes and the Tribes; and the report of the Commission to investigate into the conditions of the Backward Classes. He recommends measures to Parliament involving the expenditure of Union moneys. These functions the President clearly exercises on ministerial advice.

The recommendations of the President are necessary before legislation can be introduced for the reorganization of States or alteration of State boundaries. The views of the State Legislature or Legislatures must be ascertained before such a recommendation is made and the views so expressed are not binding on the President. As the President shall act on the advice of his Ministry it rests upon the decision of the latter whether the Bill should be introduced in opposition to the views of the State Legislatures or not.

Similarly, sanction of the President is necessary before legislation can be introduced relating to Money Bills, Bills involving expenditure, Bills affecting taxation in which States are interested. No Bill imposing restrictions on freedom of trade can be introduced in the State Legislatures without the previous sanction of the President.

When a Bill passed by both the Houses of Parliament is presented to the President, he may take any of the following three steps as provided by the Constitution :

(1) he may give his assent to the Bill;

(2) he may withhold his assent;

(3) he may return it, if it is not a Money Bill for the reconsideration of both the Houses of Parliament with a message for : (a) a total reconsideration of the Bill, or (b) a partial reconsideration of the Bill, or (c) he may propose amendments to the Bill.

Withholding assent to a Bill passed by Parliament, is inconsistent with the principle of ministerial responsibility and the President is not likely to venture it. The President has been given the power of veto over legislation with the intent that like the Sovereign in Britian he, too, should never use it. So long as the Council of Ministers commands a majority in Parliament and as long as Parliament remains representative of the people, it carries with it the mandate of the political sovereign. If the President withholds his assent he tampers with the will of the political sovereign expressed through their representatives.

If the President sends back a Bill for reconsideration and if such a Bill passed again by both Houses of Parliament with or without amendments as contained in the Presidential message, the President must give his assent thereto. This is of the nature of a 'suspensive veto' and is more or less identical to the suspensive veto power of the American President. The Constitution does not prescribe any time limit within which the Bill must be returned by the President for reconsideration. It simply says, "The President may as soon as possible return the Bill after it is presented to him." Can the President indefinitely keep the Bill pending ? The principle of ministerial responsibility again intervenes with political consequences if the President tries to put it in cold storage.

In fact, the provision of returning Bills after they are passed by Parliament, is opposed to the basic principles of a parliamentary government. It is tantamount to directing the Ministry to revise its policy. If the President objects to some provisions of the Bill or had to offer some suggestions

thereon, the best opportunity for him was to communicate his views to the Cabinet before the introduction of the proposed legislation in Parliament. The Constitution imposes a duty on the Prime Minister to communicate to the President all decisions of the Cabinet relating to the affairs of the Union and proposals for legislation and to furnish such information regarding administration of the affairs of the Union and proposals for legislation as the President may call for.

The Constitution-makers perhaps did not foresee that by borrowing the instrument of 'suspensive veto' from the American Constitution they were not only creating legal complications but political confusion too. Rajendra Prasad, in spite of his unequivocal declaration on the nature of the Constitution in the Constituent Assembly, as its President, attributed to the office of President of India enormously greater powers than those given by the Constitution. On September 15, 1951 he sent a note to the Prime Minister in which he expressed the desire to act solely in his own judgement, independently of the Council of Ministers, when giving assent to Bills, when sending messages to Parliament and when returning Bills to Parliament for reconsideration. This desire was inspired by the Hindu Code Bill which had just been introduced in the provisional Parliament. Prime Minister Jawaharlal Nehru immediately wrote back to the President and reminded him that "These were serious matters of great constitutional importance. They might involve a conflict between the President on one side and the Government and Parliament on the other. They would inevitably raise the question of the President's authority and powers to challenge the decision of Government and of Parliament. The consequences would obviously be serious." He further added that "in our view, the President has no power or authority to go against the will of Parliament in regard to a Bill that has been well considered by it and passed. The whole conception of constitutional government is against any exercise by the President of any such authority."[39]

The President replied to the Prime Minister on September 18, 1951 wherein he maintained that the Constitution "confers in unequivocal words on the President the right to address and send messages to Parliament.....Similarly, it also confers on him in unequivocal terms the right to declare either that he assents to a Bill or he withholds assent therefrom when it has been passed by Parliament and presented to him.....The meaning of the words which are clear and unequivocal in our Constitution is, I take it, sought to be curtailed by importing and reading into our Constitution certain practices and conventions of the British Constitution. While it is to be hoped that ordinarily and in most cases no difference between the Government and Parliament on the one hand and the President on the other will arise, and the President will act in accordance with the convention of the British Constitution that the King acts on the advice of his Ministers occasions requiring the President to take an independent line of his own cannot be altogether and entirely ruled out." After assigning his reasons for not always acting on the advice of his Ministers, the President wrote that in his view the Constitution "does not admit of a wholesale importation of all practices and conventions of the British Constitution." The President added that he would be the last person to create any conflict and would be prepared to go to the farthest extent to avoid it, if he could do it consistently with his conscience and his views about the Constitution. But "the time for taking any decision by me," he concluded, "has not yet come, and still, hope that it may not come. When it comes, I will, of course, write to you and the Cabinet giving my reasons for any decision that I may take. I can only give you the assurance that I shall not take any decision without giving my fullest consideration to all aspects of the question, particularly the question of constitutional correctness and propriety.[40]

The Prime Minister referred the contents of the President's letters to Alladi Krishnaswami Ayyar and the Attorney-General, M. C. Setalvad, for their opinions. The Attorney-General communicated his opinion on September 24, 1951 and informed the Prime Minister that the functions of the President "cannot be exercised by him without the concurrence of his Ministers and that in exercising them he is bound to act in accordance with the advice tendered by his Ministers.[41]

Alladi Krishnaswami Ayyar wrote two letters to the Prime Minister, the first on September

39. Letter from Jawaharlal Nehru to Dr. Rajendra Prasad, September 15, 1951. Munshi, K. M., *Indian Constitutional Documents*, Vol. I, p. 583.
40. *Ibid.*, pp. 585-86.
41. *Ibid.*, pp. 592-93.

20, 1951, wherein he expressed the opinion that it was perfectly clear that the President "is in every respect in the position of a constitutional monarch in England or his representative in the Dominions, namely, the Governor-General and that there is no sphere of his functions in respect of which he can act without reference to the advice of his ministers. This holds good in respect of his duty to assent to bills as to other matters. Though the Constitution does not go into details in this regard, Article 74 of the Constitution is sufficiently clear on this point." In his second letter, October 8, 1951, he wrote that the President's argument, if conceded, "will upset the whole constitutional structure envisaged at the time when the constitution was passed, make the President a sort of dictator answerable to no one and will reduce the Indian Constitution to a hybrid type which has its counterpart neither in what is known as the Presidential type of Government as obtained in America nor the cabinet type of government known to Britain and the Dominions nor to the system of government obtaining in France which in several respects approximates to the system of government obtaining in Britain and the Dominions." He added that Prasad "seems to read every article of the Constitution in which the expression 'President' occurs as conferring powers upon the President in his individual capacity without reference to the Cabinet or the Council of Ministers." But Article 74 "is all pervasive in its character and does not make any distinction between one kind of functions and another. It applies to every function and power vested in the President whether it relates to addressing the House or returning a Bill for reconsideration or assenting or withholding assent to the Bill. It will be constitutionally improper for the President not to seek to be guided by the advice of his Ministers in exercising any of the functions legally or technically vested in the President. The expression aid and advice in Article 74, cannot be construed so as to enable the President to act independently or against the advice of the Cabinet."[42] A. G. Noorani succinctly says that "Dr. Prasad's demarche thus helped clarify the position once for all, though with results he could have hardly liked."[43] The amended Article 74 now places the matter beyond the reach of any controversy. The advice tendered by the Council of Ministers is binding on the President. What he can do is that he may require the Council of Ministers to reconsider such advice and he is statutorily bound to act in accordance with the advice tendered after such consideration.

President Zail Singh's non-assent to the Postal Interception Bill (the Indian Post Office (Amendment) Bill, 1986) revived an issue which remained unsettled from the early days of the Constitution—the relative powers of the constitutional Head of the State and the elected government, commanding majority in Parliament, under Parliamentary system, the specific provisions of the Constitution and the well-recognised conventions governing such a system notwithstanding. A Bill amending the Indian Postal Act, 1898, and empowering officials of the Union and State Governments to intercept mail of citizens, passed by Parliament in its winter session 1986, was sent to the President in the normal routine for his assent. But while some other measures sent by the Government were received back with the Presidential approval, the amending Postal Bill was not. Instead of according assent, the President sent the Bill to the Law Ministry with several suggestions for its review. The clarifications submitted to the President did not satisfy him, in particular on Clause 26 which gave the Government power to intercept a citizen's mail as it ran counter to the 1968 recommendations of the Law Commission, and was violative of the provisions enshrining fundamental rights to freedom of speech and expression.

The President under Article 111 has the power to withhold assent to a measure and send it back to Parliament with a message that it be reconsidered or indicate the desirability of a particular amendment. Since President Zail Singh did not return it to Parliament and kept it pending, ultimately leaving to his successor to take action as he deemed necessary a political motive would certainly be seen in the entire process, rationale of the review of the Bill aside.

Even under the formal provisions of the Constitution, the President's power of vetoing a Bill is limited, for if the Parliament passed the Bill again in the original form, it is constitutionally obligatory on him to assent to it. So far there has been only one instance of the exercise of President's veto power. It was in regard to the PEPSU Appropriation Bill in 1959 when this State was under the President's rule. But it was sent to the President for assent a day after when

42. *Ibid.*, pp. 593-94.
43. "The President—II", *Indian Express*, New Delhi, March 21, 1967.

the President's rule had ended. President Rajendra Prasad took the position that it was *ultra vires* of Parliament to exercise the legislative power of the PEPSU State and withheld assent. It did not lead to any constitutional crisis perhaps because only a technicality was involved.

The President also gives assent or may withhold his assent to Bills passed by the State Legislatures, but reserved for his consideration by a Governor. Where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House, or as the case may be, the Houses of the Legislature of the State together with such a message. When a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented to the President for his consideration.

On August 8, 1948 Rajendra Prasad wrote to B. N. Rau seeking clarification whether a Governor could in his discretion withhold assent from a Bill passed by the State Legislature; and if the Governor referred the Bill to the President, could the President then assent or withhold assent in his discretion ? His argument was that if the Ministry at the Centre was the same as in the Province (State), presumably meaning that both could easily be Congress Ministries, the provision would be meaningless. The answers to Rajendra Prasad's questions lie in the Draft Constitution itself and the relevant Articles thereto are 175, 176, 143 (1). The Governor was given only those discretionary powers which were explicitly provided in the Draft Constitution (Article 143) and this power was not given in the case of assenting to or withholding assent from Bills or of referring them to the President, except that in certain situations the Governor could in his discretion refer a Bill back to the Legislature together with his recommendations. If the Legislature again passed that Bill, with or without recommendations of the Governor, the Governor was bound to give his assent thereto (Article 175). When the Bill was referred to the President by the Governor, he could assent to it, withhold assent or refer it back to Provincial (State) Legislature. No mention of discretionary power of the President was made in Article 176. It was, accordingly, clear that the President was in this case, too, bound to act on the advice of his Ministers.

The issue of reservation of Bills for the consideration of the President has become a matter of practical importance since 1967 when parties in power in some States are different from one at the Centre. It is possible that some of them may undertake legislation within their legal competence to give shape to their own economic and social ideologies and quite conceivably they may conflict with the policies and ideology of the party in power at the Centre. Should a Governor reserve such legislation for the consideration of the President and if he does, should the Union Government advise the President how he should deal with the reference; whether he should return it to the State Legislature with a message for reconsideration, withhold his assent or keep the Bill pending indefinitely as no time limit is prescribed for the President to signify his assent ? Surely, it was not the intention of the Constitution-makers to vest the Union Government in a Federal polity with such a sweeping power as to reduce the States to the subordinate position of mere administrative units as was the case before 1920. There is also a similar provision in the Constitution of Australia empowering the Governor of a State to reserve a Bill for the consideration of the Crown and not of the Governor-General. Secondly, the Crown is advised by the State Cabinet and not by the Commonwealth of Australia Cabinet. It, thus, clearly establishes that the Australian Constitution does not tamper with the autonomy of the States. This is precisely what a federal polity demands. It is, accordingly, hoped that the President of India would exercise his judgement, when confronted with such a situation, after seeking the views of the State cabinet and if need be, the advice of the Supreme Court as was done in the case of the Kerala Education Bill passed by the Communist Government when it was earlier in power : "This alone would place the President," says Asoka Chandra, "in correct relationship with States and conforming to the democratic principles of federal State."[44]

The President has been given far-reaching power in the sphere of legislation when Parliament is not in session. In no country with a written Constitution and the parliamentary type of government is the chief of the State the repository of such prodigious legislative power. Clause (1) of Article 123 provides : "If at any time, except

44. "Scope for President to use his Judgement," *The Statesman*, New Delhi, March 31, 1967.

when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him require." Clause (2) of the same Article provides that the Ordinance has the same force and effect as an Act passed by Parliament. The Ordinance so promulgated must be laid before both Houses of Parliament immediately after it reassembles. If Parliament disapproved the Ordinance it lapses. If it is not disapproved, it will automatically cease to operate at the end of six weeks from the reassembly of Parliament. Since the maximum period which can elapse between two sessions of Parliament is six months, the minimum duration of Ordinance, unless previously terminated by Parliament, can be six months and six weeks. The President may withdraw the Ordinance at any time.

The Ordinance issuing power of the President is a relic of the Government of India Act, 1935. In Britain the Executive does not possess such an independent power of legislation. There is no precedence of such a power to exist in the Dominions. In the United States all legislative power is vested in Congress and it cannot delegate its authority of law-making to any other authority. But the President of India is empowered to issue Ordinances when Parliament is not in session and these Ordinances have the force and effect of law as passed by Parliament. The courts cannot question the *bona fides* of the President's action in issuing an Ordinance or whether there existed reasonable necessity for such an action. The President is the sole judge of the necessity of issuing an Ordinance and he is not to give reasons for promulgating it. To dispel any kind o doubt in that respect the Thirty-eighth Amendment inserted a new Clause (4) in Article 123. It provided : "Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in Clause (1) shall be final and exclusive and shall not be questioned in any court on any ground." The courts could not even examine the Ordinance promulgated and see whether it had been issued within the scope of powers conferred by the Constitution. The satisfaction of the President was final and conclusive and not subject to judicial review. This provision was deleted by the Forty-fourth Amendment.

The Ordinance issuing power vested in the President is of the nature of an emergency power to meet the extraordinary situation in which it is not possible for the Executive to get the necessary legislation enacted immediately by Parliament. Ambedkar explained to the Constituent Assembly that "it is not difficult to imagine cases where the powers conferred by the ordinary law may be deficient to deal with a situation which may suddenly and immediately arise. The emergency must be dealt with and it seems to me that the only solution is to confer on the President the power to promulgate a law which will enable the executive to deal with that particular situation."[45] Both the wording of Article 123 (1) and Ambedkar's defence of it make it clear that an Ordinance must be resorted to only in the event of emergency when immediate Executive action is called for.

But there had been a tendency on the part of the Government to resort to the Ordinance-making power oftener than seems desirable. Mrs. Gandhi's Government had seen appropriate to promulgate in ten weeks between Parliament's last session and the Winter Session in November 1980 spate of Ordinances and nearly half of the 20-odd Bills that came before Parliament during the Winter Session were measures to replace some of the 19 Ordinances that had been promulgated. One of these Ordinances was promulgated one week before Parliament was to reassemble. The Opposition from all sides of the House gave vigorous expression over this misuse of the Executive power which the Chairman of the Council of States and the Speaker of the House of the People endorsed.

Ananthasayanam Ayyanger, who was Speaker in 1959, presiding over a symposium on : "Law and Democracy in India,"[46] deplored the arbitrary manner in which the Executive was prone to use the Ordinance-making power of the President. "At time one felt," he said, "that the promulgation of an Ordinance was delayed until a Parliament session was prorogued." Such a procedure was highly objectionable, and "a negation of parliamentary democracy." When the framers of the Constitution provided that any Ordinance issued must receive legislative sanction within the specified period, they were anxious that, as far as possible, democratic procedures and processes should be enforced by the

45. *Constituent Assembly Debates*, Vol. VIII, p. 214.
46. *The Tribune*, Ambala Cantt., February 9, 1059.

party in power in making laws. And, thus, emergency powers were to be exercised sparingly and only in case of real emergency. The Executive has paid scant attention to the intention of the Constitution-makers during the last more than two decades and conventions about the Executive's self-restraint as were built up under Jawaharlal Nehru's stewardship have been nullified. The Government cannot technically be faulted for arguing that what it has done is absolutely constitutional. But common sense and conventions suggest that promulgation of indiscriminate Ordinances does not strengthen the free institutions to which India is constitutionally committed.

Finally, the President nominates twelve members to the Council of States from among persons having special knowledge or practical experience of Literature, Science, Art and Social Service. He may also nominate two Anglo-Indians to the House of the People if no Anglo-Indians otherwise get themselves elected to the House.

Judicial Powers

The President may grant pardons and reprieves, and suspend, remit or commute sentences to persons convicted by Court Martial, and in all cases in which sentences to death have been passed. But the President's power of pardon does not affect the similar power of the Governors of the States and military officers with respect to Court Martial. The President's power of pardon covers offences under acts relating to matters on the Union List. It does not relate to offences committed against matters on the Concurrent List unless Parliament has expressly excluded the executive power of the State of such matters.

The President's power of pardon is exercised on the advice of Ministers.[47] In Britain pardoning is a Royal prerogative. But it is primarily a matter for the Home Secretary and the Royal share is mainly formal.

Miscellaneous Powers

There are many miscellaneous powers of the President : making of rules as to the manner in which orders and instruments made by the Government of India, in the name of the President, shall be authenticated; rules for the convenient transaction of the business of Government of India and for allocation among ministers of the said business; rules, in consultation with the Chairman of the Council of States (Rajya Sabha) and the Speaker of the House of the People (Lok Sabha), as to the procedure with regard to joint sittings of, and communications between, the Houses. The President's approval is also necessary for rules made by the Supreme Court for regulating the practice and procedure of the Court. The President makes regulations determining the number of members of the Union Public Service Commission, their tenure and conditions of the service, etc. He also makes regulations specifying the matters in which it shall not be necessary to consult the Union Public Service Commission in respect of the services of the Union.

The Constitution also confers on the President the power of taking the opinion of the Supreme Court on questions of public importance involving a question of law as well as a question of fact. It means that the President can refer to the Supreme Court the question whether a proposed Bill will be *ultra vires* of the powers of the legislatures. The advisory opinion given by the Supreme Court is not binding on the President.

EMERGENCY POWERS

One of the major issues to engage the attention of the Constituent Assembly members was the inclusion of adequate provisions in the Constitution which would enable unified, speedy and effective action in situations of emergent nature. The familiarity with and experience of the exercise of emergency powers during the British rule formed the background to shape the decisions of the Constitution-makers on this vital and most pressing issue of the day.

The Drafting Committee provided for two separate situations envisaged in the Draft of the

47. Rajendra Prasad "did not act as a signing machine when dealing with appeals for clemency." He examined each case thoroughly and satisfied himself that the accused had been provided with proper defence and frequently called the Home Minister or his Deputy for information about appeals. Datta, C. L. *With Two Presidents, The Inside Story*, p. 45. G. B. Pant, the Home Minister, was reported to have said that Prasad "himself looked into each case so very carefully that the Home Ministry simply forwarded these cases to him and abided by his decision whatever it might be, without question or delay" *The Tribune*, Ambala Cantt., April 7, 1963. Early in November 1981, Billa and Ranga, sentenced to death in the Chopra children murder case, questioned the validity of the President's rejection of their mercy petitions. The Chief Justice of India constituted an emergency bench, which sat at his residence on a non-working day, to hear the petition. While admitting the petition the Chief Justice asked if there was a proper policy which determined the President's decision in mercy petitions. The court thus became a party to challenge what has so far been regarded as the President's absolute discretion to grant or deny reprieve to persons under death sentence. The Supreme Court had itself confirmed their death sentence on an appeal. The petition was finally dismissed but the interference of the Supreme Court is significantly important.

Constitutional Adviser—a national emergency affecting the security of the Union or any part thereof, and an emergency confined to a Province (State). Draft Article 275 empowered the President, when he was satisfied that there was a grave emergency whereby the security of India was threatened, whether by war or domestic violence, to issue a proclamation of emergency making a declaration to that effect. It was also made clear that a proclamation of emergency could also be issued before the actual occurrence of war or domestic violence if the President was satisfied that there was imminent danger thereof. The proclamation would cease to operate after six months unless approved by resolutions of both Houses of Parliament. Draft Article 276 gave the Union Government full power during the period the proclamation of emergency remained in force to issue directions to State Governments as to the manner in which their executive authority was to be exercised. Articles 277, 278 and 279 supplemented the powers so conferred either by legislation or otherwise.

Two important amendments were subsequently made to the emergency provisions by the Drafting Committee. The first was a new article which placed on the Union Government a duty of protecting every State, and the second was the responsibility of an intervention in a State when it was faced with the threat of a breakdown of the constitutional machinery. The President was competent to act on the basis of a report of the Governor or otherwise.

The proposal relating to financial emergency was introduced by Ambedkar on October 16, 1949. The financial emergency provisions enabled the Union Government to direct a State to reduce the salaries and allowances of all or any class of its staff as well as those of the Judges of the Supreme Court and High Courts. An express provision was also added that failure on the part of any State to comply with any directions would be deemed to be a failure to carry on the government in accordance with the provisions of the Constitution.

At the revision stage the Drafting Committee decided to introduce a new article of general application in the Constitution that non-compliance with the directions issued to a State Government, as in the case of financial emergency, would be deemed to be a failure on the part of the State Government to carry on the government of the State in accordance with the provisions of the Constitution. The intention was to make its application uniform and, accordingly, a new Article 365 was inserted in the Constitution.

Kinds of Emergency

Part XVIII of the Constitution incorporating Articles 352 to 369 deals with the emergency provisions which are divided under three distinct heads :

(1) *An emergency arising out of a threat to the security of India or any part of it by war or external aggression or armed rebellion.* A Proclamation of Emergency may be made by the President at any time if he is satisfied that the security of India or any part thereof is in danger or is likely to be in danger either due to war or external aggression or armed rebellion.

(2) *Failure of constitutional machinery in a State.* The President is empowered to make a Proclamation when he is satisfied that the government of a State cannot be carried on in accordance with the provisions of the Constitution, either on the report of the Governor of the State or otherwise.

(3) *Financial Emergency.* The President is empowered to make a declaration of financial emergency whenever he is satisfied that the financial stability or credit of India or any part thereof is threatened.

The two kinds of Proclamation—Proclamation of Emergency (Articles 352 and 360) and Proclamation of failure of constitutional machinery in a State (Article 356)—differ on the grounds leading to the Proclamation as well as to the effects. The Proclamation of Emergency may be necessitated whenever the security of India or any part of it is threatened or is deemed to be threatened either due to war or external aggression or armed rebellion, or whenever the financial stability or credit of India is threatened. The Proclamation of failure of constitutional machinery, on the other hand, is necessitated whenever the Government of a State cannot be carried on in accordance with the provisions of the Constitution. A threat to the security of India or a threat to her financial stability may not lead to the Proclamation of failure of the constitutional machinery in a State. The obvious grounds in the latter case is either failure of the constitutional machinery in a State, or the refusal of a State to discharge its constitutional obligations.

When a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or external aggression or armed rebellion, is in opera-

tion provisions of Article 19, basic freedoms, may be suspended by a law or an executive action. The President may also suspend by an Order the right to move courts for the enforcement of such Fundamental Rights, except fundamental rights enshrining Articles 20 and 21, as are specified in the Presidential Order. Nothing of this kind shall happen when a Proclamation of failure of the constitutional machinery in a State is made. Neither any of the Fundamental Rights are suspended nor the right to move courts for the enforcement of Fundamental Rights is liable to be suspended.

Secondly, the object of a Proclamation of Emergency is to confer wider powers, executive and legislative, upon the Union Government in order to meet the threat to the security of India or its financial stability. The State authorities do not cease to function. The organs of the State Governments continue to function as before under normal conditions, except that (i) the Union Government can give directions to the States as to the manner in which the executive power thereof is to be exercised; (ii) the legislative competence of the Union Parliament is widened and it acquires the power to legislate on subjects included in the State List; and (iii) the President is empowered to modify, by his own Orders, the provisions of the Constitution with regard to financial matters. But in case of a Proclamation of failure of the constitutional machinery the Government of the State concerned is superseded by the Union, except the High Court. The State Legislature is suspended or dissolved and the State executive in whole in part.

Emergency due to External Aggression or Armed Rebellion

A Proclamation of Emergency may be issued by the President, under Article 352 (1), if he is satisfied that a grave emergency exists whereby the security of India or of any part of the territory of India is threatened, whether by war or external aggression or armed rebellion.[48] Originally, a Proclamation of Emergency could not be made in respect of part of the country. It applied to the country as a whole. The Constitution (Forty-second Amendment) Act, 1976, enables the President to make a Proclamation of Emergency either in respect of whole of India or of such part of its territory as may be specified in the Proclamation.[49]

The reasons leading to the declaration of emergency may be actual occurrence of war or external aggression or armed rebellion or a threat thereto. It means that a Proclamation declaring Emergency can be made even before the actual occurrence of war or external aggression or armed rebellion, if the President is satisfied that there is an imminent danger thereof. The satisfaction of the President, which means the satisfaction of his Council of Ministers,[50] is the only determining factor whether any cause for declaration of emergency exists or not. A Proclamation of Emergency may be varied or revoked by a subsequent Proclamation.

As a measure of abundant caution and to safeguard the abuse of emergency powers vested in the President under Article 352, the Constitution (Forty-fourth Amendment) Act, 1978, provides that the President shall not issue a Proclamation declaring Emergency or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under Article 75) that such a Proclamation may be issued has been communicated to him in writing.[51]

A Proclamation of Emergency is required to be laid before each House of Parliament and it ceases to operate at the expiry of one month[52] unless before the expiry of that period it has been approved by resolutions of both Houses of Parliament by a majority of total membership of each House and by a majority of at least two-thirds of the members of the House present and voting.[53] If a Proclamation is issued at a time when the House of the People (Lok Sabha) has been dissolved or its dissolution takes place during the

48. Subs. by Constitution (Forty-fourth Amendment) Act, 1978, S. 37 for "internal disturbance."
49. Section 48, (w.e.f. 3.11.1977).
50. Whenever the Constitution requires the satisfaction of the President or Governor for the exercise by the President or Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet System of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or Governor generally exercises all his powers and functions (1974) 2SCC 832.
51. Article 352(3).
52. Subs. by the Constitution (Forty-Fourth Amendment) Act,1978, S. 37 for "two months."
53. Article 352(6), *Ibid.*

period of one month, in that case the Proclamation must be approved by the Council of States (Rajya Sabha) by a majority of its then, total membership and by a majority of not less than two-thirds of its members present and voting. It must also be approved by the newly elected House of the People by a majority of its then total membership and two-thirds of the members present and voting. If the House of the People (Lok Sabha) does not pass such resolution within thirty days of its first sitting the Proclamation ceases to operate after the expiry of thirty days from the date on which the House sits after its reconstitution.

If the House of the People approves the Proclamation, it continues in operation for a period of six months and it shall cease to operate, unless previously revoked, after the expiry of six months from the date of passing of the second resolution by the House of the People. The Proclamation can be renewed for a further period of six months at a time and for "so often"[54] as deemed necessary if the resolution to that effect is each time passed by each House of Parliament by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting. It means that the duration of the Emergency, after the expiry of one month from the time of its Proclamation, cannot exceed for more than six months at a time, but there is no limit on the total length of time during which the Proclamation of Emergency can continue to remain in force provided each time before the expiry of six months it is approved by each House of Parliament by the prescribed majority of the then total membership and two-thirds majority of the members present and voting.

If the dissolution of the House of the People (Lok Sabha) takes place during any period of six months and a resolution approving the continuance in force of the Proclamation of Emergency has been passed, by the prescribed majority, by the Council of States (Rajya Sabha) but no resolution to that effect had been passed by the House of the People (Lok Sabha) before the expiry of six months, the Proclamation shall cease to operate after the expiry of thirty days from the date on which the newly elected House first sits, unless its continuance in force is duly approved by the requisite majority of the total membership of the reconstituted House and by a majority of not less than two-thirds of its members present and voting before the expiry of the specified period of thirty days.[55]

In order to remove all doubts about the declaration of a Proclamation of Emergency and to remove ambiguities, if any, in Article 352, the Constitution (Thirty-eighth Amendment) Act, 1975, inserted two Clauses (4) and (5) therein. The Constitution (Forty-fourth Amendment) Act, 1978, omitted Clause (5) and renumbered Clause (4) as Clause (9) which reads : "The power conferred on the President by this Article shall include the power to issue different Proclamations on different grounds, being war or external aggression, armed rebellion[56] or imminent danger of war or external aggression or armed rebellion, whether or not there is a Proclamation already issued by the President under Clause (1) and such Proclamation is in operation." This provision removes all doubts whether the President can issue another Proclamation of Emergency on any other ground when one Proclamation is already in operation. There can be a series of permissible Proclamations provided the grounds in each case are different. For example, a Proclamation on the ground of armed rebellion can go together with a Proclamation of threatened external aggression or even a third may be added if the ground is different.

Clauses (7) and (8) deal with the procedure for revoking a Proclamation declaring Emergency or a Proclamation varying such Proclamation issued subsequently if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of such a Proclamation. If the House of the People is in session a notice in writing signed by not less than one-tenth of the total number of members of the House of the People may be addressed to the Speaker signifying their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of a Proclamation declaring Emergency, under Clause (1) of Article 352 or a Proclamation varying such Proclamation under Clause (2) of the same Article. If the House of the People is not in session the notice signifying the intention to move such a resolution is to be addressed to the President of India. On receipt of such a notice by the Speaker if the House of the

54. Proviso to Article 352(5), inserted by *Ibid.*
55. Proviso to Article 352(5), *Ibid.*
56. Subs. by *Ibid.*, for "internal disturbance."

People is in session, or the President, if the House is not in session, a special sitting of the House shall be held within fourteen days from the date on which the notice is received. If the House of the People passes the resolution disapproving the Proclamation declaring Emergency or disapproving the continuance in force of such a Proclamation, the President shall revoke Proclamation declaring Emergency or disapproving of its continuance in force. Revocation of the Proclamation is the exclusive privilege of the House of the People. The members of the Council of States have neither the right to initiate a resolution revoking Emergency nor a resolution passed by the House of the People to that effect is subject to their approval. The Constitution is also silent about the majority required in the House of the People supporting the resolution revoking the Proclamation.

Prior to the enactment of the Forty-fourth Amendment Act, 1978, there did not exist any provision in the Constitution authorising the members of the House of the People to move a resolution for disapproving a Proclamation of Emergency or its continuance. The decision of revoking it rested with the President alone. The House of the People could only disapprove the resolution of the Government seeking the approval of the House for continuing in force for the prescribed period of time a Proclamation of Emergency.

Effects of Proclamation of Emergency

While a Proclamation of Emergency is in operation the following constitutional consequences come into effect:

Notwithstanding anything in the Constitution, the Executive power of the Union extends to the giving of directions to any State as to the manner in which its Executive power thereof is to be exercised. If a Proclamation of Emergency is in operation in any State or part of its territory, as specified in the Proclamation, the Executive power of the Union shall extend by giving directions to any other State or part of its territory, in which Proclamation is not in operation, if the security of India is threatened by activities in that State or in any part of its territory.

The power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties upon the Union or officers and authorities of the Union relating to that matter or matters notwithstanding that it is not included in the Union List of the Seventh Schedule. If the operation of Emergency is confined to a specified State or part of its territory, the power of Parliament to make laws conferring power and imposing duties upon Union or officers and authorities of the Union shall extend to any other State or part of its territory, in which the Proclamation of Emergency is not in operation, if the security of India is threatened by activities in that State or in any part of its territory.

Parliament shall have the unrestricted power to make laws, while a Proclamation of Emergency is in operation, for the whole or any part of India with respect to any of the matters enumerated in the State List of the Seventh Schedule. Laws so made by Parliament shall become inoperative six months after the Proclamation has ceased to operate, except as things done or omitted to be done before the expiration of the said period.

Any law made by the Legislature of a State, which is inconsistent with such laws made by Parliament will be void to the extent of inconsistency.

During the period of the operation of a Proclamation of Emergency the President may, when Parliament is not in session, promulgate Ordinances in respect of matters enumerated in the State List. The President's legislative power under Article 123 is enlarged accordingly.

Parliament has the power to extend its own life beyond five years, by law, while a Proclamation of Emergency is in operation for a period not exceeding one year at a time. Such an extension in its term cannot last beyond six months after the Proclamation has ceased to operate.

The President may, while a Proclamation of Emergency is in operation, by his Order modify the provisions of Articles 268 to 279 relating to the distribution of revenues with a view to securing revenues for the Union to meet the situation created by Emergency. But every such Order made by the President shall be laid before each House of Parliament immediately after it is made. In no case shall such Orders be valid beyond the financial year in which the Proclamation of Emergency ceases to operate.

While a Proclamation of Emergency is in operation in India or any part of the territory thereof nothing in Article 19 shall restrict the power of the State to make any law or take any executive action impairing or abrogating Fundamental Rights. But any law so made or executive action taken otherwise than a law must contain a

recital to the effect that such law or executive action taken is in relation to the Proclamation of Emergency. Any law so made or executive action taken shall, to the extent of incompetency, ceases to operate.

Where a Proclamation of Emergency is in operation the President may by Order declare that the right to move any court for the enforcement of Fundamental Rights, except under Articles 20 and 21, as may be specified in the Presidential Order and all proceedings pending in the courts for the enforcement of such rights shall remain suspended for the period during which the Proclamation remains in force or for such shorter period as may be specified in the Presidential Order. Every Order made by the President shall be laid before each House of Parliament "as soon as after it is made." The Constitution does not fix any time limit for the Order to be placed before Parliament. It is for the President to determine when the Order shall be laid before Parliament.

While the Presidential Order suspending the right to move courts for the enforcement of specified rights in the Presidential Order, except under Articles 20 and 21, is in operation nothing shall restrict the power of the State to make any law or to take executive action which the State, but for the provisions contained in Part III is competent to make or take. Any law made or executive action taken must contain a recital to the effect that such law or executive action is in relation to the Proclamation of Emergency in operation. But any law so made shall, to the extent of incompetency, cease to have effect as soon as the Presidential Order ceases to operate. If a Proclamation of Emergency is confined to a particular territory such a law or executive action may be extended to any other State or Union Territory in which the Proclamation of Emergency is not in operation, if the security of India or any part thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.

The Presidential Order suspending the enforcement of rights, except Articles 20 and 21, may extend to the whole or any part of the territory of India. but where a Proclamation of Emergency is in operation only in a part of the territory of India, any such Order shall not extend to any other part of the territory of India unless the President is satisfied that the security of India or any part of its territory is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation and considers that such extension is necessary.

Failure of the Constitutional Machinery

Article 355 imposes on the Union Government the duty to protect every State against external aggression or internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. Article 356 further provides that if the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of the Constitution, the President may by Proclamation :

(a) assume to himself all or any of the functions of the government of the State including all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as may appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending, in whole or in part, the operation of any provisions of the Constitution relating to any body or authority in the State.

If the Proclamation has declared that the powers of the State Legislature shall be exercised by or under the authority of Parliament, it shall be competent :—

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate subject to such conditions as he may think fit to impose, such power to any other authority to be specified by him in that behalf;

(b) for Parliament, or for the President or other authority in whom such power to make laws is vested, to make laws conferring powers and imposing duties, or authorising the conferring of powers and the impo-

sition of the duties upon the Union or officers and authorities thereof;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

Clause (2) of Article 357 substituted by Constitution (Forty- second Amendment) Act, 1976, provides that any law made in exercise of the power of the Legislature of the State by Parliament or by the President or other authority so appointed, shall after a Proclamation made in case of failure of the constitutional machinery, continue to remain in force after the Proclamation has ceased to operate until altered or repealed or amended by the State Legislature concerned or other competent authority.

The President, however, cannot assume to himself any of the powers vested in or exercisable by the High Court. Nor can he suspend, either in whole or in part, the operation of any provision of the Constitution relating to High Courts.

The Proclamation may be revoked or varied by a subsequent Proclamation. Every Proclamation issued in connecution with the failure of constitutional machinery in a State requires to be laid before each House of Parliament and it ceases to operate, except where it is a Proclamation revoking a previous Proclamation, after the expiry of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. If a Proclamation is issued at a time when the House of the People (Lok Sabha) is dissolved or the dissolution takes place within the specified period of two months and the House had not passed a resolution approving the Proclamation, it should be approved by the Council of States (Rajya Sabha) before the expiration of two months subject to the approval of the newly elected House of the People (Lok Sabha) within thirty days of its first sitting. If the reconstitued House of the People does not pass such a resolution approving continuance in force of the Proclamation before the expiry of thirty days, it ceases to operate after the expiry of that period.

A Proclamation approved by both the Houses, unless revoked, ceases to operate on the expiry of six months[57] from the date of issue of the Proclamation unless again approved "so often" before the expiry of six months at a time, but no such Proclamation shall in any case remain in force for more than three years. It means the maximum period for which the Proclamation can remain operative is three years, but it is to be renewed each time after expiry of every six months.

In order to safeguard against the abuse of power under Article 356 the Constitution (Forty-fourth Amendment) Act, 1978, substituted a new clause for clause (5). It provides that a resolution with respect to the continuance in force of a Proclamation for any period beyond one year from the date of issue of the Proclamation shall not be passed by either House of Parliament unless :

(a) a Proclamation of Emergency is in operation, in the whole of India, or in the whole or any part of the State, at the time of passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.

The Proclamation of failure of constitutional machinery in the State of Assam was, accordingly, revoked early in December 1980, before the expiry of a year ending on December 12 and again in February 1983.

The expression used in Article 356 that "the government of the State cannot be carried on in accordance with the provisions of the Constitution" has a very wide scope. There is no necessary connection between the conditions of Emergency due to war, external aggression or armed rebellion or a threat thereto and failure of the State government to work according to the Constitution. But a Proclamation of failure of the constitutional machinery in a State or States can be made, if the President is satisfied that the measures taken to meet the Emergency created due to war or external aggression or armed rebellion or a threat thereto, under Articles 352 and 353, are not adequate or are not likely to be adequate. The President can also make a Proclamation of failure of the constitutional machinery, if he is satisfied that there is a political breakdown and there is no stable majority in the State Legislature to form the Ministry or the party

57. Subs. by the Constitution (Forty-Fourth Amendment) Act, 1978, S. 38 for "one year." The Forty-Second Amendment had substituted "one year" for "six months" as it originally existed.

wrangles within the majority party itself do not satisfy the conditions of a stable government, as it happened in four States Punjab, Travancore-Cochin, Patiala and East Punjab States Union and Andhra of the pre-States reorganisation period. But it became a common feature of the United Front Governments after the 1967 General Elections. The constituent parties and groups of these Fronts could not form effective alliances and there was no common goal and no common approach to the problems they had to face. The only concern of the component units of the United Fronts was to get into power, to oust the partners and to create a constitutional crisis wherever and whenever possible.

The Janata Government adopted an unprecedented procedure in declaring the dissolution of the Assemblies in the nine Congress ruled States in the North, putting them under the President's Rule under Article 356 and holding fresh elections. Home Minister Charan Singh asked the Chief Ministers of these nine States, immediately after the elections to the Sixth House of the People in March, 1977, to advise their Governors to recommend to the President dissolution of the State Assemblies as the Congress had lost confidence of the people of those States by totally rejecting the candidates put up by the ruling party in the elections to the House of the people. But State Governments did not accept the Home Minister's suggestions and, consequently, President's Rule was imposed under Article 356 in all these States.

However impressive the political consideration, the precedent set by the Janata Government seems to have become the norm of practical politics. Immediately after assuming office in January 1980, the Congress (I) Government, with a massive majority in the House of the People, began to talk in the language of the Janata Government and in February 1980, decided to dissolve nine State Legislatures where parties other than the Congress (I) were in office. But the logic of the then Home Minister Zail Singh's proposal for an "automatic dissolution of Opposition-led State Assemblies after the Lok Sabha elections" is neither consistent with the existing provisions of the Constitution nor is it in consonance with the nature of a federal polity, which the Constitution establishes. Nor was it ever the intention of the Constitution-makers to choke the channels of responsible government through dubious means and intentions.

Finally, failure to comply with the directions of the Union Government may also lead to the Proclamation of failure of the constitutional machinery. It is important to note that in order to issue a Proclamation of failure of the constitutional machinery in a State the President need not wait for the report of the Governor as it had been done so often but more particularly in 1977 and 1980 when nine State Assemblies were dissolved each time at one stroke and, once again, in 1991 in Tamil Nadu. The President is empowered to take action on his own initiative and it is all a matter of his satisfaction.

The powers of the President to supersede the Government of a State are very wide and even drastic and they received stiff opposition from some of the top-ranking members of the Constituent Assembly when the relevant provisions were under discussion on its floor. Some of them condemned the provisions as "far too sweeping thus reducing provincial autonomy to a farce." H. V. Kamath informed the Assembly that he foresaw the possible end of democracy in India in the form of a Hitler-like takeover of the Union Government. He particularly referred to the use of the word "otherwise" in Article 278 of the Draft Constitution (corresponding to Article 356 of the Constitution) and said that it was "a diabolical word in this context" and prayed for its dele- gation.[58] Hriday Nath Kunzru's criticism went much deeper into the problems of government and in the responsibilities, in a free society, of the governed. He argued that if real responsible government was to be established in the Provinces (States), "the electors must be made to feel that the power to apply proper remedy, if any mismanagement occurred, rested with them. It depended upon them to choose their representatives who would be capable of working in accordance with their best interest." If the Union Government or Parliament were given a power to interfere and manage their affairs, there was a danger that whenever there was a dissatisfaction in the State, appeals could be made to the Union Government to come to their rescue.

It proved to be true. Even statesmen of the status of Jayaprakash Narayan and Morarji Desai demanded the promulgation of President's rule in the States of Bihar and Gujarat respectively. Desai threatened to go on hunger-strike if his demand was not conceded. And when his object

58. *Constituent Assembly Debates*, Vol. I, p. 140.

was fulfilled, he demanded its revocation.

Ambedkar's defence of emergency provisions in the Constituent Assembly showed that he was alive to Kunzru's apprehensions. He asserted that there was a possibility of "these Articles being abused and being employed for political purposes." He expressed the view that it would be proper and just that these provisions would never be brought into operation and they would remain a dead letter. But what Ambedkar had thought did not actually happen. The provisions of Article 356 have been used all these years for purely political purposes and dubious methods have been used to supersede the State governments and impose the President's rule. It began with Nehru in the State of Kerala in 1959 and since then it has been used for 83 times and, probably, no State escaped from the grips of Article 356.

Application of the Emergency Provisions to the State of Punjab

To meet the growing menace of secessionism and extremism that had plagued Punjab since early 80's, the Constitution (Fifty-ninth Amendment) Act, 1988, inserted Article 359 A providing for the modifications in Article 352, 358 and 359—Emergency provisions in their application to the State of Punjab.

In Article 352 in Clause (1) the following was substituted after the opening portion :

"If the President is satisfied that a grave emergency exists whereby—

(a) The security of India or any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion; or

(b) the integrity of India is threatened by internal disturbance in the whole or any part of the territory of Punjab he may by Proclamation, make a declaration to that effect in respect of the whole of Punjab or of such part of the territory thereof as may be specified in the Proclamation."

As a consequence of this provision relevant modifications to this effect were to be substituted at the appropriate places in the remaining part of Article 352 as well as in Article 358–dealing with suspension of provisions of Article 19 during Emergency. In Article 359 dealing with suspension of the enforcement of rights during Emergency only Article 20—protection in respect of conviction for offence—was to be excluded from suspension and not both the Articles 20 and 21—protection in respect of life and personal liberty—as ordained by the Constitution (Forty-fourth Amendment) Act, 1978.

Financial Emergency

If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of the territory thereof is threatened he may, under Article 360, by a Proclamation make declaration of Financial Emergency. A Proclamation of Financial Emergency, like a Proclamation of Emergency due to war or external aggression or armed rebellion or a threat thereto, is to be laid before each House of Parliament and remains in force for a period of two months. It ceases to operate at the expiration of that period unless it has been approved by resolutions of both Houses of Parliament. If a Proclamation is issued at a time when the House of the People (Lok Sabha) is dissolved or its dissolution takes place within two months of issuing of the Proclamation and the House has not passed a resolution of its continuance in force, it must be approved by the Council of States (Rajya Sabha) within the specified period of two months and by the newly elected House of the People within thirty days of its first sitting. If no resolution approving the resolution is passed by the House within that period of thirty days the Proclamation ceases to operate after the expiration of thirty days from the date when the House meets for its first sitting. A Proclamation of Financial Emergency may be revoked or varied by a subsequent Proclamation. Unlike the Emergency under Article 352, due to war, external aggression or armed rebellion, the Constitution does not provide for either the majority necessary for approving the resolution by both Houses of Parliament for continuance of Financial Emergency after the expiry of two months or its revocation on a resolution by the House of the People.

During the period a Proclamation relating to Financial Emergency is in operation, the executive authority of the Union extends to the giving of directions to any State to obsreve such canons of financial propriety as may be specified in the directions, and the giving of such other directions as may be deemed necessary and adequate by the President for maintaining the financial stability and credit of India. Notwithstanding anything contained in the Constitution, such directions may :

1. (a) ask a State to reduce salaries and

allowances of all or any class of public servants connected with the affairs of the State;

(b) reserve all Money Bills or other Bills to which the provisions of Article 297 (Financial Bills) apply for the consideration of the President after they have been passed by the State Legislature, and while a Proclamation of Financial Emergency is in operation, the President is competent to issue directions for the reduction of salaries of all or any class of public servants connected with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

Emergency Powers Examined

Emergencies must arise in the life of every nation and there must be adequate provisions to meet them. Self-preservation is the first law of every nation and there must necessarily exist the competence to meet exigencies when they arise. The capacity for protection and self-defence is a necessary concomitant of sovereignty and nationhood. The Central Government, therefore, in every State is constitutionally made responsible for protecting the country from external aggression and securing it from internal disturbances and violence. During periods of emergencies fundamental rights and othe constitutional guarantees are so modified as not to impede the Executive in taking such action as it may deem expedient and necessary. In Britain, the maxim is *inter arma silent leges,* when there is an armed conflict the laws remain silent and the courts have tolerated it in the interests of the country. But almost in every country the Executive assumes emergency powers under Legislative authority. In Britain Parliament itself endows the Executive with authority to arrest without trial suspected persons by passing such Acts as the Defence of the Realm Act, 1914, and Emergency Powers (Defence) Act, 1939. And a distinction is always made between an emergency due to war and an emergency due to internal disorder. Whatever be the nature and extent of emergency, the Rule of Law is always kept unimpaired.

The Constitution of theUnited States does not specifically provide for any kind of emergency. The Supreme Court, too, has held that "emergency does not create power"; nor does it increase the power already given in the Constitution. The Constitution simply provides that the United States shall guarantee to every state in the Union a Republican form of government, and shall protect each of them against invasion, and on application of the Legislature or of theExecutive (when the Legislature cannot be convened) against domestic violence. In pursuance of this provision, the National Government has exercised tremendous powers. But the Constitution ordains that "The privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require it." Thus, only actual invasion or rebellion justifies the suspension of the writ of *habeas corpus*. Internal disturbance, such as a strike or any other similar cause, does not justify it. It has been, further, held that the power to suspend the writ is the exclusive right of Congress, and it is for the courts to determine whether the Constitution justifies or not the exercise of this right by Congress.[59] There is no provision in the Constitution which empowers either the Executive or the Legislature to suspend any of the Fundamental rights either during war or any other emergency. In *Home Building Association* v. *Blaisdell,* the Supreme Court ruled that "Even war does not remove Constitutional limitations safeguarding essential liberties." Every restriction on the rights and liberties of the people as a result of "police power" of the State "must be weighed by balance of justice." India followed the Weimar Constitution and vested the President with vast emergency powers, although unlike the German President, he acts on the advice of his Council of Ministers and on assuming emergency powers he is guided by the advice of his Ministers who derive their authority from and are responsible to Parliament. A Proclamation of Emergency s constitutionally required to be laid before each House of Parliament and it ceases to operate after the expiry of the specified time unless it is approved by both Houses of Parliament. But till 1978, the Constitution did not provide adequate safeguards to prevent an ambitious Prime Minister from indiscriminately invoking the emergency powers to perpetuate himself or herself in power, as Mrs. Indira Gandhi did in 1975. A Proclamation of Emergency on the ground of internal disturbance, as originally provided in Article 352, was issued on the night of June 25, 1975 before the Cabinet approved it. It was just

59. *Ex parte Miligan.*

an *ex post facto* approval of the subservient Cabinet when it came before it on the morning of June 26. The Thirty- ninth Amendment had inserted clause (5) in Article 352 which provided that the satisfaction of the President with regard to the declaration of emergency was final and conclusive and it could not be questioned in any Court of Law on any ground. The President could also suspend by Order the right to move courts for the enforcement of any of the Fundamental Rights including the protection of life and liberty, and, consequently, a writ of *habeas corpus* could not be moved by a person arrested or detained.

The Constitution (Forty-fourth Amendment) Act, 1978, remedied the damage done by Mrs. Gandhi in declaring emergency without consulting her Cabinet and provided other safeguards to prevent its abuse. In Article 352 (1) "internal disturbance" was omitted and substituted by "armed rebellion", which is specific and is in the nature of "internal insurrection", to borrow a phrase from the American Constitution. The President shall not issue a Proclamation of Emergency for any reason unless it is a decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank) and communicated to the President in writing that such a Proclamation may be issued. The President, if he so desired, may require the Cabinet to reconsider its decision. Clause (5) inserted by the Thirty-ninth Amendment providing that the satisfaction of the President was final and conclusive and it could not be questioned in any court of law has been omitted and any person can now challenge the validity of a Proclamation of Emergency.

A Proclamation of Emergency ceases to operate after the expiry of one month unless it has been approved before the expiry of that period by resolutions passed by both Houses of Parliament supported by a majority of the total membership of that House and by a two-thirds majority of the members of that House present and voting. The President shall also revoke a Proclamation if the House of the People passed by an absolute majority a resolution disapproving or, as the case may be, disapproving the continuance in force of such a Proclamation. The power of the President to suspend the right to move courts for the enforcement of Fundamental Rights under Article 359 has also been amended. Rights guaranteed under Article 20—protection in respect of conviction of offences—and Article 21—protection of life and liberty—have been protected and remedies for their enforcement can be secured by appropriate proceedings in the Supreme Court or a High Court.

Even this is not enough. The issuance of a Proclamation of Emergency is an executive action and it is a two-pronged weapon which can be used if the President is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion. It remains in force for a period of one month without reference to Parliament, except that it is to be laid before each House of Parliament. Parliament can intervene only if its continuance in force is deemed necessary and expedient on the expiration of one month. The right of the Executive, therefore, to issue a Proclamation of Emergency remains unfettered for a period of one month. In almost every other country the Executive assumes emergency powers under Legislative authority. And emergency in India does not cease when the conditions necessitating it cease to exist. It continues in force till it is revoked by a subsequent Proclamation initiated by the Executive or its continuance in force is disapproved by resolutions of both Houses of Parliament supported by the requisite majority in each House, or the House of the People itself passes a resolution that it should be revoked. But a Government commanding a comfortable majority in both the Houses of Parliament and determined that it should continue in force can checkmate Parliament to have its way. There is no time limit for which a Proclamation is to continue in force. The only safeguard is that it is renewable after every six months. Moreover, Proclamation of one kind of Emergency is no inhibition for the President to issue another Proclamation for a different reason. There can be series of Proclamations in operation at the same time provided that the grounds are different. When a series of Proclamations are in operation at the same time and the specified time of their expiration of six months in each case is different the country is likely to suffer from continuous conditions of Emergency on different grounds.

The power of the President to suspend the right to move courts for the enforcement of any of the Fundamental Rights, except under Articles 20 and 21, is only *ad interim* power, for every Order issued by the President, as soon as may be after it is made, is to be laid before Parliament. But it is for the Executive to determine the time when it should be laid before Parliament. The

Constitution does not fix any time-limit.

Though there is no necessary connection between a Proclamation of Emergency issued under Article 352 (1) and failure of the constitutional machinery under Article 356 (1), but the President if he is satisfied that the measures taken by a State Government or a number of State Governments, under Articles 352 and 353, are not adequate or likely to be adequate to meet the requirements of Emergency by war or external aggression or armed rebellion or a threat thereto he may issue a Proclamation declaring the breakdown of constitutional machinery in a State or a number of States and assume to himself all or any of the functions of the Government of the State or a number of States. It is rather unprecedented that in a federal polity the Central Government may go to the extent of superseding the government of a constituent unit and abrogate its constitution except for provisions relating to the High Court so long as a Proclamation of Emergency remains in force. Whereas the Constitution does not fix any time limit for the continuance in force of a Proclamation of Emergency, the maximum period for which the President's rule in a State can remain in force is fixed at three years. But this limit was exceeded in the case of Punjab by amending the Constitution on the ground of disturbed conditions in the State. Whatever be the compelling reasons supersession of the Constitution of a constituent unit and imposition of the Central rule therein is in no way a redeeming feature of which a federal polity should feel proud.

ROLE OF THE PRESIDENT

Constitutional Position of the President

The role which the President can play in the body politic of the country had remained the subject of wide controversy till 1976, when the Constitution (Forty-second Amendment) Act, decided the controversy by providing in Article 74(1) that the President in the exercise of his functions shall act in accordance with the advice of his Council of Ministers. This was reinforced by the proviso to Article 74(1) by the Constitution (Forty-fourth Amendment) Act, 1978, which made the position of the President unambiguously clear and definite beyond any doubt. What he can do now is that he may require the Council of Ministers to reconsider the advice tendered to him, and the President "shall act in accordance with the advice tendered after such reconsideration." Coupled with it is clause (3) of Article 352 substituted by the Constitution (Forty-fourth Amendment) Act, 1978, which provides that the President shall not issue a Proclamation of Emergency or a Proclamation varying such Proclamation "unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under Artcle 75) that such a Proclamation may be issued has been communicated to him in writing." Therefore, the satisfaction of the President to issue a Proclamation of Emergency under Article 352(1) is to all intents and purposes the satisfaction of the Cabinet which is collectively responsible to the House of the People and not to the President.

It does not, however, mean that the President is mere figurehead or "a magnificent cipher." This, according to K. Subba Rao, the former Chief Justice of India, "is a cynical view."[60] His office is of great dignity and he exercises a great influence over the policies and administration of the government. The President represents the majesty of the State, is at the apex though only symbolically, and has rapport with the people and the parties, being above politics. Acting on ministerial advice does not necessarily mean immediate acceptance of the Ministry's first thoughts. The President can state all his objections to any proposed course of action and ask his Ministers-in-Council, if necessary, to consider the matter. It is only in the last resort that he must accept their advice. This is *raison d'etre* of proviso to Article 74(1) inserted by the Forty-fourth Amendment.[61] The President's vigilant presence makes for good government, if only he uses the right to be consulted, the right to encourage and the right to warn, to borrow Bagehot's words. A President of great sense and sagacity would want no others.

If the Constitution divests the President of power, it does not mean that he exercises no influence. There is a good deal of difference between power and influence. Jennings, while dealing with the powers and position of the Brit-

60. As reported in *Indian Express*, New Delhi, May 30, 1969.

61. N. K. Palkhivala is of the opinion that when Charan Singh's Cabinet resigned in August 1979, his advice to the President to dissolve the House of the People was not binding on the President. "To say that the advice of that cabinet in favour of dissolution was binding on the President is to say that a Cabinet which has never lived with Parliament has a right to demand its death. Surely there are less dangerous ways of mocking the Constitution." The President's Decision : Consequences of Dissolution., *The Times of India*, New Delhi, August 24, 1979.

ish King says, "A function to be exercised on advice is not formal or automatic."[62] A King must be persuaded on many occasions and on occasions the King may do the persuading. Jagjivan Ram, who had been a Union Minister almost all the time since Independence till August 1979, said that the President of India "exercises his moderating influence and inspires or moulds policies and actions so silently and unobtrusively that many are prone to think that, unlike any other Head of a State, he neither reigns nor rules.[63]

Although the President does not attend the meetings of the Cabinet yet he must keep himself abreast of what the Cabinet does and what the public feels. Article 78 imposes a constitutional duty on the Prime Minister to keep the President informed of all decisions of the Council of Ministers relating to the affairs of the administration of the Union and proposals for legislation; to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and if the President so requires, to submit for the consideration of the Council of Ministers any matter in which a decision has been taken by a Minister but which has not been considered by the Council of Ministers. This he may do to enable the decisions of the individual Minister to become articulate through the channel of collective responsibility and, as such, the solidarity of the Council of Ministers.

When Draft Article 65, corresponding to Article 78 of the Constitution, was being discussed, Law Minister B. R. Ambedkar explained to the Constituent Assembly members that the practice (as it existed on the eve of the commencement of the Constitution) was to send "weekly summaries prepared by each Ministry containing decisions taken by it to the Cabinet and the Governor-General. If on perusal of these summaries the Governor-General thought that a particular decision taken by a Minister was not good, he would place that matter for reconsideration of the Cabinet." He recalled that the provisions of Draft Article 65 (Article 78 of the Constitution) were intended to clarify the relationship between the Council of Ministers and the President. The Union Constitution Committee had omitted all references to the authority of the President and his relations with the Council of Ministers, excepting that their function was to aid and advise the President. The Drafting Committee thought it imperative to fill in the gap. Justices V. R. Krishna Iyer and P. N. Bhagwati referring to Article 78, in *Shamsher Singh and Ishwar Chander Aggarwal* v. *The State of Punjab*, observed, that this Article "wisely used, keeps the President in close touch with the Prime Minister on matters of national importance and policy significance, and there is no doubt that the imprint of his personality may chasten and correct the political government, although the actual exercise of the functions entrusted to him by law is in effect and in law carried on by his duly appointed mentors, *i.e.* The Prime Minister and his colleagues."

Emphasising the importance of relations between the President and the Prime Minister, as envisaged in Article 78, V. V. Giri said that the President can play a useful role by exchanging views "frankly and freely concerning Government constantly—as I and the Prime Minister have done." Narrating the experiences of his term of office to the Reporter of the *Press Trust of India*, President Giri remarked, "Taking an overall view of my tenure, though I cannot say that I am satisfied with the results achieved it is for the Government to implement policies and programmes. I have in my humble way put forward from time to time concrete proposals designed to find solution to some of the most urgent problems facing the country."[64] But the relationship between President Neelam Sanjiva Ready and Morarji Desai was less than cordial and there was practically no consultation between the two. Speaking at a reception accorded to Sanjiva Reddy by the citizens' committee Hyderabad, immediately after entering Rashtrapati Bhavan, he said, "I am not a President to play the second fiddle. This they know at Delhi."[65] This was an aggressive way of saying what Giri had said and it was perhaps Reddy's reaction against the label of "rubber-stamp" the Janata Party used for his predecessor Fakhruddin Ali Ahmed, and was accused of his "timid performance" during the 1975 Emergency. But Reddy had not been steady in his pronouncement during his tenure of office. The consultations between Reddy and Mrs. Indira Gandhi were regular, but sans cordiality. Mrs. Gandhi's consultations with President Gy-

62. Jennings, W. I., *Law and the Constitution*, p.98.
63. Refer to *Ajatshatro*, edited by Valmiki Chowdhury.
64. *Indian Express*, New Delhi, August 19, 1974.
65. *The Statesman*, New Delhi, October 10, 1977.

ani Zail Singh were regular and deeply cordial, though vital differences between the two had emerged on the Punjab crisis.

But the relationship between President Gyani Zail Singh and Prime Minister Rajiv Gandhi created a crisis of "confidence and morality" as Madhu Dandavate, Janata Member of the House of the People (Lok Sabha) described it. Rajiv Gandhi had not honoured in its letter and spirit his obligations under the Constitution to the Head of the State and deviated form the well-established convention of regular consultation between the two. He called on the President at Rashtrapati Bhavan only on two occasions during his tenure of first two years in office. Jawaharlal Nehru created the convention of visiting the President every week on Monday at 10 A. M. After the 1962 war with China, the then President Radhakrishnan, requested Nehru, who was not keeping good health, instead of reporting to him every week to do so every month. This was the convention followed by successive Prime Ministers, except Morarji Desai, but still he observed the possible outward constitutional formalities.

The uneasy relationship between the Prime Minister and the President, which had been Delhi's most open secrets for close two years and written about in the print media frequently, was highlighted by the Opposition on the discussion on the motion of thanks to the President in both the Houses of Parliament. Intervening in the debate in the House of the People on March 2, 1987, the Prime Minister observed that he and his Ministers had kept the President informed about important developments and on matters of national interest. Also there was no question of choking the constitutional authority of the President as regards reconsideration of any advice given by the Cabinet, he said. He pleaded with the Opposition not to politicise the office of the President and keep it above politics.

The Prime Minister would not have made this claim in Parliament as he knew as well as any one else that it was not true that he and his Ministers had kept the President fully informed on important matters. The President repudiated the statement of the Prime Minister in his letter dated March 9, 1987 and it somehow leaked and was reproduced in *Indian Express,* New Delhi. Among other things, the President said in his letter that "as you are aware the factual position is somewhat at variance with what has been stated by you" in Parliament on March 2 and that "I am constrained to say that certain well-established conventions have not been followed", that "I have not been briefed on matters relating to accords finalised in respect of Assam, Punjab and Mizoram," that "when I had specifically requested you to meet me after my visit to Jammu and Kashmir last year, there was no response from you," that "I have brought to your notice that reports of some commissions of inquiry had not been sent to me long after the receipt by the Government", and "that politicisation of the office of the President was started not by the Opposition as alleged by the Prime Minister in Parliament, but by an honourable member of the ruling party in April 1985, who was subsequently elevated to the Council of Ministers."[66] The letter ended thus : "You may share these with Parliament so that full facts are known to the people's representatives."

The Prime Minister sent a detailed reply to the President's letter followed by two meetings, which continued to be more or less regular, indicating that the process of consultation between the Head of the State and Head of the Government had well retrieved. The Prime Minister and the Ministers briefed the President on various issues, but differences still persisted between the two on the interpretation of Article 78. The President claimed his unfettered constitutional right to ask for any kind of information relating to the affairs and transactions of the Government whereas the Prime Ministers, supported by a resolution of the Cabinet, invoked the provisions of Article 74(1) and would not concede to the President that much of free-wheeling. It was, therefore, for the Prime Minister and the Council of Ministers to determine and decide the extent of information that could be furnished to the President and on matters deemed appropriate which might be constitutional. It meant that the powers of the President to seek information were limited and that he was guided in that respect on the advice of his Council of Ministers.

The result of this unfortunate controversy over the relationship between the Prime Minister and the President had done considerable damage to the individuals and the institutions involved in it. The President in his letter of March 9, 1987 to

66. Reference was to K.K. Tewari, Member of the House of the People, who accused the President on the floor of the House for harbouring extremists in the Rashtrapati Bhavan.

the Prime Minister had succinctly said, ".....but I do feel that if relations between the Prime Minister and the President are maintained in line with the letter and spirit of the Constitution, keeping national interest paramount there will be no room for comment or speculation from any quarter. This delicate relationship has to be nurtured by mutual trust, concern for conventions and empathic and free exchange of views."

It, once again, revived the issue of the powers of President *vis-a-vis* the Prime Minister which had been a subject of controversy since the time of the first President, Dr. Rajendra Prasad. But never before the controversy acquired the dangerous overtones it had acquired then. Somnath Chatterjee, lawyer and Member of Parliament. while delivering A. K. Gopalan lecture in New Delhi on April 19, 1987, on the "Role of the President and the Prime Minister in the Constitution," argued that the President has the authority to dismiss the Prime Minister, dissolve the House of the People (Lok Sabha) and call for fresh elections if a situation warranted such action. Referring to the controversy relating to Article 78, he maintained that unfortunately some people in the ruling party were arguing that the Prime Minister could supply only such information as he thought proper or necessary. This amounted to placing the Prime Minister above the Constitution and it was fraught with dangerous consequences, including the President exercising his authority to dismiss the Prime Minister.[67]

There was widespread speculation that the President was planning what would amount to a *coup* against a duly elected Prime Minister commanding two-thirds majority in the House of the People (Lok Sabha). First, rumours that the Gyani was contemplating such a move began to float from individuals claiming to be close to the President, in the summer of 1986. These rumours acquired a new urgency in the wake of the Gyani's letter of March 9, 1987 to Rajiv Gandhi which happened to be followed by sensational but unsubstantiated charges of corruption. These rumours gained sufficient credence that the Gyani had been consulting lawyers on the issue of the powers of the President under the Constitution. Zail Singh confirmed that he had studied the pleas of the prosecution of Prime Minister "most carefully" and sought legal opinion from different people because "I can only sanction what is legally sustainable. I cannot act of pique." He told Pritish Nandy, editor of the *Illustrated Weekly*, Bombay, in an exclusive interview : " I have already taken too many controversial steps. I must leave something for my successor too." He added, "Just because Rajiv Gandhi has humiliated me in so many ways does not mean that I can dismiss him or sanction prosecution proceedings. I must act with dignity and propriety. I must act as President of India."[68] Rajiv Gandhi and his Government was so much afraid of unpredictable Gyani Zail Singh that in an unprecedented move the Prime Minister did not advise the President, when the winter session of the 1987 Parliament came to an end, to prorogue the House of the People (Lok Sabha); though the Council of States (Rajya Sabha) was. The way in which the mind of the President worked is revealed in an Urdu couplet which he recited entirely out of context at a farewell meeting with reporters in Bangalore on July 14, 1987 :

"Main jin haathon men phool ke guldaste de
kar aya tha,
Ab wohi haath pathar le kar meri talash men
hain."

(The hands in which I had placed a bouquet of flowers are today after me with a stone).

The President often writes to the Prime Minster and expresses his views on various important matters. There were many occasions in the past when the President and his Prime Minister exchanged strongly worded correspondence over many issues. Differences arose between Rajendra Prasad and Jawaharlal Nehru in 1950 on the Hindu Code Bill and the Government had to postpone the consideration of the Bill for some time.

Another important issue on which the President and the Prime Minister differed was the introduction of Hindi for official purposes. The President advised the Prime Minister to speedily and vigorously encourage the use of Hindi so that it might become the sole official language as early as possible. Nehru, on the other hand, argued that the pace of Hindi in Government offices should not be forced because of practical difficulties in using it at all levels, and, secondly, it would meet stiff opposition from non-Hindi-speaking areas, especially from the South. Rajendra Prasad, therefore, did not act as mere figuerhead during his tenure of office. He tried to

67. *The Hindu*, New Delhi, April 23, 1987.
68. *Illustrated Weekly of India*, Bombay, July 19-25, 1987.

influence the decisions of the Cabinet. When Rajendra Prasad retired from his office as President, the Prime Minister and Parliament paid warm tributes to the ability and tact with which he had conducted himself as the constitutional Head of the State. The address presented to him on May 8, 1962, *inter alia,* said, "By your qualities of unostentatious grace, your utter simplicity, clarity of outlook, deep humility and broad humanity, you invested a special meaning and significance in your choice as President. As the first President of India, you have enriched and embellished the office and are leaving behind inspiring traditions."

Radhakrishnan during his tenure of office had been exceptionally frank in publicly giving expression to his views. In his Republic Day broadcast on January 25, 1963, he said : "Our credulity and negligence are responsible for our reverses" in NEFA. In a speech in Bomaby, the President declared India's reverses as "a matter of sorrow, shame and humiliation." In November, 1963, in his Convocation address delivered at the Uttar Pradesh Agricultural University, the President attributed stagation of agriculture to "lack of true, wise leadership and administrative inefficiency." In a broadcast to the nation on January 25, 1964, Radhakrishnan cautioned against complacency towards corruption and said, "It would be well to recognise that the tolerance of our society for weak, inefficient and unclean administration is not unlimited." But his broadcast to the nation on January 25, 1967, came from an anguished heart. He warned the nation that the "prospect of a revolution" was "inescapable," if unruly behaviour, fasts and violence in the country did not end. Describing 1966 as the worst year since Independence, full of natural calamities and human failures, the President said that even after making allowance for all difficulties of the situation, "We cannot forgive widespread incompetence and the gross mismanagement of our resources."

In spite of this open criticism of the Government's policy, Nehru, Shastri and Mrs. Gandhi got on well with Radhakrishnan. Unlike Rajendra Prasad, Radhakrishnan did not claim larger powers than commonly allowed to the President. He was the Philosopher President and as an upholder of the Constitution, he was a wise Head of the State who advised, warned and encouraged as the occasion demanded. On the death of Prime Minster Nehru, the President in broadcast to the nation said : "Nehru held the office of the Prime Minster of our country since the dawn of independence; and in the long years of his Premiership tried to put our country on a progressive, scientific, dynamic and non-communal basis. His steadfast loyalty to certain fundamental principles of liberalism gave direction to our thought and life.....He used the existing social and political institutions and breathed in them a new spirit, a new vitality." Radhakrishnan congratulated the Prime Minster and the Government and the Chiefs of Staff "on the hard and excellent work which they and those working under their leadership" did during the Indo-Pakistan conflict in 1965.

The President, in brief, like the King of Britain, has not merely been constitutionally romanticised but actually vested with a pervasive and persuasive role. While he plays such a dynamic role, he is not a rival centre of power in any sense and must abide by and act on the advice duly tendered to him by his duly constituted Ministers, except in a narrow territory (appointment of the Prime Minster and dissolution of Parliament) which is sometimes slippery, as in the case of Charan Singh's appointment as Prime Minster by the President in July 1979 and dissolution of Parliament in August 1979 and both these acts of President Sanjiva Reddy attracted widespread criticism, though not without substance. Prof. N. V. Pylee considers that President Reddy "was clearly guilty of violating the Constitution" by permitting Charan Singh as Prime Minster, after the dissolution of Parliament, without satisfying even the basic constitutional requirements as the Constitution "does not have any specific provision for a caretaker government.."

It has been rightly said that the voice of reason is more readily heard when it can persuade but no longer coerce. With extensive political knowledge and wide experience at his command, the President may influence the decisions of his Ministers and help even in moulding the policy of the government. As a friend of the Ministers, he may resist the advice tendered to him, but he must not carry his point so far as to threaten the stability of the Government. Even "When the President", said V. V. Giri, "expressed his view" publicly on matters of common concern—sometimes vital to the functioning of our democracy— he does not do so to embarrass the government but to strengthen their hands in dealing

with them.[69]

In the final analysis the Presidency is what its occupant makes of it. The President must have a dynamic personality, political wisdom and independence of mind and intellect. His influence will be strictly in proportion to the quality of his personality and character. It depends also on the President's relations with his Council of Ministers. The history of Presidency under Rajendra Prasad and Sarvapalli Radhakrishnan, in spite of the former's controversial statement of November 28, 1960, and the latter's public criticism of the Government, is resplendent with what a sagacious occupant of that august office can do in dispelling all doubts, real or imaginary, regarding the possible abuse or misuse of the President's powers. Both have set precedents which help to fulfil the objectives of the Father-framers of the Constitution. Neelam Sanjiva Reddy was a controversial President and despite his unpredictable prouncements, he fulfilled his duties to the best of his wisdom and upheld the prestige of the august office that he occupied. Of all the Presidents he alone worked with three Prime Ministers, each differing from others not only in views, style of functioning and temperament but in party loyalties. By holding to the sound principle that the Head of the State and head of the Government should work harmoniously he adjusted himself to a Janata Prime Minster, a Lok Dal Prime Minister and the Congress (I) Prime Minister despite his relations with Morarji Desai were far from cordial and the same was true of his relations with Mrs. Indira Gandhi. This could have led to serious difficulties, but Reddy never tried to impose his views on the Government of the day and precipitate a constitutional crisis. He had to tackle difficult issues the like of which his predecessors were never called upon to deal with and succeeded to tide them over to the best of his wisdom and political experience he had gained in various capacities of his political career, although his decision to ignore Jagjivan Ram's claim as the new leader of the Janata Parliamentary Party and to ask Charan Singh, a defector from the Janata Party, to form the Governmet shall ever remain controversial as no sagacious President would have attempted it.

The Seventh President Gyani Zail Singh categorically stated after his election that he would function strictly in accordance with the Constitution. A nominee of Prime Minister Indira Gandhi, whose loyalty had been his only asset and had paid him rich dividends. He is humble and soft by temperament but he is one of the shrewdest and most experienced politicians in the country today. It is a matter of common knowledge that the President had differences with Prime Minister Indira Gandhi on the Government's handling of the Punjab crisis. The President confessed to Khushwant Singh that he was kept in dark about 'Operation Bluestar' and only learnt of it over the radio. He added that the President had also told him that if he had been informed of the operation in advance he would have dissuaded the Prime Minister from taking such an adventure.[70]

Virtually all Presidents of India thus far have come from a political background—certainly Gyani Zail Singh, who as Union Home Minister and also earlier as Chief Minister of Punjab and President of the Congress (I) was involved in matters of political controversy. It is quite understandable that there might have been variances, even sharp, between Prime Minster Rajiv Gandhi's perception of political problems and issues and President Gyani Zail Singh, but he had the constitutional right to know the inner thinking and decisions of the political government on a range of domestic and international matters and seek necessary information on all matters of State. No matter who leaked the President's letter of March 9, 1987, challenging the veracity of the Prime Minister's statement in Parliament on March 2 and 4 it sought to prove that Rajiv Gandhi did not speak the truth, or the whole truth, when he said that he had been keeping the President fully briefed on all important issues. Did not the Prime Minister reveal in 1985 that he departed from the various past conventions and one of them, of course, was the fulfilment of his constitutional duty under Article 78? It goes to the credit of Gyani Zail Singh that he subdued the humiliation or to put it rather mildly mistreatment by those who claimed to be the people's representative till he was forced to clarify the points involved in March 2 and 4 statements of the Prime Minister made in Parliament.

69. But President Sanjiva Reddy's plea for greater autonomy to the States, made in the course of his Patel Memorial Lecture on October 31, 1981, triggered a storm of controversy and was certainly embarrassing to the Government in the explosive situation created by the demand for the greater autonomy and prolonged unrest in the North-East. It was hailed by the CPM and the Akali Dal.

70. *The Times of India*, New Delhi, April 21, 1987.

Nor did he fall in the trap that was laid for him by the Opposition parties to precipitate a constitutional crisis which would have put into jeopardy the future of democracy itself in India, though he kept the atmosphere so heavily charged with suspicion by his pronouncements that no one was quite prepared to discount the possibility that President Gyani Zail Singh would not spring an unpleasant surprise on the nation[71] before he formally laid down office on July 25, 1987.

R. Venkataraman assumed office of the President of the Republic of India on July 25, 1987 and reminded the nation, in a brief speech delivered at the Central Hall of Parliament, the need for consolidation and confidence. He cautioned that "too many institutions and relationship have suffered an erosion of confidence. This cannot but have disastrous consequences." He said, "As I enter office today in all humility, I wish to assure the nation that I shall endeavour to deserve the trust and confidence reposed in me. In the discharge of my responsibilities, namely, to preserve, protect and defend the Constitution, I shall strive to follow the illustrious tradition set by eminent Presidents like Dr. Rajendra Prasad, Dr. Radhakrishnan and Dr. Zakir Hussain. I will neither fail to exercise the duties and functions attached to this high office, nor stray beyond the powers enshrined in the Constitution by the founding fathers."

In an exclusive interview with Promila Kalhan Venkataraman who was then Vice-President of India and a Congress (I) nominee for Presidency, expressed the view that the President of India was not meant to be a second seat of power by the Founding Fathers of the Constitution of India. He can guide, advise and warn the Government and should the Constitution seem to be leaking down, he can take necessary action to protect it. Otherwise his role is limited". When asked, suppose the Prime Minister does not listen to the advice of the President, what can the President do about it ? "Nothing ," he replied. The interviewer intervened and said, I suppose much depends on the personality of the President. His answer was "that is for you to say."[72]

No President of India has in the last forty years been faced with turmoils, moral and political, which challenged his objectivity as President R. Venkataraman had. But he faced all sorts of situations with courage and discreetfully and proved worthy of the office he held. A false step would have created difficulties for him and inflict a serious damage to the Presidency.

SUGGESTED READINGS

Constituent Assembly Debates.

Granville Austin, *The Indian Constitution - A Cornerstone of a Nation.*

Jennings W-1, *Some Characteristics of the Indian Constitution.*

Morris- Jones, W.H. *The Government and Politics of India.*

71. Addressing a crowded "Meet the Press" programme at Chandigarh on July 19, 1987, asked by a persistent journalist about the likelihood of his decision to grant permission to sue the Prime Minister President Gyani Zail Singh said the matter was under consideration. As another reporter persisted that there was hardly a week before he relinquished office, he retorted back: "yes I have about a week to take decision." He also said that "the Constitution gives vast powers to the President which have to be used with discretion."

72. *The Hindustan Times Sunday Magazines,* July 5, 1987.

CHAPTER IX

The Council of Ministers

The Real Executive

If the President is the constitutional Head of the State the real executive is the Council of Ministers established by Article 74 (1) with the Prime Minister at the head to aid and advise the President in the exercise of his functions and he is constitutionally required to always act in accordance with such advice. The question whether any, and if so what, advice was tendered by Ministers to the President cannot be inquired into by any court. Article 361 (1) also provides that the President shall not be answerable to any court for the exercise and performance of the powers and duties of his office. The question of ministerial advice cannot be brought before courts and personal immunity from legal action, whether during office or thereafter, is given to the President for any act done or purporting to be done by him in the exercise and performance of those powers and duties. It also establishes that the relations between the President and his Ministers are confidential. The principle involved in these provisions is similar to the doctrine of the British Constitution that the "king can do no wrong." It means that the President of India, like the British Monarch, may not perform any public act involving the exercise of discretionary powers except on the advice of his duly constituted Ministers. And for every act performed in the name of the President the Ministers are responsible to the House of the People. To put it in a matter of fact language, the President can do nothing right or wrong, of a discretionary nature and having a legal effect. His name cannot be referred to in connection with any public act anywhere in courts or within and outside Parliament. Nor can any Minister plead the orders of the President in defence of a wrongful act or for any error of omission and commission and thereby shield himself behind the legal immunities of the occupant of the Presidential office.

Before 1978 the Constitution simply provided for the Council of Ministers and the use of the term Cabinet in the context of the machinery of government was nowhere mentioned. Immediately after the transfer of power in August 1947, no distinction was made between the Council of Ministers and the Cabinet. Both the terms were used interchangeably. All Ministers, except the Prime Minister, enjoyed the same position, status and powers. But the Prime Minister and other Ministers were not oblivious of the confusion thus caused. In order to make the position of the Ministers precise and define their powers, Gopalaswamy Ayyangar, a senior member of the Council of Ministers, was entrusted with the task of studying the problem of Cabinet organisation and to make recommendations. The Ayyangar Report, submitted in November, 1949, recommended the categorization of Ministers on the British pattern and defining the powers and responsibilities of each category of Ministers.

The Constitution of India did not take cognisance of the three-tier Ministers as recommended by the Ayyanger report. But the Council of Ministers formed by Jawaharlal Nehru under the new Constitution took due care to adopt this categorization of the Ministers and since then it has become entrenched in the political system of India. The Council of Ministers consists of : Ministers, who are members of the Cabinet; Ministers of State, who are not members of the Cabinet but are of the Cabinet rank; and Deputy Ministers. Cabinet Ministers usually less than twenty, are the most influential and outstanding leaders of the party included in the Council of Ministers. They meet collectively in Cabinet meetings, held normally once a week, decide upon policy, and in general head the important Ministries of the Union Government. Ministers of State, though formally of Cabinet status and are paid the same salaries as the Cabinet Ministers, do not attend and participate in the deliberations of the Cabinet meetings unless specially invited when something relating to their Ministries, if they hold independent charge of such Ministries or when the Cabinet Ministers with whom they are attached cannot attend the meeting has to be decided by the Cabinet. Next in rank are the Deputy Ministers. They are junior Ministers and their task is to assist the Ministers with

whom they are associated in their administrative and parliamentary duties.

But the Constitution (Forty-fourth Amendment) Act, 1978, has institutionalized the term Cabinet by recognizing it and distinguishing it from other Ministers who are members of the Council of Ministers. The newly inserted Clause (3) in Article 352 provides that the President shall not issue a Proclamation of Emergency or a Proclamation varying it "unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under Article 75)" is communicated to him in writing.

Size of the Council of Ministers

The Constitution does not fix the size of the Council of Ministers. It is for the Prime Minister to determine its size according to the exigencies of the time and requirements of the situation. But the choice of the Prime Minister is limited to the extent that he must consider the claims and views of the leading members of the Parliamentary party in both Houses.[1] The need to give representation to important regions and communities are two other important factors which no Prime Minister can afford to ignore. Important States, Like Uttar Pradesh, Bihar, West Bengal, Maharashtra, Gujrat, Punjab[2] and Tamil Nadu have never remained unrepresented. Like- wise, important communities, such as Muslims and Sikhs, must always be properly represented.

One result of this part of regional and communal representation is that the size of Council of Ministers has remained big and often unwieldy. Nehru was often criticised for keeping large Council of Ministers. In November, 1962 a resolution was moved in the House of the People (Lok Sabha) recommending reduction in the size of the Council of Ministers and emphasised the need for exercising rigorous austerity in ministerial circles. Nehru opposed the resolution and pointed out that Emergency created by war with China had actually increased the work-load of the Government. The Council of Ministers formed by Lal Bahadur Shastri in 1964 consisted of 51 members, sixteen of them were Cabinet Ministers. Soon after his election as leader of the Congress Parliamentary Party, Shastri declared that a large Cabinet would be fully justified in view of the vastness of the country and the nature and complexity of the problems confronting it. Mrs. Indira Gandhi, during the eleven years of her tenure, kept the number around sixty and the number of Cabinet Ministers varying from fifteen to eighteen. Morarji Desai kept his Council of Ministers at as low a number as nineteen for four months but all Cabinet Ministers. Addition was, however, made by including Ministers of State, but kept the total below forty.

The Administrative Reforms Commission in its Report, on the *Machinery of the Government of India and its Procedure of Work,* recommended that the strength of the Council of Ministers should normally be 40 and only under special circumstances it might go up to 45. It was suggested that the three-tier system in the ministerial set-up should be continued. The Commission recommended a compact cabinet consisting of not more than 16 Cabinet Ministers "to ensure homogeneity, speed and purposeful functions should constitute the norm." The collective responsibility of the Council of Ministers to the House of the People necessitates that all its members must belong to the same party and believe in the same policy in order to provide a stable government under a unified command of the homogeneous and disciplined leaders. But when emergencies upset the normal conditions and the nation faces some crisis, the national government may be established to solve all such problems through the common and concerted efforts of the representatives of all parties. Nehru included in his Council of Ministers, formed in January, 1950, five non-Congressmen—B.R. Ambedkar, Syama Prasad Mukherjee, Baldev Singh, Gopalswami Ayyangar and Shanmukham Chetty. But gradually the number of non-Congressmen was reduced and by 1958 all the senior posts in the Council of Ministers were held by Congressmen. Nehru did not consider feasible the suggestion made in 1962, when China had attacked India, for a broadbased Council of Ministers. Mrs. Indira Gandhi rejected the insistent demand of the Opposition to form a national government after the 1969 Congress split and when she headed the minority government. The Government formed by Charan Singh in July 1979 was a minority Government with Congress (S)[3] as its partner

1. Mrs. Indira Gandhi in the composition of her Council of Ministers in January 1980 considered personal loyalty to her in the days of her political distress a superior claim.
2. Except when no elections were held in the State both for Parliament and the State Assembly.
3. A faction led by Swaran Singh.

with the support of Congress (I)[4] which was withdrawn subsequently followed by the resignation of the Prime Minister and his Council of Ministers. The Chandra Shekhar Government was also a minority government with the assured support of Congress (I) and so is one headed by P. V. Narasimha Rao. Narasimha Rao called it a consensus Government as he chose to adopt a conciliatory approach right from the beginning. "My style of functioning is to be one of consensus. I will not, the Congress (I) will not ride rough-shod", he declared in the House of the People (Lok Sabha) while replying to the debate on the motion of the confidence in July 1991.

Morarji Desai committed a constitutional breach by being sworn in as the Prime Minister on March 24, 1977 without a Council of Ministers. Article 74(1) provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. For two days there was no Council for Desai to lead and to aid and advise the President. Any advice tendered to the President by the Prime Minister for two days, when the first instalment of Ministers with Moraraji Desai as its head was sworn, was not in terms of Article 74(1) and actions of the President during this period were bad in the eyes of law and violative of the principle of collective responsibility. This unhappy breach of constitutionalism set a precedent for Chief Ministers in quite a number of States when in June 1977, they assumed their offices alone without the Council of Ministers again to be repeated by Congress (I) Chief Ministers in 1980, 1982 and 1983. In the States it has become a norm of practical practice.

BASIC PRINCIPLES OF PARLIAMENTARY GOVERNMENT

Cabinet is the Driving and Steering Force

The cabinet is a wheel within a wheel. Its outside ring consists of a Party that has a majority in the House of the People (Lok Sabha), the next ring being the Council of Ministers of different ranks, and the smallest of all being the cabinet containing the Party leaders who really matter. By this means is secured that unity of Party action which depends upon placing the directing power in the hands of a body small enough to agree and influential enough to control. The cabinet is, thus, the driving and steering force in the Parliamentary machine of government.

Such a system of government hinges upon well-established and universally recognised principles some of which have been constitutionalised and find expression in the various provisions of the Constitution. Cabinet itself, which had prior to 1978 an extra-constitutional growth, is now a part of Article 352(3) together with the office of the Prime Minister. This provision also makes cabinet distinguishable from the Council of Ministers and renders it a policy-formulating and decision-making body.[5] Articles 74 and 75 of the Constitution incorporate the principles that govern the functions of the Parliamentary government and they are basic in its life. Article 74 (1) enjoins that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall act in accordance with the advice so tendered. The President is vested with the power to refer the advice so tendered for there consideration of the Council of Ministers. But he is bound to act in accordance with the advice thus tendered after such reconsideration.

Article 75 provides that the Prime Minister shall be appointed by the President whereas other Ministers shall be appointed by him on the advice of the Prime Minister. The Council of Ministers is collectively responsible to the House of the People (Lok Sabha) while individual Ministers hold office during the pleasure of the President which for all intents and purposes means the Prime Minister. A Minister including the Prime Minister, who for six consecutive months is not a member of either House of Parliament ceases to be a Minister after the expiry of that period unless he had been elected to be a member of either the House of the People or the Council of States.

But all these provisions, though vital, are neither full nor positive and many important points involved therein for the smooth functioning of Parliamentary democracy have been left to be determined by conventions and usages. There is some supreme virtue in leaving them subject to conventions and usages. The conventional element makes the working of Parliamentary democracy flexible and, consequently, easily adjustable to meet the emergencies or any other special circumstances that may confront the nation. A discreet use of the convention lubricates the machinery of government which otherwise could crack under the rigidity of law.

4. Led by Mrs. Indira Gandhi.
5. Article 352(3).

Constitutional Head of the State

The Head of the State in a Parliamentary system of government must not be the directing and deciding factor responsible before the nation for the measures taken. The whole executive power is exercised in his name by the political men who belong to the majority party in the representative legislative chamber and are responsible to it for all public acts individually as well as collectively. If the representative chamber does not approve their policies or endorse their actions, they must quit office and make room for others who can retain its confidence. As the Head of the State takes no part in the politics of the country, he does not participate in the confidential discussions (deliberations of the Cabinet) in which his Ministers formulate policy and decide the advice they would tender him.

The object of the Constitution framers was to make the President, like the British Monarch and that he should act on the advice tendered to him by his Ministers. The Constitution, no doubt, uses the traditional language of the Canadian and South African Constitutions that the Council of Ministers will "aid and advise" the President in the exercise of his functions and powers, but it does not do any damage to the basic requirements of Parliamentary democracy. The expression "aid and advise" is a stereotyped phrase of constitutional law and practice. It has no relevance to its use in the ordinary dictionary sense. It is a term of art which has historically acquired a special meaning well understood by constitutional lawyers. In explaining the form of government and the role of President, Ambedkar explained to the Constituent Assembly that the "President of the Indian Union would be generally bound on the advice of his Ministers. He can do nothing contrary to their advice."[6]

Originally, the Constitution made no specific provision that the President must act as advised by the Council of Ministers. The Constitution-framers thought that the binding nature of ministerial advice was the *sine quo non* of the Parliamentary system and it was a universally recognised practice from which and about which there could be no doubt. It would, thus, be futile to make any specific provision of this vital truth in the Constitution itself. Moreover, the Constitution nowhere vested the President with any discretionary and individual judgment powers. They, accordingly, thought that lack of such a provision is an adequate safeguard to any kind of doubt about the exercise of Presidential authority.

Bit it did not happen that way. The first President of India Dr. Rajendra Prasad believed that in certain exceptional circumstances the President may not act on the advice tendered to him by his Council of Ministers. The thesis assumed added importance and became rather sharp when K. M. Munshi, then one of the living architects of the Constitution who had forcefully advocated in the Constituent Assembly the importance of adopting the Parliamentary system wrote in January 1963, that judged by the well-accepted canons of interpretation a person on whom a duty is cast or in whom a trust is invested is bound to exercise his own discretion in relation to the duty or trust and cannot be deemed to have been deprived of it by implication.[7]

To dispel all doubts and as a measure of abundant precaution the Constitution (Forty-second Amendment) Act, 1976, amended Article 74(1) which read "....The President who shall, in the exercise of his functions, act in accordance with such advice." The Constitution (Forty-fourth Amendment) Act, 1978, substituted a provision to Article 74(1) providing for a little free-wheeling for the President by giving him the choice, if he so required, to refer the advice so tendered "either generally or otherwise" to the Council of Ministers for reconsideration, but such advice, after reconsideration, was made binding on the President. The function of the Council of Ministers is, thus, to decide and for the President to advise if he feels that their decision stands in need of some advice.

Ministers Chosen from Parliamentary Majority

The essence of the Parliamentary government is that Ministers should be members of the Legislature and belong to the majority in its representative chamber. The membership of the Legislature gives to Ministers a representative character and invokes their responsibility for all acts of omission and commission to those who gave them the mandate to govern through the chamber which is the repository of their will. It also binds the Executive and Legislative authorities together and there can be no working at cross purposes between the two wings of the Government. It is in this context that Bagehot made his

6. *Constituent Assembly Debates,* Vol. VIII, p. 53.
7. *The Times of India,* New Delhi, Republic Day Supplement, January 26, 1963, p. VII.

classic statement that Cabinet is a hyphen that joins, the buckle that fastens the Executive and Legislative Departments. Moreover, membership of the Legislature provides Ministers an effective opportunity to present, advocate and to defend their views and proposals and get them endorsed by the representatives of the people.

There is no constitutional bar in India to a person, who is not a member of either House of Parliament to become a Minister and there are scores of instances, the most recent being of Prime Minister P. V. Narasimha Rao and the Finance Minister Manmohan Singh. Both were without having seats in either House of Parliament when appointed Ministers. But a Minister so appointed ceases to hold office if for a period of six consecutive months he is not a member of either House of Parliament. It means that every Minister who has no seat in Parliament must become a member of either House of Parliament or quit his office.

Leadership of the Prime Minister

The Council of Ministers is a team that plays the game of politics under the captaincy of the Prime Minister. The Prime Minister is the leader of the Parliamentary majority Party and Ministers work and function under his leadership. In terms of the Constitution, Ministers are appointed by the President on the advice of the Prime Minister, but in actual practice they are his nominees and his advice to the President in proposing their names for appointment is binding. The Prime Minister's choice in selecting the Ministers is limited no doubt but once the choice has been made and submitted for the Presidential appointment, there can be no deviation therefrom. It is also the constitutional right of the Prime Minister to retain a Minister, to shift him from one Ministry to another or sound him to resign or to dismiss him if the Minister becomes defiant. The identity of the Ministers is unknown to law without the Prime Minister. They remain in office as long as he is there. If he resigns their resignation is *ipso facto*. A Party, in brief, lives on Party spirit and as an instrument of government it preserves its continuous corporate identity on the leadership of the Prime Minister. All this secures unity and close association between Ministers on one side, and the Cabinet and the Parliamentary majority on the other.

Ministerial Responsibility

Ministerial responsibility is the essence of the Parliamentary system of government and collective responsibility is Britain's principal contribution to modern political practice. Ministerial responsibility means, in the first place, that Cabinet Ministers preside over the administrative Departments of the Government and for the effective and efficient working of their respective charge, they are individually responsible to and answerable to the legislature. In the second place each Minister largely shares a collective responsibility with other Ministers for anything of high importance that is done in every branch of public business besides his own. The Ministry is a unit, it comes into office as a unit and goes out of office as a unit. The Ministers belong to the same Party or a combination of parties if there is not one single party in majority under the recognised leadership of the Prime Minister and they swim and sink together. Solidarity is the prerequisite condition of the Cabinet system. It is binding, accordingly, on every member of the Cabinet and every political officer outside the Cabinet, no matter what his rank is, to present a common front and pursue an agreed policy for which all accept responsibility and on which they stand or fall together. A Minister who is not prepared to defend a Cabinet decision must resign and if he does not, then, he is liable to be dismissed from his office.

The Constitution expressly provides for the collective responsibility of the Council of Ministers to the House of the People (Lok Sabha). This provision gives a constitutional sanctity to Britain's principal contribution of collective responsibility. It means that the Council of Ministers remains in office as long as it can retain the confidence of the representative chamber of the Legislative. There is, however, no provision in the Constitution for the individual responsibility of the Ministers. It simply provides that Ministers hold office during the pleasure of the President which in practice means the pleasure of the Prime Minister. It is rather rare for the Prime Minister to venture a dismissal of a colleague. Morarji Desai instead of exercising his prerogative of asking Charan Singh and Raj Narain to resign convened an emergency meeting of the Cabinet and 14 Ministers backed the decision of the Prime Minister in asking them to withdraw from the Cabinet. It was virtually their dismissal.

Secrecy

If collective responsibility is to be really effective; it is imperative that the Cabinet should deliberate in secret and its proceedings remain

highly confidential. "There must be", as Lord Salisbury said, "irresponsible licence in discussions."[8] If mature, rational and independent contribution to the process of policy-making is desired from men who are engaged in a common cause and who come together for the purpose of reaching an agreement, secrecy of the proceedings and the views expressed by the participating members in the discussion must be ensured. Publicity reduces the independence of mind of ministers in relation to each other and harmony of views becomes impossible. Moreover, a knowledge of differences among Ministers makes difficult the unflinching support of the whole Party to the policy adopted. It also offers vulnerable points to the attacks of the opposition which is ever vigilant to plague the Government at every step.

The Cabinet in India is a secret body collectively responsible for its decisions. The Oath of Secrecy which every Minister is required to take before entering upon his office imposes a constitutional obligation not to disclose any Cabinet secret. Moreover, Cabinet decision is an advice to the President and the President's sanction is necessary before any sort of publicity may be given to that advice. When a Minister resigns as a result of differences of opinion or is asked to resign, Rules of Procedure and Conduct of Business in Parliament permit him to make a personal explanation to the House without raising a debate.[9]

There are other means by which more or less reliable information regarding the views expressed and decisions taken often get out. In every country either the Prime Minister, or some other Minister on his behalf, gives to the press a guarded statement on the Cabinet decisions in order to promote opinion about the policy which the Government has decided to pursue. Then, the press has its own methods of sneaking in and Ministers are quite vulnerable. Prime Minister Lal Bahadur Shastri established the system of public relations and Cabinet decisions, which were not of a confidential nature, were released to the Press by the Cabinet Secretariat at the end of every meeting. The advisability of such public relations was proposed to Jawaharlal Nehru on several occasions, but he did not favour it. Mrs. Indira Gandhi continued with the change introduced by Lal Bahadur Shastri and the practice continues since then.

How the Cabinet Works

The Cabinet generally meets once a week, but when Parliament is in session or when urgent matters requiring immediate decisions, arise, it may hold more than one meeting. The meetings are usually held at Rashtrapati Bhavan, where the office of the Cabinet Secretariat is located. Sometimes Cabinet meetings were held at the Houses of the Ministers both under Nehru and Shastri. Morarji Desai revived this practice which was abandoned by Mrs. Gandhi. Chief Ministers may be asked to attend the meetings when matters relating to their States are discussed in order to arrive at a positive decision. P. C. Sen, West Bengal Chief Minister, and Orissa Chief Minister, Biju Patnaik, attended the Cabinet meetings on June 6, 1963 when the food problem in the eastern region was causing concern. Patnaik was also consulted on defence problems immediately after the Chinese attack in October, 1962, and given a room in the Ministry of External Affairs. Experts on matters of technical nature, such as military, scientific or economic may be invited to explain personally the issues involved in such matters. The Deputy Chairman and members of the Planning Commission attend when problems relating to their respective charge are brought on the agenda.

The agenda is prepared by the Cabinet Secretariat in consultation with the Prime Minister. There are no definite rules determining the subjects for discussion in the Cabinet. Matters of a routine nature are decided by the Minister in consultation with the Prime Minister or these may be referred to the Appropriate Cabinet Committee and subsequently confirmed by the Prime Minister. The Prime Minister himself may take the decision and later inform the Cabinet. H. M. Patel, who had been the Cabinet Secretary, says that Prime Minister Jawaharlal Nehru himself had repeatedly taken decision on his own in respect of matters relating to the External Affairs Ministry without the Committee of the Cabinet for Foreign Affairs being aware of them. He further says that the Cabinet itself had been ignored by the Prime Minister even more frequently and that "several senior ministers have also tended to take a leaf out of the Prime Minister's book and to by-pass the Cabinet. They do not do so on thier own. They obtain the Prime Ministers concurrence to a line of policy which they advocate and then without waiting for the

8. Cecil Gwendolen, *Life of Lord Salisbury*, Vol. II, p. 233.
9. Rule 218.

approval of the Cabinet go forward treating the Prime Minister's approval as the approval of the Cabinet."[10] This is supported by N. V. Gadgil, who had been Cabinet Minister from 1947-52.[11] Mrs. Indira Gandhi "simply informed" the Cabinet about the declaration of internal emergency in June 1975 and dissolution of the House of the People in January, 1977.

Every matter that comes for the Cabinet discussion is accompanied by an explanatory memorandum. If the matter concerns more than one Ministry, all the concerned Ministries submit their explanatory memoranda, which are circulated among all Cabinet Ministers well in advance of the scheduled meeting. An item not on the agenda can be raised at the meeting with the permission of the Prime Minister, provided it is of great urgency. The Prime Minister presides at the meetings and in his absence the Deputy Prime Minister, if there is one. In the absence of both, the seniormost Minister used to preside. During the tenure of Mrs. Gandhi's Prime Ministership, the seniority list was abandoned and the names of Ministers appeared alphabetically. The Prime Minister named the person who would act in her absence and this practice was continued during her second tenure in office in 1980 and still continues to be the practice.

The Administrative Reforms Commission suggested that the office of the Deputy Prime Minister should be regularised and the Prime Minister needs institutional support for ensuring efficient and effective functioning of the governmental machinery. Originally, Morarji Desai had no Deputy Prime Minister, but exigencies of tottering Janata Party and in his anxiety to save the Government from exit from office, compelled him to appoint two Deputy Ministers—Charan Singh Deputy Prime Minister No. 1 and Jagjivan Ram Deputy Prime Minister No. 2. A unique precedent in the annals of any country with Parliamentary system of government.

There is no quorum for a Cabinet meeting. Its duration depends upon the nature of the items on the agenda. Discussion ensues on each item and it is frank and often blunt. Differences are resolved by mutual discussion, and discussion continues until an agreement is reached. Votes are never taken.[12] The decisions taken are forwarded to the Ministers for necessary administrative action.

Cabinet Committees

The burden of the Cabinet is titanic. It cannot meet its stupendous task when it generally meets once a week and that too far a short duration.[13] Then, it has too many members for effective discussion and all of them, except the Minister Without Portfolio, if there is one, are heads of the Ministries and they are too occupied in their departmental and parliamentary duties. Moreover, the Cabinet has neither the time nor is it able to tackle all the numerous details relating to administration. The result is emergence of Cabinet Committees. The Committees help the Cabinet to discharge its responsibilities efficiently and expeditiously. Some of these Committees are continuous and, thus, permanent, others are *ad hoc*, that is created for single time-limited matter. An *ad hoc* Committee is set up to deal with a special problem or a critical situation and is composed of Ministers primarily concerned with the problems at issue. It deliberates, reports and disbands. A special committee of the Cabinet was constituted in November, 1964 to examine the charges of corruption against the Orissa Chief Minister and some of his other colleagues. In 1962, the Emergency Committee was set up soon after the Chinese invasion. Such Emergency Committees were twice again set up in 1965 and 1971 after Pakistan had attacked India. A Cabinet Committee was also appointed on the reorganisation of Assam. In July 1987 a special Cabinet Committee was set up under the Chairmanship of the Prime Minister, Rajiv Gandhi, to tackle the problem created by the worst drought of the country. In October 1991, a Cabinet Committee, under the chairmanship of the Prime Minster (Narasimha Rao) was appointed to monitor prices.

Before 1970, there were four Standing Committees: Foreign Affairs, Economic Affairs, Internal Affairs, and the Parliamentary Affairs. In 1970 the Internal affairs Committee and the Foreign Affairs Committee were replaced by the Political Affairs Committee under the chairmanship of Prime Minister. Other Committees, new or reconstitued were : Economic Co-ordination Committee, Family Planning Committee, Food

10. Aiyar, S.P., and Srinivasan, R. (Edts.), *Studies in Indian Democracy*, pp. 205-206.
11. Gadgil. N. V., *Government from Inside*, Chap.VI.
12. According to Krishna Menon, "The Cabinet never votes." *The Times of India*, New Delhi, October 23, 1968. Also refer to Gadgil, N. V., *Government from Inside*, Chap. VI.
13. The longest session was for four hours at a stretch on October 14, 1964 to consider the outlines of the Fourth Five-Year Plan.

and Agriculture and Rural Development Committee, Committee on Accommodation, Appointment Committee, and the Parliamentary Affairs Committee. The Prime Minster again reconstitued the Committees in 1974. The functions of these Committees were also revised.

The Janata Government decided to undertake a systematic programme of dismantling the superfluous administrative apparatus built up by the Congress Government during all those years. Among the steps taken were to reduce the number of Cabinet Committees. Only four Committees were set up instead of over a dozen in the Congress administration. Previously, the same group of Ministers sat on at least half a dozen Committees, excepting that there was only one additional Minister on each Committee. The system often led to delay and sometimes even confusion.

The number and composition of the Cabinet Committees are largely determined by the Prime Minister. They combine two functions : co-ordinating the various Ministries and decentralising the policies. The Committees can also be employed to keep critical problem under continuous review. By including non-Cabinet Ministers, whenever deemed appropriate, in their deliberations, the committee system can extend the Cabinet's co-ordinating activity to wider areas of governmental affairs. It is also possible for the senior members of the permanent services to attend Cabinet Committee meetings as adviser to their Ministers.

The Cabinet Committees report to the whole Cabinet and seek to submit agreed reports and recommendations. A Minister, who is not satisfied with such recommendations, can appeal to the Cabinet where differences are tried to be resolved. If the Minister is not reconciled to the decision taken by the Cabinet, he may resign.

Cabinet Secretariat

As said earlier, India has adopted the British model of setting up a Cabinet Secretariat. The Department of Cabinet Affairs, under the Cabinet Secretariat, had an important and co-ordinating role in the process of decision-making at the highest level and operated under the direction of the Prime Minister. Its functions included the submission of cases to the Cabinet and its Committees, preparation of the records of the decisions taken and follow-up action on their implementation. It also serviced the Committees of Secretaries which met periodically, under the chairmanship of the Cabinet Secretary to consider and advise on problems requiring inter-ministerial consultation and co-ordination. The Cabinet Secretariat formulated the Rules of Business and allocated the business of the Union Government to the Ministries and Departments under the direction of the Prime Minister and with the approval of the President. The Department of Cabinet Affairs obtained and circulated to the President, the Vice-President, the Council of Ministers and other important functionaries periodical summaries and notes on important developments in each Ministry.

Prime Minster Morarаji Desai, who was the Chairman of the Administrative Reforms Commission, in an effort to give implementation to the recommendations of the Administrative Reforms Commission, decentralised the work of administration in order to make it result-oriented and also responsive to the people. Decision-making which was hitherto concentrated at the level of the Prime Minister's Secretariat and the Cabinet Secretariat, rested with each Ministry; it looked after its own work without having to look up to some higher body for routine approvals. The Cabinet Secretariat, thus, resumed its original role as a co-ordinating body and to process proposals sent by the various Ministries for the consideration of the Cabinet. Since the departure in the process of decentralization was a complete departure from the past practice, it necessarily cautioned gradualism. As a preliminary step the Department of Personnel and Administrative Reforms went back to the Home Ministry and Revenue Intelligence to the Finance Ministry. The underlying idea of decentralization was to make the administration more responsive to the people and the points of contact between it and the people should be increased. There should be a quick method of redressal of grievances and routine decisions concerning the people should be taken with utmost speed.

After the return to power in 1980, Indira Gandhi restored the Secretariat to its earlier size and even expanded the establishment to some extent. But after Rajiv Gandhi became Prime Minister, it got further expanded to the size of a full-fledged Ministry wielding enormous power in the higher direction of Government. Apart from a Secretary, a special Secretary, four Additional Secretaries, four Joint Secretaries, three Directors and several Deputy Secretaries, there were several senior officers of the rank of Secretaries like the Information Adviser and Security Adviser in the Prime Minister's Secretariat. It

inevitably led to a lot of criticism from other sections of the Government about the style of functioning and the kind of supervisory role it sought to establish over the working of the Whole Government. It compelled the Prime Minster to take a fresh look and see how best his Secretariat could improve its role without treading on the toes of the senior Ministers or interfering unduly with the performance of their Ministries and Departments. The Cabinet Secretariat with its reformed role still functions but the appointment of the Cabinet Secretary has become a political appointment now and it does not augur well.

Prime Minister's Secretariat

In this process of decentralization and in order to cut necessary administrative frills, the Prime Minister's Secretariat was renamed as Prime Minister's Office. The origin of the Prime Minister's Secretariat goes back to August, 1947, when it was devised to serve the purpose of a centre of information and a channel of communication between the Prime Minster and the Union Ministers. It had nothing to do with decision formulation. But Lal Bahadur Shastri's failing health in 1964 made him to lean heavily on his Secretariat and it reassumed the role of a regular department functioning under a Secretary. Instead of remaining an information pipeline the Secretariat became a top decision-influencing body. Mrs. Indira Gandhi reorganised the Secretariat so that it would function as a reservoir of knowledge and an effective centre of liaison between the Union Ministries and the State Governments in dealing with the problems of national importance. The Research and Analysis Wing (RAW) was expanded and activised so that the Prime Minister should be kept posted with matters and men in the country. During the past few years of Mrs. Gandhi's first tenure of Prime Ministership the RAW played a significant role even in politics within the Union Government and between the Union and the States.

The Prime Minister's Secretariat had to a large degree brought about co-ordination among Civil Servants, Ministers and the Prime Minster *inter se.* But it had also been instrumental in concentrating powers at the top level. The three advisers of the Prime Minister—L. K. Jha, P. N. Haksar and Yashpal Kapur—at one time exercised influence and authority in no way inferior to that of a Union Minster. L. K. Jha played an important role in negotiating the Kutch Agreement in 1965. P. N. Haksar was sent to Dacca to discuss matters of urgent and vital importance with Sheikh Mujib-ur-Rahman. He also took an active part in negotiating an important agreement with Pakistan foreign Minister Aziz Ahmed in the Delhi Conference of 1973. The Prime Minister's Secretariat issued a circular to all the Union Ministers on October 8, 1974 asking them to send to the Prime Minister's Secretariat copies of the Statements to be made to Parliament and notes on supplementary questions on such statements.

The role of the Prime Minister's Secretariat had been the subject of frequent criticism in Parliament. A demand was made by the Janata Party to Prime Minster Morarji Desai for a thorough probe into the activities of the Research and Analysis Wing of the Secretariat. As a result of the process of decentralization some 600 officers working in the RAW were posted in their Home States and the Secretariat was shorn of its name as well as powers. The Prime Minister's office consisted of the Principal Secretary, the Private Secretary and a few personal assistants. The rest of the staff was scattered. In Desai's view one of the main reasons for the alienation of the people from the Congress Government was centralisation of decision-making apparatus under the Prime Minster. The system had led to concentration of power in the hands of Mrs. Gandhi and a small group of officials in the Cabinet Secretariat and the Prime Minister's Secretariat and resulted in the taking up decisions in an undemocratic manner.

FUNCTIONS OF THE CABINET

Extent of Functions

Cabinet is the supreme directing authority, the magnet of policy, which co-ordinates and controls the whole of the executive government of the Union and integrates and guides the work of the Parliament. The most authoritative statement about the functions of the Cabinet in Britain was made in Report of the Machinery of Government Committee (1918) and these functions legitimately go with the Cabinet wherever such a system of government exists. The Committee listed three functions :

(a) "the final determination of policy to be submitted to Parliament;
(b) the supreme control of the national executive in accordance with the policy prescribed by Parliament; and
(c) the continuous co-ordination and limitations of the interests of several Departments."

A Parliamentary system of government on the British model is operative in India, but the Cabinet in India performs certain functions which the British Cabinet dare not assume. For instance, article 123 of the Constitution empowers the President to promulgate Ordinances which shall have the same force and effect as an Act of Parliament. Such Ordinances are issued and promulgated on the advice of the Cabinet under the authority of the President. Fundamental Rights as contained in Article 19 may be suspended when a Proclamation of Emergency is in force and the decision to declare Emergency and suspension of Fundamental Rights, as contained in the Presidential Order, including the enforcement of such rights, is that of the Cabinet and not of the Prime Minister alone.[14] Decisions relating to the reorganisation of the States and alteration in their boundaries are taken by the Cabinet. All such decisions are in the final analysis subject to the approval of Parliament, but so long as the Government commands a comfortable majority Parliament simply gives its approval.

Policy-Determining Functions

Cabinet is deliberative and policy formulating body. It discusses and decides all sorts of national and international problems confronting the country. The Cabinet always attempts to reach unanimous agreements embodying Government's policy so that it presents to Parliament and to the world at large a united policy of action. This is the essence of collective responsibility. If an individual Minister finds it impossible to agree with policy determined by the Cabinet, the only course left for him is to resign rather than to plague the Cabinet. As a policy-determining body, the Cabinet meets regularly once a week and takes decisions on all vital issues and other matters emerging from various Ministries and earmarked for Cabinet discussion. The Cabinet, thus, supplies leadership, initiative and resourcefulness.

While the Cabinet has determined on a policy the appropriate Ministry carries it out either by administrative action within the framework of the existing law or by submitting a new proposal for legislation to Parliament. Legislation is the handmaid of administration and Cabinet is the instrument which links the Executive wing of Government to the Legislative—"the hyphen that joins, the buckle that fastens the executive and the legislative departments together," in the classical expression of Bagehot. In this way the Cabinet directs Parliament for action and it gets the approval of its policy with a majority in Parliament. Cabinet, as such, leads Parliament.

These are essentially legislative functions of the Cabinet. But in a modern State, as Jennings has said, "most legislation is directed towards the creation or modification of administrative powers." No vivid distinction, as a matter of reality, can be made between legislation and administration. The Cabinet plans the legislative programme at the beginning of each session of Parliament and determines priorities. Legislative measures are introduced either by a Cabinet Minister or by some other Minister acting on the Cabinet's approval. No Minister can introduce a legislative measure on his own initiative. It is for the Cabinet to decide what Bills shall be promoted in a session of Parliament. In matters of legislation, therefore, the control of the Cabinet over the Council of Ministers is unchallengeable. It will be more correct to say that the Cabinet Ministers formulate policies, make decisions and draft Bills on all significant matters which in their judgement require legislative attention, asking of Parliament, only that it gives sanction to such decisions and policies by considering them and taking the necessary vote. The Cabinet really legislates with the advice and consent of Parliament. The time of summoning and prorogation of Parliament is decided by the Cabinet. Dissolution of Parliament, which decides the fate of various parties, is the decision of the Cabinet, though the Prime Minster of India like his British counterpart, exercises it is as a matter of right.

Supreme Control of the Executive

The Cabinet is not an Executive instrument in the sense that it possesses any legal powers. The Constitution vests the Executive authority in President, exercisable by him either directly or through officers subordinate to him. The real functionaries are the Ministers. Ministers preside over the Ministries of Government, and carry out the policy determined by the cabinet and approved by Parliament. In carrying out the work of their Ministries, Ministers, whether in the Cabinet or not, must faithfully follow the directions of the Cabinet in enforcing its decisions and

14. Article 235 as amended by the Constitution (Forty-fourth Amendment) Act, 1978, as also Article 358.

policies. Any deviation therefrom is against the rigid discipline of party government and, consequently, may lead to the removal of a Minister who defies the principle of party unity. The Cabinet is, thus, the supreme national Executive. It superintends, supervises and directs the work the Civil servants do all over the Union. All questions and problems which are likely to focus the attention of Parliament are considered in the Cabinet and decisions taken thereon to prevent a multiplicity of votes in important debates.

The power of delegated legislation has still more enhanced the Executive authority of the Cabinet and the Ministers. Legislation during recent times has become more voluminous and more technical and Parliament very often passes laws in skeleton form leaving it to the Council of Ministers or Ministers in charge of the appropriate Ministries to fill in the details and make Rules and Regulations in order to give effect to such laws.

The Cabinet as a Co-ordinator

The essential function of the cabinet is to co-ordinate and guide the functions of the several Ministries and Departments of Government. Administration cannot be rigidly divided into twenty or more Ministries. The actions of one Ministry may affect the work of another Ministry. In fact, every important problem cuts across departmental boundaries, and the Cabinet performs the vital task of co-ordinating policy. On purely inter-departmental matters endeavour is made by the Ministries to resolve their differences and reach agreement. If no agreement can be reached, then, the Prime Minister acts as an arbitrator and co-ordinator. In the last resort, the appeal is to the Cabinet. The Minister who does not agree to the Cabinet decision must resign. This means not only the linking of specific administrative decisions by reference to a general policy, but the expression of the same general policy in legislation.

The emergence of the Cabinet and the increased problem of co-ordination in the context of the Welfare State and implementation of Five-Year Plans have brought about a significant expansion in the work of the Cabinet Secretariat. The Cabinet Secretariat takes down and circulates the decision of the Cabinet, its Committees and Sub-committees. It circulates the agenda and the background papers to Cabinet Ministers. The Prime Minister and the Chairmen of the Cabinet Committees now primarily rely upon the corps of their expert assistants in the Cabinet Secretariat to supply them with the requisite information and advice in integrating the work of the different Ministries. There are also the Committees of the Secretaries of the Ministries which meet periodically under the chairmanship of the Cabinet Secretary, to advise the Cabinet on problems of interministerial consultation and co-ordination.

Control over Finance

Two more functions may be added to those enumerated above. The first is that the Cabinet is responsible for the whole expenditure of the State and for raising necessary revenues to meet it. In Britian, the annual Budget statement is excluded from the scope of the Cabinet decisions. But being a matter of political importance, it is always brought before the Cabinet and the Chancellor of the Exchequer makes an oral statement about it a few days before his Budget speech. On the estimates the control of the Cabinet is complete. If there are new proposals to taxation policy they must be considered at length by the Cabinet before the Budget is produced. In India, too, the Cabinet does not discuss the Budget. But the Finance Minister generally keeps his colleagues in the picture so far as a proposal may affect matters which come within their purview. The final decision is that of the Finance Minister. The detailed taxation proposals are shown to the Prime Minister. The Prime Minister may take one or more of his senior colleagues in his confidence and direct the Finance Minister to do so. But the proposals are divulged to the Cabinet only on the day when the Finance Minister is to make his budget speech in Parliament. The Cabinet can, however, examine the Budget proposals after it has been presented to Parliament and insist on modifications. It can even overthrow it altogether, but this may be done only at the risk of the resignation of the Finance Minister and damage to the prestige of the Government. If the secrecy of the Budget is to be ensured, then, the Finance Minister, as British Prime Minister Anthony Eden, said, "is wise if he shares his burdens to some extent with the Prime Minister," but "clearly he cannot share them with the whole Cabinet."

C. Rajagopalachari severely criticised the Budget procedure followed in India. Commenting upon the Budget proposals for 1963- 64 which imposed an additional taxation burden of Rs. 275 crores in a single year, he said, "The way in which budgets are made and got ready for

presentation leaves no room for the whole or material section of the Cabinet to examine and advise upon it, or even to go through it. In order to safeguard secrecy all consultation is avoided. The Budget is hatached by the officials working under the nominal guidance of the Finance Minister." If both the Prime Minster and the Finance Minster, he added, happened to be persons "blissfully ignorant of the business of the budget-making, when all the economy of the county comes under the direct or indirect influence of the budget, the consequences are, what we see now, disastrous."

Control over Appointments

Appointments do not normally come before the Cabinet for discussion. But all major appointments, such as those of Governors and other appointments to the key positions, must be mentioned in the Cabinet before they are made public. This is tantamount to seeking the approval of the Cabinet though as a matter of reality it may be a sheer formality. But the control of the Cabinet is obviously there.

THE PRIME MINISTER

Office of the Prime Minister

The powers and functions of the Prime Ministers of India and Britain are to a great extent similar as both these offices are the product of a Parliamentary system of government. Both are central to the formation of the governments of their countries, central to their lives and central to their death. Lord Morley's description that the Prime Minister is the "keystone of the Cabinet arch" is a classical exposition, but he also added that the Prime Minister could assume powers not inferior to that of a dictator so long as he enjoyed the confidence of the House of Commons. The Indian Prime Minister, Mrs. Indira Gandhi, assumed this role after declaring internal Emergency. But whatever be the magnitude of the authority of the British Prime Minister, he can never be a "grand vazier" as Gladstone declared. Harold Wilson, former Labour Prime Minister, described the role of the Premier as "conducting an orchestra and not playing instrument himself." Mrs. Gandhi played the instrument herself and the rest danced to the tune she produced.

In some other important aspects, too, both these offices differ from one another. The office of the Prime Minister of India is created by the Constitution and his role, though not precisely defined, is statutorily made manifest. The office of the British Prime Minister is the result of sheer chance and accident and the role he plays in the body politic of the country is the consequence of slow and steady growth beginning from Walpole. It is, again, the result of a convention that the British Prime Minister belongs to the House of Commons to which Chamber the Ministry is answerable.[15] It is also a convention that the Ministers of one Chamber have no access to the other Chamber and take part in the discussions of the other House. The Indian Constitution does not say whether the Prime Minister should belong to the House of the People or to either House or be a Member of Parliament at all. But conventions and the basic requirements of a responsible government do demand that he should be a member of the representative House at the time of his appointment.

Though the first Lord of the Treasury, the British Prime Minister does not hold charge of any particular department, he confines himself to general supervision and overall control of the Government. But in India, Prime Ministers have invariably held charge of some Ministry or Ministries. Nehru headed the External Affairs Ministry and the Atomic Energy Department. Shastri took over the portfolio formerly held by Nehru, but within six weeks of his assumption of office he gave up the External Affairs for reasons of health. Mrs. Indira Gandhi retained for herself only the Department of Atomic Energy in 1966 and afterwards had with her Planning, Electronics and Space in addition to Atomic Energy. Morarji Desai retained Planning and other Departments held by Mrs. Gandhi. Mrs. Gandhi during her second innings in 1980, held charge, *inter alia* of Defence, Mines and Planning but afterwards gave up Defence retaining Atomic Energy, Space, Science and Technology. In addition to the portfolios inherited by Rajiv Gandhi from his mother he was also a Minster for Defence for sometime, and then, took over finance when V. P. Singh was switched over to the Defence in February 1987. In the Cabinet reshuffle on July 25, 1987, the Foreign Minister was assigned Finance and the Prime Minister took over foreign Affairs from him. The practice is now so firmly entrenched that all Prime Ministers have held charge of quite a number of Departments.

15. Since 1903 no Peer has been appointed as the Prime Minister, except Lord Home in 1963. But within ten days after his appointment he renounced peerage.

Chandra Shekhar had at one stage charge of as many as twenty-three Departments. A more or less similar pattern remained with Narasimha Rao.

Appointment of the Prime Minister

The Constitution is silent how the President shall choose the Prime Minister. It does not also say whether he should necessarily belong to the House of the People or may be a member of either House of Parliament. If the letter of the law is to be followed strictly, a Prime Minister may be appointed without his being a member of either House of Parliament, as P.V. Narasimha Rao was, for a period of six months and after the expiry of that period he must seek election to either House. But this shall be against the theory and practice of the Parliamentary system of government as it vitiates the principle of ministerial responsibility. The convention is that the Head of the State summons the leader of the Party or group commanding a majority in the House of the People to form a Ministry. It would be immaterial whether the Party is a single Party or a coalition and if a coalition whether formed before or after the election. If no Party has a majority, the President should ordinarily exercise discretion and summon the leader of a party or group most likely to be able to form a Ministry. Where the former governing Party had lost its majority, the President should call upon the leader of the Opposition Party to form a Ministry even if it is smaller in number than the former governing Party. This rule is based on the principle which requires the mandate of the electorate is to be respected. but this rule can apply only if there is a reasonable possibility of the minority Opposition Party being able to form the Ministry and to carry on the Government by commanding a majority in the House.

However, appointment of Charan Singh as Prime Minister was bad by any canon of constitutional propriety and it evoked widespread criticism bringing the institution of Presidency into the arena of party politics.[16] On July 15, 1979, Prime Minister Desai submitted "his own resignation" and that of his "Council of Ministers" to the President, because the Janata Party had lost the absolute majority in the House of the People and, at the same time, informed him that his Party continued "to be the largest singly Party" in the House. Desai had expected that the President would invite him as leader of the single largest Party in the House to form the new government. But the President asked Y.B. Chavan, the Leader of the Opposition in the House of the People, to explore the possibilities of forming a government. Chavan reported to the President his failure to form an alternative government. The President, then, wrote identical letters to Morarji Desai and Charan Singh to prove their claims to form a Ministry. Desai subsequently resigned from the leadership of the Janata Party when he found that the list of his supporters submitted to the President included the names of some Congressmen and also retired form active politics. The Janata Party, then, elected Jagjivan Ram as its new leader.

Desai's complaint against the President that he was not fair to him and that he was bound to call him first, instead of Y.B. Chavan, to form a new government since he headed the largest single party in the House of the People was not tenable. Morarji Desai had no right to be an aspirant for the office by virtue of having resigned, when the Janata Party had been reduced in strength as a result of internal dissensions in the Party, in the face of the no-confidence motion moved by the leader of the Opposition which had acquired certainty of success. Sir Ivor Jennings in his classic *Cabinet Government* clarified the point. After making an unaswerable case for asking the Leader of the Opposition to form a new government no sooner the Government was defeated whether at the polls or in the House, Jennings made the proviso that "Where a Government resigns owing to internal dissensions it does not necessarily follow that the Opposition must take office." The Queen "must ascertain the views of all interested parties" and she is entitled "to consult whom she pleases, and the precedents give her full liberty."

The Janata Party was reduced in its strength as a result of its internal dissensions and its leader could not be invited to form a government even if it was the largest single Party in the House so long as its leader remained Morarji Desai and against whose stewardship the Party broke up in protest resulting into a certain defeat on a motion of no confidence. Desai would have resigned from the leadership of the Party simultaneously with his own and that of his Council of Ministers' resignation. But Desai defied the well-established and recognised conventions of the Parliamentary system of government and retained the

16. Refer to Chapter VIII. *ante.*

leadership till circumstances compelled him to quit and retire from active politics. There would have been a greater merit in the Janata case if Desai would have relinquished the leadership to give a new leader a chance to try his luck.

Equally serious was Charan Singh's disqualification who sabotaged his own Government and then himself defected when Parliament was not in session. Consistent with standard of political morality Charan Singh would not have been in the running for Prime Ministership. At the time of the adjournment of Parliament he was part of Desai's Government (Deputy Prime Minister No. 1) and he defected, when Parliament was not in session, to a party which had not been recognised by Parliament and engineered to become its leader. But it was Charan Singh's ambition of life to become the Prime Minister of India and he seized the opportunity by claiming a majority only on the strength of support from the Congress headed by Indira Gandhi. By ignoring the claim of Jagjivan Ram that he could establish his majority at the floor of the House and appointing Charan Singh as Prime Minister, the President elevated opportunism "to the status of national policy." It was also betrayal of the electorate for the Janata conglomeration won the 1977 Parliamentary election as well as Assembly elections in the nine North States on the platform of ending authoritarianism whose undisputed symbol, they held, was Mrs. Gandhi. By consorting with her merely to achieve power and to fulfil the ambition of his life, Charan Singh showed utter contempt for the electorate on whose mandate he and others of the erstwhile Lok Dal Members had been elected.

The best course for the President was if neither of the two contenders, Desai and Charan Singh, would have been asked to establish their claims to form an alternative government. If not for any other reason, it would have been just punishment for unscrupulous politicians for their petty manoeuvres. And when Desai had resigned from the leadership of the Janata Parliamentary Party, there was no other choice for the President but to give chance to the new leader of the Janata Party when Jagjivan Ram had offered himself to substantiate his majority on the floor of the House. His failure to prove his credentials would have saved the Presidency from disrespect and no *mala fide* would have been hurled on Neelam Sanjiva Reddy.

The appointment of Rajiv Gandhi on October 31, 1984, after the assassination of Mrs. Indira Gandhi, even before he was elected leader of the Congress Parliamentary Party was clearly an exercise of President's discretion. Some eyebrows were raised as it violated the established convention governing the appointment of a Prime Minister in such a contingency, that is, the sudden death of the Prime Minister and when there is no Deputy Prime Minister or the party had not elected its leader. The Opposition parties and the commentators remarked that Rajiv Gandhi regarded it as his "natural right" to succeed his mother and Gyani Zail Singh has his own explanation to offer in electing Rajiv Gandhi. He told Pritish Nandy, editor of the *Illustrated Weekly of India*, "Look, everyone knows how much I loved Jawaharlal Nehru and Indira Gandhi. I would do anything for them. Yet, the nation was more important to me. So I spent a lot of effort trying to genuinely assess Rajiv before I swore him in. I didn't let my love for Nehru family overwhelm my love for the nation. Rajiv's sweetness and simplicity appealed to me. He seemed a man capable of leading the nation and appealing to the masses. He was gentle, soft spoken, decent."[17]

Role of the Prime Minister

The Prime Minister is the keystone of the Cabinet arch. In his hand is the key of the government. His functions and duties are wide and his authority enormous. K.T. Shah expressed apprehension in the Constituent Assembly about the concentration of power in the Prime Minister and said that such a concentration of power "may very likely militate against the working of the real responsible and democratic government."[18] Not in identical terms, Ambedkar too admitted that the Prime Minister is by far the most powerful man in the country. He maintained, "if any functionary under our constitution is to be compared with the United States President, he is the Prime Minister and not the President of the Union."[19] The comparison between the Prime Minister and the American President is not apt as both these offices belong to two distinct and opposite systems. Yet it cannot be denied that the Prime Minister commands a pivotal position and the entire Cabinet system revolves around his office.

17. *The Illustrated Weekly of India*, Bombay, July 19-25, 1987, pp. 12-13.
18. *Constituent Assembly Debates*, Vol. VIII, pp. 114-46.
19. *Ibid.*, p. 998.

There is positive provision in the Constitution conferring so vast powers on the Prime Minister, but the spirit of the Constitution and the principles on which it is based are as cogent sources of authority as specific provision in the Constitution.

The Prime Minister forms the Council of Ministers, determines its sizes, decides the persons to be included in the Council of Ministers, names the Ministers to constitute the Cabinet and allocates offices. He may even select his colleagues from outside the ranks of his Party, as Nehru did in 1950.There is nothing in the Constitution which may bind the Prime Minister in the selection of his team to make the Council of Ministers. But there are certain political considerations, party obligations, geographical considerations and representation of various minorities, which no Prime Minister can venture to ignore. Mrs. Gandhi put at the top considerations of personal loyalty during her difficult days in forming her 1980 Council of Ministers. There are some leaders in every Party whose ranking is so high, their influence and following so dominating and personality so towering that their inclusion in the Council of Ministers is taken for granted even though the Prime Minister may be keen to exclude them. Similarly, in the allocation of portfolios they may demand what they wish to have and the Prime Minister has no choice but to yield. They may safely decline what is given, if the assignment is deemed not consistent with their standing in the Party or even liking. Vallabhbhai Patel would have accepted nothing short of Home Affairs, State and Broadcasting. T. T. Krishnamachari declined to rejoin the Cabinet after the 1962 elections unless he was given the Finance Ministry, though he joined later as Minister of Economic Production, very soon to step into the Finance Ministry.

It is the undisputed right of the Prime Minister to shuffle and reshuffle his pack as and when he likes. He is free in the exercise of his judgment to make such appointments as may seem appropriate to him for the stability, effectiveness and efficiency of the Government. He has the unfettered right to review, from time to time, the allocation of offices among the various Ministers and to decide whether that allocation still remained the best that could be effected. In July 1965, S.K. Patil resisted Nehru to shift him from Ministry of Food to Railways. But once he resigned under the Kamraj Plan, which really was a device to get rid of inconvenient Ministers whom otherwise Nehru was hesitant to remove, it was his final exit from the Council of Ministers. In July, 1969, Mrs. Indira Gandhi deprived Morarji Desai of the Finance Ministry and left him to continue as Deputy Prime Minister alone, the position he did not accept and resigned. In accepting Desai's resignation the Prime Minister asserted her unfettered right to allocate offices as she deemed best. In 1970, she shifted Y.B. Chavan from Home to Finance and Dinesh Sigh from External Affairs to the Minister of Industrial Development to be finally dropped in 1971. Mrs. Gandhi reshuffled her Council of Ministers six times between 1971 and 1974, minor changes apart. On the sixth reshuffle, October 19, 1974, she changed the portfolios of her senior colleagues and dropped five. Morarji Desai made minimal changes during his tenure of twenty-seven months whereas Mrs. Gandhi did it twice during the first eleven months of her office in 1980 and many more followed with a major reshuffle in February 1983. Rajiv Gandhi holds record. During the first two-and-a-half years of his tenure in office, he shuffled and reshuffled his Council of Ministers nine times.

Both as a captain of the team and head of the administration, it is the prerogative of the Prime Minister to ask anyone of his colleagues, whose presence in the Ministry is deemed prejudicial to the stability, efficiency, integrity or policy of the Government, to resign. If he defaults, he may be dismissed. Mohan Dharia was virtually dismissed on March 2, 1975 for his public utterances supporting Jayaprakash Narayan's movement in Bihar. The Prime Minister wrote to Dharia that his retention in the Council of Ministers was no longer possible and that the President was being advised accordingly. Dharia, immediately after receiving the Prime Minister's letter resigned. Divesting Morarji Desai of his Financial portfolio without even informing him earlier had a ring of dismissal, though the Prime Minister did not tell it specifically. Morarji Desai wrote separate letters to Charan Singh and Raj Narain on June 29, 1979 to withdraw from the Cabinet. Mrs. Gandhi silently dropped her trusted lieutenants V. C. Shukla, Kamalpati Tripathi and Kedar Pandey. Vishawnath Pratap Singh, Defence Minister in Rajiv Gandhi's Government resigned in April 1987. It was a well-calculated move on the part of V.P. Singh the implications of which were not understood then. V. P. Singh dropped his own creator and the Deputy Prime

Minister Devilal as he had established himself a scheming rival.

The Prime Minister possesses the power of dissolution. Dissolution of the House of the People means that the members hold their seats in the House at the mercy of the Prime Minister's use of this "terrifying power", for it entails new elections with all the uncertainties and vicissitudes involved in election. The threat of dissolution, thus, always hangs like a sword of Damocles. On December 7, 1970 the President dissolved the House of the People on the advice of the Prime Minister. 1971 Parliamentary elections returned the Congress with a massive majority. Mrs. Gandhi again advised the President to dissolve the House of the People in January 1977. The following elections in March 1977 swung the pendulum against the Congress uprooting it in North India. Mrs. Gandhi also lost the election. In August 1979 Charan Singh advised the President to dissolve the House of the People and order new elections. The advice tendered by the Prime Minister was variously criticised as it came from a person who could not face the House of the People to receive its mandate. Even the action of the President was criticised in dissolving the House. New elections were held in January 1980 and Mrs. Gandhi's Congress was returned with massive majority.

As Chairman of the Cabinet, the Prime Minister attracts "special kind of loyalty, engendered by the vague feeling that business is expedited and improved by order and that one must be prepared to suffer the chairman's ruling for the sake of the collective enterprise."[20] Ministers may differ behind closed doors, but they must finally agree if party solidarity is to be maintained and collective responsibility ensured. The possibilities of disagreement are, indeed, rare. A difference between two Ministers or Ministries can be settled by private consultation or by arbitration by the Prime Minister. If differences emerge out of the Cabinet discussions the chairman of the Cabinet occupies a position of pre-eminence which enables him to impose the decision. Moreover, the Prime Minister is the leader of the Parliamentary Party and his fifteen or more colleagues in the Cabinet owe him a personal allegiance and party loyalty. He also controls the agenda for the Cabinet meetings. It is for the Prime Minister to accept or reject proposals for Cabinet discussion, but no Prime Minister will like to embarrass himself by a complaining colleague that an important matter was not placed on the agenda, especially when the Party in power, as the Janata was, a combination of heterogeneous constituent units with no common ideology to bind them and guide their actions, or minority Government, as at present headed by P.V. Narasimha Rao, wherein every single member constitutes the strength of Government and ensures its stability.

The Prime Minister is the Manager-in-Chief of the Government's business. He supervises and co-ordinates policies of the several Ministers and Ministries. He must see the Government as a whole and bring the variety of governmental activities into reasonable relationship with one another. It is, however, not possible for a Prime Minister in any part of the democratic world to exercise his control and supervision over all the Ministries and Departments of the Government. The province of the state, too, has vastly expanded. The responsibilities of the Prime Minister have, therefore, tremendously increased and are being shared by his colleagues, who constitute the inner Cabinet and the work of co-ordination is done by various Committees of the Cabinet. Still, the Prime Minister is supposed to exercise a general supervision over all Ministries and Departments and he has the right to be consulted on all matters important or minor, controversial or otherwise. B.K. Kaul, Principal Private Secretary to the Prime Minister in his examination before the Public Accounts Committee, on a question about the supervisory functions of the Prime Minister, said, "The Minister-in-charge of each Ministry is responsible for the affairs of the Ministry. Under the Cabinet system of government, the minister is the highest person-in-charge of a Ministry. He is directly responsible to the Prime Minister." When asked, cannot the Prime Minister sit in judgment over other Ministers, he replied, "He can. Ultimately the Prime Minister is responsible."[21]

Apart from the overall supervision of the administration of the Union Government, the Prime Minister exercises special responsibility towards foreign, defence, finance, home and economic affairs. He may not hold charge of the Foreign Affairs Ministry, but his control over the foreign policy and in the appointment of diplo-

20. Finer, Herman, *The Theory and Practice of Government*, p. 592.
21. Public Accounts Committee 1952-53, Seventh Report on Appropriation Accounts (Civil), 1949-50, Vol. II, Evidence, pp. 21-22.

matic missions is unchallengeable. He is the spokesman of the Government on all international matters and every statement he makes and every word he utters is searched for meaning in foreign offices throughout the world. The Prime Minister's figure looms large in world. Nehru was his own Foreign Minister. Shastri and Mrs. Gandhi retained this Ministry for a brief period and so was Rajiv Gandhi. But the Tashkent Agreement was on Shastri's own initiative supported by a few Ministers and Civil Servants present on the occasion. Mrs. Gandhi was primarily responsible for taking decisions on such grave issues as the Indo-Soviet Treaty and Bangladesh. Rajiv Gandhi himself was responsible for Indo-Sri Lanka accord.

Similarly, the relation of the Prime Minister with the Defence Ministry is close and active. During war the responsibility for defence and foreign affairs essentially devolve upon the Prime Minister assisted by the Defence Minister, Foreign Affairs Minister and the Chiefs of Staff. Nehru himself made the decision on ceasefire with Pakistan in 1947 and to take the Kashmir issue to the United Nations. The conduct of the two more wars with Pakistan in 1965 and 1971 was guided by Shastri and Mrs. Gandhi and the credit for victory on both the occasions went to the two Prime Ministers.

No less is the Prime Minister's hold on the economic affairs. He must always have a full grasp of important policies and programmes, like land reforms, industrial advancement and production, food, irrigation, prices and other problems of identical importance. The Prime Minister is the chairman of the Planning Commission and the National Development Council. Mrs. Indira Gandhi was the author of the Twenty-point Economic Programme which formed the hub of economic policy of her Government. Rajiv Gandhi gave a new orientation to the programme and its progress was regularly monitored at the highest level. The policy of industrial liberlisation and other economic reforms initiated by the Congress (I) Government in June 1991 were the child of Narasimha Rao himself, though formally endorsed by the Cabinet.

By the same token internal peace and security of India is the basic responsibility of the Union Government and in pursuance of it Mrs. Indira Gandhi declared internal Emergency in June 1975 on her own initiative and informed the Cabinet of it the next day. The Punjab, Assam and Mizoran accords were the result of Rajiv Gandhi's own determination. There might have been private consultations with his close confidants but none of them was the result of a Cabinet decision. It is generally the decision of the Prime Minister to determine whether the Government of a State be carried on in accordance with the provisions of the Constitution and action under Article 356 should be taken or not. The appointments of the State Governors and judges of the Supreme Court and High Courts, subject to the constitutional requirements, are made by the Prime Minister.

The Prime Minister is the leader of the House of the People. All principal announcements of policy and business of the Government are made by him and all questions of non-departmental affairs and critical issues relating to national and international matters are addressed to the Prime Minister. The Prime Minister initiates and intervenes in debates of general importance and also possesses an immediate authority to correct what he may regard as the errors of omission and commission of his colleagues in the Council of Ministers. Nehru appeased an angry House of the People by promising an immediate inquiry when the Food Minister vainly tried to assure the House that it need not feel concerned over the fertilizers. When the Law Minister introduced the Representation of the People's Bill at the fag-end of the session of Parliament and hinted at further legislation by the President during the recess it angered the House. The Prime Minister intervened and promised that it would only be done by Parliament and, if necessary, the session of Parliament might be lengthened. With Nehru the Opposition parties, though ineffective, enjoyed influence and the Prime Minister's strength rested not only on the majority that the Congress Party commanded, but from both sides of Paliament. There was, however, a serious breach between Mrs. Gandhi and the Opposition after 1971. Between November, 1969 and February, 1971 the minority Government headed by Mrs. Gandhi yielded on many occasions to the Opposition pressures. After the 1971 electoral majority the rift between the Government and Opposition became more sharp. It is true that the Opposition, too, behaved irresponsibly and harassed the Government sometimes ruthlessly. But Mrs. Gandhi and her colleagues completely ignored the Opposition parties, except the Communist Party, and even questioned the relevance of Opposition in India. Morarji Desai, on the other hand, consulted the Opposi-

tion on all important matters and an attempt was made to reach a consensus on national issues, such as the election of the President and the anti-defection legislation. The Leader of the Opposition enjoyed the status of a Minister. But the cleavage between the ruling Congress (I) Party, after it came into office in January 1980, and the Opposition parties had become alarming. The frustrated Opposition parties mauled by the electorate with no possibility of return to power in the very near future together adopted the attitude of confrontation at every step with the Government. They were so vertically and horizontally divided that they could not agree on a common programme to present a united Opposition, but they readily joined hands together to agitate against the Government without the slightest consideration to national interests. Their meeting point was to hunt out Mrs. Gandhi from office.

Rajiv Gandhi took the Opposition parties into confidence and tried to ascertain their views and reactions on important national and international issues. He consulted the various Opposition parties if a consensus candidate could be agreed to for the eighth Presidential election. But the Opposition was in complete disarray. A regional partly Telugu Desam, was the main Opposition group in the House of the People. Quite a number of conferences and conclaves were convened to form an alternative party to the Congress and even a confederation of the parties was suggested, but unity could not be forged. Confrontation with the Government remained their point of agreement on the floor of the House or the threats to take the issues to the streets as the Bharatiya Janata Party frequently resorted to. Non-Congress Chief Ministers in their meeting on April 25, 1987 decided to conduct mass movements in their respective States on issues directly affecting the people and to press for greater reform of Centre-State relations though all the issues involved therein were pending with the Sarkaria Commission which had submitted its Report but the Government was to consider it before taking any final decision. A minority Government can ill-afford to ignore the opposition and consensus is the keynote of Narasimha Rao's Government. The Opposition too refrains from taking any bold decision and oust the Government from office so soon after the two General Elections within a short span of eleven months.

The Prime Minister is the channel of communication with the President on matters of public importance and the Constitution itself establishes this channel when Article 78 prescribes it a duty of the Prime Minister that he should communicate to the President the decisions of the Cabinet and provide information that he needs. It also enjoins on the Prime Minister to provide to the President such information relating to the administration of the affairs of the Union and the proposals for legislation that the President may call for. It is inconceivable that in the discharge of what are laid down as the *duties* of the Prime Minister to the President, the Council of Ministers—in effect the Prime Minister—should be the determining authority and that it should be vested with unfettered discretion on the nature and timing of the information to be submitted to the President. Article 74(1), which provides that the President in the exercise of his functions shall act in accordance with the advice of the Council of Ministers, cannot be read so as to reduce other provisions of the Constitution to a nullity.

But the nature and extent of information required and sought by the President, under Article 78, is obviously subject to the test of relevance and reasonableness and must not be interpreted in a fundamentalist or overweening way. This right to information is indeed a necessary adjunct to the President's playing his constitutional role effectively. The President is envisaged to represent the nation, ensuring that the rules of the Constitutional game and 'fair play' are observed. He is also entitled to advise and caution the Government, though obviously what impact the advice will have depends on the holder of the office and how much the Council of Ministers and Parliament respect his wisdom, sagacity and integrity.

The Prime Minister is the chief adviser of the President and in emergencies, he or she will consult him, though there was a breach when Mrs. Indira Gandhi presented the Proclamation declaring internal Emergency in June 1975 without prior consultation with the President. Nor did she brief the President on the "Blue Star Operation." He learnt it from the news bulletin broadcast by the All-India Radio. Rajiv Gandhi did not consult him on the various accords he concluded.

The patronage exercised by the Prime Minster is enormous. All major appointments are really made by him. In the course of making such appointments, he, no doubt, receives the advice of his colleagues, but the ultimate choice belongs to him.

The general election is in reality the election of the Prime Minister. The slogan in the

1952, 1957 and 1962 General Election was "to vote for the Congress and strengthen the hands of Nehru." The Congress and Nehru had become synonymous. He had no visible grip on the Party machine, but his sway over the people was greater and more absolute than that of any other democratic statesman elsewhere. Writing about Prime Minister Nehru, Hiren Mukherjee, the Communist M.P., said, "If to a public figure nothing is more rewarding than the love of his people, Jawahar Lal Nehru has been one of the most fortunate persons in creation. Apart from Gandhiji, no one, in India has been recipient in recent decades, of such abounding love—and, while the Mahatma commanded a sort of reverence, Nehru has evoked the people's affection. Even Subhash Chandra Bose, in some ways a more dynamic person, lacked the secret of Jawaharlal's personal fascination for all varieties of people."[22] K.R. Srinivsa Iyengar, writing under the caption : *The Prime Minster,* observed "when he (Nehru) enters an assembly, be it a Select Committee or a mass rally, the effect is invariably the same. All eyes converge towards him, all hands clasp in eager affectionate welcome as if to a preordained tune, and a hushed expectancy watches his intrepid movements and strains to catch his words and whispers. The men are a little out of breath, the women are almost overwhelmed."[23] Prime Minster Nehru was, thus, the virtual leader of his Party and he towered above all in national stature. In fact, he had acquired world stature and even his bitter political adversaries acclaimed him as such. "May this gentle colossus," prayed Hiren Mukherjee, "stride the Indian scene for as long as we care to foresee in the future."[24]

The Prime Minister moulds and guides public opinion by receiving deputations and discusses issues, by public speeches at party conferences, and on other important occasions which demand proper attention. The role which a Prime Minster played in assuming leadership of the party depends upon his personality, his prestige and even his strategy. Jennings says, "since his personality and prestige play a considerable part in moulding public opinion he ought to have something of the popular appeal of a film actor and he must take some care over his make up—like Mr. Gladstone with his collars, Mr. Lloyd George with his hair, Mr. Baldwin with his pipes and Mr. Churchill with his cigar." Nehru and the nation were personified. In the beginning of her career as Prime Minister, Mrs. Indira Gandhi's assets were her youth, her strong sense of duty and her unquestioned dedication to the country's interests and good. She had a hold on the people's imagination. After the nationalisation of 14 major Banks in July, 1969, Mrs. Gandhi's popularity ran at a peak according to a Gallup Poll reported by E.P.W. Da Costa.[25] The survey conducted by him disclosed that in August 1969, her peak popularity rose to 71 as compared to 45 in October 1966 and 41 in August-September 1967. "This is high," said da Costa, "but short of the Indian peak of 97 which Lal Bahadur Shastri reached after 22-day hostilities in 1965. Nevertheless, the ascent from 41 to her peak figure of 71 is a clear indication that the Prime Minister has emerged in the arena of India's most popular leaders which includes her father and Lal Bahadur Shastri." It proved true in the mid-term 1971 elections to the House of the People, when she secured a massive mandate from the electorate for her policies and programmes. The manner in which she dealt with the Bangladesh issue and the successful end of war with Pakistan within a brief period of two weeks evoked widespread respect for her and raised Mrs. Gandhi's stature as Prime Minister to unprecedented heights. There was "Indira Wave", as described in terms of politics.

But her popularity waned after 1973. This swing can be attributed to diverse factors, but importantly to the uncertain and instable economic conditions in the country and the never-ending price rise which completely disillusioned the people. All this was coupled with Jayaprakash Narayan's movement in Bihar and his tirade against the Prime Minister herself. The Opposition parties, more especially the Congress (O), seized the opportunity under Jayaprakash's umbrella with the avowed object of defaming Mrs. Gandhi and dislodging her from office. Even Jayaprakash Narayan gave a call for her removal from office and branded her as an unabashed dictator and the leader of corruption and other malpractices who had amassed wealth from questionable quarters. Finally, came the Allahabad High Court judgment on June 12, 1975, which

22. "Symposium on Nehru," *The Illustrated Weekly of India,* Bombay, August 16, 1959.
23. *The Hindustan Times,* Sunday Magazine, November 13, 1953, p. 1.
24. "Symposium on Nehru", *The Illustrated Weekly of India,* Bombay, August 16, 1989.
25. *The Hindustan Times,* New Delhi, August 28, 1969.

disqualified her to hold an elective post for a period of six years.

Just thirteen days after the Allahabad High Court judgment, the country was brought under a state of internal Emergency. No other office under the Constitution suffered so much damage as did that of the Prime Minister of India. On January 18, 1977, Mrs. Indira Gandhi advised the President to dissolve the House of the People (Lok Sabha) and order fresh elections. The Opposition Parties formed a common Janata Front and contested the elections. The people, who had lost faith in Indira Gandhi's leadership and the Party she headed, withdrew their mandate. The Congress (I) was routed in North India and Mrs. Gandhi was defeated in her own Constituency which she had nursed so fondly all those years.

The nation looks to the Prime Minister for leadership. But it is the democratic leadership that the Prime Minister under a Cabinet system is called upon to provide; a leader of a team, ensuring that it functions as a team. It is the Prime Minister who tenders the advice of the Council of Ministers to the President. If the Prime Minister simply informs the Cabinet of such a vital matter as the declaration of Emergency and the subservient Cabinet endorses it without demur, there is neither team nor its captain. Ambedkar uttered the warning in the Constituent Assembly on November 25, 1949 as it concluded its labours. He told the Assembly members "to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not to lay their liberties at the feet of even a great man, or trust him with powers which enable him to subvert their institutions." This caution, he added, was far more necessary in the case of India than in the case of any other country. "For in India *bhakti* or what may be called the path of devotion or hero-worship, plays a part in politics unequalled in magnitude by the part it plays in the politics of any other country in the world. *Bhakti* in religion may be a road to the salvation of the soul. But in politics, *bhakti* or hero-warship is a sure road to degradation and to eventual dictatorship.

Rajiv Gandhi succeeded his mother and in the January 1985 Parliamentary elections he swept to power on the kind of vote not even Jawaharlal Nehru and Mrs. Indira Gandhi received in their days. It was a rather indulgent electorate, caught in anxiety after Mrs. Gandhi's assassination, that placed Rajiv Gandhi on the high pedestal with over 400 seats in the House of the People. The young Prime Minster, at the age of 40, was idealized both by the people and the media. He was contemptuous of the run-of-the-mill Congressmen so much so that he called them power brokers at the Party's centenary celebrations in December 1985. He had sought to project himself "Mr. Clean" determined to carry the country to the twenty-first century by his innovative schemes and projects and dynamic government that would work "fast." He adopted a series of policies which were very different from Mrs. Gandhi's as in the case of accords in respect of Punjab, Assam and Mizoram. Much of the intelligentsia saw Rajiv Gandhi as a successor to Nehru and not to Mrs. Gandhi.

But within a short span of twenty-eight months of his assumption of office, his popularity began to subside. What is significant is the speed at which his popularity graph began dipping, particularly with the leakage of President Gyani Zail Singh's letter of March 9, 1987 to the Prime Minister closely followed by the Fairfax controversy, the result of the Assembly elections in the States of West Bengal and Kerala and then the controversial Bofors deal. The Opposition got hold of some issues on which it could embarrass the Government and it did well. Failure of the Punjab policy, the rout of the Congress (I) in the Haryana Assembly elections followed by expulsion of Vishawnath Pratap Singh from the Party to join Arun Nehru and Mohammed Arif Khan, his former Ministers, who had earlier been expelled for their anti-party activities, further worsened the image of Rajiv Gandhi and there was total loss of his credibility among the masses in general. Similarly, the United States' determination to step up military-cum-economic assistance to Pakistan and to ignore Islamabad's bid to acquire nuclear weapons capability was testimony to the collapse of Rajiv Gandhi's America policy. Questions about the durability of the Prime Minister's leadership and even the country's stability began to be asked. Former President Sanjiva Reddy was invited for consultation on the national problems by the Prime Minister in end May 1987. He told press persons that during his talks with the "Young Prime Minister" for over an hour they discussed many issues, but Rajiv Gandhi was not clear about the dimensions of the problems facing the country. He was "in a state of confused mind with regard to their solution." He further said, "I had been there to give a bit of my mind to Mr. Rajiv Gandhi in resolving the problems.....It is now for the Prime

Minister to consider them in the interest of the nation."[26]

Position of the Prime Minister

This makes the position of the Prime Minister clear. An appraisal of the Indian Prime Minister's position under the Constitution was made by the Administrative Reforms Commission headed by Morarji Desai. Its report said : "The Constitution accords the Prime Minister a special position in the executive machinery of Government. He is not only the head of the Council of Ministers—*pimus inter pares*—but also the President's principal adviser. The high position invests him with the special responsibility to see that the institution functions as a team, that the rule of collective responsibility is effectively enforced, that policies are made objectively and realistically after due study and deliberation and are motivated by the national interests, that they are implemented properly and effectively, that administration is responsive to the people's needs."

But in actual practice the Prime Minister is not *primus inter pares;* not even in Britain. Discussing the position of the British Prime Minister, Herbert Morrison says, "As the head of the Government he is *primus inter pares.* But it is today far too modest an appreciation of the Prime Minister's position."[27] Jennings says that Prime Minister is not merely *primus inter pares*. He is not even *inter stellas luna minores* (a moon among lesser stars). "He is rather, a sun around which planets revolve."[28] The earlier conception of the Prime Minister as first among equals, *primus inter pares,* does not reflect the real difference in status and responsibility between the person who holds the first position, and is the Prime Minster, and even his senior colleagues. While refuting the charge of C.D. Deshmukh that the two crucial decisions on Bombay, which caused his resignation from the Council of Ministers, Nehru declared in the House of the People on July 30, 1956, "After all, I am the Prime Minister of India and the Prime Minister is the Prime Minister. He can lay the policy of the Government.....I know something of democratic procedure.....I know something of what the Prime Minister's duties are and that in the Constitution the Prime Minister is the linchpin of the Government. To say that the Prime Minister cannot make a statement is a monstrous statement itself.....I am something more than the Prime Minister of this country, and we are all something more. We are the children of Indian revolution."[29]

The authority of the Prime Minister is great if he is keen to assert himself to the full position he occupies. The office of the Prime Minister in India is created by the Constitution and his authority carries with it constitutional sanction. In a judgment on the right of the Prime Minister to continue in office after Parliament had been dissolved, the Supreme Court held that to accept the plea that the Council of Ministers ceases to hold office "would be to change the whole concept of the Executive. It would mean that the President need not have a Prime Minister to aid and advise him in the exercise of his functions." If Article 52 which provides that there shall be a President 'is mandatory," the Court ruled, "so is Article 74 (1) which says that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions." While expressing no firm opinion on the plea of N.A. Palkhivala, Mrs. Indira Gandhi's counsel, that an absolute stay on the Allahabad High Court judgment disqualifying her to hold any elective post should be granted as the theory of balance of convenience was in her favour, Justice Krishna Iyer observed, "The Prime Minister is the central figure who decides crucial internal and external policy.....Although collective Cabinet responsibility was the essence of the democratic process, the personality of Prime Minister has a telling effect on democratic government. (Therefore) the balance of convenience would be in favour of continuance of the same team (Council of Ministers) which was animated by the presence of the key personality within the Council of Ministers."

The Prime Minister is the king-pin in the system of Cabinet Government. On him rests the entire machinery of administration : its stability and policy continuity. To defy his authority and challenge his position is suicidal to the political ambition of a Minister unless the Prime Minister has handled his job so badly that there is a widespread feeling of his unfitness for it. Nehru even thought of dismissing Sardar Patel. It was reported that the Prime Minister told his Deputy

26. *The Hindu,* New Delhi, June 2, 1987.
27. Morrison, H., *Government and Parliament,* p. 97.
28. Jennings, W.I., *Cabinet Government,* p. 183.
29. Brecher, Michael, *Nehru, A Political Biography,* p. 485.

that he had the right to select his colleagues and he could dismiss him if his views differed from the policy of the Cabinet.[30] Ambedkar resigned from the Government and complained in the statement of his resignation that many Ministers had been given three or four portfolios so that "they had been overburdened. Others like me have been wanting more work. I have not been considered even for holding a portfolio temporarily when a minister-in-charge has gone abroad for a few days." Nehru accepted the resignations of Morarji Desai, S.K. Patil, Lal Bahadur Shastri, Jagjivan Ram, K.K. Shrimali and Gopala Reddy under the Kamraj Plan because it provided him an opportunity to get rid of some or the incompetent inconvenient colleagues whom he was hesitant to remove in the normal way. Lal Bahadur Shastri and Jagjivan Ram were dropped in order to keep up an appearance of impartiality in accepting these resignations. Morarji Desai had to quit unceremoniously from Mrs. Gandhi's Cabinet as Charan Singh and Raj Narain had to do from Morarji Desai's Cabinet. Similar was the fate of V.C. Shukla and Kamalapati Tripathi in 1981, Kedar Pandey in 1983 and Ghani Khan Chowdhry in May 1987. V.P. singh dismissed his Deputy Prime Minister Devi lal.

After Lal Bahadur Shastri's election as leader of the Congress Parliamentary Party an impression went round that he would be just an equal in the Cabinet and would always consult on all matters of importance not only his ministerial colleagues, but also the President of the Congress Party and its other leaders who had helped him in his election. Shastri immediately scotched all such conjectures. In a statement made at Nagpur on June 16, 1964 he said, "I cannot effectively function as Prime Minister of India if I yield to any pressure from any quarter." Kamraj had openly stressed the necessity of building a "collective leadership" to fill the gap created by the demise of Nehru, a charismatic figure. But as events proved Shastri was, in the words of Frank Moraes, "nobody's puppet". He did not live long enough "to put the issue of his overriding authority as Prime Minister to test but before his death, he had indicated the drift of his mind. He was not willing to fit snugly into the framework of a cosy collective leadership, or to adapt himself to rule by consensus.[31]

Mrs. Indira Gandhi inherited all those disabilities when she succeeded Shastri. She had the added disadvantage of age too. The top leadership of the Congress Party, responsible for her election as leader of the Parliamentary Party, deemed her succession as an interim arrangement. She, too, was rather shaky in the beginning, but with greater political stability, after the 1971 poll, Mrs. Gandhi showed signs of greater maturity and a new confident personality emerged. She succeeded in eclipsing her powerful colleagues in the Cabinet. The stature she attained after India's victory over Pakistan and the manner in which Bangladesh issue was resolved, Mrs. Gandhi would "brook no rival, and before her authority ministers cower. Among some, including Chavan and Jagjivan Ram, subservience is possibly explained by the fact that at one time or the other the Prime Minister has caught these veteran war horses prancing on the wrong foot in the wrong pastures."[32] Mrs. Gandhi revived the inner or "kitchen" cabinet, the practice which Shastri had abandoned, in the very first year of her assumption of office. Dinesh Singh, C. Subramaniam and Ashoka Mehta were her close confidants. But there was a significant difference in the style of Nehru and Mrs. Gandhi's inner Cabinet. Nehru included in his inner Cabinet senior Ministers and the inner body was something like a "policy" or "partial" Cabinet.[33] But Mrs. Gandhi would trust her junior colleagues. She also received counsel from other trusted colleagues, Uma Shankar Dikshit and Durga Prasad Dhar, and from outside the Council of Ministers. D. P. Mishra, Nandini Satpathy, S.S. Ray, D. K. Barooah and Rajin Patel were her close confidants. She heavily leaned on her younger son Sanjay Gandhi and after his demise her elder son Rajiv Gandhi was her constant

30. Gadgil writes, ".....the schism between the viewpoint of Vallabhbhai (Patel) and Nehru began to come to surface gradually. Nehru was displeased with a speech made by Vallabhbhai in Varanasi.....The differences between them became sharper as time went on. It was rumoured then that Nehru had given a hint to Vallabhbhai through one of his confidants that he might have to go if he did not behave. I do not believe there could have been any such hint. But I know for certain that Nehru's favourites and sycophants were quite capable of creating such mischief." Gadgil, N.V., *Government from Inside*, p. 150.
31. Frank Moraes, *Witness to an Era*, p. 263.
32. *Ibid.*, p. 253.
33. Patel, Azad, Ayyangar, Kidwai, Desai, Menon and Shastri were its members at one time or the other. Nanda, Krishnamachari and Shastri formally assisted him in the last months of his office.

political aide and even assumed extra-constitutional authority.

Morarji Desai had no inner circle to consult. Nor could he afford to attempt one in a strife-ridden Council of Ministers and warring constituent units of the party that he headed. He told Pritish Nandy, Editor of the *Illustrated Weekly of India,* "I always listened to my colleagues.....and did what was right for the nation."[34] In Rajiv Gandhi's case power fell into his lap at a young age of 40 and without any experience of the intricacies of politics, he was in a hurry to reach the 21st century without realising that the present had to be a bridge between the past and future. He selected a coterie of persons young in age who had no roots in a democratic movement. If Rajiv Gandhi had not appointed his friends as his counsels officially, he lent his ears to Amitabh Bachchan, Romi Chopra, Rajiv Sethi and ex-Captain of the Indian Airlines Satish Sharma. The result was complete failure on all fronts, domestic and international and utter loss in prestige and credibility.

The actual power of the Prime Minister, however, varies according to his personality and the extent to which he is supported by his Party. His prestige, no doubt, is one of the elements that makes for the success of the Party as he goes to the electorate not as an individual, but as a leader of the Party. So long as he retains the hold on his Party, he is, able within limits, to dictate to his Party. The mighty power of Nehru was of his dynamic personality and he reigned supreme over his Party and the Government that he headed. "Many of his colleagues and, or Party high-ups," wrote Radhakrishnan, "received the shock of their lives when Nehru asked them to explain obscure reports published in the papers, with the relevant cutting pasted faithfully on the note paper."[35] Nehru combined the two posts of the Congress Party President and the Prime Minister from 1951 to 1954. Thereafter, he received unequivocal respect, affection and regards from the Presidents who followed him. The Congress Party had, in fact, always looked to the Prime Minister for political guidance and his leadership was never questioned. Nehru too treated the Party President and the Working Committee with the utmost consideration nd never denigrated publicly the organisation. He consulted the Working Committee frequently on matters of national importance and valued the suggestions proposed by them. In case of difference of opinion, he had the capacity to bring round the Working Committee to his Cabinet's point of view. He had also the capacity to yield to the opinion of his Cabinet colleagues and the Parliamentary Party in the wider national interests. The Congress Parliamentary Party demanded Krishna Menon's resignation in 1962, when China attacked India and the Indian army suffered a series of reverses. Nehru defended Menon in the Parliamentay Party and vaguely threatened to resign. It was reported that one of the leaders in the Party said, "If you continue to follow Menon's policies, we are prepared to contemplate that possibility." Nehru yielded and Menon had to resign. This is the specimen of Nehru's respect for democratic and human values.

Shastri in the beginning showed deference to the wishes of the Congress President, but soon he assumed the role of equality and a little later he clearly established his dominant position. He also played prominent part in the re-election of Kamraj as the Congress President. But the relations between Mrs. Gandhi and the Congress President became strained from the very start, although Kamraj had played the key role in her selection as leader of the Parliamentary Party. She did not consult the Congress President on such important matters as the devaluation of the rupee as well as on the decision of the Indo- US Foundation and the election of her some men to the Central Election Committee of the Party. The Prime Minister, as Rajni Kothari remarked, "appeared to be no longer a prisoner of Kamraj and looked forward to an equal partnership with the Congress President."[36]

But soon she began to assert herself. After having consolidated her position in the Government Mrs. Gandhi strove to make mark on the Party and even challenged Kamraj insisting on the nomination of Dr. Zakir Hussain for the Presidency. Relations between the Party and Mrs. Gandhi's Government deteriorated after the 1967 General Election when the top Party leaders, like Kamraj, S. K. Patil and Atulya Ghosh, lost the poll. The rift between the Congress President, S. Nijalingappa, and Mrs. Gandhi became sharp and the 1969 Presidential election brought the breaking point. Mrs. Gandhi wanted that the choice of the Presidential candidate should be the exclusive

34. *The Illustrated Weekly of India,* Bombay, February 2, 1986.
35. *The Tribune,* Ambala Cantt., November 13, 1955.
36. Rajni Kothari, "*India : The Congress System of Trial*", Asian Survey, February 1968, p. 89.

concern of the Prime Minister whereas the Congress President asserted that it was the right of the Central Parliamentary Board. When the Central Parliamentary Board selected Neelam Sanjiva Reddy as the Congress candidate for the presidential poll, Mrs. Gandhi complained that by imposing the decision on her the office of the Prime Minister had been denigrated. "All over the world", she said in anguish, "the impression had gone round that the Prime Minister is demoted in her own organisation. No democracy can function if the head of the Government is insulted in the Party."[37]

Mrs. Gandhi had "the reputation of never forgetting and more ominously, she never forgives."[38] The "insult" of imposing the Presidential candidate was to be avenged and thus began conflict, confrontation and split. Mrs. Gandhi clarified the position of the Prime Minister *vis-a-vis* the Congress President and the Working Committee. Addressing the general body of the Congress Parliamentary Party on August 29, 1969 she explained that the sphere of the Congress President was the Party which laid down broad policies. But the implementation of policies and programmes rested with Parliament and the State Legislatures. The leader of the Parliamentary Party, as the Prime Minister, had responsibility not only to the Congress Parliamentary Party, but to the State Governments and the nations of the world. Therefore, it would not be proper to fetter the discretion of the Prime Minister.[39] But the Congress President warned his partymen against the evil of "personality cult" which was reflected in the speeches of the Prime Minister and her desire of freedom of vote in the ensuing Presidential election; one was the nominee of the Congress and the second an independent having the tacit support of Mrs. Gandhi.

The Indian National Congress was split and Mrs. Indira Gandhi became the undisputed leader of the Party then known as the Indian National Congress (Ruling). In the initial stages after the split she even toyed with the idea of becoming the Congress President,[40] but hesitated lest the accusation of "personality cult" might be confirmed. The nationalisation of the top fourteen Banks, her utterances promising economic and social justice, the massive 1971 poll majority, the successful end of Bangladesh crisis and the victorious end of the war with Pakistan inspired confidence in the mind of the people in a manner unparalleled in the history of the Indian National Congress. The Congress and its competent bodies at all levels of the organisation completely surrendered to Mrs. Gandhi the authority to take decision on the issues involved, to nominate Chief Ministers of the States and even the members of the *ad hoc* committees where the Pradesh Congress Committees had been superseded. The Congress President Jagjivan Ram (1969-71), D. Sanjivayya (1971-72), Shankar Dayal Sharma (1972-74) and D. K. Barooah all echoed her tune of thought. Except Jagjivan Ram, the remaining three were her nominees. But Barooah surpassed them all when he publicly declared that 'India is Indira, and Indira is India."

The Party abdicated in favour of the Prime Minister and, thus, began an era of constitutional despotism and sycophancy. Both the Prime Minister and the Party had to pay a very heavy price for the concentration of authority and the role played by the "caucus". Fifty Congress members of both Houses of Parliament gave to the Congress President a letter, immediately after March 1977 elections, demanding his (Barooah's) resignation. Mrs. Gandhi also came under severe criticism for allowing the emergence of "caucus" which wielded undemocratic power during the nineteen months of Emergency. Demand was also made to purge the Congress, if its politics was to be purified and even Mrs. Gandhi's removal from the Party would not have been a surprise. But Mrs. Gandhi found her survival in splitting the Congress for the second time and became the President of the group : Congress Conventionists, to be finally known as Congress (Indira) or Congress (I).

It is the paradox of Mrs. Gandhi's popularity that even in the dark days of her political career there was no revulsion against her popular rating as assessed by E.P.W. da Costa in August 1977. In January 1980 Parliamentary elections the electorate reposed their confidence in the indispensability of Mrs. Gandhi at the critical juncture of India's political career after Independence and returned her Congress with a massive majority. They re-affirmed their confidence in her again in the Assembly elections in nine Northern States and in the following by-elec-

37. *The Statesman*, Calcutta, August 17, 1969.
38. Frank Moraes, *Witness to an Era*, pp. 263-64.
39. *The Sunday Standard*, New Delhi, August 31, 1969.
40. Krishnan, T.K. Kunhi, *Chavan and the Troubled Decade*, p. 289.

tions. But the political upheaval of 1977 had made no change in Mrs. Gandhi's style of functioning. She rode the crest and combined the office of the Prime Minister and the Presidentship of the Party designated as Congress (Indira). An important criterion, she adopted in the second spell of her office in selecting her team of Ministers was the unflinching loyalty of a person in her days of distress. This criterion was rigidly applied in the selection of Party candidates for contesting elections to the House of the People and the State Assemblies. Subservience to the Party leader at all levels was as vigorous as before. Zail Singh, the then Home Minister, described "Indiraji" as his *rahnuma* (patron)[41] and she was patron of all whether they had given public expression to their feelings or not. She still believed in *ad hocism* and no Party elections were held, either in the Central organisation or in the Provincial Committees. The State Chief Ministers were her nominees and they held office at her pleasure. The State Party bosses were her creation and they changed at her will.

Way back in 1957, N.V. Gadgil, former Union Minister (1947-52) wrote that the position of the Prime Minister "is a peculiar one. In the Cabinet, he naturally claims that it is his responsibility that the decisions of the Government are in conformity with the broad principles and policies laid down by the Congress. In the Working Committee, where he cannot escape dominating, he represents the Government and is in a stronger position to necessarily press his views, backed up as they are by administrative experience." Many merits, he added, are claimed for such a position of the Prime Minster as he constitutes an effective connecting link between the Government and the Party organisation as represented by the Working Committee. "But the disadvantage which is inherent in a situation of this kind," Gadgil remarked, "is equally overwhelming, *viz.*, that the Prime Minister is invested with formidable power and influence and unless he be a genuine democrat by nature he is very likely to become a dictator."[42] Nehru was a sensitive democrat, a great humanist, averse to power politics. Mrs. Gandhi had a past. She always told her countrymen that Nehru was her teacher, her Guru, and pledged to uphold all the human and democratic values which her father had painstakingly nourished. But history's verdict is that she failed to maintain the Nehru legacy.

Morarji, on the other hand, was a democrat who had a firm belief in the rule of law and dignity of the individual. His had been a remarkable political life moulded by Gandhi and his own strong often rigid views how he should conduct himself, the Party and the govern- ment. Many disagreed with some of his views and found the ring of self-righteousness often through his preaching. In politics man proposes and circumstances dispose and this is precisely what happened during Desai's tenure of Prime Ministership. His misfortune was that he had the Government of a squabbling and undisciplined Party which even effected the style of his Ministers. They contradicted each other and one another. Cohesion at any stage had not been their concern both in the Party and the Government. At one stage, with few exceptions, there was a race among them for self-promotion. Without any official restraint or political decorum, they talked to the Press, to the public and against each other including the Prime Minister. A Prime Minister commands from his colleagues party loyalty and personal allegiance and it is the strength of the office he holds and ensures team spirit. Morarji Desai could not get either. Charan Singh and Jagjivan Ram did not forget that their claims had been ignored and Prime Ministership was gifted to Desai by Jayaprakash Narayan. The split and inner-party fights posed an insurmountable problem and Desai was not strong enough to hold the Government and Party together. He cogently summed up this deplorable aspect of the affairs of the Janata Party. During the 'meet-the-Press' programme he pointed out that the Janata Party was formed by six different parties which had been criticising each other for thirty years. The parties had come together as all wanted to be together but habits which were thirty years old could not vanish overnight. When asked was it proper for any Minister to publicly state his views till the Government took a decision ? The Prime Minster said that "it would be much better if everyone in this country understood what was proper and what was not." "But how many do so ?", he asked. He added that he had been drawing their (Ministers) attention and this was having its impact. Patience was needed to educate

41. As reported in *The Tribune*, Chandigarh, March 21, 1980.
42. Gadgil, N. V., "The Government and the Party," *The Indian Journal of Public Administration*, New Delhi, October-December 1957, p. 354.

a person, he remarked.[43] Nothing more could be expected in reply from a hapless and helpless Prime Minister.

Rajiv Gandhi became complacent after the enormous success that he achieved in the first two years of his assumption of office as Prime Minister and President of the Congress (I) both rolled into the one. He felt that he had massive support both inside and outside Parliament and became a little more aggressive in moving the country faster to his cherished goal of the 21st century. He was oblivious of the constraints of democracy, the inertia of administration,[44] the vastness and complexity of the land and the pressure of population, particularly of the people struggling to find a place in the sun.

Most importantly Rajiv Gandhi was oblivious of what has come to be known in the vocabularly of American politics as the "Nixon effect." Whenever a leader is returned to power with a massive majority and also combines unto himself the command of the organisational wing of the Party, he begins to operate carelessly. Without due regard to scruples, with a touch of arrogance, he grievously offends his supporters in the Party. Rajiv Gandhi made himself inaccessible to his Party colleagues and treated them as ordinary members of the public; he would reshuffle his Council of Ministers as if it was a pack of cards; and that he would not listen to the advice of his senior Cabinet Colleagues. Even more important that the Congress leaders of standing would be as afraid of him as they were of Mrs. Indira Gandhi after she had split the Congress in 1969, driven out of the organisation those who had dared oppose her and established her supremacy in it. Whatever resistance had survived in the Congress and surfaced in the wake of electoral debacle in 1977 got eliminated when Mrs. Gandhi again split it in 1978. It was this organisation which Rajiv Gandhi had first lorded over as General Secretary and then inherited on October 31, 1984. Its leading lights could not legitimately have been expected to be guided by anything otherwise than the survival instinct. Here we can do no better than paraphrase Oliver Goldsmith and say :

> Ill fares the system to hastening ills a prey,
> Where power accumulates and men decay.

SUGGESTED READINGS

Constituent Assembly Debates.

Granville Austin, *The Indian Constitution —A corner-stone a Nation.*

Hanson, A.H. and Janet Douglas, *India's Democracy.*

Jennings, W.I. *Some Characteristics of the Indian Constitution.*

Palmer, Norman, D., *The Indian Political System.*

43. As reported in *The Times of India,* New Delhi, February 29, 1980.
44. In a public speech the Prime Minister stated that "Our administrative mechanism is cumbersome, archaic and alien to the needs and aspirations of the people."