

The State of Undivided India



Introduction

The earliest Muslims to travel to India may have sailed from Arabia in the lifetime of Prophet Muhammad (PBUH). For centuries, Arab traders and sailors had been familiar with the ports of western India. Some of them settled there, and it seems that certain rajas of Madras, whose prosperity depended on the maritime trade, encouraged their youthful subjects to become Muslims and learn navigation.¹ The descendants of these Arabs and the converts are still to be found on the Malabar coast. However, the Muslims' arrival in the Indian subcontinent in great numbers started with their invasion of Sindh in AD 712 under the leadership of Muhammad bin Qasim. The Muslims followed in waves of conquest until Delhi fell to Muslim forces under Shahabuddin Muhammad Ghori in 1192.

The Delhi Sultanate was founded by Qutubuddin Aibak in 1206 and Muslim power continued to expand until it reigned supreme over the entire subcontinent. Five Turkish/Afghan dynasties ruled Delhi till 1526. The Muslim sultans belonging to these dynasties ruled by decrees (*farmans*). The sultan was the chief executive, sole legislator, and the chief judge of the land. The powers of executive, legislature, and judiciary were concentrated in him. He administered justice to both Muslim and non-Muslim subjects. The Hindus acquired the status of *dhimmi*s; persons who, while retaining their own religion, were exempted from military service on payment of a poll tax.² The Delhi sultans, however, preferred adherence to the principles of Islamic law while administering justice to their subjects. Nevertheless, the unrestrained power of the sultan and his whims and wishes were the law of the land. Each sultan divided his territory into provinces (*subas*), run by provincial governors (*subedars*). Magnificent and luxurious courts, rewards for obedience, suppression of dissent, pious dispositions, and instilling fear and awe in the hearts of the ruled,

rather than seeking the consent of the people, were the chief traits of such rule.³

The Turko-Afghan Muslim dynasties were succeeded by the Mughals. Babur, the first Mughal to rule the Indian subcontinent, came from a small kingdom in Turkistan. He defeated the last of the Turko-Afghan dynasties, the Lodhis, and laid the foundation of the Mughal empire. The period of its first six emperors (1526–1707) is known for the glory and power of the Mughals. These emperors are known for laying the foundation of the modern administration of India and for introducing a system of agricultural revenue administration which still prevails in India and Pakistan.

Akbar (1556–1605), subdued the entire subcontinent except the extreme south, and ruled over Afghanistan as well. He tried to unite Muslims and Hindus by adopting a policy of appeasement towards his Hindu subjects. He accepted in marriage, for himself as well as for his son, women of Hindu Rajput chieftains. He prohibited the levy of taxes on Hindu pilgrims and the collection of *Jizya*, the differential tax (or protection tax), claimed from non-Muslims. Cow slaughter was made illegal. He even founded a new religion, *Din-e-Illahi*, synthesizing Muslim and Hindu faiths. This religion, however, did not survive him.

For transacting the affairs of the state, Mughal emperors appointed heads of various departments: the Imperial Household under the Khan-e-Saman; the Imperial Exchequer under the Diwan; the Military Pay Department under the Mir Bakhshi; the Judiciary under the Chief Qazi; Religious Endowment and Charities under the Sadurs Sudar; and the Mohtasib, who censored public morals. Qazi Courts usually followed the interpretations of divine law by eminent Muslim jurists. The Mughal empire was initially divided into twelve provinces and finally into fifteen during the reign of Aurangzeb. The provinces were further divided into districts and sub-

divisions. The Mughal government freely borrowed and adopted Persio-Arabic rules of governance and mixed them with elements and institutions of Hindu empires of yore. The Mughals were prone to centralization. Despite their despotic disposition, most emperors never allowed their imperial rule to degenerate into unbearable tyranny for the masses.⁴

Aurangzeb (1658–1707), was the last of the great Mughals. He tried to rule strictly in accordance with the tenets of Islam. He re-introduced *Jizya* for non-Muslim subjects but it was made clear that the objective was to allow non-Muslims to buy exemption from military service. He did not dismiss non-Muslims from his service because he believed that religion had no concern with the secular business of administration. One of his achievements, for which he is particularly remembered, is a detailed compilation of Muslim laws known as *Fatawa-Alamgiri*.

After the death of Aurangzeb, the Mughal empire quickly fell into decay. Although it survived in name until 1857, it slowly disintegrated and became ineffective. In 1739, Delhi was sacked by invaders from Persia led by Nadir Shah. The Marathas became a power to be reckoned with until they were crushed by Ahmed Shah Abdali in the third battle of Panipat in 1761.

The British, French, Portuguese, and the Dutch fought amongst themselves for domination of the subcontinent until finally the British got the better of the other colonialists. In the weakened Mughal empire, successor states were created in Bengal, Oudh, Rohilkand, Hyderabad, and Mysore, led by Muslim rulers. Sikhs dominated the Punjab for some time. The British East India Company, after disposing of their European rivals, dealt with the Muslim, Hindu, and Sikh rulers of the states one by one. However, the rulers of Mysore, Hyder Ali and Tipu Sultan, did put up a stiff resistance and kept the British at bay for some time. By the middle of the nineteenth century, the British East India Company completely dominated the Indian subcontinent. The last attempt at throwing off the British yoke failed in 1857 when the Company's forces fought back and suppressed the mutiny of Indian soldiers (known as the War of Independence). The last of the Mughal emperors, Bahadur Shah Zafar, was formally deposed. Simultaneously, the East India Company's rule was

brought to an end and India was made a colony of the British Crown.

The Mughals had ruled by decree with the emperor concentrating all executive, legislative, and judicial powers in himself. The status of the subjects and the justice administered to them depended largely on the disposition of the sovereign and the calibre and integrity of men appointed by him as administrators and judges.

No written constitutions are known to have existed during the Muslim rule of India from 1206 to 1857. Governments were run more or less on the principles of monarchy. The eldest son was expected to succeed his father as sultan or emperor. However, there were no fixed rules of imperial succession. On the death or decline of almost every emperor, there was a fratricidal war until the strongest claimant eradicated all possible threats and proclaimed himself emperor.

Although the emperor or sultan was the repository of all powers of State, day to day administration was carried out by his appointed governors and justice was administered by his appointed judges (Qazis). Judgments were given at different levels in different matters by either the head of the family, village, caste, the court of the guild, the governor of the province, the minister of the king, or even the king himself.⁵ Litigation was brief and the execution of the judgment was swift.

British Expansionism in India

The desire of the British to trade with India and South East Asia grew out of their need to import spices. On 31 December 1600, Queen Elizabeth I granted a charter, for fifteen years initially, to the Governor and company of Merchants of London trading into the East Indies. The Charter authorized the London Company to trade freely into and from the East Indies.⁶

This Charter provides, *inter alia*,

that it shall and may be lawful to and for them, or the more Part of them, being so assembled, and that shall then and there be present, in any such Place or Places, whereof the Governor or his Deputy for the time being, to be one, to make, ordain and constitute such, and so many reasonable laws, Constitutions, Orders and Ordinances, as to them, or the greater Part of them, being then and there present, shall seem necessary and

convenient, for the good Government of the Company, and of all Factors, Masters, Mariners and other Officers, employed or to be employed in any of their Voyage and for the better Advancement and Continuance of the said Trade and Traffic.⁷

It appears from this that since the Company was formed mainly for the purpose of sea-trade, and not for any territorial acquisition or sovereignty over a foreign country, power to make maritime emergency regulations was granted. This is somewhat similar to the power of modern subordinate legislation.⁸

Besides the legislative function of the Governor and Company, it had immediate judicial function. It was empowered to 'lawfully impose, ordain, limit and provide such Pains, Punishments and Penalties, by Imprisonment of Body, or by Fines and Amercements, or by all or any of them, upon and against all Offenders, contrary to such Laws, Constitutions, Orders and Ordinances, or any of them.'⁹

Emperor Jahangir allowed the Company to trade with India and to manage the Company's factory in Gujarat without any interference from the central government but subject to the approval of the local Viceroy, Prince Khurram, who did not raise any question regarding this grant. He was in the habit of upholding the Company's interest in the local area. Gradually, the Company managed to establish factories in different parts of India, particularly in the coastal areas of the country. Throughout the seventeenth century, it was one of the basic aims of the Company to acquire territorial control by establishing factories in important trade and political centres of India.¹⁰

This Charter was renewed by King James I in 1609 for perpetuity. However, it could be cancelled at any time by a royal decree, after giving three years' notice to the Company. Charles II issued a new Charter in 1661 increasing the authority of the Company and making it more effective. In 1683, the Company was empowered to declare war on and to conclude peace with any ruler. Consequent to this, the Company was also granted the right to raise, arm, train, and muster a strong army. In 1686, the Company established its own royal mint. Around 1698, the British government wanted to raise a loan, and therefore auctioned the monopoly of trade in the East Indies. As the Company could not raise the requisite amount, it was wound up

and a new Company was formed similar to the old one.¹¹

The establishment of the New East India Company coincided with the disintegration of the Mughal empire after the death of Aurangzeb in 1707. As mentioned earlier, after struggling with rival colonialists from France and Holland, the Company succeeded in driving them out and establishing its own supremacy over a large part of India. To begin with, the Company established its administrative control over Bombay. After the battle of Plassey and Buxor, it extended its control and administration to Bengal, Bihar, and Orissa. On the fall of Seringapatam in the fourth Mysore war in 1799, the last real resistance to the expansionism of the Company offered by the Sultans of Mysore also collapsed and the Company continued to extend its hegemony over the subcontinent without much resistance.

Legislative Control by the British Parliament

The expansion of the Company's rule in India made it imperative for the British government to find ways and means to supervise such control. This resulted in legislation being passed by the British Parliament. The Act of 1773 granted the British government powers to regulate the affairs of the Company in India.¹² Apart from making extensive provisions for internal management of the Company, it endorsed the appointment of Warren Hastings as the first Governor-General of India along with his four counsellors.¹³ Provisions were made for the establishment of a Supreme Court of Judicature at Fort Williams and for its effective jurisdiction.¹⁴ This Act left much to be desired because it was inherently vague and unclear. It did not make clear the division of powers between the British government and the Company and became a useless piece of legislation in the face of swiftly changing circumstances in India. The Amending Act of 1781 was passed to remove the defects in the parent Act but all the difficulties were not removed.¹⁵

These Acts were followed by what is known as Pitt's India Act of 1784, whereby the supreme authority was placed in the hands of the British government of the day which acted through a Board of Control. It introduced a dual control system under two bodies, the

Board of Control and the Court of Directors.¹⁶ The Governor-General of India was accountable to both of these bodies which made his position difficult and the administration under him cumbersome. The Act of 1786 made Cornwallis Governor-General of India as well as the Commander-in-Chief of the Indian military forces with the power to override his Council.¹⁷ In 1788, the Declaratory Act was passed vesting full powers and supremacy in the Board of Control, thus transferring power to the Crown.¹⁸ The Charter Act of 1793 empowered the Governor-General of India and the Governors of the Indian Provinces to override their respective Councils.¹⁹ The Governor-General was given direct control over the Presidencies of Calcutta, Madras, and Bombay.²⁰

Further provisions were made to regulate the government of British territories in India and for better administration of India under the Government of India Act, 1800.²¹ This Act provided for the establishment of a Supreme Court of Judicature at Madras.²² Provisions were also made for jurisdiction of Courts in Bengal, Madras, and Bombay.²³ The Charter Act of 1813 expressly proclaimed the sovereignty of Britain over India and the Company was reduced to an administrative organization.²⁴ The Government of India Act 1833, fully declared the authority of the Crown, restricting the trade monopoly of the Company till 30 April 1854, and led to the codification of laws for India.²⁵ The Government of India Act of 1853 further reduced the authority of the Company by reducing the number of directors from twenty-four to eighteen and by introducing six nominees of the British government on the Board of Directors.²⁶ During this period, the Company kept expanding its control over the Indian subcontinent. Around 1856, the Company controlled the entire subcontinent except the Princely states which also accepted the overlordship of the Company. The Princely states that tried to tow an independent line were forcibly brought under control. The last symbol of Mughal power, Bahadur Shah Zafar, was removed from office in 1857.

The dual control system introduced by Pitt's India Act of 1784 continued up to 1858 when it was abolished and replaced by the Secretary of State for India. The uprising of Indian soldiers in 1857 provided a pretext for the British government to assume direct control over India. The Act of 2 August

1858 ended the regime of the East India Company and with it the dual control system. The Board of Directors of the Company held its last meeting after the said Act and formally handed over to its British sovereign the vast empire it had built in India with skill, cunning, and enterprise. The Company created history by proving that a skilful trading company could take over a vast country, rather a subcontinent, fraught with internal strife, power rivalries, religious animosities, and lack of central authority.

Although colonization of India had been completed by the East India Company by 1858, the British government formally assumed control over the administration of India after a Proclamation issued by Queen Victoria on first November, 1858.²⁷ Under this Proclamation, civil and military officials in the service of the Company were retained and all treaties and engagements made with the native princes of India by the Company were protected. The Proclamation promised the Indians some fundamental rights. These included: freedom of religion, safeguard against discrimination on the basis of race or creed, or in services; equal and impartial protection of the law; and protection of property rights inherited from ancestors. The Proclamation also extended recognition to the ancient rights, usages, and customs of India.

The Government of India Act, 1858

In order to administer India in accordance with the Proclamation, the British Parliament passed the Government of India Act in 1858.²⁸ It was, in effect, a constitutional document for colonial India. Under this Act, the territories under the control and administration of the Company were transferred to and vested in the Crown. The Secretary of State, who was to sit in Parliament, was empowered to exercise powers that were previously exercised by the Company or the Board of Control (which was abolished).²⁹ A Council, consisting of fifteen members, was established by the Act. The council was to conduct all business relating to the Government of India in the United Kingdom under the direction of the Secretary of State.³⁰ The Secretary of State could override the opinion of the majority of the Council but had to record reasons for doing so.³¹ The

expenditure of the revenues of India was made subject to the control of the Secretary of State and the Council.³² The accounts for each financial year were to be laid before the British Parliament.³³ The Secretary of State could sue or be sued in India as well as in England in the name of the Secretary of State in Council as a body corporate.³⁴ All acts and provisions in force at the time were saved and continued in force and made applicable.³⁵ The Secretary of State and members of the Council were indemnified against any personal liability regarding the performance of their official duties and all liabilities, costs, and damages in respect thereof were to be paid out of the revenues of India.³⁶

The Government of India Act, 1858 was amended in 1859 and the Governor-General of India, Governors and certain officers (authorized by the Secretary of State and the Council) were empowered to sell and dispose of all real and personal estate in India which was vested in the Crown and to execute any contracts in this behalf.³⁷

The Indian Councils Act, 1861

The Government of India Act, 1858 was concerned with the business of the Government of India to be transacted in the United Kingdom. It made no provision for the administrative set-up in India. It was therefore necessary to provide for an internal framework for the administration of India and to incorporate the native population in the administration. Decentralization of authority was also deemed necessary.

With these objectives in view, the Indian Councils Act was passed in 1861 to make provisions for the Council of the Governor-General and for the Local Government of the Presidencies and Provinces of India.³⁸ The Council of the Governor-General was composed of five members, three to be appointed by the Secretary of State with the concurrence of a majority of the members of his Council. The other two were appointed by the Crown, one being a barrister and the other the Commander-in-Chief of the Armed Forces in India.³⁹ In addition to these five ordinary members of the Council, the Governor-General was empowered to nominate six to twelve additional members to his Council for making laws and regulations.⁴⁰ The Council of the Governor-

General was empowered to make, repeal, amend, or alter any laws and regulations for India subject to the assent of the Governor-General or the Crown.⁴¹ The Governor-General was also empowered to make Ordinances having the force of law in cases of urgent necessity.⁴²

Provision was also made for the composition of Councils for the Governors of the Presidencies of Madras and Bombay. These Councils could frame laws and regulations for their respective Presidencies subject to the assent of the Governor concerned.⁴³ The Governor-General could constitute new provinces, alter provincial boundaries,⁴⁴ and appoint Lieutenant-Governors and their Councils for such provinces.⁴⁵

Constitutional Developments between 1861 and 1909

While the Indian Councils Act, 1861 did provide a framework for legislation and administration within India, it was not an exhaustive piece of constitutional legislation. The gaps in the Act were filled by various laws of constitutional importance. The East India (High Courts of Judicature) Act, 1861, provided for the establishment of High Courts in Calcutta, Bombay, and Madras.⁴⁶ Judges of the High Courts held their offices at the Crown's pleasure.⁴⁷ Upon establishment of the High Courts of Calcutta, Madras, and Bombay, the Supreme Courts of Sudder Dewany Adawlut and Foujdary Adawlut at these places were abolished and their jurisdiction stood vested in these High Courts.⁴⁸ These High Courts exercised all such civil, criminal, admiralty, vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and powers which were granted to them by the Crown under the Letters Patents.⁴⁹ These High Courts had powers to superintend and to frame the Rules of Practice for courts subordinate to them.⁵⁰ Provision was also made for the establishment of a High Court in the North-western Provinces.⁵¹

The Indian Councils Act, 1861 was amended to enlarge the powers of the Governor-General of India-in-Council at meetings for making laws and regulations and to amend the law respecting the territorial limits of the several presidencies and lieutenant-governorships in India.⁵² The Governor-

General was given the power to make laws and regulations for all British subjects, whether in the service of the Government of India or not, including those within the princely states of India.⁵³ The Governors of the presidencies and Lieutenant-Governors of the provinces were conferred powers to draft laws and regulations for the governments of the territories under them for the assent of the Governor-General.⁵⁴ The Governors and Lieutenant-Governors were made ex-officio members of the Governor-General's Council for the purpose of such laws and regulations.⁵⁵ The Governor-General was empowered to override the opinion of the majority of his Council but any two or more members of such a dissentient majority could record their dissent and notify it to the Secretary of State.⁵⁶ The Governor-General, with the sanction of the Secretary of State, was empowered to make appointments to certain offices without certificate from the Civil Service Commission.⁵⁷

The Indian Councils Act, 1892 was enacted in order to amend the Indian Councils Act, 1861.⁵⁸ The number of additional members of the Governor-General's Council was raised from six to twelve, to ten to twenty. This Act opened the way for the appointment of Indian residents as additional members of the Councils of the Governor-General, governors of the presidencies, or lieutenant-governors of the provinces.⁵⁹ The local legislature of any province was empowered to repeal or amend any law or regulation as to that province.⁶⁰

The Muslims of India bore the main brunt of defeat in the 1857 war of independence. Three sons of the last Mughal Emperor, Bahadur Shah Zafar, were shot dead and their heads presented to the Emperor. The Emperor was exiled for life to Rangoon. A number of *ulema* who had given *fatwas* of *jihad* against the British were either killed or deported for life. Muslims in Delhi were particularly victimized and the city fell into a quagmire of illiteracy and backwardness.⁶¹ Muslims were not allowed to enter Delhi.

Hindus, on the other hand, were forging ahead in all fields of life. Of the 240 Indian pleaders admitted to the Calcutta Bar between 1852 and 1868, only one was a Muslim. There were no covenanted officers or High Court judges from amongst the Muslims. In all of the government gazetted appointments in the province of Bengal, only 92 out of the 1338 posts were held by Muslims.⁶² In 1878, there were 3155 Hindus

as opposed to 57 Muslims holding graduate and post-graduate degrees.⁶³

In these difficult times, when Muslims in India were sliding into ignorance and retrogression, a towering figure, Syed Ahmad Khan, possessing great foresight and courage, appeared on the scene. He advised his fellow Muslims to seek adjustment with western ideas and took steps to restore mutual trust between the British and the Muslims by defending Muslims against British charges of disloyalty. Syed Ahmad was convinced that the only hope for the advancement of the Muslim community lay in their acquisition of western learning, especially the sciences. To achieve this he established the Mohammadan Anglo-Oriental College (subsequently the Aligarh University) in 1875. To meet the demand of the Muslim community for Islamic education, Syed Ahmad ensured that although the teaching at the college was in English and the main curriculum western, both Arabic and religious instruction were made compulsory subjects. The College was successful not only in Syed's immediate objective, but also produced candidates for the higher ranks of government service, as well as Muslim political leaders such as Maulana Muhammad Ali, Khawaja Nazimuddin, and Liaquat Ali Khan.

Syed Ahmad's contribution to the political cause of Indian Muslims was formidable. As a member of the Governor-General's Legislative Council from 1878, he successfully campaigned for separate nomination of Muslims to the local self-government institutions which were created by Lord Rippon. He was one of the original exponents of the two nation theory and believed that Hindus and Muslims could not have an equal share in power. Syed Ahmad opposed the demands of the Indian National Congress for the enlargement of the representative government in India and the recruitment of Indians for government service by open competitive examination. In his view, representative government was inexpedient for a country inhabited by two different nations, Hindus and Muslims. Regarding competitive examinations, he believed that Muslims had not yet acquired sufficient knowledge of the English language and other modern sciences to adequately compete with others.⁶⁴

An important political development during this period was the formation of the Indian National Congress in 1885, on the initiative of Allan Octavian Hume, a retired British official, and under the

presidency of the Viceroy, Lord Dufferin. The Party originally intended to throw up a cadre of native politicians beholden to the British rulers to help the latter improve administration, but, with the passage of time, the Congress grew into the most powerful political organization in India. Although a number of Muslims joined the Congress, many influential Muslim leaders, including Syed Ahmad, advised them against it. Muslim leaders were afraid that in a Congress dominated by Hindus, Muslims would be at a disadvantage.

The partition of Bengal in 1905 embittered relations between Hindus and Muslims. The reason for partition was mainly administrative. In those days Bengal included the present Bihar and Orissa, and it was difficult to administer such a large area and population with one Governor. The agrarian economy of Bengal was dominated by the capitalists of Calcutta, and this was hindering local initiative for progress and industrialization. The partition of Bengal was meant to lead to greater administrative efficiency and to encourage local initiative. The Muslims of Bengal welcomed partition, but the Hindus bitterly opposed it. The latter thought that it would weaken their economic and political position. Violent agitation by Hindu members of the Congress convinced the Muslims that they had to create their own political force and leadership. The British government, under pressure from Hindus, later annulled the partition of Bengal in 1911.⁶⁵

The fears of Hindu domination within the Congress and the situation arising from the agitation against the partition of Bengal were addressed by some influential Muslim leaders by forming the All India Muslim League in Dhaka in 1906 with the aim of protecting political and other rights of Indian Muslims. The All India Muslim League was later recognized as the political body representing Indian Muslims which later spearheaded the Pakistan movement.

Another development during this period was the Muslims' demand for separate electorates at all levels of government, district boards, municipalities, and legislative councils. They drew the attention of the Viceroy to the fact that in the United Provinces, while Muslims constituted 14 per cent of the population, they had not secured a single seat under joint franchise.⁶⁶ These views were communicated to the

Viceroy by a Muslim delegation led by the Aga Khan in 1906. The delegation requested that Muslims be granted separate electorates in future reforms. The Viceroy, Lord Minto, assured them that he was entirely in accord with their case and agreed to extend favourable consideration to their demand for a separate electorate.

The Minto-Morley Reforms, 1909-1919

By 1909, there was widespread political awakening amongst the Indians. Active political participation of Indians was reflected in the formation and influence of political parties such as the Indian National Congress and the All India Muslim League. So much so, that the local self-government reforms introduced by Lord Rippon did not meet the political aspirations of the Indian people who wanted greater participation in government, provincial as well as central, at the highest levels.

One factor which contributed to movements for greater reform was the triumph of Japan in the Russo-Japanese War of 1904-5. Japan's victory raised the hope in the hearts of the Indians that India, too, could become a great power. There was also a change in public opinion in Britain with the Liberals' accession to power in 1906. They did not subscribe to the archaic notions of an endless wardship of a permanently adolescent India.⁶⁷ Another factor was the growing strength of Indian public opinion. The demand for greater participation in government became more and more pronounced after the Viceroyalty of Lord Curzon (1899-1905), who had an autocratic style of governance and disregarded Indian opinion.

The British government considered it advisable not to ignore the rapidly changing political atmosphere in India. In 1907, Lord Minto, the Viceroy, disclosed in the Legislative Council that the people of India would be given greater opportunity to express their views on administrative methods. In December 1904, Lord Morley, the Secretary of State, introduced his famous Bill in the British Parliament which was passed in 1909 as the Indian Councils Act. This Act is popularly known as the Minto-Morley reforms.

The Indian Councils Act, 1909

The Indian Councils Act, 1909 enlarged the size of Legislative Councils of the Governor-General and the Governors of various Provinces,⁶⁸ which included the nominated as well as elected members. Indians became entitled to nomination or election as members of these Legislative Councils, subject to conditions laid down in the regulations made by the Governor-General with the approval of the Secretary of State.⁶⁹

The functions of the Legislative Councils were increased and individual members in the Imperial Legislative Council could move resolutions relating to alteration in taxation. Matters of general public interest could also be discussed in the Legislative Councils and members could ask questions and supplementary questions.

In the rules framed under this Act, official majority was given up in the Provincial Legislative Councils, though working majorities were maintained. Official majority was, however, maintained in the Central Legislature. In the provinces, university senators, landlords, district boards, municipalities and Chambers of Commerce were to elect members of the Legislative Councils. Muslims were given separate representation and Muslim members of the legislature were to be elected by Muslims alone. The demand for a separate electorate was thus accepted.

These reforms did not satisfy the Indians. Although elections to Legislative Councils were introduced, the number of voters was limited due to strict qualifications of property and education imposed on franchise. Further, the system of election was indirect. The people were to elect members of local bodies who were to elect members of electoral colleges who, in turn, were to elect members of the provincial legislatures. The members of the Provincial Legislature were to elect members of the Imperial Legislature. These reforms also made no change in the composition of the executive though the legislatures could criticize its actions. The Act gave great weight to vested interests by giving special representation to landlords, chambers of commerce and other influentials. There was official majority in the Imperial Council. Non-official majorities in the provincial councils were nullified by the fact that they included nominated members. While

parliamentary reforms were introduced, no responsibility was given to the councils. In short, the reforms led to a lot of confusion. The result was widespread criticism of the government⁷⁰ though some of it was thoughtless and irresponsible.

The inadequacy of the reforms of 1909 and the resultant discontent and disappointment of the people gave rise to revolutionary and terrorist activities. The reversal in 1911 of the 1905 partition of Bengal annoyed the Muslims. They saw it as a concession to the Hindus who had challenged the government. The undoing of the province of East Bengal meant that Muslims would lose their majority and once again be dominated by the more advanced Hindu community.⁷¹ It was a clear breach of assurances and commitments made by the British regarding the inviolability of the partition. The years following the cancellation of the partition of Bengal marked a turning point in the history of Indian Muslims. It could be argued that the seeds of Pakistan were sown by this one event.

By 1916, hopes of a speedy and conclusive British victory in the War had disappeared and disillusionment had set in. This realization brought the Muslim League close to the Congress. In the Lucknow Pact of 1916, the Muslim League and the Congress agreed to urge Britain to announce self-governance to the people of India and substantial reforms after the War as a step towards that goal: Separate electorates granted by the Minto-Morley Reforms alongside weightage for minorities in provincial legislatures were ratified by the Congress in the Lucknow Pact.

The Secretary of State for India, Edwin Montague, and the Viceroy, Lord Chelmsford, jointly prepared a report on Indian constitutional reforms known as the Montagu-Chelmsford Report. Published in July 1918, the Report identified four objectives:⁷²

1. Complete popular control, as far as possible, in local bodies.
2. Immediate steps towards responsible government to be taken in the provinces.
3. The Indian Legislative Council to be made more representative while the Government of India remained wholly responsible to the British Parliament.

4. The control of Parliament and the Secretary of State over the Government of India and the provincial governments to be relaxed.

The Report recommended 'responsible government' at the provincial level and authority was no longer to be concentrated at the centre. An important outcome of the report was the setting up of the **Chamber of Princes** on 8 February 1921. The Chamber included 108 leading princes and twelve additional members elected by group voting from amongst the rulers of 127 other states. The Viceroy presided, and the Princes annually elected their own Chancellor and Pro-Chancellor. A standing committee of seven members was formed to advise the Viceroy on matters referred to the committee by him.⁷³ The Chamber was given no executive powers but it was an important step forward in co-operation between ruling princes and the paramount British power.

It was on the basis of the Montford report that the Government of India Bill was introduced in the House of Commons by Montague in June, 1919. The object of the Bill, said Montague, was the conciliation of the Indians. He emphasized the Bill's importance as the promise held out to the Indians for reforms after the end of the First World War.⁷⁴ It was passed by the British Parliament on 18 December 1919 and received the Royal Assent five days later.

The Government of India Act, 1919

The preamble of the Government of India Act, 1919 stated that it was the declared policy of the British Parliament to provide for increasing association of Indians in every branch of administration and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India. However, it said, progress in giving effect to this policy could only be achieved in successive stages.⁷⁵

Some of the main provisions of the Government of India Act, 1919 were as under:

1. The Act provided that the Secretary of State for India was to be paid out of British revenues.⁷⁶ The Secretary of State continued to possess and exercise the powers of superintendence, direction, and control over the affairs of India.

The Governor-General of India was obliged to carry out the orders of the Secretary of State.

2. The Act set up a bicameral legislature at the centre in place of the Imperial Council consisting of one House.⁷⁷ The two Houses were called the Central Legislative Assembly and the Council of State.
3. Direct elections were provided for both Houses of the Central Legislature though the franchise was very restricted.⁷⁸
4. The duration of the term for the Central Legislative Assembly was three years, and for the Council of State five years, which could be extended by the Governor-General.⁷⁹ The Governor-General had the power to summon, prorogue, and dissolve the Houses of the Central Legislature. He could also address both Houses.⁸⁰
5. The Central Legislature had the power to make laws for all of British India, for Indian subjects wherever they might be, and for all persons employed in the defence forces. It could also repeal or amend laws for the time being in force. However, prior sanction of the Secretary of State-in-Council was required to pass a law abolishing any High Court.⁸¹ Prior sanction of the Governor-General was required to introduce Bills on the following subjects:⁸²
 - (a) The public debt or public revenues of India.
 - (b) Religion or religious rites and usages of British subjects in India.
 - (c) Discipline or maintenance of the land, naval, or air forces.
 - (d) Relations of the Government of India with foreign states or Indian states.
 - (e) Any measure repealing or amending any Act of legislature or any Ordinance passed by the Governor-General.

The Governor-General could also prevent consideration of a Bill or a part of it if, in his opinion, it 'affects the safety or tranquility of British India, or any part thereof'.⁸³

6. The Governor-General could issue an Ordinance for a period of six months which had the same force and effect as an Act of the Central Legislature. He had the power of veto over the

Bills passed by the Central Legislature. He could withhold his assent and return a Bill for reconsideration.⁸⁴ He could also reserve the Bill for the signification of His Majesty's pleasure. The Crown could disallow any Bill passed by the Indian legislature or Ordinance issued by the Governor-General.

7. The Central Budget was presented before the Central Legislature in the form of demands for grants. There were certain non-votable items which were not open to discussion unless the Governor-General so allowed. All other items were submitted to vote. In an emergency, the Governor-General was empowered to authorize such expenditure as, in his opinion, was necessary for the safety or tranquility of British India or any part thereof.⁸⁵

Diarchy in the Provinces

A partially responsible government was introduced in the provinces in the form of a diarchy, that is, dual government. The executive of the provinces was divided into two parts, one responsible to the legislature and the other responsible to the British Parliament through the Governor and the Governor-General.⁸⁶ Departments such as education, local self-government, public health, public works, industries and so on, known as transferred subjects, were allocated to ministers who were elected members of the Provincial Legislature. Departments such as police, administration, finance, land revenue administration, irrigation and canals described as reserved subjects, were headed by nominated officials, generally ICS officers (taken from the executive council of the Governor), who were responsible only to the Governor.⁸⁷ The transferred departments were also indirectly controlled by reserved departments, because they depended for revenue on the finance department, a reserved subject. The Governor headed both reserved as well as transferred departments and could easily override the decision of his minister or a member of his executive Council. No principle of Cabinet or collective responsibility was introduced in the working of the provinces.⁸⁸

This system of diarchy, which operated from 1921 to 1937 in the provinces, had many drawbacks. The division of administration into two parts within the

same province was contrary to the principles of efficient administration. The division of subjects into reserved and transferred was confusing and haphazard. Many initiatives and reforms were lost in red-tapism. The ministers, who were representatives of the people, and members of the executive council, who were mostly bureaucrats, did not generally pull together.

In spite of these drawbacks, diarchy worked in some provinces. There were joint deliberations between the two parts of government in some departments. It proved to be a transitional stage between bureaucracy and responsible government. Considering the general restlessness and discontent in post-war India, the Act was an experimental adventure in Indian constitutional history.⁸⁹

Central and Provincial Legislatures and their Powers

Two separate lists were drawn up under the Act, one containing central and the other provincial subjects.⁹⁰ The central list included defence, foreign and political relations, public debts, tariffs and customs, posts and telegraphs, patents and copyright, currency and coinage, communications including railways, aircraft, waterways, commerce and shipping, civil and criminal law and procedure, major courts, quarantine, and so on. The provincial list included local self-government, public health, sanitation and medical administration, education, public works, water supplies and irrigation, land revenue administration, famine relief, agriculture, forests, co-operative societies, law and order including justice, police and jails. There was no concurrent list but all the residuary subjects were to fall within the domain of the centre. In case of doubt, the Governor-General and not the courts, decided whether a particular subject did or did not belong to a province.

The sources of revenue for the centre were customs, income tax, non-alcoholic excise including salt, opium, railways, posts and telegraphs, currency and coinage, and tributes from the Indian states. The sources of revenue for the provinces were land revenue, irrigation, excise on alcoholic liquors, stamps, registration fees, forests, and minerals. The provinces could also impose taxes on succession, betting, gambling, advertisements, and amusements.

The raising of loans by the provinces inside India needed special sanction of the Governor-General, while for a loan sought outside India the prior permission of the Secretary of State was needed. The provinces were given a certain amount of money out of the proceeds of the income tax collected by the central government while the provincial governments made contributions to the centre to meet its deficit.⁹¹

Under the Act of 1919, the Central Legislature had two chambers: the Council of State and the Legislative Assembly. The Council of State was the upper house and was composed of 60 members, 34 elected and the remaining nominated. Of the 26 nominated members, not more than 20 could be officials. Of the 34 elected members, 19 were elected by general constituencies and the rest by communal and special constituencies; eleven Muslims, one Sikh and three Europeans. Elections were direct but the franchise was extremely restricted. For instance, United Provinces (UP) elected seven members but only those paying 5000 rupees as land revenue or 1000 rupees as income tax could cast their votes. The total number of electors in all of British India for the Council of State in 1925 did not exceed 17,000.⁹²

The Legislative Assembly was the lower house and had 145 members; 26 were officials, 14 nominated non-officials, and the remaining 105 elected. Out of the elected members, 53 were elected from the general seats, thirty Muslims, two Sikhs, nine Europeans, seven landlords, and four from Indian commerce. Qualifications of voters differed from province to province. For instance, in UP, a person owning a house with annual rental value of rupees 160 could vote in urban constituencies and a person paying land revenue of rupees 150 annually could vote in rural constituencies. The total franchise for electing members of the Legislative Assembly in the year 1926 was only 1,128,331 throughout British India.⁹³

The Central Legislature had the power to make laws for all subjects and servants of the Crown in British India. It could not make any law affecting the powers of the Secretary of State for India or the Governor-General. It could not make laws affecting the public debt of India, religious rights or usages, armed forces and foreign relations.⁹⁴

The provincial legislatures were all unicameral and were called Legislative Councils.

Political Developments, 1919-1935

The period from 1919 to 1935 was very important and turbulent from the standpoint of political and constitutional developments in India. The Indian National Congress, in its annual session in 1919, condemned the Montford Reforms as 'inadequate, unsatisfactory and disappointing'.⁹⁵ It called on the British government to take immediate steps to establish a fully responsible government in India.

Satyagraha

Political trouble started with the passing of the Anarchical and Revolutionary Crimes Act, 1919, based on the Report of the Rowlatt Committee headed by Justice Sidney Rowlatt. This Act provided for speedy trial of offences by a special court consisting of three High Court judges. This court could meet in camera and could take into consideration evidence not otherwise admissible under the Evidence Act. No appeal was provided against the decision of the court. Provincial governments were also given wide powers in matters of arrest, searches and seizures, confinement of suspects, censorship, and so on.⁹⁶ The Act was bulldozed through the Central Legislature by the official majority despite strong opposition and warnings by every single non-official Indian member, elected or nominated. Muhammad Ali Jinnah resigned from the Central Legislature in protest.

M.K. Gandhi launched a movement of *Satyagraha* against the Act and called for country-wide strikes. Although he intended to start a peaceful and non-violent movement against this Draconian law, the movement led to violent protests and disorders and a number of people in Delhi and Ahmadabad were killed by police firing. The worst incident occurred in Amritsar where, on 13 April 1919, under the orders of Army Commander, Brigadier-General Dyer, troops opened indiscriminate fire on a peaceful but large public meeting in the Jallianwala Bagh. Four hundred people died in this incident and another 1200 were wounded. In order to control further outbreaks of violence, Martial Law was declared in some districts

of the Punjab from 15 April to 11 June 1919. Gandhi decided to call off *Satyagraha* because of the violence and killings it had unleashed.

Khilafat Movement

During the First World War, Lloyd George, the Prime Minister of Britain, made a solemn promise to Indian Muslims that Turkey would not be deprived of the lands of Asia Minor and Thrace, populated predominantly by people of Turkish stock. This promise was not kept and Turkey was deprived of her homelands in the terms settled for the armistice. Thrace was given to Greece and the Asian portions of the Turkish empire were divided amongst Britain and France as mandated territories. A High Commission was appointed with a view to deprive the Sultan of all his powers.

Muslims in India were enraged by these events and the Ali brothers, Maulana Muhammad Ali and Shaukat Ali, launched what they called the Khilafat Movement and approached Gandhi for help. Gandhi seized this opportunity to lead the Muslims in India. He threatened to launch a movement of non-cooperation if the terms of peace with Turkey did not meet the sentiments of Indian Muslims. The Khilafat Movement came to an end in 1923 when Mustafa Kamal Ataturk seized power in Turkey and expelled the British, French, and Greek forces from Asia Minor and Thrace.

The Delhi Muslim Proposals were included in Jinnah's fourteen points which were adopted by Muslim League in March 1929. In view of subsequent resolution, the earlier resolution loses its significance. Thus there is no need of inclusion or mention of Delhi proposals on these two plagues.

The Simon Commission

In September 1925, a resolution was carried in the Central Assembly advising the British government to make fundamental changes in the Constitution of India, making the government fully responsible. It also called for a round table conference, representing all interests, to prepare a detailed scheme to be placed before the Legislative Assembly for approval and submission to the British Parliament. In November 1927, the British government appointed a commission, composed entirely of Englishmen and headed by Sir John Simon, to inquire into the working of the system

of government, the growth of education, and the development of representative institutions in British India. The Commission was also asked to report on the desirability of establishing the principles of responsible government and extension, modification, or restriction of the degree of responsible government then existing under the Act of 1919.

The Simon Commission was boycotted by political parties and other representative organizations in India. Resolutions were passed condemning the exclusion of Indians from the Commission. The day the Commission landed in India, a country-wide *hartal* was observed. The Commission was greeted with black flags and no one, including the Central Assembly, co-operated with the Commission. Thus a step taken ostensibly to appease and pacify Indians produced contrary results.

The Report of the Simon Commission was published in May 1930. It considered the ultimate constitutional framework for the whole of India as a federation, and the place of the provinces in that set-up. The Report declared that the framework could not be unitary and must be federal, not merely in response to the growth of provincial loyalties, but because it was only in a federation that the Indian states could be expected in due course of time to unite with British India. The Report made the following recommendations:

1. Diarchy should be abolished in the provinces and provincial administration should be entrusted to ministers responsible to their legislatures. Franchise should be expanded and the legislature enlarged.
2. Each province should be given a Legislative Council of its own and its representation in the Central Legislature should be strengthened.
3. At the centre, the Central Legislature should be refashioned on the federal principle. The members of the Federal Assembly or the Lower House should be representatives of the provinces and elected by the Provincial Councils. The elections and nominations to the Councils of States should also be on a provincial basis.
4. As far as the Central Executive was concerned, no substantial change was recommended. The entire government could continue to be composed of official nominees and it was not

responsible to the legislature. There was to be no diarchy at the centre.

5. The Report said that an All-India Federation would be set up in the distant future.⁹⁷

The Report was, generally condemned by Indians.

The Nehru Report

After the boycotting of the Simon Commission, an all-parties conference was formed to propose a constitution for India. It held its meeting in Bombay in May 1928 and appointed a committee headed by Pandit Motilal Nehru to consider and determine the principles of a Constitution for India. The Report of the all-parties conference, commonly known as the Nehru Report, was published in August 1928.

The Nehru Report proposed a fully responsible government both at the centre and in the provinces. It proposed that the provinces be assigned enumerated functions, whereas residuary powers were to be assigned to the government of India. The Central Legislature should be bicameral, composed of a Senate and a House of Representatives. The Senate should consist of two hundred members elected by the Provincial Legislative Councils, through proportional representation with a single transferable vote. The House of Representatives would have a membership of five hundred. The members were to be elected by means of joint non-communal constituencies on the basis of adult franchise. The distribution of seats amongst the provinces, both in the case of the Senate and the House of Representatives, was to be proportionate to population. In ordinary legislation, both the chambers were to possess equal powers, but with regard to Money Bills, the House of Representatives was to be given the supreme power. No measure affecting the discipline or maintenance of any part of the military forces was to be introduced except on the recommendation of the Defence Committee consisting of ministers and military experts.

The Governor-General was to be appointed by the British government. He was to be paid out of Indian revenues and his salary was not to be altered during the tenure of office. The Governor-General was to act on the advice of his executive council. The Prime Minister was to be appointed by the Governor-General and other ministers were to be appointed by

him on the advice of the Prime Minister. The Executive Council was to be collectively responsible to Parliament. The Governor-General-in-Council was to appoint High Commissioners and other representatives similar to those appointed in Canada and other dominions.

Military services were to be guaranteed their existing rights and privileges but in the civil services, the legislatures were to have full powers to make laws and regulations. The central government was to exercise the same rights and discharge the same obligations towards the Indian states, arising out of treaties or otherwise, as the government of India had hitherto exercised or discharged.

The government of a province was to be vested in the Governor to be appointed by the King. He was to be paid out of provincial revenues. The Governor was to act on the advice of the Provincial Executive Council whose number was not to exceed five. The Chief Minister was to be appointed by the Governor and other members of the Executive Council were to be appointed by him on the advice of the Chief Minister. Legislative Councils in the provinces were to be reconstituted on the basis of joint electorate and adult franchise. The North-West Frontier Province, Sindh, and Balochistan were to have the same status and form of government as other major provinces.

Provisions were to be made for a Supreme Court consisting of the Lord President and other justices of the Supreme Court who were to be appointed by the Governor-General-in-Council, but were not to be removed from office except on an address from both Houses of Parliament praying for such removal on the ground of misbehaviour or incapacity. The Supreme Court was to have both original and appellate jurisdiction. Provision was also made for preferring appeals to the King-in-Council under certain circumstances.

The Governor-General-in-Council was to appoint a Committee of Defence, consisting of the Minister of Defence, the Minister of Foreign Affairs, the Commander-in-Chief, the Commander of Air Forces, the Commander of Naval Forces, the Chief of General Staff, and two other experts. The functions of the Defence Committee would be to advise the government and the various departments concerned on questions of defence and general policy.

The Report provided for the fundamental rights, nineteen in number, which were to be embodied in the Constitution. Fundamental rights were to guarantee freedom of life, liberty, property, speech, assembly, and freedom of conscience and religion. They also guaranteed all citizens the right to free elementary education and equality before the law as well as equal civil rights. There were to be no penal laws of a discriminatory nature. No person would by reason of his religion, caste, or creed suffer in any way in public employment, office of power or honour, and in the exercise of any trade or calling. All citizens were to have an equal right of access to and use of public roads, public wells, and all other places of public resort. Parliament was to make suitable laws for the maintenance of health of all citizens and for securing a living wage for every worker, as well as laws for the protection of motherhood, the welfare of children, and the economic consequences of old age, infirmity, and unemployment. Finally, men and women were to have equal rights as citizens.

The Report proposed joint electorates with reserved seats for minorities on population basis with the right to contest for additional seats. There were to be no reserved seats for any community in the provinces of Punjab and Bengal, and it was suggested that full protection should be given to the religious and cultural interests of the Muslim community. New provinces were to be created on the basis of language.⁹⁸

The Nehru Report was considered and accepted by the all-parties conference held in Lucknow on 28 August 1928. A large section of Muslims, however, rejected the proposal of communal representation on the basis of joint electorates. The Indian National Congress, in its session on 31 December 1928, accepted the Nehru Report.

Jinnah's Fourteen Points

In March 1929, the Muslim League held its meeting in Delhi. It was at this forum that Jinnah presented his Fourteen Points as the minimum Muslim demand for any political settlement. The Muslim League, rejecting the Nehru Report, passed a resolution adopting the Fourteen Points, which are given below:

1. The form of the future Constitution should be federal in structure with residuary powers vested in the provinces.
2. A uniform measure of autonomy should be granted to all the provinces.
3. All legislatures, central and provincial, and other elected bodies in the country should be constituted on the definite principle of adequate and effective representation of minorities in every province without reducing the majority in any province to a minority or even equality.
4. In the central legislature, Muslim representation should not be less than one-third.
5. Representation of communal groups should continue to be based on separate electorates, but the option to abandon separate electorate in favour of a joint electorate at any time, should be given to every community.
6. Any territorial redistribution that might at any time be necessary should not in any way affect the Muslim majority in the Punjab, Bengal, and North-West Frontier Provinces.
7. Full religious liberty, that is, liberty of belief, worship, and observance, propaganda, association and education should be guaranteed to all communities.
8. No Bill or resolution or any part thereof should be passed in any legislative or any elected body if three-fourths of the members of a community in that particular body opposed such a Bill, resolution or part thereof on the ground that it would be injurious to the interests of that community, or alternatively such other methods should be devised which might practically deal with such cases.
9. Sindh should be separated from the Bombay Presidency.
10. Reforms should be introduced in the North-West Frontier Province and Balochistan on the same footing as in other provinces.
11. Provision should be made in the Constitution giving Muslims an adequate share along with the other Indians in all the services of the state and in local self-governing bodies having due regard to the requirements of efficiency.
12. The Constitution should embody adequate safeguards for the protection of Muslim culture

and for the promotion of Muslim education, language, religion, personal laws, and Muslim charitable institutions and for their due share in the grants-in-aid given by the state and by self-government bodies.

13. No Cabinet, either central or provincial, should be formed without there being at least one-third Muslim ministers.
14. No change should be made in the Constitution by the central legislature except with the concurrence of the states constituting the Indian federation.⁹⁹

The Delhi Muslim Proposals were included in Jinnah's fourteen points which were adopted by Muslim League in March 1929. In view of subsequent resolution, the earlier resolution loses its significance. Thus there is no need of inclusion or mention of Delhi proposals on these two plagues.

Civil Disobedience Movement and the Round Table Conference

The Viceroy, Lord Irwin, was convinced that it was not possible to maintain unrepresentative central government for all times to come. He conferred with the newly formed Labour government in England and made a statement in October 1929 that the ultimate goal of India's constitutional progress was the attainment of dominion status.

The views of Indians and the British government differed on the subject. Indians demanded a Constituent Assembly to draft a Constitution for India. Gandhi and Lord Irwin met to iron out the differences but did not succeed and the civil disobedience movement was launched in March 1930. Thousands of people all over the country deliberately violated laws and courted arrest. Repression was in full force. Ordinances were issued in quick succession by the government to meet the situation. Editors and proprietors of newspapers and printing presses were arrested and fined. There seemed to be a complete breach between the government and the nationalist movement in the country.¹⁰⁰

After the publication of the Simon Commission Report and its condemnation by the people of India, the British government called the first round table conference in London. The conference met in

November 1930. As the Congress leaders were in jail, the government appointed those men belonging to other parties, communities, and interests to represent India whom it considered predisposed towards it. It was not considered advisable to proceed with the work of the final form of the future Constitution of India in the absence of the representatives of the Indian National Congress; therefore, it was decided to call a second round table conference and, in the meanwhile, efforts were made towards a reconciliation between Congress and government. Consequently, Gandhi withdrew the civil disobedience movement and the famous Gandhi-Irwin Pact was signed in March 1931.

At the second round table conference, many problems were considered but no solution could be conclusively reached. Consequently, the work was referred to various committees which were required to submit detailed reports. As regards the question of communal representation, the British government said it had been obliged to give its own award.

The third round table conference, in November 1932, was called by the British Government rather reluctantly as it was of the opinion that the remaining work on the draft of the Indian Constitution could be done in India. The session of the third round table conference lasted from 17 November to 24 December. The Labour Party did not co-operate in the deliberations and the Indian National Congress was unrepresented in this session. Delegates to the Conference merely discussed the reports of the various committees appointed by the second round table conference and decided a few more points.¹⁰¹

Communal Award and the Poona Pact

As the Indians could not arrive at any settlement, Ramsay MacDonald issued his famous award known as the Communal Award on 26 August 1932. The scope of this award was purposely confined to the arrangements to be made for the representation of British Indian communities in provincial legislatures. Consideration of representation to the central legislature was deferred for the time being since it involved a question of the representation of Indian states which needed further discussion.

According to the Award, elections to the seats allocated to the Muslim, European, and Sikh constituencies were to be held separately by voting on

separate communal electorates covering the whole area of a province. Special provisions were made for excluded areas. Provision was to be made in the new Constitution of India to allow the revision of electoral arrangements after a lapse of ten years with the assent of the communities affected, for the ascertainment of which suitable means were to be devised. All qualified voters who were not voters in the Muslim, Sikh, Indian, Christian, Anglo-Indian, or European constituencies, were entitled to vote in a general constituency. Seven seats were reserved for the Marathas in certain selected plural-member general constituencies in Bombay. Members of the depressed classes who were qualified to vote were given a general constituency. However, special seats were to be reserved for them to be filled by election from special constituencies in which only members of the depressed classes electorally qualified were entitled to vote. Any person voting in such a special constituency was also entitled to vote in a general constituency.

The election of Indian Christians was to be held by voting in separate communal constituencies. Anglo-Indians were to vote on communal lines. Women were also given special representation. Electors of a particular community were to elect their quota. Special seats were allotted to commerce and industry as well as mining and planting which were to be filled up by election through the Chamber of Commerce and other associations. Their details were to be worked out later. Seats allotted to land holders were to be filled by their constituencies.

The government reserved the right of making slight variations in the number of seats given to various communities with a view to facilitating the work of delimitation of constituencies. However, the proportion was not to be materially changed.

Gandhi, in a letter written in March 1932 to Sir Samuel Hoare, Secretary of State for India, had warned that he would resist with his life the grant of separate electorates to the depressed classes. When the British government refused to move in the matter and the condition of Gandhi became serious on account of his fast unto death, Indian leaders made up their mind to modify the Award by mutual agreement. Negotiations took place and ultimately the Poona Pact was signed in September 1932, and was accepted by the government.

The Poona Pact reserved seats for depressed classes out of the general electoral seats in the provincial legislature as follows. Madras 30, Bombay with Sindh 15, Punjab 8, Bihar and Orissa 18, CP 20, Assam 7, Bengal 30, and UP 20. The total number of reserved seats for the depressed classes was thus 148.

The depressed classes were to have representation in the central legislature on the principle of joint electorate and seats were to be reserved for them in the same way as in the case of the provinces. 18 per cent of the general seats for British India were to be reserved for them. They were also to be given fair representation in the local bodies and in the public services, subject to educational qualifications.¹⁰²