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Communal violence during Partition and its impact on Constituent Assembly

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Abstract

The constituent assembly of India since its inception was veering towards a loose federal polity to provide the multicultural states with powers equaling that of the center, as well as to counter the demand of partition of India on communal lines. Both the Cabinet Mission plan, and the Government of India act, 1935 had also suggested a federal polity for independent India. During freedom struggle, the nationalist leaders envisioned a truly federal India with effective decentralization. The cataclysmic events of large scale migration accompanied by communal violence completely altered the situation. Contrariwise to the idea of a federal polity, the framers of the constitution opted for a strong center to maintain unity and peace in the country. The course of events which followed, and the violent turn that it took had a very large impact on the final outcome of the constitution. The Indian constitution in its present form does not even contain the word federal or federation. It is a quasi-federal polity, where power vests strongly with the center.

Keywords: Constituent assembly, Partition of India, Government of India act (1935), Communal riots / violence, Transfer of power.

The constituent assembly of India had the historic task of framing a constitution for the country, which would satisfy and fulfill the diverse group of people with varying differences of culture, language, religion and beliefs. They also had to keep in mind the various problems inherent in the transfer of power from Britain to India. They wanted to adopt such political institutions, which would unite the divergent identity groups in India. "They had to decide what type of constitution would bring India the unity, stability, and economic gain pre-requisite for such a change. And, basic to these two decisions, members of the assembly had to choose a constitution that while promoting their aims, would be acceptable to those they represented, the 400 millions of India." ¹

During the tumultuous lifetime of the constituent assembly, there were many changes that occurred, which steered the course of the assembly and its debates. There were many external forces working at crossroads, which compelled the framers of the constitution to

change their own ideas, and notions about the kind of constitution that they were preparing for the country.

The idea of framing a constituent assembly had been gaining widespread support in India. The country had been demanding full freedom from the British since the beginning of the 20th century, and the demand for an independent constitution was inherent in the demand for freedom from foreign rule. All through the national movement Indians were fighting for a national government based on a national constitution. "The history of India's constitutional development, the idea of parliamentary sovereignty was pre-eminent."²

The setting up of a constituent assembly seemed to Indians the concrete step towards the realization of self-government in India. In 1924, the central legislative assembly adopted a resolution, which came to be called The National Demand. For the very first time, the central legislative assembly had expressed its strong opinion supporting the creation of a constitution of India, which would grant complete freedom to the country. The resolution clearly stated that:

*"This assembly recommends to the governor-general in council to take steps to have the government of India act revised with a view to establish full responsible government in India"*³ The first official declaration by the British government towards setting up of some such body in India was made in the Cripps offer of 1942. According to this offer it was promised that, "immediately upon the cessation of hostilities station steps shall be taken to set up in India in manner described hereafter an elected body charged with the task of framing a new constitution for India."⁴

After the Second World War, the British government reiterated the offer, in the form of the 'Wavell plan'. It stated that during the period of drafting of Indian constitution, the viceroy's executive council should be reconstituted by addition of Indian leaders to make it more representative of political opinion in India. This plan however was rejected by the Indian parties.

In 1945, the promise of a Constituent Assembly was again made in the House of Lords. Pethick-Lawrence, the secretary of the state for India declared that the British government regarded "the setting up of the constitution making body in India as a matter of great urgency."⁵

The first step towards realizing the constitution body was the coming of the cabinet mission plan to India. The cabinet mission arrived in India on March 24, 1946. Its main purpose was to attain consensus among various political leaders of India. Towards this end, they organized immediate discussions with party leaders, but a common basis of agreement could not be attained. Muslim league, and Jinnah, wanted to form a separate country for Muslims, Pakistan. They demanded two constitutional bodies to be made...one for India, and one for Pakistan. Congress was totally opposed to the partition, and was only prepared for maximum amount of local autonomy.

The cabinet mission found huge practical difficulties in adopting either the separation of the country or the congress proposal of extreme autonomy to Muslim majority areas. Having rejected both these proposals, the cabinet mission recommended the basis, which the constitution of free India should take. They did not define the details of the constitution, only helped to set in motion the machinery by which the constitution of India could be framed by Indians.

In a bid to make the entire transition smooth and quick they suggested that the newly elected provincial legislative assemblies should be used for electing the members for constituent assembly of India. Both the Congress and the Muslim League accepted cabinet missions plan but with certain reservations of their own. Later, however the Muslim League withdrew its acceptance of the plan, and decided not to take part in the Constituent Assembly.

Under the Cabinet Mission plan the British ruled India and the princely states joined together would constitute a Union of India. In this format, “all residuary powers were to vest in the provinces. The Indian states were to retain all subjects and powers other than those ceded to the union.”⁶

This was not the first time that a loose federal structure was being contemplated for an independent India. Prior to this the Simon commission (1927-29) and the Butler Committee (1927-30), both had recommended a federal union for India. At the three successive round table conferences held between 1930-32, both the representatives of British India and the Indian states had also favoured a federal polity for India. “At the three round table conferences held in London, the delegates of British India and those of Indian states alike unanimously accepted the federal idea as the immediate solution to the Indian constitutional problem.”⁷

The government of India act of 1935 also envisaged a federal polity in India. Thus, it was not a surprise that when Pt. Nehru moved his historic ‘objectives resolution’ in the constituent assembly in December 1946, he included in it a scheme of a federal polity with residuary powers vested in the states.

In his speech he says that, “wherein the said territories, whether with their present boundaries or with such others as may be determined by the constituent assembly and thereafter according to the law of the constitution, shall process and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the union, or as are inherent or implied in the union or resulting therefrom”.⁸

It is safe to say that in such a scenario, with clearly spelt out path for the constituent assembly, India should have had a loose federal structure with the residuary powers vested with the states. Instead, the constitution of India in its final form emerged a mostly unitary body with a strong center and residuary powers resting with the center as well. The constitution of India, in its present form does not even mention the word federation or

federal anywhere in its whole body of exhaustive work. How did this change, which effects the basic functioning of a nation come about?...in a speech in constituent assembly, pt. Nehru once said that in working of the constitution of India, "there can be no compulsion, except the compulsion of events, which none can ignore"⁹ it was indeed the compulsion of events which steered the course of India's constitution towards a strong unitary state. It was a direct consequence of a series of events which began with mass spread rioting and violence in different provinces of India, a rushed and hasty withdrawal of the British from India, and culminated in the partition of the country into two separate units.

Transfer of power to India and the partition

On Feb.20, 1947, the British Prime Minister Atlee made a statement in the House of Commons regarding the transfer of power to India, 'not later than June 1948'¹⁰ With this statement a new viceroy for India was also appointed. Admiral Viscount Mountbatten was given the task of "transferring to Indian hands the responsibility for the government of British India in a manner which will best ensure the future happiness and prosperity of India."¹¹

Lord Mountbatten arrived in India in March 1947 to a dangerously charged atmosphere of social and political unrest. Amidst hopes of a quiet and smooth transfer of power into Indian hands, there were also strong forces operating in India, which compelled the British to make utmost haste in transferring the power to India and also necessitated the partition of India.

Riots had broken out in many parts of India, and taken a very serious turn in Punjab and Bengal. The Muslim league, which had refused to join the Constituent Assembly, had been demanding a separate state and a separate constituent assembly for Muslims. On 16 August 1943 they launched a 'Direct Action Day', which triggered violence and riots in various parts of the country.

Very soon after his arrival in India, Lord Mountbatten was convinced that the Muslim League and even some of the princely states would not accept the Cabinet Mission plan. Within a week after his arrival he mentions the worsening communal situation in India, "the scene here is one of unrelieved gloom, with communal riots and troubles in Punjab, NWFP, Bihar, Calcutta, Bombay and even in Delhi."¹² He further stresses the importance of acting quickly and coming to a decision otherwise, "I may well find the beginnings of a civil war on my hands."¹³ the looming threat of a full fledged civil war seems to weigh a lot on Lord Mountbatten's mind as well as a desire for a quick and speedy solution and transfer of power.

This is a recurring theme in his correspondence and reports of this time. On 17th April he again mentions the riots and worsening situation of civil administration. He repeats that, "we have got to make up our minds one way or the other in the very near future if we are to avert civil war and the risk of a complete breakdown of the administration."¹⁴

When the PM Atlee had announced the date for the final transfer of power to India in his Feb. 20 speech, he had specified that, “Although the final transfer of authority may not take place until June 1948, preparatory measures must be put in hand in advance. It is important that the efficiency of the civil administration should be maintained and that the defence of India should be fully provided for.”¹⁵

It is clear that the British were in no hurry at this time and wanted to leave India in hands of a strong government, which would be achieved by the workings of the constituent assembly already established. It also becomes clear that they were not contemplating the partition of India and were in fact, getting ready to “take necessary steps to effect transfer of power into Indian hands by a date not later than June 1948.”¹⁶

Interestingly, it appears that the British were uncertain if the Indians would be ready by June 1948, to receive such responsibility altogether. It can only be assumed that the Indian side might be feeling the same way. In a discussion with senior officers of British India, on 11 April, Lord Ismay believed that, “it was fast becoming apparent that it would be impossible to hand over complete power to the provinces by June 1948. They would not be ready to receive it.”¹⁷ And yet, the British left India a full 10 months before the time specified. The internal situation of rioting, violence and bloodshed was a major determining factor for this hasty departure.

In his private report of 17 April 1947, Lord Mountbaten reveals that “the dangerously unsettled state of the whole country continues...and the only step which is likely to clear the air of communal strife is an early and generally accepted decision on how power is to be transferred.”¹⁸ Further elucidating on the dangerous situation in India at that time he says that, “even the quieter provinces feel that they are sitting on the edge of a volcano and that an eruption might take place through any of the 3 main states-Bengal, Punjab, and the N.W.F.P at any moment, with risks of sporadic eruptions in Assam, Bombay and Bihar.”¹⁹

These statements make it abundantly clear that the British were worried about the violence and rioting in Indian states and wanted a speedy resolution to the problem, and the only solution that could be worked out to the satisfaction of sharply different, and opposing view points of both congress and the Muslim league was the partition of the country.

In his commentary on the transfer of power in India, V.P. Menon also mentions that, “in the face of rapidly deteriorating situation in the country, Lord Mountbaten felt that if the procedure for the transfer of power was not finalized quickly, there was a possibility that at least in some parts of the country, there would be no authority to whom power could be transferred.”²⁰

In this socially and politically charged background, Lord Mountbaten evolved the framework of an alternative plan, which would be acceptable to all Indian political parties. He hoped to quickly reach a consensus and arrive at a solution. As early as May 23, 1947, the British cabinet had approved “a draft plan, which in the event of a failure to secure a compromise on the basis of the cabinet mission plan, the viceroy was authorized to lay

before the conference of Indian leaders on 2nd June.”²¹ This draft plan contained the partition of India on communal lines.

The theme of partition was not a new one for Indian political leaders. The Muslim league had been harping on the theme of a separate state for Muslims since 1940, and by 1947, in view of the sharp differences between the two political parties and the communal strife which was tearing India apart. Even the congress had ‘reluctantly’ accepted partitioning of the country.

In a meeting with Mountbaten in April 1947, Jinnah had referred to the partition of the country as marking a ‘clean cut in a surgical operation’²² The congress spokes man Kriplani in an interview with Mountbaten on 17 April 1947 admits that the part has now been reached at which the congress must reluctantly accept that the Muslim league will never voluntarily come into a union of India. Rather than have a battle, we shall let them have their Pakistan”²³ Later, even Sardar Patel confided to K.M.Munshi that “if partition had not been accepted there would have been a long drawn out communal strife in cities and rural areas, and even the police and the army would be torn by communal dissensions”²⁴

Partition of the country appeared to the only solution to all involved in the decision and the reason that even congress, which had been dead set against partition from the very beginning, accepted it is the large scale violence which was raging on in different parts of India. The viceroy, Lord Mountbaten came back to India, with the cabinet approval on 30th may 1947, and “with his return, years of debate and discussion on policy gave way to days of decision. The viceroy’s conference with Indian leaders began on 2nd and resumed on 3rd June, in fact determining the nature of the final Anglo-Indian transfer settlement.”²⁵

How great a part the violence of the riots played in the ultimate partition of the country and the working of the Indian constituent assembly becomes clear when we read the personal papers of Lord Mountbaten. In his personal weekly report on June 5, 1947, he writes about extensive riots around Delhi, in the district Gurgaon, and says that, “I could not help feeling that this renewed outbreak of violence, on the eve of the meeting with the leaders, might influence them to accept the plan which was about to be laid before them.”²⁶

The plan, which was laid before the Indian leaders on 2 June 1947, was the partition of the nation as well as the two provinces of Punjab and Bengal as well as immediate transfer of power and extension of dominion status to the successor authorities that emerged. The leaders were given only till the midnight to convey their reactions to this plan.

The same night, the congress’ reaction in the form of a letter was sent to the viceroy, which clearly states that congress had accepted the cabinet mission plan and is already working on the new constitution for an independent India, but in view of the “subsequent events and situations today.....we are willing to accept the proposals made by HMG”....but emphasized again that they were doing so “in order to achieve a final settlement”²⁷

Having a positive reaction from all the Indian political leaders, the viceroy called another meeting with them on the next day, June 3rd 1947. On this day he laid before them a detailed

and lengthy paper entitled, 'the administrative effects of the partition'. In clear, crisp, and practical language, this paper meticulously detailed out the extensive scope of what needs to be done to achieve partition of the country. It contained minutiae about demarcation of boundaries, the division of the armed forces, records of the central civil departments, division of assets and liabilities of the government, division of jurisdiction of high courts, division of administrative organization and finances, etc....huge administrative tasks to be finished before the date of partition, which was mentioned as 'not later than 15th august, 1947.'

This paper must have had a devastating effect upon the Indian leaders. As Lord Mountbaten recorded, "the severe shock that this gave to everyone present would have been amusing if it was not rather tragic."²⁸

The effect of the partition and ensued violence on Constituent Assembly

The partition of India had a huge impact on the outcome of the constitution. There is a vast difference between the draft constitution which was drawn up, before the partition was announced and the final Indian constitution which was adopted. The main difference was in the way the federal character of the country was revised.

With the partition of India decided on, it became imperative more than ever for India to adopt a quasi-federal democracy, with a strong center. "During the freedom struggle, the nationalist leaders envisioned a truly federal India with effective decentralization. However, partition of India accompanying the end of the colonial rule, and the large scale violence, and bloodshed resulting from it leading to the death of a million people, and permanent migration of over 10 million people across the newly created borders, radically altered the situation. The framers of the constitution quickly came to the conclusion that unity, and integrity of the remaining India were paramount, and peace and order must be maintained at any cost. As a result they opted for a highly centralized, quasi federal state with strong unitary features."²⁹

Following the June 3rd announcement of the viceroy, it became clear that India was to be partitioned. This was followed by formation of a 'decisive swing in favour of a strong center'³⁰ in the constituent assembly. Two days after the formal announcement of the partition of India, on 6th June, the union constitution committee, dealing with the question of whether India should adopt a unitary or federal structure came to the conclusion that:

- 1) India should adopt a federal structure with a strong center
- 2) There should be three exhaustive lists: federal, provincial, and concurrent, with residuary powers for the center.³¹

The constitutional perspective of India was altered dramatically by the impact of the partition. This can be clearly understood by the statement in the second report of the union powers committee, which observed that, "now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordination

vital matters of common concern and of speaking effectively for the whole country in the international space.”³²

The second report of the union powers committee also concluded that the “soundest framework for our constitution was a federation with a strong center”³³

Although, the framers of the constitution kept repeating that India would be a federation with a strong center, it really did steer towards too strong a center.

There were some dissenting voices in the constituent assembly, who felt that the center was being made too strong. Mr. K. Santhanam criticizing the powers given to the center observed in the assembly that they were proving for almost ‘a unitary center’. He also pointed out that the financial powers (taxation) were also mostly given to the center, which will make the provinces “beggars at the door of the center”.³⁴ Other members like Mehboob Ali Baig, and N.G. Ranga were of the opinion that this system of a strong center might lead to ‘totalitarianism’ and to the ‘negation of democracy’³⁵

Opposed to them, there were others who strongly defended the creation of a strong center. These members wanted an almost unitary constitution in view of the recent circumstances and past history. Among them, Mr. Frank Anthony urged giving the maximum possible powers to the center in the interest of the integrity and cohesion of the nation.³⁶ Others who stoutly defended a strong center were Alladi Krishnaswami Ayyar, Dr. B.R. Ambedkar, and T.T. Krishnamachari, among others.

In the background of communal violence in the country in the wake of partition, the framers of the constitution wanted to establish unity in the country through mechanisms of a powerful central government. They tried to achieve this by uniting the whole of India and Indians under a single mass electorate with adult suffrage. “That India would have a centralized parliamentary constitution was nearly certain from the start, and increasingly during the lifetime of the assembly the compulsion of events made that choice even more certain.”³⁷

The violence that engulfed the nation was so widespread and strong that even in the capital, Delhi there were reports of rabid violence. With the announcement of partition of India, “rioting and bloodshed began in late August 1947; assembly members attending the fifth session had to have special curfew passes to enable them to get to the assembly. As late as November that year, Muslim assembly members requested special protection while in New Delhi. The violence brought home the lesson that local law enforcement and local—even provincial – government could be frail reeds in times of great distress, that the center must have the power to preserve order and the processes of government.”³⁸

The severe violence and cruelty which accompanied the last months of the British government in India and continued till the few months after the formation of two sovereign units was largely responsible for the hasty departure of the British from the country, and the formation of a quasi federal constitution, which provided for a strong authoritative center for India.

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