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# UNIT 16 CONSTITUTIONAL DEVELOPMENTS\*

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## 16.1 INTRODUCTION

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This Unit attempts to analyse the political developments between 1927 and 1935 from the visit of the Simon Commission to India to the passage of the Government of India Act, 1935. It shall also deal with the Nehru Committee report, which prepared a detailed constitutional scheme for India in reply to the challenge posed by Lord Birkenhead to Indians, asking them to frame a constitution acceptable to all political parties in India. This Challenge was accepted by the Congress and an All-Parties Conference was called at Delhi on February 28, 1928. As many as 29 organisations were represented.

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## 16.2 BACKGROUND

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The Congress declared that the Montagu-Chelmsford reforms (Government of India Act, 1919) was, 'inadequate, unsatisfactory and disappointing' and could not be workable in actual practice. The Congress asked the British to follow the principle of self-determination so as to establish a fully responsible government as soon as possible. Simultaneously, it resolved to work towards that objective. There were, however, many obstacles. Not long back, the Rowlatt Report led to the enactment of two unpopular bills despite stiff opposition. Gandhi's call for Satyagraha against the two iniquitous bills gave rise to *hartals* all over the country and civil disturbances in a number of places. The imposition of martial law in Punjab followed and climaxed into the Jallianwala Bagh Tragedy (1919) where

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General Dyer ordered machine gun fire on a peaceful and unarmed crowd, resulting in the death of 400 people, and injuring nearly 1,200. The Muslims were also restive at that time due to the humiliating treatment meted out to defeated Turkey (in the First World War) by the Allied Powers. They launched the Khilafat Movement which had the support of Gandhi. These developments did cause a fundamental shift in the policy of the Congress. It stated in 1921 that the 'object of the Indian national Congress is the attainment of *Swaraj* by all legitimate and peaceful means'. This was a clear shift in perspective. This would mean going beyond the confines of constitutional political discourse. It was a call for active pursuance of the concept of *Swaraj* through legitimate and peaceful means. In consequence, the Montford Reforms introduced earlier had no chance of success either. As the Congress 'attitude towards the Act of 1919 hardened, even the moderates among them who were ready to cooperate with the government found the conditions difficult to bear. This led to the formation of the Swaraj party (1923), notably by Motilal Nehru and C.R. Das, with the explicit objective of 'wrecking the legislatures from within' by following a policy of 'uniform continuous and sustained obstruction with a view to making government through the Assembly and the Council impossible'. The tactics worked, and the hypocrisy behind the dyarchical scheme of government was exposed.

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### 16.3 SIMON COMMISSION

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The appointment of the Simon Commission in November 1927, two years before it was due, was an indirect admission by the government of the failure of its reforms. The reason put forward, however, was that unrest was mounting in India. But a private letter of Lord Birkenhead to the Viceroy, Lord Reading, stated that the Conservatives in power apprehended a Labour victory in next general elections in England and did not like to leave the announcement of the Commission to the successors. Furthermore, it was believed that such a move could be used as a bait to ensnare and thereby break the Swaraj Party. The Commission was to look 'into the working of the system of government, the growth of education and the development of representative institutions in British India and matters connected therewith' and to consider 'to what extent it is desirable to establish the principle of responsible government, or to extend, modify or restrict the degree of responsible government existing therein, including the question whether the establishment of Second Chambers of the local legislatures is or is not desirable'. The Commission was composed of seven members of the British Parliament, mostly white, which disappointed the Indian public and led to its total boycott by the Congress. The untenable excuse offered by the British was that, as their Parliament appointed the Commission, its members necessarily had to be from that body. The Commission faced black-flags demonstrations wherever it went in India and had to hear the slogan 'Simon Go Back'. Its offer to form a joint committee with the Central Assembly was also rejected unceremoniously.

The Simon Commission had stated that in order to cope with the diversity of the country the ultimate character of the Indian government had to be federal. It declared that the establishment of responsible government at the centre was to wait indefinitely, which obviously meant that it was to be established somewhere in the distant future. Its observations regarding Dominion status were not very clear. It recommended that a Greater India consisting of British India and the

Princely States as a federal association was to be established in the future but the clause of British Paramountcy (with Viceroy as the agent of Paramount power) was to remain. This was met with great opposition from many political parties, spearheaded by the Congress.

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## 16.4 ALL-PARTIES CONFERENCE AND NEHRU REPORT

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At the 1927 Madras Congress Session, a resolution boycotting the Simon Commission was passed. The Working Committee was authorized to prepare a constitution for India in consultation with other organisations. Congress representatives as well as representatives of other organisations such as Muslim League, Hindu Mahasabha, etc. met at a conference in February, 1928. This came to be known as the All Parties Conference. This Conference was presided over by Dr. M.A. Ansari. It was agreed that in framing the Constitution of India, the principle of full Dominion responsible self-government should be kept in mind. After two subsequent meetings of All-Parties, in Bombay and in Lucknow, the Constitution was ratified. It asked for full Dominion Status and had provisions for having responsible governments at Center as well as in the Provinces.

Responsibility of the Cabinets was to be joint or collective, a full-fledged federation for India was considered only as a possibility and defense budgets were subject to approval of the Central Legislature and included provisions for incorporating fundamental rights (nineteen fundamental rights were suggested for inclusion in the proposed statute), though moderately worded. A Supreme Court was to be established, to serve as the final court of appeal and all appeals to the Privy Council were to be stopped.

It also secured the rights of the Native Rulers on the condition that they must allow for establishment of responsible governments in the States. The Nehru report also recommended joint electorates with seats reserved for the minorities on population basis except in Bengal and Punjab. 'Full protection was afforded to the religious and cultural interests of the Muslims, and even new provinces on linguistic basis were to be created with a view to the planning of Muslim-majority provinces.

Therefore, in May 1928, a Committee was appointed with Motilal Nehru as president. The Nehru Committee appointed by the nationalists was a response to the appointment of Simon Commission and the challenge given by Lord Birkenhead thrown to Indians asking them to frame a Constitution on which the Indian opinion was united. At the Calcutta Congress session it was stated that the Report had contributed to a great extent in solving India's political and communal problems.

The committee's report was an outline draft of a constitution which was based on the principle of fully responsible government on the model of the Constitution of self-governing dominions. The establishment of full responsible government was not to be considered as a remote but as an immediate step. Apparently it was different from the principle of gradual advancement as envisaged by the Act of 1919. This draft is commonly known as the Nehru Committee report. It made the following recommendations:

- i) India should have the same constitutional status in the British Empire as other dominions with parliament having powers to make laws and should be known as the Commonwealth of India.
- ii) The Constitution should define citizenship and declare fundamental rights.
- iii) The legislative powers should vest with the King and bicameral parliament, and executive powers with the king exercisable by the Governor-General and the same provisions should be made for the establishment of responsible governments in provinces in respect of governors and executive councils.
- iv) Hierarchy of courts with a Supreme Court as its apex appeal court be established.

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## 16.5 MAIN FEATURES OF NEHRU REPORT

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The report suggested that the Indian Parliament should consist of (a) the Senate elected for seven years, consisting of 200 members elected by the Provincial Councils; and (b) the House of Representatives with 500 members elected for five years through adult franchise. The Governor General (to be appointed by the British Government but paid out of Indian revenues) was to act on the advice of the Executive Council which was to be collectively responsible to the Parliament. The Provincial Councils were to be elected, on the basis of adult franchise, for five years and the Governor (to be appointed by the British Government) was to act on the advice of the Provincial Executive Council'.

The Nehru Report contained virtually no federal features. Despite the fact that federal principle was introduced in the composition of the senate, the provinces were not equally represented in it and thus the federal principle was not really put into practice. De-centralisation was carried to the same extent as in the Act of 1919. Residuary powers were vested in the centre. The position of Princely States in relation to Centre was not made clear. The Committee considered the establishment of a federal constitution but it did not take concrete steps to materialize it.

The importance of the Report lay in the fact that it was the first expression of the organised opinion of the majority of the Indian leadership on the communal problem. According to Coupland, 'it embodied the frankest attempt yet made by the Indians to face squarely the difficulties of communalism'. The Report stated that the only method of giving a feeling of security to the minority was to provide for safeguards and guarantees. The Committee in this respect made three distinct proposals:

- i) The proposed Constitution should provide for liberty of conscience and religion.
- ii) On the principle of self-determination the Muslim majority provinces should be given distinct politico-cultural identity i.e., Sind was to be separated from Bombay presidency and N.W.F.P. was to be given full provincial status.
- iii) The principle of separate electorates should be rejected and all elections should be conducted on the basis of joint electorates subject to reservations of seats for Muslims at centre and in provinces where they were in a minority and for non-Muslims in N.W.F.P.

However a little later, the Committee made two additional recommendations relating to the communal problem. Communal representation was to be reconsidered after ten years and Baluchistan was to be given full provincial status.

### **16.5.1 Muslim Reaction to Nehru Report**

At the All Parties Convention held in Calcutta in December 1928, M.A. Jinnah demanded one third representation for the Muslims in the Central Legislature. As this was not accepted, he joined the groups led by Agha Khan and Muhammed Shafi. An All India Muslim Conference was held in Delhi on 1 January, 1929 and it passed a resolution emphasising two principles:

- i) The first principle was that since India was a vast country, with a lot of diversity it required a federal system of government in which the states would have complete autonomy and residuary powers.
- ii) The second principle was that the system of separate electorates should continue as long as the rights and interests of Muslims were not safeguarded in the constitution.

In March 1929 Jinnah put forward before the Muslim League a detailed account of Muslim demands known as the 'Fourteen Points'. These demands suggested a total rejection of Nehru Report because of two reasons. Firstly a unitary Constitution was not acceptable because it would not ensure Muslim domination in any part of India. A federal Constitution consisting of a Centre with limited powers and autonomous Provinces with residuary powers would enable the Muslims to dominate in five provinces, namely NWFP, Baluchistan, Sind, Bengal and Punjab; and, secondly the solution to the communal problem as suggested by Nehru Committee was not acceptable to Muslims. Jinnah was categorical about the inclusion of separate electorates.

### **16.5.2 Nehru Report and the Native States**

A complex problem which confronted the Nehru Committee was regarding the status of princely states. In 1927 the people of Princely states formed the State Peoples Conference with a view to introducing self-governing institutions. This move threatened the interests of princes who sought the help of British in this matter. The result was the appointment of a Committee under the chairmanship of Sir Harcourt Butler which laid stress on preservation of princely states through British Paramountcy. The Nehru Committee criticized the appointment of Butler Committee and stated that the rights and obligations of Paramountcy should be transferred to the government of Commonwealth of India and conflicts between Commonwealth of India and Indian states were to be referred to the Supreme Court.

### **16.5.3 Internal Opposition to Nehru Report**

Within the Congress the younger section led by Jawaharlal Nehru and S.C. Bose criticized the Nehru Report because of its acceptance of dominion Status. They had already stated their inclination towards greater freedom and talking about dominion status was viewed as a limiting Constitutional exercise. This reaction by the younger section within the Congress forced leadership at the Calcutta Congress to pass a resolution that if the British government did not accept the

Nehru Report on or before 31 December, 1929, or spurned it before that date, the Congress would start another mass movement. Since Lord Irwin showed no signs of taking concrete steps in the direction of establishing full Dominion Self-Government, as he had announced in his declaration of 31 October 1929, the Congress declared on 31 December, 1929, that the Nehru Report had ceased to be valid.

#### 16.5.4 Nehru Report's Acceptance

The All-Parties Conference subsequently accepted the report but did not include the three amendments Jinnah had suggested in the meeting. The Congress forwarded the report to the British and set a deadline of one year for its acceptance, failing which they would organise a non-violent campaign in 1930. Three months later the Muslim league rejected the report and came up with Jinnah's famous 'Fourteen Point', their minimum acceptable conditions for a political settlement. Meanwhile, Ramsay MacDonald of the Labour Party had become the Prime Minister of England under whose advice the Viceroy stated that 'it is implicit in the Declaration of 1917 that the natural issue of India's constitutional progress as therein contemplated is the attainment of Dominion Status. So there should be a Conference of the Indians and the British to consider the final proposals of the Simon Commission (in limbo at that time) before they were submitted to the Parliament in England.'

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### 16.6 ROUND TABLE CONFERENCES

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Not only did the proposed Round Table Conference have a limited purpose and scope, but the 'Dominion status' referred to as the subject matter was also capable of being interpreted differently. The Congress decided to boycott the Round Table Conference by declaring that the national aim was to attain complete independence and therefore it launched the Civil Disobedience Movement in March 1930.

Gandhi set out on his momentous march to Dandi to prepare salt from the sea accompanied by thousands of followers. There were numerous arrests, lathi-charges by the police (even on women and children), threats to newspapers and journals for publishing the details of such onslaughts on unarmed people, and enactment of a number of ordinances. The gap between the nationalists and the government appeared to be unbridgeable. Amidst such political turmoil the Round Table Conference was convened in London between November 16, 1930 and January 19, 1931.

As many Congress leaders were in jail, 'safe' representatives of other parties, communities and services were nominated by the government as the spokespeople of India. The three basic principles adopted in the conference were: (i) the form of the new government would be an all-India federation; (ii) the federal government, subject to certain conditions, would be answerable to the federal legislature; and (iii) the provinces would be autonomous. The Conference ended with the declaration of Ramsay MacDonald, '... responsibility for the Government of India should be placed upon legislature, Central and Provincial, with such provisions as may be considered necessary ... and also with guarantees... required by minorities'.

To secure the participation of the Congress in the next Conference, the Gandhi-Irwin pact was signed in March 1931 leading to the release of all political prisoners. The Congress in turn terminated the Civil Disobedience Movement. As the sole representative of the Congress to the second Conference (September 1 to December 1, 1931), Gandhi gave wide space to Jinnah to solve the vexed communal problem. In the meantime, M.A. Jinnah, having received secret support from the Secretary of State for India, Sir Samuel Hoare, became too inflexible in his demands, leaving Gandhi with no other option but to return to India without any results. Gandhi was arrested on reaching India. Citing the absence of an agreed settlement as a pretext, the British proceeded to adjudicate on the respective quantum of representation of different communities which led to the infamous ‘Communal Award’ of 1932.

Gandhi could possibly sense the British game plan of divisive politics. He went on a fast to stop this political fracture between ‘Caste Hindus’ and the ‘Scheduled Castes’. The Poona Pact was signed somewhat modifying the ‘Communal Award’. The Third Round Table Conference in London (November 17 to December 24, 1932) was attended by 46 delegates, very carefully invited by the Conservative government in Britain. In the Conference the reports of the Sub-Committees appointed during the Second Round Table Conference were heard and formed the basis of discussions. Some more details about the new constitution were settled. The Indian delegates tried to push through some progressive provisions, which were instantly put into the cold storage. Similarly the question of including a Bill of Rights for the citizens was shelved on flimsy excuses.

In March, 1933 the British Government came out with the White Paper containing the proposals, indicating the line on which the new constitution of India was to take shape. As expected the White Paper introduced some reactionary provisions like recommending the extension of the scope of separate electorates, a provision whereby the representative of the States were to be nominated by the Princes and the power to abolish the second Chambers in the Provinces was given to the Central Legislature. Later on this power was given to the British Parliament. Restrictions on the powers of the Federal Court were increased so as not to make it the final Court of Appeal. This process culminated in the Secretary of State for India placing a Bill in the British Parliament in February 1935, which, on being passed and receiving Royal assent, became the Government of India Act 1935.

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## 16.7 GOVERNMENT OF INDIA ACT, 1935

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The Government of India Act was passed by the British parliament in August 1935. Its main provisions were as follows.

- i) **Supremacy of the British Parliament:** The Government of India Act, 1935 was passed without a Preamble. This allowed the Preamble of 1919 Act to continue unhindered. This meant that realisation of responsible government by successive stages was the goal, with British Parliament being the sole judge of the nature and time of each advance. All rights of amending, altering or repealing the Constitution of India remained vested with the British Parliament.
- ii) **Provincial Autonomy:** The whole of the Provincial Executive was now made responsible to or removable by the legislative Assembly of the

Province. The difference between the reserved subjects and the transferred subjects was dropped. All Provincial subjects were placed under the charge of the popular ministries but the Governors still retained their imposing set of powers. This made the application of provincial autonomy incomplete.

- iii) **Dyarchy at the Centre:** It was to comprise all British Indian Provinces, all chief commissioner's Provinces and Indian states. The federation's formation was conditional on the fulfillment of two conditions: (a) states with allotment of 521 seats in the proposed Council of States should agree to join the federation; (b) aggregate population of states in the above category should be 50 per cent of the total population of all Indian states. Since these conditions were not fulfilled the proposed federation never came up. The Central Government carried on up to 1946 as per the provisions of Government of India Act, 1919.

**At the Federal Level:** a) **Executive:** Governor-general was the pivot of the entire constitution. Subjects to be administered were divided into reserved and transferred subjects. Reserved Subjects- foreign affairs, defense, tribal areas and ecclesiastical affairs-were to be exclusively administered by the Governor-general on the advice of executive councilors. Executive councilors were not to be responsible to the central Legislature. These ministers were to be responsible to the federal legislature and were to resign on losing the confidence of the body. Governor-General could act in his individual judgment in the discharge of his special responsibilities for the security and tranquility of India; b) **Legislature:** The bicameral legislature was to have an upper house (Council of states) and a lower house (Federal Assembly). The council of states was to be a 260-member house, partly directly elected from British Indian provinces and partly (40 per cent) nominated by the Princes. The Federal assembly was to be a 375 members house partly indirectly elected from British Indian provinces and partly (one-third) nominated by the Princes. Oddly enough election to the council of states was direct and that to the Federal assembly, indirect. Council of state was to be a permanent body with one-third members retiring every third year. The duration of the assembly was to be 5 years. The three list for legislation purposes were to be federal provincial and concurrent. Members of federal assembly could move a vote of no confidence against ministers. Council of States could not move a vote of no confidence. The system of religion-based and class-based electorates was further extended. Governor-general had residuary powers. He could (a) restore cuts in grants (b) certify bills rejected by the legislature (c) issue ordinances and (d) exercise his veto. Eighty per cent of the budget was non-votable.

**At the Provincial Level:** Provincial autonomy replaced dyarchy. Provinces were granted autonomy and separate legal identity. They were freed from 'the superintendence, direction' of the secretary of state and Governor-General. Provinces hence forth derived their legal authority directly from the British Crown. They were given independent financial powers and resources. Provincial governments could borrow money on their own security.

- a) **Executive:** Governor was to be the Crown nominee and representative to exercise authority on the king's behalf in a province. He was to have special powers regarding minorities, rights of civil servants, law and order, British business interests, partially excluded areas, princely states etc. They also had the power to take over and indefinitely run administration.

- b) **Legislature:** Separate electorates based on communal award were to be made operational. All members were to be directly elected. Franchise was extended and women got the right on the same basic as men. Ministers were to administer all provincial subjects in a council of ministers headed by a Premier. The Provincial ministers were made answerable to and removable by the adverse vote of the legislature. The Provincial legislature could legislate on subjects in provincial and concurrent lists. Forty percent of the budget was still not votable .

Governor could (a) refuse assent to a bill, (b) promulgate ordinances, (c) enact Governor's acts

### 16.7.1 Evaluation of the Act

Numerous 'safeguards' and special responsibility of the Governor General worked as brakes in proper functioning of the act. In the Provinces the governor still had extensive powers. This Act enfranchised 14 per cent of British India population. However the extension of the system of communal electorates and representations of various interests promoted separatist tendencies which culminated in partition of India.

The Act provided a rigid constitution with no possibility of internal growth. Right of amendment was reserved with the British Parliament.

The Act of 1935 was based on two basic principles, namely, federation and parliamentary system. Although the federation principle was introduced with a built-in unitary bias yet the provinces were invested with a coordinate and not a subordinate authority. No doubt, the federal character was seriously distorted by the provisions of safeguards and special responsibility which gave extraordinary powers to the executive head at the centre and the provinces. An important point to be noted is that fully responsible government was not introduced at the centre. The provincial autonomy envisaged under the Act was also placed under serious limitations. The Dominion Status for India was still a distant dream. The incorporation of safeguards was a clever constitutional device to delay the introduction of a fully responsible government. Although these provisions were made for the transition period, the extent of the period of transition was not defined.

The Indian National Congress rejected the provision of safeguards and repudiated the idea of transition. It suspected that there were sinister motives behind them and they were found to have an adverse effect on the national movement.

### 16.7.2 The Long-term British Strategy

Political suppression could only be a short-term tactic. In the long run the strategy was to weaken the movement and integrate large segments of the movement into colonial, constitutional and administrative structure. It was hoped that these reforms would revive political standing of constitutionalist, liberals and moderates who had lost public support during the Civil Disobedience Movement. The Colonial State repression earlier and reforms now would convince a large section of Congressmen of the ineffectiveness of an extra-legal struggle. They British political establishment felt that once Congressmen had tasted power, they would be reluctant to go back to politics of sacrifice.

The Colonial State had planned that these reforms could be used to create dissensions within the Congress. The right-wing political groups were to be placated through constitutional concessions and radical leftists to be crushed through police measures. Provincial autonomy would create powerful provincial leaders who would gradually become autonomous centers of political power. Congress would thus be provincialised and its central leadership would get weakened.

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## 16.8 NATIONALISTS' RESPONSE

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The Act was criticized and rejected by the Congress on the ground that in formulating it the people of India were never consulted, and as such it did not represent their will. Congress charged the government of formulating the Act in such a way as to stall the introduction of responsible government and perpetuate their rule and exploit the Indian masses. In spite of its recognition of the aspirations of the Indians to have a responsible government, the Act of 1935 did not fulfill those aspirations. It did not concede the right to vote to all the adults. The property qualifications, the system of separate electorates, the provisions of safeguard were violative of democratic rights of the people. The Act was, therefore, denounced as undemocratic in spirit, offensive to people's sovereignty and institutionally unworkable. The Liberals criticized the Act but were willing to work the reforms as a step towards responsible government. The Muslim League also criticized the Act but was ready to give it a trial. On the whole the Congress condemned the Act but hesitated that they might be prepared to work the provincial part under protest. Thus, the Congress participated in the elections in 1937 and formed provincial ministries. However, the Congress demanded convening of a constituent assembly elected on the basis of adult franchise to frame a constitution for independent India.

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## 16.9 SUMMARY

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By the mid-1920s, it had become clear that the working of the Government of India Act of 1919 did not satisfy the Indians leading to resentment. Keeping this in mind, the British government appointed the Simon Commission to recommend framing of new constitutional provisions for India. However, since all the members of the Commission were Whites, this led a lot of resentment and protest in India against it. The various Round Table Conferences held in London were also did not provide satisfaction to the nationalists. Nevertheless, when the Government of India Act, 1935 became operative, the Congress decided to work it despite serious reservations.

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## 16.10 EXERCISES

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- 1) How did the Indian nationalists react to the formation of the Simon Commission?
- 2) Discuss the features of the Nehru Report.
- 3) Discuss the provisions of the Government of India Act, 1935. Why did the Congress criticise it?