

THE NEW CONSTITUTION AND AFTER  
by Sir Shafaat Ahmad Khan

**THE NEW CONSTITUTION AND AFTER**

# THE NEW CONSTITUTION AND AFTER

The Rt. Hon'ble  
V. S. Srinivasa Sastri Endowment Lectures,  
1941—42

[ DELIVERED IN FEBRUARY AND MARCH, 1941 ]

BY  
SIR SHAFAT AHMAD KHAN



UNIVERSITY OF MADRAS

1941

**PRINTED AT G. S. PRESS, MADRAS,**

## PREFACE

The Srinivasa Sastri Lectures were delivered at Madras in February and March this year and are now published without substantial changes. I have dealt with the Constitution up to 1938, and have not discussed the events of 1939-'41. The provincial Constitution was suspended in October 1939, in seven provinces of British India, at a time when the Federal Constitution had not yet been inaugurated. The Muslim League adopted the principle of Pakistan at its Lahore Session in March, 1940, and it became not merely the creed, but the manual of action of the League at its Madras Session, in April this year. The new scheme of the Viceroy's Expanded Executive Council was published in July, this year, and immediate effect was given to it.

This bare recital of events shows clearly the fundamental change which events during the last two years have wrought in India. The lectures are, therefore, purely academic in their spirit and treatment, and I have scrupulously avoided reference to controversies which have unfortunately rent India in twain. I have tried to function merely as a *rapporteur*, and have contented myself with elucidating the provisions of the Act, and explaining the viewpoint of the various interests affected thereby.

The Constitution Act of 1935 is dead, and the new Constitution that will be devised will have to take into account the insistent demand of the Muslim community for the security of its position in India, no less than the keen desire of India for Dominion Status of the Westminster variety, which should be conceded within a definite time. Finally there is the offer of the Viceroy of August 8, 1940, and the speech of Mr. Amery on April, 22, this year. This dry recital of chief events will show how rapidly the political situation has changed in India.

In the First Part, I have confined myself to the exposition of the Act of 1935. In Part II, I have dealt, very briefly, with my conclusions, which, it must be noted, are tentative, and are merely summaries of arguments for and against particular proposals.

27, Elgin Road,  
Allahabad,  
August, 17, 1941.

SHAFAT AHMAD KHAN

# LIST OF CONTENTS

PAGE

## PART I

1. How Constitutions are framed	.. 1
2. Limitations of the Scope of these Lectures Emphasised.	2
3. The Meaning of the Constitution	.. 4
4. Real Test of a Constitution is its Workability	.. 5
5. It is difficult to forecast what shape the Constitution will ultimately assume	.. 6
6. Units and Centre in a Federal Constitution	.. 7
7. Federalism the only solution of India's Political Problem.	8
8. Theories of Federation	.. 10
9. Calhoun	.. 11
10. German Theories of Federalism	.. 13
11. Von Seydel	.. 14
12. Jellinek	.. 14
13. Gierke	.. 16
14. Laski	.. 17
15. Guild Socialism	.. 17
16. Why Federation was supported	.. 20
17. Why the entry of Indian States is necessary for Federation	.. 22
18. Other examples of Federations	.. 24
19. On what principles should such a Federation be framed. External Danger cements jarring elements.	26
20. Need for Compromise	.. 28
21. Effects of States' Entry in Federal Structure	.. 29
22. Its Effects on Finance	.. 29
23. Indian Provinces show Administrative uniformity	.. 30
24. Dangers of Over-Centralisation	.. 31
25. Residuary Powers	.. 33
26. Sovereign States of British India and Growth of Provincial Patriotism	.. 34
27. Federation	.. 36
28. Position of Services in the New Constitution	.. 37
29. Financial Problems	.. 39
30. How other Federations have dealt with this Problem	41
31. The Federal Executive—What Should be its Model ?	.. 46

	PAGE
32. The Difficulties of Governors in the New Constitution	47
33. Minorities and the Cabinet	.. 49
34. Powers of the Federal Executive	.. 50
35. Defence Department	.. 52
36. India must get Dominion Status of Westminster variety	53
37. Foreign Policy Must Be Reserved for Sometime	.. 54
38. Future of Service	.. 55
39. Objections to Provincial Autonomy	.. 56
40. Reply to These Objections	.. 56
41. Indian Provinces Have Invariably Looked to Delhi For Lead	.. 57
42. No Need for Anxiety and No Clash of Principles	.. 58
43. Constitution Must Be Worked By Men	.. 59
44. Relation of Federal Executive to Indian States	.. 60
45. Relation of State Administration to Federal Administration	.. 61
46. Analogies in the German Constitution	.. 62
47. American Constitution	.. 62
48. Federal Executive is The Residuary Legatee in The Constitution	.. 63
49. Influence of Economic Issues	.. 64
50. Composite Cabinet May Be Strong—Position of Governor-General	.. 65
51. India's Position in the International World	.. 66
52. Edmund Burke Quoted	.. 68
53. Princes in the Scheme	.. 68
54. This Scheme is Feasible, Though Not Idealistic	.. 69
PART II—CONCLUSIONS	
55. The Congress and The League	.. 70
56. Pakistan	.. 71
57. Communal Friction	.. 72
58. Genesis of the Statute of Westminster	.. 74
59. How the Statute was worked	.. 76
60. Extension of Powers of Dominions	.. 78
61. The Statute Confers "Independence"	.. 81
62. How Parliamentary Government worked in the Provinces	.. 82
63. Cabinets of Swiss Model	.. 83
64. Territorial Representation	.. 85
65. Chances of Framing A New Constitution	.. 88
66. India and the British Commonwealth	.. 90