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INDIAN ADMINISTRATION

A TEXTBOOK

OF

INDIAN ADMINISTRATION

BY

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PREFACE TO THE FIRST EDITION

I HAVE attempted in the following pages to describe the growth of British administration in India from the days of the East India Company to the present times. The book is mainly intended for Intermediate Arts Students of Bombay University and I hope it will prove interesting also to the general reader. It had to be brought out in difficult circumstances. After the manuscript was handed over to the Aryabhushan Press in Poona, a disastrous fire reduced, along with many other valuable things, the printed matter to ashes, with the result that printing had to be done hurriedly again and the book brought out within less than a fortnight's time. But for the willing and cordial help rendered to me by my friends, Mr. H. P. Desai, M.A., of the *Bombay Chronicle* and Prof. Y. D. Joshi of Surat, and by the management of the Bombay Chronicle Press, the book would not have seen the light of day so soon. I am therefore extremely thankful to them.

I must also express my sense of gratitude to Prof. P. A. Wadia for kindly going through a large part of the manuscript and for making valuable suggestions.

SURAT, 1926 M. R. PALANDE

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CHAPTER I

Early History; 1600–1757

1. The Rise of the East India Company and its Early Charters

Three Periods—The First Period

The history of the development of the British power in India, as has been pointed out by Sir C. P. Ilbert, may be regularly divided into three periods. During the first period, which begins with the grant of Elizabeth's Charter in 1600, the East India Company were primarily a trading corporation enjoying important mercantile privileges and holding sundry factories on or near the coast in India for the conduct of their trade. They had to exist on sufferance so far as the native powers were concerned and were in rivalry with the merchants of other European nations like Holland and France. With the acquisition of certain districts in Bengal in 1760, and finally with the acquisition of the Diwani in 1765 the first period in the history of the growth of the Company's power terminates. The Diwani practically conferred upon the Company rights of territorial sovereignty and created new problems and difficulties which had to be solved by their authorities.

The Second Period

The second period begins from 1765 and extends up to the final abolition of the Company in 1858, when responsibility for the government of India was directly assumed by the Crown of England. During this period the Company

acquire and consolidate territory after territory till their sovereignty spreads practically to the whole of India. This is a period during which they gradually lose their mercantile privileges and functions and share their territorial sovereignty in diminishing proportions with the Crown. The Parliament of England saw occasion to interfere directly in the affairs of the Company after the undertaking of territorial government by them. The first instance of such direct interference occurred in 1773, when Parliament passed the Regulating Act for the good administration of the Company. This period has been described as a period of Double Government. The East India Company were the immediate authority entrusted with the administration of the country and the Parliament of Britain continued to exercise its superior control and supervision over their affairs. The various Acts which were passed by Parliament to regulate and reform the affairs of the Company are instances of such supervision.

The Third Period

The third and last period began in 1858 when the Crown of Britain directly assumed the responsibility of the governance of India. The intermediate agency of the Company was abolished. As Ilbert says, the first period is clearly a period of Charters. The second period is marked by Acts of Parliament passed at almost regular intervals of twenty years. The third period commences with the Government of India Act of 1858, which declared that India was thenceforward to be governed by and in the name of Her Majesty the Queen of England.

Elizabeth's Charter

The first Charter of the East India Company was granted in 1600 on the last day of the year. It empowered the Company to assemble in any convenient place and there hold court and 'make, ordain, and constitute

reasonable laws and constitutions, orders or ordinances for the good government of the Company, of all factors and officers and for the advancement of traffic and trade.' The direction of the affairs of the Company was vested in a Governor to be elected annually by the members, and in twenty-four committees, each consisting of an individual, also annually elected. The total number of members who were originally incorporated in the Company was 217. Further admissions could be made from among the sons of the original members or apprentices and factors specially selected.

The total capital subscribed is stated to have been £68,373. There was no reference to the joint stock principle and apparently there was equal voting power for all members irrespective of their contributions. The Company then came under the class of Regulated Companies. The members were subject to certain common regulations and had some common privileges but each traded on his own capital and for each separate voyage. A group of subscribers would organize a voyage and accounts were wound up on the return of the ships sent out, profits or losses being distributed among the organizers. The earlier expeditions were not directed to India but to the Spice Islands. The third voyage, arranged in 1608, was intended to include India.

Charters of the Stuart Kings

In 1609 James I renewed the Charter of Elizabeth. In 1615 the power of issuing commissions to officers empowering them to inflict punishments for non-capital offences and to proclaim martial law was given to the Company. The Company's monopoly soon began to excite jealousy and encroachments upon their privileges began to be made by an association started by Sir W. Courten who obtained from Charles I an independent

license to trade in the East. It was not till 1657 that this rival association was united with the East India Company under the Charter issued by Cromwell.

In 1661 Charles II issued a Charter similar to the one issued by Cromwell. It legally recognized the principle of joint stock though it had been followed in practice since 1612. The Company were also given the right of coining money and jurisdiction over English subjects in the east. The Charter of 1669 granted Bombay to the East India Company for an annual rent of £10. By Charters issued in 1677 and 1683 the Company's privileges were further extended. James II's Charter of 1687 empowered the establishment of Municipal Corporations by the Company.

Parliament and the Company's Monopoly

During 1683–5 the question, whether the Company's monopoly granted by Royal Charter without the consent of Parliament was legal, was discussed in connexion with the case of the East India Company *v.* Sandys. The point was argued before the Privy Council and the legality of the monopoly was upheld. The same question was again raised in 1691 and the same verdict was given. Parliament, however, passed in 1693 the famous resolution that all subjects had an equal right to trade in the East Indies and that, as Lord Macaulay has amplified, the whole legislature alone could give any person or society an exclusive privilege. The constitutional point was thus finally settled, though, in practice, the Company's Agents paid no heed to the resolution of Parliament and kept the eastern trade closed to all but themselves.

By the Charters of 1693-4 changes were made in the constitution of the Company. One vote was given to each holder of £1,000 stock, but not more than ten

votes could be possessed by one man. The Governor and the Deputy Governor must be holders of £4,000 stock, and a Committee of £1,000 stock. The Governor's and Deputy Governor's tenure was not to be more than two years. In 1698 the qualification for a vote was reduced to £500 stock and that for a Committee raised to £2,000.

Charters of 1693-4

In the meanwhile, a new company had been started in 1688 by the rivals of the old one and after its incorporation it began to make inroads upon the monopoly of the old Company as Parliament had declared monopolies to be illegal unless granted by it. Attempts in the direction of a compromise between the old and the new companies were made but without much success. In 1698 the first Parliamentary measure was taken to regulate Indian trade and commerce, when the General Society was incorporated as a Regulated Company and most of the subscribers of this body as a joint stock company. These were steps in the direction of facilitating a compromise or a coalition between the old and the new companies. It was, however, not until 1708 that the final coalition was effected under what is known as Godolphin's Award, by which the old Company's Charters were surrendered and all their powers and privileges were transferred to the new company under the name of 'The United Company of Merchants of England Trading to the East Indies'.

A New Company and Godolphin's Award

In 1726, in supersession of the existing courts, Mayor's Courts were established in municipal towns like Madras, Bombay and Calcutta. By Charters granted in 1730 and 1744 the exclusive privileges granted to the United Company were extended for further terms. Advance of loans to the State at a low rate of

Later Charters

interest was the price exacted for the extension of privileges. Stringent provisions were passed against interlopers. An Act of 1754 laid down regulations for the Indian forces of the Company in order that they should be adequately strengthened. The Charters of 1757–8 allowed the Company any booty or territory which they might have acquired in their struggles with native powers.

2. The Constitution of the East India Company

The Court of Proprietors

There were two classes into which the members of the Company were divided. The one and larger class was known as the Court of Proprietors and consisted of all persons who held any amount of stock of the East India Company. Till the passing of Pitt's India Act, the proprietors, as being the body consisting of all shareholders who jointly owned the Company, were the final authority in the administrative organization of the Company. Their sanction was required for every important measure that may have been recommended by the Directors. Legislative power was entirely held by them. They passed all regulations and declared the amount of the dividend. Four meetings of the Court of Proprietors had to be held regularly during the year, extraordinary meetings being summoned when necessary.

The proprietors were not persons acquainted with or experienced in the active management of the business of the Company. They were not the Company's executive. They were interested more in the dividends that they hoped to receive on the capital they had invested than in the actual vicissitudes of the Company's complex operations. It was believed that this detachment engendered in them a sense of irresponsibility and a persistent

tendency to demand increase of dividends year after year to the detriment of the general financial interests of the Company.

Attempts were made to regulate the voting powers of the proprietors from time to time, by fixing the possession of a certain minimum amount of stock as the necessary qualification for entitling a proprietor to have a vote. Such restricting proposals were made with a view to avoid irresponsibility and to guarantee that the voter who gave his vote or made any proposal did not do it out of mere frivolity or merriment. Hence the Act of 1784 rendered this body impotent by depriving it of the power that it formerly possessed, the power of revising and sanctioning the actions of the Directors. The proprietors thereafter continued only to receive whatever dividend was allotted to them, till the expiry of the Company. They ceased to have any influence as political or administrative factors in the Company's affairs after the year 1784.

The Court of Directors

The Court of Directors was the other and the more important body in the constitution of the East India Company. Originally, in the Charter of Elizabeth, power was given to the proprietors or members to elect annually from among themselves twenty-four committees each consisting of a single individual. The twenty-four committees or individuals were, in fact, in sole practical charge of the affairs of the Company and formed the executive machinery and directing brain.

Committees of the Directors

It would appear that according to the original Charter every member, without reference to the quantity of stock he held, was liable to be elected to the committees. Election to the committees, or which is the same thing, to the Directorate, soon came to be made dependent upon

the amount of monetary interest that the individual desirous of being elected had in the business of the Company. Thus the Act of 1689 fixed the possession of £2,000 stock as a necessary qualification for seeking election to the Directorate. The number of Directors continued to be twenty-four till 1854, when they were reduced to eighteen, of whom six were to be nominated by the Crown. Formerly they were annually elected by the Court of Proprietors, but by the Regulating Act their tenure was increased to four years, a quarter of their number being annually re-elected.

The Directors divided themselves into various committees so as to facilitate the disposal of their complex work by the introduction of the principle of division of labour. To each such committee were given important charges like those of political and military matters or finances or revenue or judicial and legislative matters. There were, for instance, the Committee of Correspondence, the Committee of Law Suits, the Committee of Treasury, the Committee of Accounts, of Warehouses, etc. After the submission of all questions to the respective committees which had different jurisdictions, and after investigation and report had been made by the committees on them, they were finally put before the whole Court of Directors for formal sanction. Pitt's India Act constituted a Committee of Secrecy of three members elected by the Directors from among themselves to carry on secret correspondence, orders, etc. between England and India.

Their Patronage

The Directors had large patronage in their hands, practically every appointment in India being made by them. Nomination to the Governor-General's post, however, necessarily required the sanction of the Home Government, as also to the posts of the Governor and the Commander-in-Chief.

The various Acts that were passed between 1773 and 1853 left almost untouched this large patronage that it was the privilege of the Directors to enjoy. It was a lucrative privilege, the annual value of each share of such patronage divided among the twenty-four Directors and the Governor and the Deputy-Governor being calculated at £15,000.

Their Powers

The Directors were the persons that made the Company. They managed the trade, kept the accounts and issued orders to the servants in India, dictating to them the part that they should play in the tangled political situation of India in which they had to work. Their consent was necessary for the declaration of war or ratification of peace. In short, every important matter of administration and all lines of policy to be adopted by the Company were discussed and disposed of by the combined council of the Directorate. The highest official in India, the Governor-General, had to carry out their mandates and often, in cases of difference between the absentee masters and the servants on the spot, occasions arose for the servants to tender resignation of their offices on account of the uncompromising and unsympathetic attitude of the Board of Directors. A huge mass of correspondence containing numberless dispatches, drafts, orders, minutes and *communiqués* passed to and fro between India and England and was the means by which the Directors exercised their superior authority.

Even after the creation of the Board of Control, though some of the powers of the Directors were diminished, the importance of this body in the constitution of the Company did not completely disappear. Only, in pursuance of the policy of progressive tightening up of the Crown's and Parliament's control over the Indian

constitution, the Directors were given a somewhat subordinate position compared with the supreme independence that was formerly enjoyed by them.

The Governor

The third agency in the constitution of the Company to which reference must be made was the Governor and the Deputy-Governor. The Elizabethan Charter had authorized the annual election of a Governor by the members from among themselves. There were no restrictions in the beginning as to the kind of person who could stand for election. The Charters of 1693–4, however, laid down that the Governor and the Deputy-Governor must have stock of £4,000.

The Governor was, of course, the chief executive official of the Company and must have been entrusted with the duty of seeing that all the wheels of the machinery of the Company's government were moving smoothly and unclogged. He does not, however, appear to have enjoyed any very special power more than the Directors, though he had a larger share in the patronage. The dovetailing of the various parts of the huge organization of the East India Company must have been, however, no mean task and the efficient and easy dispatch of the mass of details incidental to such an institution must have required some ability and skill.

3. The Factories and Presidencies

The Factories

The Company had to employ their own Agents to collect throughout the country the different articles of export from India. These goods, as also those that arrived in India in ships sailing from abroad, had to be properly arranged and stocked. Special warehouses were erected for the purpose; so were counting houses near them. These, together with the

offices of the Agents and the apartments for the business of the place, constituted what was called a factory of the Company. During the days of disorder that prevailed after the death of Aurangzeb it became habitual for the Company to fortify these stations of trade and maintain in them contingents of professional soldiers.

Their different Centres

It was not till 1612 that Thomas Aldworthe was successful in establishing a permanent British factory, the first of its kind, in Surat, on the west coast of India, the earlier attempts to do it having proved futile. During the course of the next few years subordinate agencies were set up in Ahmedabad, Godhra, Cambay, Burhanpur, Ajmer, and Agra. Factories were founded at Masulipatam and Pettapoli about 1616. In 1640 Fort St. George was built on a piece of land secured from a Hindu Raja. That is modern Madras. It was raised to the rank of a Presidency in 1653. The important factory at Hooghly was established in 1651. Dacca and Patna soon followed. In 1686 the Company's Agents and Council quitted the factory at Hooghly for political reasons and retired to Sutanati or modern Calcutta which became a recognized British centre after 1690, in which year Job Charnock 'definitely founded the capital of India'. Bombay was transferred by Charles II to the East India Company in 1668.

The Presidencies

The three important factories of Bombay, Madras and Calcutta soon came to be described as Presidencies. Each of them was presided over by a President or Governor and Council, both appointed by commission of the Company. The number of Councillors generally varied between nine and twelve. They were superior Civil Servants and ordinarily seniority was the only test of promotion. The

Governor and Council jointly possessed all administrative power. Members of Council were not prevented from holding subordinate functions. Very often therefore they distributed all the most lucrative offices among themselves.

The President

The Governor or President exercised control over the Company's servants residing in the factory. He had to maintain discipline among the younger members. 'Fines were imposed for breaches of rules or misconduct such as drunkenness, dicing, brawling or insubordination.' The life in a factory corresponded to life in a club with a common mess, common prayers and common residence. Great dignity and importance attached to the President's office. He was usually appointed from England and received a salary of £500 per annum.

Gradation of Lower Officials

Below him were four or five Councillors who were senior merchants in the service. Still lower in status were the descending grades of merchants, factors and writers. Salaries for each grade were fixed, and promotion from one to another usually came by seniority. Besides the regular establishment there was a host of brokers hanging about the Company's residence. They were important persons. Through them alone could be conducted all the vast trade which it was the ambition of the East India Company to develop. The factories soon acquired the character and status of 'quasi-colonies'.

Articles of Export and Import Trade

The business transacted by the Company's officials in India was purely commercial. The exports from England, the chief articles of which were bullion, lead, quicksilver, woollen clothes and hardware, are stated to have stood at about £60,915 in 1708 and at about £92,281 twenty

years later. The chief imports into England from India consisted of calicoes and other woollen manufactures, raw silk, diamonds, tea, porcelain, pepper, drugs, etc. Their average value during 1708–30 has been calculated at £758,042 or thereabouts.

CHAPTER II

Later Developments; 1757–1857

1. The Company's Wars in Bengal

During the reign of Aurangzeb 'which exhibited the premonitory signs that heralded the break-up of the Mogul Empire' the Company's factories on the west coast were harassed by Shivaji (1664 and 1670) who also threatened Madras in 1677. Shaista Khan, the Viceroy of Bengal, oppressed the factories in that province also. The Court of Directors, dominated by the aggressive Sir Joshua Child, determined about 1686 to abandon their traditional policy of peaceful commerce and to go in for active reprisals. They proclaimed their intention of establishing a polity of civil and military power—a 'large, well grounded, sure English dominion in India for all time to come'. Judged by the immediate results achieved these declarations appear ridiculously pedantic and in the nature of brave dreams.

Disruption of the Mogul Empire

The days of disintegration following Aurangzeb's death, the rise of numerous independent potentates with conflicting interests, the complete attenuation of the central sovereign authority in Delhi, constant rivalry with other ambitious European traders, like the French, were circumstances which helped the Company to get themselves involved in wars and diplomatic negotiations with native princes. The War of the Austrian Succession and the Seven Years' War in which England and France fought on opposite

European Influences

sides, were utilized by the English and French factors in India as reasons for fighting against each other. In 1744 began the Carnatic Wars which ended in 1763. After suffering reverses in the earlier stages, the British power ultimately emerged triumphant. The profound schemes of Dupleix, Clive's defence of Arcot, the contest with Lally, the battle of Wandiwash, are events famous in the struggle. The material gain to the English Company was the acquisition of territorial sovereignty over the Northern Circars in 1760. French influence was completely destroyed.

The Battle of Plassey

Events were moving fast also in Bengal. During the prosperous rule of distinguished Viceroys like Murshid Kuli Khan and Ali Vardi Khan comparatively peaceful relations were maintained between the European settlers and traders and representatives of the Muslim power. Cassimbazar, Dacca, Patna and Malda were the centres of British trade and British factories. With the accession of Siraj-ud-daula to the office of Nabob or Viceroy, quarrels and recriminations commenced. They culminated in the tragedy of the Black Hole [1] and its retribution, the battle of Plassey, in which the Nabob sustained a disastrous defeat involving loss of power and, later on, of life. Henceforth the Nabobs of Bengal became mere instruments in the hands of the Company who made and unmade them according to their convenience.

In 1757 Mir Jafar granted to the Company an area of 882 square miles known as the Twenty-Four Parganas. The Company were recognized as the zemindar of this area paying an annual revenue of Rs. 2,22,958 to the

[1] The occurrence of the tragedy of the Black Hole has been vehemently disputed by certain eminent Indian writers in recent years.

Nabob or Nazim. This has been described as the first territorial acquisition of the Company in Bengal. The Nabobs had been humbled and though sovereignty *de jure* rested with them and with the Emperor, the Company were the real masters of the situation. In 1760 Mir Kasim who displaced Mir Jafar conferred upon the Company the Districts of Burdwan, Midnapore and Chittagong, covering over 8,000 square miles. That was the price of his elevation to the Nabobship. The grant was confirmed by the Emperor in 1765.

The Ceded Districts

The areas acquired in 1757 and 1760 are known as the Ceded Districts as distinguished from the Diwani land. In the case of the Ceded Districts all revenue belonged to the Company in their capacity as zemindar after the agreed dues to the State were paid. With Diwani lands it was otherwise. Here the Emperor was the master of the revenues and the Company were merely entrusted with the duty of collection and administration. In their own zemindari area the Company established their own collecting and administrative agency. In discharging their duties as Diwan various experiments were tried, including what is known as the Double Government of Lord Clive set up in 1765.

The battle of Buxar fought in 1764 was even more significant than the battle of Plassey. The latter was a successful skirmish against a mere Viceroy of a province. Buxar on the other hand was a struggle against the titular head of the phantom of a mighty empire, assisted by his powerful subordinates like the Vazir of Oudh and the Nabob of Bengal. The Company's victory over Shah Alam raised them to a status of pre-eminence and a degree of power which they had never attained before. There was every

The Battle of Buxar

temptation to exploit to the fullest extent the advantages proffered by the unique occasion.

2. Diwani and Clive's Double Government

Three Separate Treaties

As the victors in the battle of Buxar the Company was in a position to dictate its own terms of peace to the enemies whom it had so completely crippled. Each of the powers, the Vazir of Oudh, the Nabob of Bengal and the Emperor Shah Alam, who had combined in an endeavour to destroy the Company's growing authority was dealt with separately in three different treaties that were made with them. Their new status and relation to the East India Company were clearly defined. It will be seen that the same degree of severity was not shown to every one of them.

Treaty with the Vazir of Oudh

The Company had no desire at this moment to deal drastically with the Vazir of Oudh even though he had been defeated by them. The only action that they took against him was to deprive him of the two districts of Korrah and Allahabad. Even these districts, snatched out of his possessions, were not retained by the Company in its hands for its own benefit. They were handed over to the Emperor Shah Alam who, theoretically speaking, could claim sovereign rights over them. Thus the Vazir's discomfiture in the battle of Buxar did not bring about his total ruin. He was merely put to the loss of two of his districts and an amount of money by way of indemnity.

Treaty with the Nabob of Bengal

The Nabob of Bengal stood in a different position. The battle of Buxar was not his 'first offence'. The Company had come into contact with him much earlier and that contact had culminated into a collision on the field of Plassey. For over six years after the Nabob's

signal defeat in that engagement he had been held almost in political bondage and subordination to the Company.

Thus even before the battle of Buxar a deputy or assistant to the Nabob, called Naib Subba or Naib Nazim, came to be appointed under the orders of the East India Company. Though nominally a subordinate, he was intended to exercise considerable restraint on the actions of the Nabob. In fact, if not in theory, he was the main active force which regulated the administration of the province. It was through his agency that the Company could easily influence and interfere with the affairs of the provincial government.

Political Extinction of the Nabob

The audacity of the Nabob in rising once more against the East India Company and in joining in the inglorious struggle at Buxar was punished by his political extinction. The Company did not, indeed, take the extreme step of abolishing the Nabobship altogether. The office was maintained but no real power or importance remained associated with it any longer. The Nabobs were henceforward reduced to the insignificant status of powerless political pensioners.

The Nizamat Power resigned by him

It was stipulated in January 1765 that the Nabob should 'make over the management of the subedari, with every advantage arising from it, to the Company, by whom an annual pension of 50 lakhs, subject to the management of their nominees' was to be allowed to him. The duties of the Nizamat, that is, of maintaining peace and order in the province, were resigned by the Nabob to the Company under this agreement. The responsibility for providing an adequate safeguard against internal lawlessness and encroachments on civic rights and

liberties now passed on from the Nabob to the East India Company.

The Company selected Mohammad Reza Khan for appointment to the office of Naib Subba. The powers of the Viceroy of Bengal were practically enjoyed by this man though the Nabob continued to exist in name. And as the Naib Subba had now become entirely the creature of the Company, that body could effectively control all administration from behind the curtain whenever it desired to do so.

Treaty with the Emperor

Negotiations with the Emperor Shah Alam were conducted with greater delicacy. He was not treated merely as a fallen and vanquished foe. Great consideration was shown to him on account of the exalted status and dignity which had been associated with his name. It was agreed that he should receive annually 26 lakhs of rupees out of the revenues of Bengal. He was further assigned the provinces of Korrah and Allahabad out of the dominions of the Vazir of Oudh. In return he was induced to issue under his royal insignia the firman of the Diwani which conferred upon the Company the right of collection and administration of the revenues of Bengal, Bihar and Orissa, and the right of administering civil justice in those provinces. This momentous event took place in 1765. It is necessary to understand clearly the implications of this new acquisition secured by the Company.

The Office of Diwan

In Muslim polity the Governor or Viceroy of a province was known as the Subedar or Nabob-i Nazim. He represented the Emperor in all matters civil or military. Sometimes Deputy Governors or Naib Nazims were appointed to function for the Nazim who might be otherwise engaged. The office of Diwan was created by Akbar in 1579. 'The Diwan

was the finance minister of the province, responsible for the collection of the revenue, the expenditure of Government money and the dispensation of civil justice.' He was not entirely subordinate to the Nazim and his appointment was made by the Emperor himself. However, in the province the Nazim had precedence and predominance as the head. Gradually Diwans began to grow in importance. The posts of the Nazim, who looked after general administration, and of the Diwan, who looked after finances, came to be combined in one person as in the case of Murshid Kuli Khan in 1713. The duality of the two offices disappeared and with it also the check of one upon the other. The succession to the office became hereditary in the absence of effective control from the Emperors of Delhi.

Diwani Conferred on the Company

In August 1765 Clive revived the theoretical right of the Emperor to nominate a Diwan and the office was conferred not upon an individual but upon an institution, namely the East India Company. A distinct and exalted status was thus acquired by that body in the official hierarchy of the Mogul Court. It legalized their wielding of political power. The Company henceforth would not appear as mere mercenary foreign intruders. They were deliberately invested with the task of revenue collection of three extensive provinces like Bengal, Bihar and Orissa, and with the administration of civil justice in them. One month after the Emperor's firman was issued, the Nazim or Nabob gave his recognition to the new Diwan.

It will be seen from this description that two separate contracts helped in establishing the *de facto* sovereignty of the East India Company in the province of Bengal after 1765.

(*a*) The earlier one was the treaty signed by the

Nabob of Bengal after his humiliating surrender in the battle of Buxar. By that agreement the Nabob was completely deprived of his Nizamat responsibilities and powers. They were taken over by the Company itself on its own shoulders.

How the Company's Sovereignty was established in Bengal

The Nizamat powers imposed the duty of maintaining an adequate police force for the security of life and property and enforcement of the law. They also included the obligation of maintaining efficient magisterial courts with wide jurisdiction in all kinds of criminal cases.

The way in which the Company began to exercise their newly acquired Nizamat powers was simple. They appointed their own nominee to hold the office of the Naib Nazim or Naib Subba and through him controlled all the lower officials. He was the chief instrument of their sovereign authority. The criminal administration of the province of Bengal was thus easily transferred into the Company's hands.

(*b*) The other contract was made with the Emperor in August 1765. By this agreement, the rights of Diwani over the province of Bengal were conferred upon the Company. Henceforward it became the duty of that body to make proper arrangements for the collection of land revenue in the province. It had also to maintain efficient civil courts with wide jurisdiction for the trial of all cases in which rights of property and inheritance were concerned. The civil administration of the province of Bengal was thus deliberately transferred into the Company's hands.

Once the Diwani was accepted, the problem was how the duties imposed by that office could be successfully discharged. On this matter again Lord Clive held strong

views. He was convinced that the Company were not yet in a position to accept the *de facto* sovereignty in its entirety. Their officers were not numerically large enough to fill all the higher administrative positions. The majority of them were traders and merchants not adequately educated and certainly not specialized either by learning or by experience in the art of governance. Nor were they distinguished by a reputation for strong moral fibre which would resist the temptation of self-aggrandizement. The people who were to be governed were so different in language, laws, culture and general traditions.

The Difficulty of administering Diwani

Lord Clive therefore thought it not only prudent but necessary that the old indigenous machinery of government which had existed for centuries and with which the people were thoroughly acquainted, should be retained as before though it was now to function under new masters. He adopted the plan of retaining all old offices and even all old officers and entrusting to them their usual duties. The Nabob's office was maintained though he had no power whatever. Following the old practice a Naib Diwan was appointed. The choice fell upon Mohammad Reza Khan who had been already selected to be the Naib Nazim imposed upon the Nabob. Under the Naib Diwan there was the usual descending gradation of native officers.

Clive's Double Government

What therefore happened was this. The rights of the collection of revenue and administration of civil justice were legally acquired by the Company. However, it was not thought possible or advisable for that body to exercise those powers directly. The old administrative structure, at the head of which stood the Naib Diwan, was maintained as

How it worked

it was. The English did not begin the collection of revenues; they rather began to see that they were collected. The old mode of collection was left undisturbed. All the complex principles and details of land revenue collection were to be observed as before. The change was at the top. There it was no longer the Nabob but the Company. To this body were now transferred all the revenues of the provinces. This dual character of the system proposed by Lord Clive led to its description by historians as the Double Government.

Its Disastrous Results

Clive's plan, though probably inevitable, was none the less disastrous, particularly because the Nizamat power of the Nabob, that is, the power of maintaining peace and order and administering criminal justice had already been undermined. The Nabob could no longer function as a corrective to the Diwan. The Company, who had usurped the functions of the Nabob, satisfied themselves by conveniently imagining that the appointment of a Naib Subba was equivalent to providing an adequate and proper administration. The Naib Subba, who was a creature of the East India Company, could not afford to displease his masters by taking judicial steps against English officers even when they were guilty of a breach of the law. The guardian of the public peace and justice, on account of his impotence, was parodied into a dismal engine of oppression.

Power Divorced from Responsibility

Mohammad Reza Khan protested to the Calcutta Committee that 'English gentlemen and their *gumashtas* trade in linen, mustard seed, tobacco, oil, rice, hemp, wheat, in short, all kinds of grain and other commodities. They force their purchase money on the ryots. They do not pay customs duty to the Sircar

but are guilty of all manner of seditious and injurious acts. They ruin everybody and reduce the villages to a state of desolation.' Verelst, Sykes, Becher and other contemporaries condemned in the severest terms the despotic actions of the Company's merchants who had lost all fear of control and responsibility. Nobody dared to exercise any authority against their lawlessness. The Indian agents employed by them arrogated to themselves a position of superiority, overawed the Nabob and his officers and converted tribunals of justice into instruments of cruelty. The Naib Diwan and his associates could appropriate treasures without being detected. So far as the protection of the subject was concerned all government was dissolved.

The disastrous consequences of Clive's Double Government made it necessary that some other method of government should be devised. In fact, during the next few years, a number of short-lived experiments were tried for reforming the administrative system. Some details about them have been given in the chapter on Land Revenue in Part V of this book. It may be only stated here that all authorities are agreed in considering this period to be the darkest in the annals of the East India Company's rule in India.

3. Parliamentary Inquiries and Enactments

The English Nabobs and their Wealth

Parliament's attention naturally came to be directed towards India after the momentous events which changed the Company's status in this unexpected and unprecedented manner. Stirred by the exhilarating circumstances, the proprietors began to claim a larger dividend in spite of the Company's bad finances. Officials in the service of the Company returned home laden with huge

fortunes. They further took the liberty of gratifying their sense of vanity by making a tangible display of their enviable but ill-acquired opulence. Reports of Parliamentary Committees appointed after 1769 made the calculation that from 1757 to 1766 the East India Company's servants received as presents from the people of Bengal a sum of not less than £2,169,665. Clive also got a separate jagir, the capitalized value of which would have worked out at about £600,000. In addition to this sum an amount of £3,770,833 had been paid as 'compensation for losses incurred'. Every servant was also engaged in private trade on his own account and, by an abuse of the privileges granted to the Company, extorted large amounts from the poor customers.

Their Parliamentary Critics

Considerable repugnance was excited by the spectacle of these English 'Nabobs'. Their wealth was generally believed to have been amassed by barbarous and disreputable methods and to be tainted with tyrannical corruption. Lovers of liberty like Burke made spirited attacks upon the immoral system which could produce such unscrupulous specimens of administrators. William Pitt described the 'rapacity, plunder and extortion' of the officers as being 'shocking to the feelings of humanity and disgraceful to the national character'. The question began to agitate the English public as to whether a trading corporation should be allowed to have territorial sovereignty at all.

Parliamentary Inquiry and Action

Parliament therefore appointed a Committee in 1766 to inquire into all these matters and make a report on the state of the Company's revenues and other affairs. In the following year, 1767, Parliament passed five Acts. These checked the proprietors from taking dividends larger than ten per cent and compelled the Company to pay £400,000

a year to the Treasury for two years, in return for a permission to retain their territorial sovereignty. The contract was renewed for a further term of five years in 1769, the Company undertaking to make the stipulated annual payments in return for the permission to retain their possessions.

Bad Finances of the Company

The assumption, however, on which such an arrangement was based, that the Company's finances were extremely prosperous, was thoroughly groundless. While the servants of the Company were amassing colossal fortunes, the Company themselves were advancing rapidly towards bankruptcy. Their 'debts' amounted to about £6,000,000. They maintained a large standing army. Their political expenses continued to be heavy. Hyder Ali's victory in the Carnatic in 1769 and the disastrous famine in the north in 1770 precipitated the crisis. The Directors approached Lord North begging for a loan from Government, which alone could save the Company.

In 1772 Parliament appointed a Committee with instructions to hold a secret inquiry into the affairs of the Company. The Company's request for pecuniary assistance came before Parliament in 1773 and Lord North's Government proposed extensive alterations in the system of the government of the Company's Indian possessions. Two Acts were passed by Parliament. By one, a loan of £1,400,000 at four per cent was granted to the Company on whose power of declaring dividends some restrictions were also imposed. They were obliged to submit their accounts every half year to the Treasury.

The second Act of this year is the famous Regulating Act, the provisions of which have been separately discussed elsewhere. This is the first Parliamentary enactment which tried to modify the Company's administration

in India. The era of Charters now gives place to the era of Parliamentary Acts. Henceforth a series of statutes were passed, usually each at an interval of twenty years, when the time came for the renewal of the Company's Charter. On each such occasion the authority of the Crown and Parliament was tightened and the Company themselves were ultimately transformed from a trading corporation into an administrative agency.

The Regulating Act

The Amending Act of 1781 settled some of the disputed questions, particularly that about the jurisdiction of the Supreme Court established under the Regulating Act of 1773. It was, however, Pitt's India Act of 1784 which placed the Company in direct and permanent subordination to a body representing the British Government. It created a Board of six Commissioners for the affairs of India, popularly known as the Board of Control. The Board was to consist of the Chancellor and one of the Secretaries of State and four Privy Councillors nominated by the Crown to hold office during its pleasure; but it was never intended that high officers like the Chancellor or the Secretary of State should take any active part. The Commissioners were unpaid and had no patronage. They were empowered to superintend, direct and control all Acts regarding the civil and military administration of the Company's possessions in India. They were given access to and control over all papers, minutes, dispatches, orders, etc. The Directors had to pay obedience to the Board, which might disapprove or modify the dispatches of the Directors. The Court of Proprietors lost its chief governing power. It could not revoke or modify the proceedings of the Court of Directors.

Pitt's India Act

The importance of Pitt's measure therefore lies in its

creation of a separate Department of State in England under the official style of 'The Commissioners for the Affairs of India', whose special function was to control the Court of Directors. One of the Commissioners was appointed President, having a casting vote in matters of difference. He later on came to be popularly known as the President of the Board of Control and practically exercised all the power vested in the Board and acquired a position of supremacy. A Committee of Secrecy of not more than three members was to be formed out of the Directors. Secret orders to India dispatched by the Board were to be transmitted by this body. The Act thus inaugurated what is described as Double Government in the Indian administration. The Company's officers continued to be in actual charge of the management, while the representatives of Parliament, sitting in a separate body, controlled all important matters of policy and detail from day to day.

Importance of the Measure

By the Act of 1793, the two junior members of the Board of Control were no longer required to be Privy Councillors. Provision was also made for payment of salaries to the members and staff of the Board out of Indian revenues.

Measures of some importance were passed between 1793 and 1813 but they need not be described here.

The Act of 1813 was preceded by a searching inquiry into Indian affairs. Wellesley's vigorous policy had affected the finances of the Company and a Parliamentary Committee sat for four years from 1808 onwards to make inquiries. In 1812 it issued the famous Fifth Report which is stated by Ilbert to be still a standard authority on the question of Indian land tenures and on the judicial and police arrangements of the time. Napoleon had closed the European

The Act of 1813

ports and British trade demanded admission to Asiatic ports. The Company fought hard to retain their privilege and put forth various arguments against the opening of the doors of the east to all and sundry. Their opposition was, however, ignored and the proposals submitted by the Government were embodied in thirteen resolutions, on which was based the later Act. Parliament's interference now covered not only the internal administration of Indian affairs but it reduced the Company's trade monopoly itself, confining it to the article of tea in their trade with India. Parliament's undisputed sovereignty and discretion to introduce any alterations in the Company's constitution or privileges were once more demonstrated.

The Act of 1833

Twenty years later, careful inquiries were again instituted when the time came for the renewal of the Company's Charter. The Company were now compelled to close their commercial business and they ceased to be a mercantile corporation. They were indeed given a further lease of life for twenty years, but they became henceforth strictly an administrative machine, conducted by the Directors and controlled by the Board of Control as representing Parliament.

The Act of 1853

The Act of 1853 renewed the Charter of the Company but not for a definite number of years. The Indian dominions were to remain in the hands of the Company in trust for the Crown until Parliament should otherwise direct. The number of Directors was also reduced from twenty-four to eighteen out of which six were to be appointed by the Crown.

The Act of 1858

Finally the Mutiny of 1857 gave the death-blow to the existence of the East India Company. The Act for the Better Government of India enacted that India should be governed by and in the name of the Queen, and vested in the Queen all

powers and territories that had belonged to the East India Company. A Secretary of State with Council was *appointed to transact the affairs of India in England.*

4. Parliamentary Control over Indian Affairs

The Constitution of the Company

It will be clear from this short survey of the growth of the East India Company's political organization, consequent upon the territorial expansion of their power in India, that the Company in the nature of the circumstances had two different sets of officials to transact their business, one in India and the other in England. England was the country of the Company's domicile. From it were derived all their power and privileges. The chief controlling and directing authority of the Company's affairs resided in England and functioned from there. The Company being originally a commercial corporation, their constitution was modelled on the lines of such a body.

Parliamentary Control

It is interesting to understand how the Parliament of England exercised its sovereign control over the affairs of the Company so as to modify their Indian policy in general during the period under survey, 1600 to 1857. It is evident that occasions for interference did not arise frequently in the earlier years when the Company were more or less a purely commercial corporation. The business of the Company during these years had not reached that intricate character which it acquired during the later years of the Company's development. The Company were the creation of the English monarch who had endowed them with a legal existence through the instrumentality of a Royal Charter.

Very definite conditions as to the privileges, the constitution and the powers of the Company were mentioned

in these documents, and any transgression of the limits and restrictions imposed upon the Company was liable to lead to the penalty of the dissolution of the whole body. In the technical sense of the term, the East India Company were at no time sovereign. Their powers and privileges, even when great and undefined, were all derivative. And whenever circumstances in India made it necessary to hold new powers, request for the grant of such powers had to be made to the Crown which would then be pleased to incorporate them in a new Charter that it might confer.

i. The Issuing of Charters

Thus successive monarchs made additions to the powers and privileges of the Company in response to changing environment and on an appeal from the Directors. Such measures appeared with great frequency and sometimes at short intervals during the century and a half following the grant of the original Charter of 1600. The increase in powers was often accompanied by detailed regulation about some section of the administration. The establishment of some sort of judicial system for the trial of civil and criminal cases, the establishment of Municipal Corporations in the important cities in the Company's dominions in India, and the constant alteration and determination of the franchise for entitling a person to be a proprietor having a vote, or to be a Director, or a Governor of the Company, were matters which were regulated by the conditions of the Charters.

New Powers granted by the Charters

It will be seen, therefore, that though the authority of the Crown was not directly exercised over the affairs of the Company, to which certain rights of sovereignty were delegated as a privilege to be enjoyed under certain restrictions, the fact that the delegation depended entirely upon the will of the reigning monarch, who might or

might not grant it, put a restraint upon the actions of the Company and the freedom of their existence. They did not therefore enjoy, legally speaking, any perfect immunity from the molestation of superior control.

Parliament's Sanction for Charters

The control of the Crown did not, however, necessarily mean the control of Parliament. The battle for civic rights and liberty which the citizens of England successfully fought with their monarchs during the period of the Stuarts had been giving only a faint indication of its impending arrival when Elizabeth granted the Charter which incorporated the East India Company in 1600. At the time of the Revolution of 1688 and even earlier, the right of the monarchs to grant a monopoly through the instrument of a Royal Charter was hotly disputed and was, in the end, emphatically denied. The resolution of Parliament in 1693, to which a reference has already been made, declaring the equal right of all subjects to trade in the east was a reply to the legal claim made on behalf of the beneficiaries of the Royal Charters. With this definite shifting of the centre of political gravity from the King to Parliament and the acknowledgment of Parliament's undisputed claim, the Charters which were the foundations and the props of institutions like the East India Company began to be issued with the consent and in the name of Parliament. For the monarchs were substituted the people. The source of authority was changed, though the form in which power was delegated and control was exercised remained the same.

With the growing complication in the Company's Indian affairs arising out of their entanglement in the disturbed politics of the land, and with the assumption by the Company of the *de facto*, if not *de jure*, territorial sovereignty of the vast area comprised by the provinces of Bengal, Bihar

and Orissa, the nature of Parliamentary control had to be adjusted to suit the requirements of the new situation. The question had to be decided whether a commercial corporation could be at all permitted to exercise territorial sovereignty; whether such influence would be beneficial to the people over whom it was exercised or by whom it was exercised. The constitutional maxim that no subject can acquire sovereign rights except for the Crown also made it obligatory that Parliament should investigate very critically the operations of an institution which had plunged themselves into a political and military tangle.

ii. Parliamentary Committees

From the acceptance of the Diwani in 1765 and onwards, members of Parliament grew more curious about Indian affairs and their leaders felt a greater responsibility in respect of Parliament's supervision over the Company's administration. The most usual method of exercising this supervision was the appointment of Parliamentary Committees to conduct a detailed investigation into Indian affairs from time to time. Investigations of this kind preceded the Regulating Act, the Act of 1813, the Act of 1833, and so on. Sometimes the inquiry was held secretly and every endeavour was made to thrash out all details and thoroughly understand the circumstances of the Company's management and rule. Voluminous documents were later on published recording the evidence collected by such Committees.

iii. Parliamentary Enactments

On receiving the Reports the ministry in charge in England embodied such of their recommendations as were acceptable to it, in definite proposals for an Act and put the Act before Parliament for discussion and sanction. Between 1773 and 1858 a number of such Acts modifying, altering and regulating the administration of the

Company's Indian dominions were passed by Parliament. The time for the consideration of the Indian question invariably arose when the legal period for the currency of the Charter, on which the very existence of the Company depended, was about to terminate. From 1773 to 1853 at an interval of every twenty years, Parliament had necessarily to legislate on Indian matters. At such times it took the opportunity of reviewing the whole situation and adjusting its legislation to the needs of the administration. Even during the intervals it took the initiative in introducing measures affecting India in order to correct any defects which required urgent attention. Thus the Amending Act of 1781 was passed only seven years after the Regulating Act, and Pitt's India Act only three years after the Act of 1781. The Acts went into the details of the administration and circumscribed the freedom of the Company in the management of their internal affairs, to the extent to which these had to be carried on in accordance with the prescribed Parliamentary rules.

iv. The Board of Control

But the most effective instrument by which the Home Government exercised its supreme control over the Company's affairs, over and above the appointment of Parliamentary Committees and the enacting of laws, was the creation of a regular Parliamentary agency which worked as a normal department of Government for the day-to-day supervision and guidance of the Company's affairs both in India and in England. Committees of investigation and Acts of Parliament came sporadically with intervals of years. Their control, therefore, could not have the continuity that is secured by a permanent department. Steps were taken to institute such a standing superintending authority by Pitt's India Act of 1784.

The Board of six Commissioners which came later on

to be known as the Board of Control was nothing less than the super-imposition upon the officials of the Company of a board of masters, who were empowered 'to superintend, direct and control all acts regarding the civil and military government of Indian territories'. They were given access to all papers, dispatches and documents. The Directors of the Company had 'to pay obedience to, and had to be bound by the orders of the Board, which might modify any communications or dispatches issued by them '.

Its Powers

It will be seen at once that the formation of an authority with such vast superior powers inevitably degraded the officers of the Company to a subordinate position. They lost their power, independence and initiative. A Committee of secrecy of three, formed from among the Directors was alone entrusted with the examination and dispatch of important political and military documents. The degradation of the Directorate body as a whole was therefore considerable. The six Commissioners were to be named by the Crown.

The President was almost always a member of the Cabinet and the appointment soon came to be recognized to be a party appointment. The President went out of office and came into office according to the fortunes of his political party. In course of time the number of members of the Board was reduced to one. He continued, however, to be known as the President. Provision had been made since 1793 for the payment of the salaries of the members out of Indian revenues.

The President of the Board

The President of the Board had enormous influence over the administration. He was the representative of Parliament and its constitutional adviser on questions connected with India. With the support of that august

body behind him, he could make and unmake important decisions regarding the Indian Government. The fear that he might deprive the Directors of their lucrative patronage by persuading Parliament to abolish it tended to make the Directors subservient to his will.

Private discussions between the Chairman of the Directors and the President of the Board soon became a normal preliminary to the disposal of the vast amount of correspondence that passed in ship-loads between England and India. The practice also gradually arose of private communications between the President of the Board on the one hand and important officials in India like the Governor-General and Governors on the other. By this unofficial means the President's opinion on particular questions and the general trend of his thought could be ascertained before any action was taken in India.

Double Government

The system of Government which was thus inaugurated by the Act of 1784 has been described by writers on Indian constitution as Double Government. As the President had Cabinet status and as his office had no fixed tenure but changed with his party, Parliament was able, if it so intended, to exercise a more complete and direct control over Indian administration, because of the complete responsibility of the British Cabinet to the British Parliament and the consequent responsibility of the President of the Board to the members of that body.

It is true, however, that as his salary was paid out of the Indian exchequer, there was no occasion on which Parliament would have the necessity to consider the Indian question. It was not so with the other members of the Cabinet and departments controlled by them. Discussion necessarily arose on matters in their

departments when, at the beginning of the year, demands were made for salaries, and other expenses.

In short, Charters, Enactments, Committees of Inquiry and the Board of Control were the instruments by which the Government of England exercised its control over and supervised the administration of the East India Company's territorial possessions in India.

PART II

INDIAN ADMINISTRATION IN ENGLAND OR THE 'HOME' GOVERNMENT

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CHAPTER III

The Secretary of State

The End of the Double Government

THE system of Double Government had been creating dissatisfaction even before the outbreak of the Indian Mutiny in 1857. With the decision of Parliament, after the suppression of the Mutiny, to take over direct responsibility for the governance of India there remained no *raison d'être* for the stupendous organization that had played such an important political part in Anglo-Indian history for nearly two centuries. India was henceforth to be ruled in the name of the Crown. The East India Company with their Directors and Proprietors and the Board of Control were abolished and the system of Double Government received a death-blow. The Act for the Better Government of India was passed in 1858. It introduced important changes in the administrative machinery of the country.

The Secretary of State

For the first time in Indian constitutional history a Secretary of State for India was appointed. Through him the Crown was to conduct the administration of India. Power was given to appoint a fifth principal Secretary of State for the purpose. To the Indian Secretary were transferred all the powers that were formerly exercised by the Court of Directors and the Board of Control. He was to be assisted by a Council of fifteen members of whom eight were to be appointed by the Crown and seven elected by the Directors of the East India Company. The Act of 1869 gave to the Secretary of State the power of filling

vacancies in the Council, so that in course of time the whole Council came to be appointed by him.

His Powers

To the Secretary of State in Council was entrusted the duty of managing the departments of the Government of India in England and also the general power of supervision and control over the government and revenues of India. It will be convenient to treat of the Secretary of State and his Council separately.

The Secretary of State's powers and functions and his constitutional status have to be understood from different points of view, as for instance his relations with Parliament, his relations with the India Council and his relations with the Government of India including Provincial Governments.

His Relations with Parliament

As has been stated above, the Secretary of State for India is one of the principal Secretaries of State of His Majesty and has therefore the exalted status of a minister of Cabinet rank. He must be a member of either of the two Houses of Parliament or must become one, if he is not so already, immediately after his nomination to the post. The fact that he is included in the Cabinet makes it indispensable that he must be one of the party leaders and a man of at least some influence in the political life of England. He need not be, and very rarely is, a man who has any personal experience of India or a first-hand knowledge of its problems. He is, however, expected to acquire sufficient information about the responsibility that is assigned to him, by studying papers and documentary records, and by drawing upon his general intellectual training and experience of the world.

The tenure of his office is not fixed. He comes into office with his party and goes out with it. His selection

is usually made by the leader of the party in power, the Prime Minister. Along with his other colleagues of the Cabinet he is absolutely responsible to Parliament for all actions taken in his department and for all schemes of policy promulgated. He has to reply to questions and supplementary questions concerning his department put to him by members of Parliament. The latter may disapprove of his actions by passing a vote of censure and in that case he has immediately to quit office. In short, his subordination to the will of the British legislature is complete. Annually, the East India Revenue Accounts are submitted to Parliament, with a Report on the Moral and Material Progress of India during the year and the opportunity is taken by the Secretary of State or his deputy to inform the House of important matters of administration. Adjournments, resolutions, motions of censure, questions and supplementary questions are instruments which can all be utilized by members of Parliament to exercise a check over the Secretary of State's doings.

He is Completely Subordinate to it

Before the Reforms, the Secretary of State's salary was not paid by Parliament and was not therefore voted from the British exchequer. Hence the opportunity which Parliament easily gets of controlling and criticizing departments of public service in England when it votes their expenditure, including the salaries of their heads, was not obtained by it with reference to the India Office and the Secretary of State for India. There is no question indeed about the competence of Parliament to interfere as drastically and as frequently as it will in the affairs of its dependency. But that sort of living and active control which necessarily follows as a corollary of the power of holding the purse strings could not be exercised by it over Indian administration because of

His Salary

the financial independence of the Secretary of State. This position has been altered after the Reforms.

His Responsibility to the Cabinet

The Secretary of State as a member of the Cabinet is responsible first to his colleagues. Any scheme that he wants to initiate or any line of policy that he wants to adopt concerning the wider aspect of the administration of India must first be placed before his colleagues to obtain their support. It is only after such support is assured, that he can announce it as a decision of His Majesty's Government. The responsibility then becomes the collective responsibility of the whole Cabinet and the proposals are described as being the proposals of the Government. In case of a serious difference of opinion between the Secretary of State and his colleagues in the Cabinet there is no alternative for him but to resign and give place to a more amenable individual. The Prime Minister and other members of the Cabinet disapproving of the actions of the Secretary of State may compel him to vacate his seat by insisting upon his resignation.

Such a contingency rarely occurs in actuality as the Cabinet Ministers are all members of the same school of political thought and very often co-workers in the political field, having the same angle of vision and a similar philosophy of life. They are members of a coherent party organization. Any keen divergence between them on political questions is therefore unlikely. However, such an occasion did arise a few years ago, when Mr. Montagu, the Secretary of State for India and a member of the Cabinet, incurred the intense displeasure of his colleagues and his chief, Mr. Lloyd George, on certain matters of policy and administration and was almost unceremoniously compelled to resign his office.

The Secretary of State is helped by two assistants who

are known as the Under-Secretaries. One of them is known as the Permanent and the other as the Parliamentary Under-Secretary. The former is an official of the British Civil Service and the head of the India Office establishment. He has only executive duties to perform and he supplies to the Secretary of State all information that is required by him for the enlightenment of Parliament or for his own personal guidance. He is debarred from being a member of Parliament and is a non-party official having permanence of tenure. The continuity and length of service of these officials are of inestimable advantage to the changing Secretaries of State who are entire strangers to the organization and working of the department that is put into their hands. This head of the India Office bureaucracy is supposed to supply to the intelligent and ignorant stranger all the expert knowledge in the routine operation of the department.

The Permanent Under-Secretary

The other official, as stated above, is known as the Parliamentary Under-Secretary. This is a political office and goes to the party in power like the Secretaryship itself. The Parliamentary Under-Secretary is a member of the ministry though not of the Cabinet and relinquishes office as soon as his party loses the confidence of the electors and therefore has to retire from the task of executive government. The Parliamentary Under-Secretary must be a member of Parliament and is usually selected from the House other than the one in which the Secretary of State himself occupies a seat, so that he can give replies to questions or to criticisms and supply information on behalf of his chief to the members of that House.

The Parliamentary Under-Secretary

The next important point to be understood is the Secretary of State's relation to the India Council. The

Secretary of State, ex-officio, is the President of this Council, members of which, whenever vacancies arise, are also nominated by him. He is bound to call a meeting of the Council at least once a month. The Secretary ordinarily abides by the decision of the majority of the members on questions put before them and is bound to do so in the matter of expenditure of the revenues of India and the regulations of the Services. He has the power of overriding his Council and placing on record, on all such occasions, the reason why he set aside their opinion. He may issue orders on urgent matters without calling together a meeting of the Council, but is required to place all such orders before its next meeting. He may send out orders and instructions in secret matters without giving information to the Council, in subjects like war and peace, defence, relations to Indian States, etc. The Council is, however, given what is described as the financial veto. The consent of the majority of its members is declared necessary for taking any step in any matter affecting the appropriation of the revenues of India.

The Secretary of State's Relation to the India Council

The India Council was thus intended to be an advisory body which was to give expert advice to the Secretary of State, normally, in all matters of the administration. It was expected to become a sort of constitutional restraint operative upon the Secretary of State. However, later enactments of Parliament, like the one of 1869, have palpably reduced the independence of the Council. Even in financial matters in which the assent of the Council is declared to be obligatory, the fact that the Secretary of State is responsible to Parliament and not to the Council, makes it impossible for that body to introduce any modifications in the Secretary's proposals if they have

been approved of by the Cabinet itself. The extra-ordinary power of overruling his Council and the special privileges enjoyed by him in matters of urgency and secrecy aggravate the Council's subordination to the Secretary of State. In short, the Council has become nothing more than a body for consultation and counsel.

Relations of the Secretary of State with the Governor-General—(*a*) In Law

Lastly we have to describe the relation of the Secretary of State with the Governor-General and Government of India. The Governor-General-in-Council is required by law to pay due obedience to all such orders as he might receive from the Secretary of State. Legally, therefore, the position is clear. In case of a conflict between the Secretary of State and the Governor-General as the head of the Indian Government, there is no ambiguity on the question as to who should yield. The Secretary of State's dictation is final, the only choice left to the Governor-General being the acceptance of his superior's mandate or resignation of his office. Theoretically, therefore, no deadlock can arise between the two authorities because they are not co-ordinate. The Secretary of State is distinctly the superior, the Governor-General is distinctly subordinate.

(*b*) His Relation with the Governor-General in actual practice

Yet this enumeration of the Secretary of State's legal powers and the description of his position according to the strict letter of the constitution would not give a correct or a clear idea of the practical working of the machinery. It must be remembered that the Governor-General is the man on the spot and the head of a vast administrative organization which is at close grips with the reality of the problem. The Secretary of State is separated by a long distance from the actual scene of the

exercise of his authority. The responsibility of maintaining peace and order and the duty of conducting the complex operations of Government in the vast Indian Empire fall upon the Governor-General. A constant interference on the part of the Secretary of State would be, in the graphic analogy of the Indian proverb, like driving sheep on the ground from the altitude of the camel's back. It would be physically impossible for the Secretary of State not to allow a certain degree of independence to the views and actions of the Viceroy.

Personal Equation

The intensity of his control would, of course, vary with the intensity of interest taken in Indian affairs by the members of Parliament. It would also depend upon what is described as the personal equation of the Secretary of State and the Governor-General. Some of the Secretaries have tended to treat the Viceroys as mere agents of the British Government. Some of the Viceroys have, on the other hand, almost made some of the Secretaries of State mere convenient mouthpieces of their policy in Parliament. It all depends upon the quality of the men, their capacity of action, their strength of will and the reputation and the confidence which they enjoy.

Causes of Centralization.—i. The Assumption of Authority by Parliament

In earlier days, before the abolition of the Company, the active interference of the Home authorities in Indian administrative details was necessarily smaller than in later years. Various factors contributed to bring about a change in the direction of centralization after the assumption by Parliament of direct responsibility for the government of India. The fact of such assumption itself was a considerable factor, inasmuch as the holders of the new office of Secretary would be necessarily men of greater influence and political conse-

quence in the Parliament. Nor did the old duality of the President of the Board and the Directors continue under the new dispensation. The powers of both of them were henceforth centred in one and the same person.

ii. The Creation of the India Council

The India Council was no longer a body consisting of persons ignorant about India and having little leisure to look after Indian affairs in detail as the old Directorate had been. For the most part, the Council now consisted of persons who had retired from service in India and who, because of their intimate personal knowledge, could exercise a more stringent control over the actions of the Indian authorities. Supervision over the management of Indian finance and a close scrutiny into expenditure and income now formed the important duty of the Secretary of State, and only enhanced his control.

iii. The Suez Canal and Electric Cable

Lastly, the geographical isolation resulting from the big distance which separates England and India, making speedy communication between them impossible in those days, no longer existed after the construction of the Suez Canal in 1869. In the following year the two countries were linked up by submarine cable and telegraphic transmission of messages between them became possible. Authorities in England henceforth issued detailed and positive orders. The independence of the Government of India as the *de facto* power on the spot vanished. Distance and time were now annihilated. The Secretary of State claimed the entire guiding and controlling authority even in details. Friction naturally arose between the two parts.

Secretaries like Lord Morley enunciated and acted upon the doctrine that the Government of India were

mere agents of the Government in England. Lord Morley claimed the liberty of corresponding directly with any official in India, a claim which was bitterly resented by Lord Minto as tending to demoralize the discipline of the administration. Viceroys like Lord Elgin and Lord Ripon complained of the excessive domination of the Secretary of State. Attempts were indeed made in the past to enunciate for the Government of India greater liberty of action and freedom from the Secretary of State's overpowering control. Lord Mayo's Government, for instance, protested at being required to pass bills like the Contract Act and the Evidence Act in the form in which the Secretary of State approved of them without reference to the Indian Legislature. In reply, the Home Government proceeded to assert its rights of control in the most emphatic manner. Mr. Disraeli's Government was also equally decided in affirming similar constitutional rights when Lord Northbrook's Government attempted to assert the independence of the Government of India in fiscal matters. One more occasion to define clearly the Secretary of State's and the British Parliament's superior position arose in 1894 when, at the time of the debate on the Cotton Duties, Sir H. Fowler laid down positively that the principle of united and indivisible responsibility which was recognized as binding upon the British Cabinet also applied to the Indian Executive Council. In case of a difference of opinion between themselves and the Secretary of State, the members of the Government of India who disagreed were asked either to act with the Government or to tender their resignations. Parliament's and the Secretary of State's undoubted supremacy over the

Assertion of the Secretary of State's Legal Superiority

Government of India has thus been clearly asserted several times.

Description of his Powers in the Montagu-Chelmsford Report

The Montagu-Chelmsford Report has described the powers of the Secretary of State as they existed at the time of making the report. All projects of legislation whether in the Indian or in the Provincial Legislatures had to go to the Secretary of State for approval in principle. Before him were laid all variations in taxation or all measures affecting revenues, measures affecting customs, currency operations and debt, and proposals which involved questions of policy or large expenditure. Construction of public works and railways, creation of new appointments above a certain grade, raising of the pay of others or the revision of establishments beyond a certain sum, large charges for ceremonial or grants of substantial political pensions, grants for religious and charitable purposes, mining leases and other similar concessions, additions to military expenditure, were all matters in which close restrictions were put upon the powers of the Government of India by the Secretary of State.

Decentralization Inevitable under Self-Government

With the gradual creation of an autonomous Indian Dominion with full and unrestricted rights of Self-Government the Secretary of State must inevitably cease to be invested with that administrative importance and control which he now possesses. In that event it is even possible to contemplate that his office may be merged in that of the Secretary of State for the Dominions whose constitutional status vis-a-vis the mother-country has been recently amplified by the Statute of Westminster.

CHAPTER IV

The India Council and the High Commissioner for India

It has been stated before, that the India Council was created by the Act of 1858 and was intended to take the place of the Court of Directors to a certain extent. It was felt rather hazardous to vest the supreme control over the administration of India in one single person even though he was a Cabinet Minister. The Indian dependency had no rights of self-government as the colonies had. It was governed, from top to bottom, by a bureaucracy which was responsible only to a superior authority in England and ultimately to the British Parliament. The absence of any effective popular check upon the powers of the bureaucracy in the land itself necessitated an active control over its actions from above, that is, from the Secretary of State and Parliament in England. Precaution was taken not to allow a 'small corporation of officials, however conscientious, to pass laws for India or manage revenues at their own discretion.' Unlike the Colonial Secretary, the Indian Secretary was entrusted with the disposal of a variety of administrative matters and with the exercise of a more stringent and extensive control over men and affairs in the Government of India. To entrust all this important task to one single man was not thought desirable. To entrust it not only to one single man, but to one who was thoroughly innocent of any intimate personal knowledge of the subject he was given to administer, was regarded

Why the Council was Created

to be still more undesirable. Hence it was considered necessary to create a new body to take the place of the old Directors and the body so created was known as the India Council.

The Act of 1858

The India Council was instituted for the first time by the Government of India Act of 1858. It consisted of fifteen members of whom eight were appointed by the Crown and seven elected by the Directors of the East India Company. The majority of them were persons who had served or resided in India for at least ten years and had not left India more than ten years before their appointment. At least nine members were required to possess these qualifications. The power of filling vacancies of Crown appointments was vested in the Crown and of filling other vacancies in the Council itself. The members were to hold office during good behaviour but were debarred from becoming members of Parliament and might be removed from office on an address of both the Houses of Parliament. Their salary was fixed at £1,200 per year. The Council was charged with the duty of conducting, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India. The Secretary of State was to be the President of the Council with power to overrule in cases of difference of opinion and with power to send dispatches to India, without reference to the Council, in matters which might be regarded as urgent and secret. Weekly meetings were held for the disposal of business. Some of the patronage of the Directors was vested in the Secretary of State in Council.

Changes were made in the constitution of the Council from time to time. Thus the Government of India Act

of 1869 vested in the Secretary of State the right of filling vacancies in the Council; it also reduced the term of its tenure from 'during good behaviour' to a definite period of ten years. At the same time special power was given to the Secretary of State to reappoint old members for a further period of five years for special reasons of public advantage. In 1889 the Secretary of State was allowed to abstain from filling vacancies in the Council till its number was reduced from fifteen to ten. The Act of 1907 fixed the number of members at not less than ten and not more than fourteen and reduced the term of office from ten to seven years. The salary of a member was reduced from £1,200 to £1,000 per annum. From this year, two Indians were included in the Council as members, one of them being the late Sir K. G. Gupta.

Further Changes up to 1909

The Act of 1919 introduced further important changes. Under that Act (i) The Council of India is to consist of not less than eight and not more than twelve members as the Secretary of State might from time to time determine. The right of filling a vacancy remains as before with the Secretary of State. Half the number of the members must be persons who have served or resided in India for at least ten years and have not last left its shores more than five years before the date of their appointment. (ii) The term of office is to be five instead of seven years as before. The shortening of this period is calculated to ensure a continuous flow of fresh experience from India and also to relieve the Indian members of the necessity of spending a long period of seven years away from their homes in a foreign country. The Secretary of State's power of reappointing a member for a further term of five years, the reasons for which he

The Changes introduced by the Act of 1919

has to place before Parliament, is retained; otherwise no member of the Council is capable of being nominated again to that body. Any member is of course at liberty to resign his membership and any member may be removed from office by His Majesty on an address from the Houses of Parliament. (iii) The annual salary is put down at £1,200 for each member, those domiciled in India at the time of their appointment receiving in addition an annual subsistence allowance of £600. The salaries and allowances may be paid either out of the revenues of India or out of moneys voted by Parliament. (iv) The Indian element in the Council is increased from two to three members. (v) All the agency work of the Secretary of State in Council is henceforth to be transferred to a High Commissioner for India. A good deal of the Council's work is therefore decreased. (vi) The concurrence of a majority of votes at a meeting of the Council is required for the following purposes: (*a*) grants or appropriations of any part of the revenues of India, which means practically expenditure of Indian revenue; (*b*) making of contracts for the purposes of the Government of India Act 1919; and (*c*) making of rules and regulations for the Services in order to fix the conditions of their employment and their position.

The Council of course cannot initiate any expenditure. It is further provided that 'the revenues of India shall be applied for the purposes of the Government of India alone.' After the Reforms, the Council's control over expenditure on transferred subjects is almost wholly withdrawn. Nor is the consent of the Council required for 'votable' expenditure on the reserved side. Even in the non-votable items of provincial finance, though its control in theory is unrestricted, in practice a wide

delegation of powers is made to authorities in India. A large portion of the expenditure of the Central Government is non-votable and the Council's sanction is therefore extensively required in the case of the Central finances.

Methods of Transacting Business

The Council works by the system of committees; its members are divided into various groups and to each such group, known as a Committee, is allotted the task of transacting business in one or more departments. For example there are different committees for finance, public works, revenue, political, military, and legal matters, stores, etc., corresponding to a similar division of departments in the Viceroy's Executive Council. Each department has a Secretary of its own selected by the Secretary of State. All correspondence and proposals connected with the different branches of the administration are referred to the respective committees by the Secretary of the Department before being finally laid before the Secretary of State in Council.

The Committee does all the preliminary work of investigation and consideration of the pros and cons of proposals referred to it. The decision of the Committee is sent on to the Permanent Under-Secretary of State who then refers the matter to the Secretary of State. The latter either allows the former to issue orders or issues them himself, or, if the matter is important, orders the question to be put before a full meeting of the Council for final disposal. It is the usual practice to hold full meetings of the Council every month.

The nomination of members to the Council is exclusively a privilege of the Secretary of State. The method of its working has crystallized into a routine, the most prominent part of which is the formation of committees

and distribution of departments of Government among them so as to suit the convenience of administration. It was this dilatory routine which Mr. Montagu condemned as cumbrous and as designed to prevent efficiency in his famous speech in Parliament in 1917.

Criticism of the Council

Many Indian politicians, including the late Mr. Gokhale, have been of opinion that the India Council serves no useful purpose. It is feared that, more often than not, the Council serves as a reactionary drag on the progressive impulse of a Secretary of State, consisting as it does of retired members of the Indian Civil Service whose notions have been incurably hardened into a crust under the burning skies of India. Prominent Indian politicians have therefore demanded the total abolition of the Council. The Crewe Committee appointed in 1919 to consider plans for the reorganization of the India Office were also of the same opinion. The 'Montford' (Montagu-Chelmsford) Report, however, was not in favour of total abolition. The writers of the Report and the Joint Parliamentary Committee believed that, at least for some time to come, the advice of men of Indian experience would be indispensable to the Secretary of State and it was therefore wise to retain a body which had all the advantage of tradition and authority. Accordingly their recommendation was that the Council be continued, but they proposed important modifications in its constitution and adjustments in the method of its working.

It will be easily realized that the Council, as a political factor, stands comparatively in the background under the dominant influence and importance of the Secretary of State. This official, with his elevated status of a Cabinet Minister and large powers, completely overshadows the existence of the Council. Nor are its powers very real.

Indian public opinion, particularly after the advent of the Reforms, looks upon the continuance of this body not only as a superfluity involving economic waste and administrative dilatoriness but as a positive incongruity which cannot fit in with the principle of popular responsibility. It cannot be described either as a legislative, or as an executive or as a judicial body. Neither can it be considered as an effective restraint upon the actions of the Secretary of State. It has the distinction of being an advisory council whose advice may or may not be sought and if sought, may or may not be accepted by the high official for whom it is intended to serve as a guide. It exists at the expense of India. And with a larger grant of autonomy to the Government of India its total abolition would alone appear to be the greatest measure of its reform.

The India Office

Confusion is often made between the India Office and the India Council. The India Office comprises all the establishment of the Secretary of State. Sir Malcolm Seton states that the present establishment of the India Office is 320. The India Office is the Secretariat of the India Council and the Secretary of State. It keeps the administrative machinery moving. The India Council on the other hand is a small group of advisers whose numbers are prescribed and whose functions are defined by law. Its members do not form a bureaucracy.

The Indian High Commissioner

An important step involving a transfer of power from the Secretary of State in Council to the Government of India was taken by the Act of 1919 when it made provision for the appointment of a High Commissioner for India in the United Kingdom, and for his pay, pension, powers and duties. To this officer was entrusted all the

agency and commercial business which had been transacted till then by the Secretary of State in Council for the Government of India. The High Commissioner was to be entirely a servant and an agent of the Government of India and controllable by them. His salary and that of his establishment were paid out of Indian revenues. Similar officers are appointed by the colonies to transact their commercial business in England. They are made amenable to the orders which they receive from their masters at home. India was denied the privilege of having her own High Commissioner till the inauguration of the Reforms.

Why he was created

The combination of the office of the Secretary of State, who is constitutionally the superior of the Government of India, and that of the agent of the Government of India in their commercial transactions, like the purchase of stores, was clearly not a desirable combination. It was calculated to give rise to suspicions from which the Secretary of State ought to be kept perfectly immune. Business of millions of pounds sterling is transacted every year in England on behalf of the Government of India and naturally the most scientific and economic method that ought to be followed by the Indian nation, as by any individual, is the time-honoured commercial usage of buying in the cheapest market and selling in the dearest. The Secretary of State, not being subordinate to the Government of India, was not answerable to them for his actions, and criticisms have been persistently made that preference was given to British goods at higher prices when the same quality could be purchased outside Britain at cheaper rates. Such a preference was disastrous to the economic interests of India.

The separation of political from agency functions

performed by the Secretary of State, the appointment of a High Commissioner, and the transference to the High Commissioner, an officer paid by India and amenable to the orders of the Government of India, was expected to remove the cause of such criticisms and the ground for unhealthy suspicions. To what extent the expectations have been realized and the economic interests of India really protected even after the creation of a high-salaried High Commissioner, is a matter which stands concealed in the darkness of official pigeon-holes and confidential portfolios. Occasional criticisms in the press and the Legislature and the mysterious resignation of the first Indian to be appointed to the office of High Commissioner are, however, factors which are not calculated to inspire any very optimistic enthusiasm in the Indian mind about the practical success of the novel step. Theoretically, at least, it is true that in this respect India has now been brought into line with the status and privileges of other self-governing dominions.

CHAPTER V

Relaxation of Parliamentary Control

1. Establishment of Conventions

The Secretary of State's Responsibility to Parliament is undiminished

The position of the Secretary of State and the nature and degree of Parliamentary control exercised over the Indian administration after the Reforms is the next important point for consideration. It might be stated at once that no statutory modification of the relations of the Secretary of State with the Government of India has been effected under the Act of 1919, in the direction of allowing larger autonomy to the Central and Provincial Governments. It has been emphatically declared that the Secretary of State's responsibility to Parliament for the governance of India continues unabated as before. The preamble of the Act of 1919 clearly affirms that the responsibility for the welfare and advancement of the Indian people lies on Parliament and that that body alone can determine the time and manner of each constitutional advance that India may be allowed to make.

There cannot be therefore any division of responsibility for the development of self-governing institutions in India. The Secretary of State who is the agent of Parliament practically retains all the powers of supervision and control after the Reforms that he enjoyed before the Reforms. The degree of the delegation of his power that he might make to the Government of India and the Provincial Government is determined by the factor of his

complete responsibility to Parliament. Section 131 of the Government of India Act clearly provides that nothing in the Act shall derogate from any powers of the Secretary of State. Therefore his authority, constitutionally speaking, stands unimpaired and no action taken by him can divest him of the ultimate control that is vested in him.

The Need for Relaxation of Parliamentary Control

On the other hand the maintenance of such a control in all its rigidity is thoroughly incompatible with the declared intentions of Parliament about the development of responsible institutions in India. The two cannot be properly assimilated. Either there can be Parliamentary control, or control exercised by the Indian Legislature. The latter is connoted in the conception of responsibility. Parliament must therefore be prepared to set certain limits to its own powers of control if self-government is not to be a mere shadow. The Montford Report recommended that in respect of all matters in which responsibility is entrusted to representative bodies in India, Parliament must be prepared to forgo the exercise of its own power and that this process must continue, *pari passu*, with the development of responsible government in the provinces and eventually in the central administration. The deliberate introduction of dyarchy with its transferred subjects and popular ministers removable by the vote of the Legislature could not accord with the Secretary of State's undiminished exercise of all his former veto. The complete devolution of authority by the Secretary of State to the Government of India and by the latter to the Provincial Governments is the essential condition precedent to the establishment of self-governing institutions.

Hence though no alteration was made in the letter of the law—such an alteration, implying a restraint upon

the sovereign authority of Parliament being regarded as inconsistent with English constitutional practice—an attempt was made to define certain customs and conventions which could be followed by the Secretary of State with great scrupulousness and which would bring about in practice the necessary relaxation of the Secretary of State's control.

New Convention defined

Two cases have here to be distinguished. The transferred subjects are avowedly ministerial subjects and Parliament has delegated powers in connexion with them to Provincial Legislatures which were purposely democratized and made representative in order to enable them to function properly in their new role. The retention of active Parliamentary control over these matters was therefore an obvious incongruity and impossibility. A statutory rule made under the Act therefore prescribes that in respect of such matters the power of the Secretary of State to superintend and to control will be limited to achieve only the object of safeguarding the administration of central subjects, and of deciding matters in dispute between two provinces.

Transferred Subjects

The position of the central and reserved subjects is different. In these matters, legally speaking, the ultimate responsibility lies on Parliament and no statutory relaxation of the Secretary of State's control is therefore thought possible. All the same, if the spirit of the Reforms is to concede as much freedom as possible to the people of India and if the first instalment of 1919 is admittedly a prelude to further successions of such instalments finally leading to complete Dominion Self-Government, the maintenance of the Secretary of State's control in its

Central and Reserved Subjects

undiminished entirety even in the central and reserved departments is out of accord.

The Montford Report suggested that in these subjects also there should be such delegation of financial and administrative authority as would leave the Government of India free and enable them to leave the Provincial Government free, to work with the expedition that is desirable. Parliament, it was thought, must be prepared to accept that discretion is given in respect of certain matters to the Government of India, and for that reason to be satisfied that in these matters the Secretary of State is not prepared to interfere with what has been settled in India. The Joint Parliamentary Committee recommended the establishment of a constitutional convention that, in matters of purely Indian interest where the Government and the Legislatures of India are in agreement, the Secretary of State should be called upon to intervene only in exceptional circumstances.

2. The Fiscal Autonomy Convention

The Committee instanced one special case for non-interference. The belief, they said, was widespread among Indians that India's fiscal policy was dictated from Whitehall and in the interest of the trade of Great Britain. The entertainment of such a widespread belief was held to be clearly undesirable in the mutual interests of the two countries. The Committee therefore suggested that a satisfactory solution of the problem could be guaranteed by the grant of liberty to the Government of India to devise the tariff policy which seemed to them best fitted to India's need, taking India to be an integral portion of the British Empire.

The Veto of the Crown or the powers of Parliament were not, indeed, to be limited by law. Such a limitation is

believed to be repugnant to the spirit of the British Constitution. Yet it was felt that a certain degree of fiscal and political autonomy could be conceded to India by the adoption of a suitable convention which would have, in practice, the same force and effect as a statute itself.

It was therefore particularly recommended that in fiscal matters concerning India whenever the Indian Government and the Indian Legislature are in agreement, the Secretary of State should not ordinarily interfere even if he differs from the view that has been accepted in India. His intervention should be limited to safeguarding the international obligations of the Empire or any fiscal arrangement within the Empire to which His Majesty's Government is a party. This recommendation of the Committee was generally followed.

Mr. Montagu's Action

The majority of the Muddiman Committee reported that they noticed with pleasure that an important precedent in conformity with this recommendation had been already established in regard to fiscal matters. Within two years of the introduction of the Reforms Mr. Montagu, from the official chair of the Secretary of State, declared to a deputation of Lancashire merchants his inability to interfere in the matter of the Indian cotton excise and import duties which had been modified as a result of certain financial measures taken by the Government of India with the full concurrence of their Legislatures, in order to balance their budget. The majority report confirmed the attitude taken by the Joint Select Committee and approved of the adoption of the policy of precedents as a measure of sufficient potency. More recently, Mr. Wedgwood Benn, Secretary of State for India in the Labour Government, has also emphatically endorsed the fiscal convention and declared that the

British Government is committed to the policy of non-interference whenever, in fiscal matters, the legislature and the executive in this country are in complete accord.

3. Criticism of the Method of Conventions

Its Unsatisfactory Basis

The minority of the Muddiman Committee ventured to doubt whether such conventions would be of any permanent value or could effectively put a stop to the powers of control, particularly when it was realized that it was extremely difficult to define the expression 'purely Indian interests'. Bearing in mind the constitution then, the minority did not feel justified in building much hope on such conventions. The Indian public would be disposed to endorse emphatically this scepticism of the minority and would like much better to get the autonomy of their Governments based on foundations more solid than those which were likely to degenerate into mere personal idiosyncrasies of the Secretaries or caprices of party forces in a democracy. Even constitutional superstitions need not be inviolable.

Legislatures not wholly Elected

Agreement between the Government and the Legislature is the most vital part in the working of such conventions. It seems obvious that special emphasis is laid on the view of the Legislature because it is taken to indicate the trend of Indian public opinion in general. But even after the Reforms, neither the Council of State nor the Legislative Assembly, nor any of the provincial legislatures is composed exclusively of elected representatives. They contain a fairly large proportion of officials whose votes are directly commanded by Government and of nominated non-officials whose votes can be appreciably influenced by the official whips.

If fiscal and political autonomy, even as established by

conventions, is to be real, it appears essential that whenever highly controversial issues come up before the legislature for its decision, official and nominated non-official members ought to be directed to abstain from voting. That was the contention put forward by prominent members of the Legislative Assembly a couple of years ago when the question of giving preferential treatment to British textiles came up before it for discussion and final action. However, Government has not seen its way to accept this interpretation of the new position.

Nominated Members should not vote

There is a further reason why, from the Indian point of view, the method of convention is bound to prove illusory and inane in actual practice. The Government of India is a foreign irresponsible bureaucracy. The legislature on the other hand contains a large elected element which is in the majority and whose ambition it is to end bureaucratic rule. There is thus a fundamental incompatibility between the two. Mutual agreement and harmony is not likely to be a normal characteristic of their relation. And as that essential condition precedent is likely to be fulfilled very rarely in Indian polity, occasions for the convention to operate and for the autonomy it implies to be a live experience will be inevitably too few.

Government and Legislature will rarely agree

CHAPTER VI

Interest of Parliament in Indian Affairs

1. Before the Reforms

The Secretary of State is a servant and agent of Parliament. He receives his mandates from that body and is answerable to it for all acts done by him in his official capacity. It is now necessary to describe the manner in which the supreme sovereign body exercises control over its servant and through him over the Government of India and their people.

The Days of Burke, Fox, Sheridan and other Liberals

Reference has already been made to the appointment of Parliamentary Committees of Secrecy and the inevitable occasions of the renewals of the Company's Charter which afforded opportunities for Parliament to put itself in touch with Indian affairs. Under the dual administration of the Company and the Crown such occasions were more frequent. Members of Parliament and leaders of public opinion like Burke and Fox took an extremely keen interest in Indian affairs, particularly when they witnessed the pageants of the 'Indian Nabobs' returning from India, swollen with wealth, and utilizing their ill-gotten means to advance their political ambitions. A profound sense of injured justice and injured national prestige pervaded the minds of some of the liberal statesmen at the spectacle of the unholy riches that strutted before their eyes. To some, the phenomenon was not merely an offence to national vanity in the shape of loss of prestige, nor only an appeal to the sacred instinct of

righteous indignation at the sacrifice of justice and morality to the monsters of tyranny and corruption. It was the rousing of the instinct of national self-preservation. They scented a serious danger to the moral existence of the State when its citizens began to be polluted by degradation and corruption.

An unthinking superciliousness and an autocratic defiance on the part of the English ministers had just been severely chastised by the successful secession of an awakened and oppressed people, who now form the United States of America. And therefore an extraordinarily keen and active interest was displayed by noble-minded and far-sighted statesmen in the operations of a commercial body which was perceptibly passing into the arena of politics. The prolonged trial of Warren Hastings and the animated and sustained interest that it aroused in the members of Parliament and in the country generally was probably a climax of the degree of Parliamentary attention paid to the Indian question during the last half of the eighteenth century.

After Pitt's India Act

With the institution of the Board of Control and the creation thereby of an active agency with full powers of superintendence and control over the actions of the Company's officials, the necessity for members of Parliament individually to interest themselves in the Indian question can be said to have diminished. The President of the Board was a Cabinet Minister and as such had the confidence of Parliament, which naturally was inclined to regard India's destiny as being safe in his hands. As his salary and that of his establishment were charged to Indian revenues, there was no routine occasion every year to discuss the Indian question as arising out of the demand for grants. Nor were members of Parliament, nor the people of

England generally, very enthusiastic about the destinies of an unknown far-off foreign land, completely different in its outlook upon life and in its material condition from their own.

From the time of the end of Hastings' trial, British interest in Indian matters began to wane. However, during the period of the continuance of Double Government, occasions arose at least once in twenty years when members of Parliament were confronted with the demand for granting a further lease of life to the Company, whose charter of existence was about to come to a close. Some interest had perforce to be taken and new conditions were generally imposed on every such occasion so as to restrict the powers and privileges of the Company. These Charter Acts and the investigations of the Committees of Secrecy which preceded them, were therefore potent instruments in awakening the indifferent Member of Parliament to the existence of the East India Company and the importance of controlling their affairs.

After 1858

The abolition of the Company altogether in 1858 and the assumption by Her Majesty of direct responsibility for the governance of India did not help to improve the situation. In fact, the new condition almost gave rise to the paradox that since the proclamation of direct Parliamentary control over Indian affairs Parliament ceased to take any active interest in them. The appointment of the Secretary of State and the India Council did not excite any larger amount of attention. The annual debates on the revenues of India and the presentation by the Secretary of a Report on the Moral and Material Progress of India caused absolutely no sensation and members tried to save themselves from the calamity of listening to the document and discussions by taking refuge in more attractive adjoining

chambers. These debates were purely academic discussions conducted after the events had happened.

The indifference of Parliament to Indian questions is notorious; the ignorance of an ordinary member about the conditions in India or about the history and geography of India is as appalling as it is ludicrous. The Montagu-Chelmsford Report had to admit that the discussion on Indian matters in Parliament is often out of date and ill-informed, that it tends to be confined to a little knot of members and to stereotyped topics and that it is rarely followed by a decision. To end such an undesirable state of things and to revive the languishing interest of Parliament in Indian matters, the Report made certain recommendations which were later on incorporated in the Act.

2. After the Reforms

The Secretary of State's Salary

Henceforth it was laid down that the salary of the Secretary of State and his Under-Secretary, and expenses of his department should be paid out of moneys provided by Parliament and not, as before, out of the revenues of India. Such a change was long overdue and was both just and necessary. It was invidious to place the salary of the Indian Secretary on the Indian exchequer. He was meant to be the agent of the Crown and Parliament, wholly their servant, and responsible to them. It was therefore unjust to saddle the Indian exchequer with the expenses of his establishment or of himself. The Secretary for the Colonies, an officer analogous to the Indian Secretary, was not paid out of the revenues of the colonies but out of moneys provided by Parliament. No wonder therefore that Indian politicians were always opposed to such an unfair arrangement.

In addition to removing an old grievance, the new change was calculated to help in directing the attention of Parliament to Indian matters more frequently—at least once a year, when demands were made upon its purse to maintain the Secretary of State and his establishment. Motions for reductions could then be a normal form of criticism and debate as it was in other matters of the budget. This occasion might also be taken to get from the Secretary of State explanation on all points on which the members were curious to know a good deal.

Standing Committee of both Houses

Another method by which the Montford Report and the Joint Select Committee proposed to keep Parliament in close touch with Indian affairs, particularly after the momentous changes introduced in the political structure of India as a result of the Reforms, was the appointment of a Standing Committee of both the Houses of Parliament to discuss and study Indian questions. It was to have no statutory functions but was to have a purely 'consultative and advisory status'. 'It would exercise its powers by informing itself from time to time upon Indian questions and reporting to the House before the annual debate on Indian estimate.' The Secretary of State would appear before it to answer questions and supply information about the exercise of his veto and control. Thus by means of interrogations and requisitions for papers, the members of the Committee would keep themselves informed of Indian questions. Indian bills also might be referred to such a Committee.

The result of this plan would be the growth in Parliament of a body of men who would take a continuous and well-informed interest in Indian questions and the publication of whose reports would enable the House of Commons to focus its attention on matters of importance.

The Joint Select Committee also recommended that all the rules and regulations framed under the Reforms Act which would have to go for sanction to the Secretary of State should be given over to the consideration of the Standing Committee.

It might be added that the expectations entertained from the establishment of this body do not appear to have been much realized in practice. Evidently, the device of a Joint Parliamentary Committee, consisting of a few individuals who might be taking some interest in Indian matters, cannot be more than a feeble endeavour to rouse the whole of Parliament to a sense of its duty towards India.

Royal Commissions

The last instrument to compel Parliament's attention to Indian affairs was the provision of the Government of India Act that after the expiry of a period of ten years after its passing, a Royal Commission should be appointed to investigate the working of the system of Government, the growth of education and the development of representative institutions and to report upon the desirability and extent of the establishment of responsible Government.[1] Such periodical Commissions, it was believed, would automatically divert the attention of Parliament to India's constitutional progress and would engender among its members a more intense spirit of inquiry into the Indian problem.

Periodical occasions like these were provided till the abolition of the Company by the necessity of the revival of the Charter at the end of a stipulated period which was usually one of twenty years. Decennial investigations and

[1]The Simon Commission were appointed in 1927 in accordance with this clause. A summary of their recommendations will be found elsewhere

revisions like those recommended by the Montford Report and accepted in the Act can certainly be expected to focus, for the time being, Parliament's deliberation and interest upon India. That such an interest will be continuous and sustained and sufficiently voluminous is an opinion which is not warranted by the nature of the remedy and can be justified only by an extremely sanguine expectation.

PART III

THE CENTRAL GOVERNMENT

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CHAPTER VII

The Central Executive

1. The Governor-General

No Governor-General before 1773

As the East India Company were originally started as a commercial corporation with the object of carrying on trade in eastern waters, it was not found necessary to provide for the appointment of any big territorial official like the Governor-General. From the year of their foundation till about the middle of the eighteenth century the commercial character of the Company was strictly maintained. Their territorial possessions during the period were limited to small areas on the western and eastern coasts of India on which their factories and warehouses were situated and which they had purchased or leased out from Indian proprietors. These possessions were necessary accidents of their trade. They had no political character whatever. Bombay on the west coast and Calcutta and Madras on the east coast were their chief trading centres. The responsible commercial officials of the Company had their headquarters in these cities. As the business of the Company prospered, their administration had to be systematized.

The Charter Act of 1661 allowed the appointment of a Governor or President in each of the trading centres. He was assisted by a Council consisting of from twelve to sixteen subordinate officials who were chosen to constitute the Council according to seniority. The authority of the Governors or Presidents-in-Council spread over their

respective zones, that is to say, over the Company's western, eastern and north-eastern possessions in India. The three Presidencies of Bombay, Madras and Bengal were independent of each other and had an equal status. All of them, however, were subordinate to the Company's Directorate in London and had to carry out orders and mandates dispatched by them. The Company's business was simple and of a purely commercial character. There was therefore no special necessity to appoint a superior official on the spot in India to co-ordinate and control the affairs of the three Presidencies.

The Changing Environment

Circumstances, however, were gradually changing. A great transfer scene in the drama of Indian history was being played out. The magnificent Mogul Empire, the structure of which was just being completed by the greatest of Mogul imperial architects when the East India Company were granted their charter of inception, had passed its allotted span of life. Its chapter of existence was being closed. Its dissolution, which practically began after the death of Aurangzeb, the last great Mogul Emperor, created a confusion. A great scramble for power convulsed the whole of the land. With the disruption of a strong central power like the Mogul Emperors of Delhi, anarchical elements began to get the upper hand in a large part of the country. To a certain extent, security of life and property was diminished.

The factories and trade of the East India Company required to be protected from the depredations of aggressors. The impotence of the Delhi authorities and the consequent necessity felt by the Company to make endeavours for self-preservation were circumstances congenial to the more militant element in the Company's officers. An ostensible justification for self-defence could

now be pleaded for their forward attitude. The Company's factories were fortified into fortresses. They began to enlist a regular and trained army. They thus obtained, by force of circumstances, an opportunity to undertake functions and responsibilities which essentially belong to a political power.

The Company acquires Political Power

Once in the whirl of the administrative breakdown which marks Indian history after the death of Aurangzeb, the Company's policy had to be susceptible and elastic enough to meet all circumstances. An aggressive attitude had to be assumed at times as the best method of self-defence. Gradually it was revealed by experience that the Company might well throw themselves as competitors into the field of the general scramble, and with good chances of success. The dash of Clive broke away the film of whatever had remained of the former hesitation and caution. With the battle of Plassey and Clive's acquisition of the Diwani of Bengal, Bihar and Orissa and with the victory of Sir Eyre Coote at Wandiwash, the Company ceased to be a purely commercial body. They entered the arena of politics. They fought wars, undertook to weave diplomatic webs, acquired large territories and assumed full responsibility for their governance. They had practically initiated the experiment of empire-building in India and the management of their affairs had to respond to all the implications of this novel and curious complex of ambition and inevitability.

Unity of Control needed

The gradual but very real transition from a commercial into a political body is indicated by the necessity felt by Parliament to interfere in their internal affairs. The Company's administration had to be so modified as to provide properly for the fulfilment of the new

responsibilities of sovereignty taken upon themselves by the Company. A unity of control and a uniformity of policy in all their territorial domains were considered to be absolutely essential. The old independence of the three Presidencies, with their narrow insular outlook and their common subordination to a distant Directorate, had to give place to a greater degree of solidarity and co-ordination, and subjection to the control of one man or body of men on the spot in India, in order to ensure strength and safety for the parts as well as the whole.

The Regulating Act

The Regulating Act of 1773 gave the impulse towards unification by making the Governor of Bengal the Governor-General of Bengal, who with his Council was given power to superintend and control the government and management of the three Presidencies of Madras, Bombay and Bengal.

Henceforth it was not lawful for the Governments of the minor Presidencies 'to make any orders for commencing hostilities or declaring or making war or for negotiating or concluding any treaty, without the previous consent of the Governor-General and Council' except in circumstances of imminent necessity. Intelligence of all transactions in the provinces relating to the government, revenues or interests of the Company was to be dutifully and constantly transmitted to the Governor-General.

The establishment of such a central authority was an innovation. The provinces or Presidencies had not been accustomed to the direct control of a superior in the past and it took some time before the unfamiliar could be properly assimilated. In spite of the provision of the Regulating Act, the Provincial Governments continued to take important decisive steps which involved the

Company in the currents and cross-currents of contemporary Indian polity without any reference to or sanction from the Governor-General. This defiant insubordination of theirs, which was not relieved by any inherent successful wisdom either, plunged Warren Hastings into embarrassments and complications from which he could not easily get out. It is said by his supporters that he had to expiate many sins which were not of his committal but of the unruly and unwise Provincial Presidents.

Pitt's India Act

This unsatisfactory state of things, which gave an air of unreality to a definite and deliberate provision of an Act of Parliament, could not continue long. A special clause was inserted in Pitt's India Act to emphasize and enlarge the Governor-General's supreme power and control over the minor Presidencies in all matters of war and peace and administration. After this Act and during the administration of strong-willed rulers like Cornwallis and Wellesley this defective state of things completely disappeared. Henceforth the Governor-General-in-Council of Bengal came to be acknowledged as the head of all the Company's dominions and administration in India.

The Act of 1833

With the practical completion of the conquest of the Indian continent the designation of the Governor-General of Bengal became a misnomer. It was therefore changed to Governor-General of India by the Charter Act of 1833. The Governor-General-in-Council was vested with the 'superintendence, direction, and the control of the whole civil and military Government' in India. He continued to administer directly the Presidency of Bengal.

The Act of 1854 relieved the Governor-General of this

last burden which was transferred to the newly created office of the Lieutenant-Governor of Bengal. The same Act also empowered the Governor-General-in-Council, with the sanction of the Home authorities to 'take by proclamation under his immediate authority and management any part of the territories for the time being in possession of or under the government of the East India Company' and then give all necessary orders for its administration. The mode in which this power was exercised in practice was by the appointment of officials called Chief Commissioners. To these officials the Governor-General delegated such powers as could be delegated. In this way were established Chief Commissionerships for Assam, Burma, the Central Provinces, etc. Technically speaking, territories under the administration of the Chief Commissioners were under the immediate authority and management of the Governor-General-in-Council. This measure had become necessary on account of the ever-increasing additions to British dominion and the consequent necessity to make suitable arrangement for their administration.

The Act of 1854

On the abolition of the East India Company after the cataclysm of the Indian Mutiny in 1857, the Government of India was directly taken over by the English Crown and Parliament. In announcing the assumption of the Government of India by the Crown of England in the famous Proclamation of 1858, Queen Victoria referred to Lord Canning, Governor-General designate, as the first Viceroy and Governor-General. Strictly speaking the word 'Viceroy' is unknown to any of the statutory enactments and therefore to the letter of the constitution. Nevertheless it is freely used in practice. It describes the new exalted status which the Governor-General acquired,

After 1858 —Viceroy

when, in addition to being the head of the Indian administration, he also began to represent and personify the Crown, in the inevitable absence of the latter from its possessions. All this high position continues to be enjoyed by him to the present day.

His Appointment, Status and Non-party Character

The Governor-General is appointed by His Majesty, generally on the advice of the Prime Minister. Usually the choice falls on a gentleman of good social status and influence who has played some part in British politics and attained to some degree of importance therein and who is regarded as one of the party leaders. The office however is essentially a non-party office. The Governors-General do not change with a change in the ministry of England. Lord Reading, for instance, served under three different ministries. Continuity of executive Government is thereby ensured. Many of the Governors-General had already made their mark as distinguished persons in British politics before they embarked upon the duties of the office of Governor-General. Almost invariably their selection is made from the British aristocracy. They are expected to be men possessing a wide comprehension and a robust freshness of outlook, which qualities are generally lacking in officials of life-long service.

Tenure and Leave of Absence

Their tenure of office is not fixed by law, but custom has fixed it at five years and the custom has been as scrupulously observed as if it were the law itself. By the Leave of Absence Act of 1924 the Secretary of State in Council may grant to the Governor-General leave of absence for urgent reasons of public interest or of health or of private affairs. The period of such leave is not to exceed four months and it is not to be granted more than

once during his tenure of office. Suitable leave-allowances are provided for under the rules made by the Secretary of State.

His Functions and Powers in relation to his Executive Council

The duties and the powers of the Governor-General are numerous and varied. The Governor-General is the head of the Indian administration and the highest official in the land, and together with his Executive Council is entrusted with the task of maintaining peace, order and good government in India. He presides over the Executive Council, and has power to nominate a Vice-President from among the members to preside in his absence. He has power to make rules and regulations for conducting the meetings of the Executive Council. He distributes work among its different members. In case of an equality of votes in the Council on a particular question, he can give a casting vote. He exercises general supervision over the work of the Executive Councillors and can get himself acquainted with the details of departmental administration either directly from the members or from their immediate subordinates, the Secretaries. These officers, curiously enough, enjoy a unique and anomalous constitutional position. They have a direct access to and communication with the Viceroy over the heads of their immediate superiors.

Matters of importance are submitted by a member for the opinion of the Viceroy, and if the member and the Viceroy are agreed in their opinion, the matter is finally disposed of in the light of that opinion. The Viceroy can take and almost always does take some department, for example the Foreign Department, under his own direct charge like any other member.

Besides, in making appointments to the Executive

Council, his opinion and influence count for a great deal and his recommendations in the matter are generally accepted by the higher authorities. The power of appointing Lieutenant-Governors and Chief Commissioners was deliberately left to him after the abolition of the East India Company. After the Reforms also, he has the power of appointing governors of provinces other than Bombay, Madras and Bengal. A large amount of important patronage is thus left in his hands, a fact which may not tend to create that degree of independence in his Executive Council which is found to exist in the British Cabinet.

His Dominant Position in the Executive Council

Members of the British Cabinet are not life-long bureaucratic servants. They have their own independent professions and vocations and in a sense are administrative amateurs. They find a place in the Cabinet because they are the leaders of Parliament, and, in the last instance, of the nation. The membership of the Indian Executive Council on the other hand is the prize which comes at the end of continuous and prolonged bureaucratic service. Its acquisition is the fulfilment of a life-long ambition. Its grant is demonstrative of the acknowledgment of administrative talent, of appreciation of efficiency. Thus, in the very fundamentals of its outlook, the Indian Executive Council differs from the British Cabinet. The Cabinet is bound to be more independent-minded and less susceptible to superior control.

The Governor-General of India can indeed be technically described to be only one among several members of the Executive Council, having a casting vote only in case of a tie; and, except on the extraordinary and rare occasions when he chooses to exercise his emergency powers, he might give the impression of being only first

among equals. However, the President of the Executive Council combines in his person also the Governor-General and Viceroy, and the ramifications of this combination are extremely formidable. The head of the executive administration in India enjoys greater executive and directing and controlling power than the executive head of British administration, the Prime Minister.

Power of Overriding the Executive Council

Ordinarily every measure brought before the Executive Council requires the assent of the majority of the members in order to be passed. It may be that the Viceroy on occasions finds himself outvoted. Normally he submits to the wishes of the majority. The sad experience of Warren Hastings with some of his hostile and obstructive colleagues in the Executive Council, and the dangerous consequences of the clogging of the Government wheel due to this internal conflict compelled Lord Cornwallis to be wiser. Before he accepted the offer of Governor-Generalship, he made a demand, and the Home authorities consented to it, that the Governor-General be vested with an extraordinary power to overrule even the majority of his colleagues when the Governor-General is convinced of the futility and harmful nature of the majority's opinion.

This power has been ever since in the armoury of the Viceroy. It is indeed very rarely used. Since 1786 it has been used only once, in 1879, by Lord Lytton to reduce the cotton duties; but its mere presence there is enough to chasten any particular petulance on the part of the Executive Council. In a constitution like Britain's the contingency of an internal conflict in the executive itself would witness the centre of dispute shifted from the Cabinet to Parliament and finally to the nation. No provision is therefore necessary for the grant of any

extraordinary power to either one or the other of the disputants.

His Powers in relation to the Legislature

The Governor-General has considerable powers with reference to the Legislature. Up to the Reforms of 1919 he was the ex-officio president of the Imperial Legislative Council. Since the Reforms he has ceased to have this privilege; still his powers over the Legislature are many. He has the right of addressing both the legislative chambers; he summons them; he prorogues them: he dissolves them after their tenure is over, or even earlier if he thinks fit to do so; he can extend the period of their tenure in special circumstances. He appoints a date and a place to hold fresh elections; also a date and a place for holding sessions of either chamber.

No measure affecting subjects like the public debt or public revenues of India, religious rites and usages of British subjects, discipline of the army, foreign relations, provincial subjects and provincial laws, can be introduced in any of the legislative bodies without his previous assent. He can stop the proceedings of any of the chambers on any bill, clause or amendment, if he feels that the discussion is likely to affect the safety and tranquillity of the raj. He can send bills back for reconsideration by the Legislature. His assent is required for all bills passed by the Legislature before they can have the force of law. This is true not only of central but also of local or provincial legislation. He can require certain bills falling within the provincial sphere to be reserved for his consideration and he can reserve any bill for the consideration of His Majesty-in-Council when he himself neither gives nor withholds his assent.

In addition to these more or less routine powers which

the head of an administration must possess, an exceptional overriding veto against the decision of the Legislature has been bestowed upon the Governor-General of India by the Act of 1919. This new weapon has been forged on the anvil of the Reforms. It corresponds to a similar veto that is possessed by the Governor-General against the majority of his Executive Council. 'Where either chamber refuses leave to introduce or fails to pass in a form recommended by the Governor-General any bill, the Governor-General may certify that the passage of the bill is essential for the safety, tranquillity, or interests of British India,' and thereupon, even if the legislative chambers refuse to pass such bills, they can become Acts by the mere signature of the Governor-General.

Certification

The extraordinary constitutional anomaly which enables a single head of the administration to be in a position to defy with impunity a clear and responsible expression of popular opinion as reflected in an elected Legislature is repugnant to the spirit of democratic polity. Its deliberate creation under the Act of 1919 only indicates the transitional character of even the reformed constitution of India and the spirit of conservative caution which was guiding its framers and architects.

Transitional Nature of the New Constitution

Government can either be responsible and removable or irresponsible and irremovable. The Montford Report, in its dislike for either of these forms in its entirety as being unsuitable for India, tried to combine the two inherently incongruous systems into a working project. It recommended an increase in the Legislature's members and gave them a far more representative and democratic character. On these enlarged and popularly elected bodies were conferred larger powers, including the important power of

voting a part of the budget and therefore supplying a portion of the resources of the State. Yet the Executive, which for the discharge of its responsibility had to look up to and depend upon the Legislature, was allowed to continue to be thoroughly irremovable.

Thus even after the Reforms the Indian executive continues to be responsible only to the extra-territorial sovereignty of an absentee Parliament which functions in a distant country. But the Legislature has been given the power to endeavour to suffocate the executive to a small extent by refusing a fraction of the supplies and by refusing sanction to any legislative measure deemed essential by it. It must inevitably follow, in the severe logic of such an imperfect and impure constitution, that the executive, in order to discharge its responsibilities to Parliament, should be in a position to assert itself.

In any serious conflict between the two vital parts of Government, there is bound to arise a complete deadlock, and the work of Government is bound to come to a standstill, unless either the one or the other is allowed to override its opponent for the time being, or the quarrel is referred to the arbitrament of a third superior party. The Britisher's preponderating bias in favour of the established executive authority in India is manifested in the proposal to grant this overriding veto, and the power to end any such unenviable and disreputable impasse, to the Governor-General of India.

The new power has been described as certification. It amounts to a constitutional right of overruling a part or the whole of the Legislature. It is meant to be a real power and not a mere dead letter or a mere ornamental possession. Yet its promiscuous and constant exercise

The power must be rarely used

cannot but be fraught with serious danger to the constitution and cannot fail to prove irritating to Indian thought and exciting to Indian sentiment. Extraordinary privileges like those of certification are fundamentally incompatible with the principle and practice of political responsibility. A democratic appearance alone is not enough ; the reality of popular control is infinitely more important.

The element of progress manifested in the enlargement of the Indian Legislature and in some fractional additions to its powers and functions is vitiated by the special creation of a retrograde instrument which is avowedly intended to be utilized as an antidote against democratic waywardness. The experience of the past ten years—during which recourse was taken by the Viceroy to the device of certification on several occasions, as in the case of the Princes' Protection Bill, the doubling of the salt-tax, the Finance Bill of 1924 and in the restoration of several cuts made in the budget items by the Legislative Assembly—does not justify its description as an essentially extraordinary measure. It appears to have been interpreted as a normal instrument of Government which can be freely used from day to day. Under such conditions it becomes inevitable that even the 'reformed' form of the constitution has a mere outward semblance of democratic Government. It comes to be a mere shadow and not the substance of political responsibility.

If the ultimate goal of the British policy in India is the grant of full responsible government at an early date and if the present is distinctly a transitional period and a prelude to the final achievement, great restraint must be scrupulously exercised in making use of extraordinary powers, if their existence is necessary at all. What may accord with the strict letter of the law may yet violate the

spirit of the constitution. It seems indispensable that the freedom of judgment and discretion enjoyed by a single individual, the Governor or the Governor-General, in the wielding of the weapon of certification, should be definitely circumscribed, if the power is to be retained at all.

Ordinances

Besides these powers, the Governor-General was given by the Act of 1861, and continues to have to the present day in cases of emergency, power to make and promulgate ordinances for the peace and good government of British India or any part thereof. An ordinance so made shall have the force of law as much as if it were an Act passed by the Indian Legislature, for a period of six months. An ordinance is thus a legislative measure partaking of the character of an Act but emerging from the head of the Executive in his executive role. Such a power is of course intended to be rarely used. Generally, when the Legislature is not in session and an emergency arises suddenly which requires the adoption of immediate remedial measures, the possession of this power is extremely convenient and beneficial.

During the War, for instance, frequent use was made of this power by the Government of India in the course of the vicissitudes of their currency and exchange policy. More recently recourse was taken by Lord Reading to the method of issuing ordinances in announcing the suspension of cotton excise duties. Lord Irwin recently promulgated an ordinance embodying the Public Safety Bill which could not come up for discussion before the Legislature. During the last two years on account of the extraordinary situation created by the Civil Disobedience Movement the power of issuing ordinances has been exercised to an unprecedented extent. The temporary duration of this extraordinary power, that is its continuance

for a period of only six months at a stretch, is supposed to be its greatest corrective.

His Powers as Viceroy

The Governor-General of India is not only the head of the administration of the land. Over and above that, he also personifies in himself the British sovereign and represents his master in the unavoidable absence of the latter from the land of his governance. He therefore enjoys all the dignity and prestige and special privileges which the sovereign himself would enjoy if he chose to stay in India. He has the prerogative of mercy and pardon. On behalf of his sovereign he receives homage from Indian Princes and other mandatory powers. To them he symbolizes the Crown and the unlimited sovereignty of the Crown. The recent emphatic declarations of Lord Reading in his communications to the Nizam are significant of the same point. He represents His Majesty in his dealings with foreign princes. All the grandeur and paraphernalia of royalty attach to him as his master's deputy. A sense of sublimated detachment that pervades the environment of kingship also pervades to a certain extent the environment of the accredited viceregent of the kingship.

His great Influence on the Administration

That the cumulative influence of this lofty official upon the administration of India is bound to be immense would appear almost to be a self-evident proposition. His high social status and rank, his aristocratic connexions, occasionally his political influence as an active party leader, are circumstances which give him an initial lift in comparison with his would-be colleagues in the bureaucracy in India. His large powers, ordinary and extraordinary, as the head of the administration, his exalted status as the direct representative of the sovereign, the

large and lucrative patronage in his possession and the premium that is naturally enjoyed by the freshness and comprehension that are attributed to him as an intelligent outsider, are factors which give him a supreme eminence in the state. A heavy responsibility is believed to devolve upon him in maintaining the safety of the British raj.

The combination of all these formidable circumstances raises the Governor-General of India head and shoulders above other subordinate officials in the land. If he is endowed with a master mind and an assertive temperament, his views can colour every department of administration; if he happens to be a man of convictions and capacity, his personality is bound to permeate all important matters of policy and detail that come to be disposed of by any one of his colleagues in the Executive Council individually or by all of them collectively.

The Prime Minister of England presiding over the British Cabinet appears to be only first among equals, a leader of his peers, the difference between him and his colleagues being created and tolerated only for the exigencies of smooth constitutional working. The Viceroy of India has the appearance more of a superior than of an equal; constitutionally speaking, the distance between him and his colleagues is far greater and much more fundamental than that between the Prime Minister and his colleagues in the Cabinet.

2. The Central Executive Council

Historical

Before the unification of the three provinces of Bengal, Madras and Bombay under one central authority, affairs in each of them were managed by a Governor or President with the assistance

of a Council of the senior merchants of the Company. Endeavours at administrative centralization began with the passing of the Regulating Act. This measure vested the control of the Company's affairs in India in the hands of the Governor-General and a Council of four persons. The first Governor-General was nominated in the Act itself. The origin of the Governor-General's Executive Council thus goes back to the year 1774. The number of Councillors was to be four. Their term of office was definitely stated to be five years. The whole civil and military government of the Presidency of Bengal, including Bihar and Orissa, was vested in the Governor-General-in-Council, who was bound by the votes of the majority of those present at the meeting, the Governor-General having a casting vote in case of an equal division of opinion.

The Regulating Act

The unfortunate conflicts between Warren Hastings and his antagonistic colleagues in the Council were accentuated by the inherent imperfection of the Council's constitution. Therefore it had to be modified in the light of the experience of the first Governor-General. A clause was inserted in Pitt's India Act to the effect that as soon as the office of any one of the Councillors was, for any reason, rendered vacant, the vacancy should not be filled and the number of the Governor-General's Council should be reduced from four to three, an odd number being preferred to an even number for the more convenient use of the casting vote.

Pitt's India Act

In 1786, on a demand being made to that effect by Lord Cornwallis before he accepted office, the Governor-General was given power to override even the majority of his Council on extraordinary occasions when he felt

the use of this power justified in the interests of peace, tranquillity and good government in India.

The charter of 1793 once more affirmed that the whole civil and military government of the Presidency of Bengal and 'the ordering, management and government of all territorial acquisitions and revenues of the Company' were vested in the Governor-General and three Councillors. If the Commander-in-Chief was distinct from the person of the Governor-General, he might be specially authorized by the Court of Directors to be a member of the Council.

The Act of 1833

Further changes and detailed regulations were introduced by the Charter Act of 1833. The number of ordinary members was increased to four. Three of these were to be appointed by the Directors from among the servants of the Company who had at least ten years of service to their credit; if a man in the military service was chosen, he was not to hold any command during the continuance of his office as Councillor. The fourth ordinary member was to be appointed by the Directors, with the approval of the President of the Board, from amongst persons who were not servants of the Company. This member was not entitled to sit or vote in the Council except when the Council was considering the making of laws and regulations. The Commander-in-Chief, whenever the Governor-General himself was not holding the office, could also be appointed by the Directors as an extraordinary member of the Council, having rank and precedence after the Governor-General.

By the Charter Act of 1853 was repealed the provision of the Act of 1833, that the fourth member (that is the law member) was entitled to attend and vote only in meetings in which laws and regulations were discussed. The law

member became a full member attending all meetings and voting on all questions considered in any meeting.

The Act of 1861

The Indian Councils Act of 1861 increased the number of ordinary members from four to five. Three of them were to be appointed by the Secretary of State in Council, and must have served at least for ten years in India under the Crown or the Company. The remaining two, one of whom was required to be a Barrister of England or Ireland or an Advocate of Scotland of not less than five years' standing, were to be appointed by Her Majesty under the Royal Sign Manual. It was lawful for the Secretary of State to nominate the Commander-in-Chief as an extraordinary member.

Further modifications were introduced in 1874. Power was given to Her Majesty to increase the number of ordinary members from five to six by appointing a sixth member under her Royal Sign Manual. The newly appointed member was to have charge of the Public Works Department. The clause which specifically mentioned the department that was given to him was repealed in 1904.

The Morley-Minto Reforms of 1909 introduced an innovation. There was nothing in the law to prohibit the appointment of qualified Indians to the Councils and Lord Morley in consonance with the new spirit in which he had enlarged the Legislative Councils and tried to associate Indians in the administration, caused executive action to be taken to include one Indian in the Executive Council. Since 1909, therefore, the Governor-General's Executive Council has invariably contained at least one Indian. The first to be so appointed was Lord Sinha.

The composition of the Council before the Reforms Act and as provided by the Government of India Con-

solidating Act of 1915 stood as follows. The Council consisted of ordinary and extraordinary members if any. The number of ordinary members was five or, if His Majesty so desired, six. Three at least of the ordinary members must, at the time of their appointment, have served the Crown in India for a period of not less than ten years and one must be a Barrister of England or Ireland or an Advocate of Scotland of not less than ten years' standing. If any officer in military service was chosen to fill the post of Councillor, he was not to hold any command during such service. All the ordinary members were appointed by His Majesty under the Royal Sign Manual. The Secretary of State could nominate the Commander-in-Chief to be an extraordinary member. If the Council assembled in any province the Governor of the province could be an extraordinary member.

The Act of 1915

Finally, the Act of 1919 introduced a few changes. The limit on the number of members of the Executive Council was removed. Indian High Court pleaders of ten years' standing were qualified to be admitted. Governors of Provinces ceased to be allowed to sit as extraordinary members when meetings of the Council were held in their territory. All members, in any number that His Majesty might think proper, were to be appointed by His Majesty by warrant. Three of them must have served in India for at least ten years. One must be a Barrister of England or Ireland or an Advocate of Scotland or a pleader of an Indian High Court of not less than ten years' standing. As for the qualifications of the remaining members, rules might be made under the Act to determine and define them.

The Act of 1919

Provision was also made to enable the Viceroy to appoint Council Secretaries from among the non-official

members of the Legislative Assembly or the Council of State to assist the Executive Councillors in their work. The object was to give opportunities to the non-official members to get themselves trained in official business and to realize the practical difficulties of the administration. The salaries of the Secretaries were to be determined by the Legislature and they were to hold office during the Viceroy's pleasure. However, this recommendatory clause has not been acted upon and no Council Secretary has been appointed till now.

Steps were taken to introduce a larger Indian element in the Council. A practice was introduced in 1921 to increase the number of Indian members from one to three and it has since continued. Of the three Indian members one is generally expected to be a Mohammedan. The Viceroy's Executive Council at the present moment consists of eight members including the Viceroy and the Commander-in-Chief who is an extraordinary member.

Functions and Powers

In the Governor-General-in-Council are vested the superintendence, direction and control of the civil and military government of India, subject to the orders of the Secretary of State. Every Local Government, subject to the clauses of the Government of India Act, has to obey the orders of the Governor-General-in-Council and has to keep him constantly and diligently informed of all matters of importance in its administration. Subject to restrictions imposed by the Secretary of State in Council, the Governor-General-in-Council is empowered 'to purchase and sell and mortgage property, to borrow money, and to execute assurances for the purposes.' The same authority can, with the previous sanction of His Majesty, constitute a new province under a Governor or Deputy-Governor or Lieutenant-Governor; can declare any tract

to be 'backward' and make special arrangements for its administration; can create Executive Councils for Governors' provinces and determine the number and qualifications of their members; can, by notification, take any part of British India under the immediate authority and management of the Governor-General-in-Council and can alter the boundaries of provinces. It can also constitute local Legislatures for Governors' or Commissioners' provinces. It can alter the local limits of the jurisdiction of Indian High Courts; can appoint additional judges to the High Court for a period not exceeding two years and appoint a judge to act as Chief Justice when a vacancy occurs and till the vacancy is permanently filled up. The Governor-General-in-Council may not declare war or commence hostilities or enter into a treaty without the express order of the Secretary of State.

In any emergencies when hostilities have been already commenced or preparations for them have been already actually made against the British Government in India, he can declare war and immediately send intimation to the Secretary of State. The Governor-General-in-Council has, by delegation, powers of making treaties and arrangements with Asiatic States, of the exercise of jurisdiction and other powers in foreign territory and of acquiring and ceding property. He also enjoys such powers, prerogatives, privileges, and immunities appertaining to the Crown as are 'appropriate to the case and consistent with the system of law in force in India'.

Tenure and Leave

The tenure of office of a member of the Executive Council has been fixed by a well-established custom to be five years. By the Leave of Absence Act of 1924, the Governor-General-in-Council may grant to any member leave of absence for

urgent reasons of health or private affairs. Such leave cannot exceed four months and cannot be granted more than once during his tenure of office. Suitable leave allowances have been provided for under rules made by the Secretary of State in Council.

Method of Working

Originally the Executive Council of the Governor-General 'worked together as a board and decided all questions by a majority of votes.' There was no systematic distribution of work among its members. Every question that came up for the disposal of the Governor-General-in-Council was disposed of by the Council as a whole, sitting collectively. There was no division of labour, no allocation of departments to individual members. This sort of working in a mass entailed an enormous delay and began to prove increasingly difficult as the nature of the Government functions began to get more and more complex and their scope began to get wider and wider. The appointment of special members for Law and Finance in 1833 and 1861 respectively was an acknowledgment of the unworkable nature of collective Council work. Lord Canning abandoned the system altogether and carried to a logical conclusion the principle that was initiated in 1833.

Portfolios

He distributed the ordinary work of the departments among the members and laid down that only the more important cases were to be referred to the Governor-General or dealt with collectively. This is what is known as the portfolio system which continues to exist to the present day. Under the working of this system, each member, in regard to his own department or departments, has the final voice in ordinary departmental matters. He is councillor and administrator together. Any subject of special

importance or one in which it is proposed to overrule the views of a Provincial Government must be referred to the Viceroy; so also matters which originate in one department but also affect other departments. The members generally meet in council once a week and discuss questions which the Viceroy desires to put before them or which an overruled member might desire to be discussed by the Council. In any difference of opinion, the decision of the majority ordinarily prevails, the Viceroy having an overriding veto in exceptional circumstances.

The Present Portfolios

At the present day the portfolios in the Executive Council are distributed as under :

(i) Viceroy—Foreign and Political Departments.

(ii) Commander-in-Chief—Army and Defence.

(iii) Home Member—General supervision over matters affecting the Indian Civil Service, Internal Politics, Jails, Police, Law and Justice.

(iv) Finance Member—Finance.

(v) Member for the Railway, Commerce and Ecclesiastical Departments.

(vi) Law Member—the Legislative Department.

(vii) Member for the Departments of Education, Health and Lands.

(viii) Member for Industries and Labour.

The Secretaries

Immediately subordinate to the member in charge is the officer known as Secretary. He is in charge of the departmental office. His position corresponds, as the Decentralization Commission has pointed out, to that of a Permanent Under-Secretary of State in the United Kingdom. There is however this difference. In India, the Secretary is allowed to be present at the meetings of the Executive Council to furnish any detailed information

that might be required regarding his own department. Besides, he is required to attend on the Viceroy usually once a week and to discuss with him all matters of importance arising in his department. He has the right of bringing to the Viceroy's special notice any case in which he considers the concurrence of the Viceroy with the member's action or proposal is necessary. His tenure of office is usually three years.

Thus the constitutional position enjoyed by him is unique. He is a subordinate, having the special privilege of direct access to the superior of his immediate superior. He can create a prepossession in the mind of the Viceroy about any matter in his department without the knowledge of the member in charge. The system is a remnant of the old days when it was considered desirable to keep a check over the actions and the departmental independence of the Executive Councillors. The Governor-General as the head of the administration was therefore empowered to be directly in touch with departmental working through the Secretaries. Indian public opinion is inclined to condemn this sort of constitutional anomaly as likely to encourage mistrust and misunderstanding, particularly after the admission of Indians to the Executive Council.

The Constitutional Position

It would be clear to a student of constitution that the English Minister differs essentially from a Member of the Indian Executive Council. The former is a politician first and an administrative officer afterwards. Indeed he comes to be the latter because he has been the former. English Ministers are not lifelong bureaucratic servants. Persons in the service of Government are deliberately precluded from taking seats in Parliament and therefore in the Cabinet. Things are different in India. A few Indian

public men might find a place in the Council, if chosen to fill the appointments by the Viceroy. But others are lifted up from the most successful servants in the administration. Elevation to the Executive Council and enjoyment of the fine prospects that it offers are among the principal attractions to those Britishers who intend to seek a career in India.

The initiative and independence that would characterize a body like the British Cabinet which inhibits bureaucratic officials from becoming its members are naturally absent among the Executive Council as a whole in India. Nor can all its members possess that diffused sense of equality which permeates the relations of the English Ministers with their chief, the Prime Minister. The important patronage in the hands of the Governor-General is not a negligible factor in this connexion. There are still higher rungs in the official ladder than an Executive Councillorship, which may indeed lead to them. Therefore, in boldness, as in wider comprehension, the British Cabinet is bound to compare more favourably than the Indian Council, with its tendency to be more subdued in outlook and spirit.

Much of course depends upon the head. He is a stranger to the land which he is sent out to rule. He sets out to work with a bureaucracy which has crystallized traditions of its own and has acquired a reputation for itself. It supplies the expert knowledge about men and things in India, obtained after prolonged years of service on the spot. The claims of such a body to be recognized as an authoritative and correct guide may not be lightly disregarded but even positively admitted by commonplace mediocrity. At such times, it is not the Viceroy but the Council which really rules. However, to a Viceroy endowed with a distinct individuality and vigour

of will, the constitutional atmosphere of the Council would appear to be congenial to the development of his personal influence and the acceptance of his lead in all matters of policy and detail. The assistance of the Executive Council is indispensable to the Viceroy in all circumstances. It maintains the continuity of administration. And except under abnormal circumstances no Viceroy would think of exercising his extraordinary prerogatives in order to override the declared opinion of the Executive Council. As J. S. Mill said, the advisers attached to a powerful and self-willed man ought not to be put under conditions which would reduce them to a cypher.

CHAPTER VIII

The Central Legislature

1. Some General Information Concerning Legislatures

(*a*) Importance of the Legislature in Modern Constitutions

The Legislature controls the Executive

In all important western countries the legislature has now acquired a peculiar importance. Originally, it was predominantly, if not purely, a law-making body. Its function was to pass measures which required the force of legality. The business that it transacted pertained primarily to bills and Acts. From this position of comparative simplicity the legislature has now evolved into a body which exercises general control over the administration.

The principle and practice of political responsibility move round the pivot of the legislature's supreme dominance over the executive. The powers and functions of the legislature are the touchstone which assesses the degree of popular control that obtains in a constitution. Modern legislatures are not only law-making bodies; they make laws; they vote grants of the necessary money; they practically appoint the ministers, direct, control and modify their policy, and in case of a disagreement, even dismiss them. The daily routine of departmental management is not, indeed, looked after by them, but the general line of administrative action and the general principles pervading the policy of the State

are all inspired and dictated by their opinions and views. In other words, an all-sided control of the State vests in the legislature in a form of government which is described by constitutional writers as responsible. The English Cabinet, for instance, is the product of Parliament and completely amenable to it.

Structure of the Legislature

This unique importance that has progressively come to be attached to the legislature in modern days is the natural consequence of the changed character of the structure of legislative chambers. They are now elected bodies largely reflecting popular opinion and therefore carrying with them the invincible prestige of being the accredited mouthpieces of the whole nation. To judge of the progress in democratization and responsibility of any form of polity is to find out the extent and the reality of the legislature's predominance over the executive. The more complete the subordination of the executive, the greater is the advance in the direction of responsibility. Legislatures in India whether in the Central Government or in the provinces have to be judged henceforth by this criterion.

(*b*) THE FUNCTIONS OF A LEGISLATURE

i. Legislative

A legislature's functions and powers can be divided into different parts. For instance they can be described separately as referring to legislation or to administration or to finance. The meaning of the first of these is clear on the surface. No measure can obtain the force of legality unless it is passed by the legislature. Everything that is incorporated into the law of the land and obedience to which is compelled from the citizens, has to receive its sanction before it can be so incorporated and enforced. Unless otherwise

provided, no bill which is not voted by the legislature can have application in a court of law.

ii. Administrative

The control over administration is exercised in various ways: (i) by moving resolutions, (ii) by moving votes of censure, (iii) by moving adjournments, and (iv) by asking questions and supplementary questions to elicit information about departmental details.

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Resolutions

(i) On any matter of public importance the legislature might express a clear opinion after having discussed its issues thoroughly. This expression of opinion is in the form of a recommendation to the Government. It has no binding legal force. It is not a law and has not to pass through the elaborate procedure to which every bill is subjected before its final consummation into an Act. Yet the expression of opinion has a clear value of its own. It makes an unambiguous and emphatic declaration of the views of the elected representatives of the people. It therefore serves as an indicator which records the strength and the direction of popular opinion. A clear indication of the popular will cannot be ignored by any executive Government having a sense of responsibility. It serves to guide correctly, if not to control rigidly, any steps that may be contemplated by the executive authority.

Vote of Censure

(ii) A vote of censure is a most direct way of expressing disapproval and of exactly locating the agency which it is desired to condemn. In a purely responsible administration occasions for votes of censure are rare, for, before matters come to that pass, numerous indications are given of the existing displeasure and they are immediately understood. This right is of particular use in those forms of government where the executive cannot be

removed from office by the legislature. A direct and emphatic condemnation of the actions of irresponsible officials is likely to serve as a moral restraint upon them.

Adjournments

(iii) Adjournment motions are intended to point the attention of the house and the Government to any extraordinary happening involving public weal or interest that might take place during the actual session of the council or that may have taken place only a short time prior to the meeting of the session. Any member may beg leave to move that the regular business on the agenda be temporarily suspended and that the house do discuss the extraordinary occurrence, provided the president allows the motion. He may not do so in case he feels that the matter, for the discussion of which a temporary suspension of the regular agenda is requisitioned, is not of sufficient importance to justify the suspension. Motions for adjournment save the discussions of the chamber on prominent and burning topics of the day from being stale and more or less artificial.

Interpellation

(iv) The power of asking questions and supplementary questions is extremely valuable. It serves to throw important sidelight on the administration by enabling members to elicit information regarding routine departmental management. It is useful in exposing to publicity any unjust or tyrannical abuse of the freedom of judgment and discretion that has necessarily to be allowed to the executive. Any member of the legislature can put a question on a matter of public interest, subject to its disallowance by the president and if the answer given proves unsatisfactory, either the member who puts the question originally, or any other curious or dissatisfied member may put further supplementary questions. This at times almost approximates to a regular cross-examination. Details which are too

trivial to be discussed in the form of resolutions and which are too important to be completely ignored can be brought for public criticism through the exercise of the power of interpellation.

Publicity is the greatest check and the greatest corrective to the waywardness of all normal Governments. Publicity is of still greater value when the form of government is an irresponsible bureaucracy. Resolutions, adjournments, votes of censure, questions and supplementary questions are instruments of publicity and so long as the composition of the Government has not become abnormally mechanical and unhuman, the fear of public criticism and public exposure is bound to prove a very salutary restraint upon actions that might be taken by Government officials.

iii. Financial

The last and most important power that a legislature can enjoy is control over the purse. The great constitutional struggle in England throughout the Stuart period, and even earlier, centred round the disputed question whether the King could levy taxes without the consent of the people and spend them as he liked, irrespective of the wishes of Parliament. The most glorious achievement of the popular party in the struggle was the emphatic and decisive establishment of the principle that the money which the King's authority wanted to collect from the people by way of taxation must be voted by the representatives of the people assembled in Parliament. Parliament also decided the manner of its collection and the direction of its expenditure. The essence of democracy lies, among other things, in this sort of undisputed control over the purse that is exercised by the people through their chosen representatives. The real power of any legislature is to be measured by the degree of the monetary powers it enjoys. The English

Parliament—or more correctly the House of Commons—is the sole authority for and the sole custodian of the finances of the Government of England. The executive can get only as much money as is voted by Parliament and has to spend it on those purposes only for which it is specifically voted. Finances are to the State what life-breath is to the body and in responsible forms of government entire control over them is vested in the legislature.

(*c*) FRANCHISE AND ELECTORATES

Modern Democracies are Representative

Democracies in modern days are representative. A direct democracy is a physical impossibility, apart from other considerations of its advantages or disadvantages. In a representative government, the affairs of the State are entrusted to a few people chosen by the citizens. In an ideal state of things, every citizen, unless positively disqualified, has the right of voting in the election of such persons. The smaller the number of disqualifications and the larger the number of persons who are authorized to give their vote, the more representative becomes the character of the Government.

The right of giving a vote is described, in political science, as the franchise. Persons to whom the right of franchise is given are described as the electorate or the constituency. The electorate is not identical with the total body of the citizens. It contains only those persons who are allowed to take part, indirectly, in the administration of the land.

Disqualifications

What sort of persons should be excluded from the enjoyment of this political privilege? On the answer to this crucial question depends the degree of the democratic character of a democracy. Certain disqualifications are obvious.

Children and young boys are not, for instance, in a position, intellectually speaking, to understand the problem of government and to exercise the franchise. Lunatics and madmen come in the same category. Criminal offenders who have been convicted by a court of law for crimes against society cannot evidently be permitted to have any share in the formation of the Government. The same viewpoint holds good in the case of bankrupts. Even in countries where there is universal franchise these disqualifications are accepted as necessary and desirable.

Adult Suffrage

Most of the representative Governments in the past had more restrictions than these on the exercise of the franchise. Women, for example, were disqualified on account of their sex even if they possessed the other necessary qualifications. Poor persons, labourers, wage-earners were also regarded as unfit to possess the right of giving a vote. Ownership of a certain minimum amount of property or income has been almost an invariable qualification to entitle persons to have the vote. The trend of modern times is to reduce the amount to as low a figure as possible so as to include in the electorate the largest number of citizens.

Some of the western countries have abolished property qualification altogether. They have conferred the right of vote on all citizens, men and women, who have reached a certain age, and who are not debarred otherwise, as for instance on grounds of lunacy, treason, bankruptcy, etc. Conditions in India may be different, but the Indian electorate is to be judged from the same point of view. The Nehru Report had advocated the introduction of adult suffrage.

It would be pertinent to describe here the different kinds

of electorates that exist in India at the present day. They are mainly based on qualifications either of property or community or special interests. Residence is also an important factor.

Electorates in India

A general electorate is one in which no account is taken of the race or community of the voter. The electoral law prescribes certain property and other qualifications and all citizens, irrespective of caste, creed and religion, who possess them, are entitled to get a vote. Residence in a definite territorial area, which defines the geographical limits of the electorate, is of course considered essential.

General Electorates

In India, the nearest approach to a general electorate is found in the non-Mohammedan Constituency. It consists of all enfranchised persons, other than Mohammedans, in any electoral area. It may thus be composed of Hindus, Parsees, Jews, Christians and others, all placed together in one collection, provided the conditions about the franchise are properly satisfied.

Non-Mohammedan Constituency

The concept of a communal electorate is different. Here the very first condition which is essential to entitle a person to acquire a vote is that he must belong to a particular community. Being a member of that community he must further satisfy the conditions of the franchise as they may have been fixed by the electoral law. Persons not belonging to that community are entirely excluded from the electorate.

Communal Electorates

In India, communal electorates have been conceded to the Mohammedans throughout the land, to the Sikhs in the Punjab and to the Europeans in important cities and plantations. The voters who vote in these constituencies and the candidates who contest these seats must belong to

the Mohammedan, Sikh and European communities respectively. Others can neither vote nor stand for election in these electorates.

Mixed Electorates with Reserved Seats

It is possible to devise an electorate which is a compromise between the general and communal principles and combines both of them. That is known as the system of mixed electorates with reservations of seats for particular communities. In such a system it is not necessary that the voters or electors must belong to a particular religion or race. The electorate contains names of all those who possess the requisite franchise. It is a miscellaneous mass of different creeds and communities. But it is also laid down that out of the total number of seats which have to be filled by election a certain number must be held by members of a particular race.

An illustration will make the point clear. Suppose a territorial constituency has been assigned three seats in the legislature. It may be prescribed that at least one of these three seats must be held by a Mussalman though the electors are composed of both Mussalmans and non-Mussalmans.

It may happen that in the results of the election the first three candidates, who poll the largest number of votes in consecutive order, are all non-Mussalmans. In that case the third of such candidates is not declared to be elected; but a Mussalman candidate, who may stand much lower in rank in the numerical order but who is the first Mussalman standing immediately next to the second of the above is declared successful.

On the other hand, it may also happen that in the results of the election the first three candidates, who poll the largest number of votes in consecutive order, are all

Mussalmans. The election of every one of them is, in that case, considered to be perfectly valid. In addition to the one seat reserved for them, they are thus enabled to capture the remaining one or both.

In a communal electorate the candidate has to win the confidence of only the members of his community. In a mixed electorate with reservation of seats, he has to look for votes even outside his community and endeavour to be popular with all.

In India, the concession of the privilege of reservation of seats for their own community has been granted to the Maratha caste in the Bombay Deccan in elections to the Bombay Legislative Council. The Nehru Report advocated the extension of the same system throughout the whole country in place of the present communal electorates. A considerable body of enlightened public opinion also supports the same view in the interests of a consolidated Indian Nationalism.

Special Electorates

Besides these types there is another type known as 'special constituencies'. These are intended to represent certain special interests in the country in their own right and independently. The landed aristocracy of the country, the trade and commerce of the country, educational institutions like universities, are all special interests which have to be properly safeguarded and which are given special recognition as entities useful and beneficial to the State. They are therefore very often formed into constituencies by themselves. Such a constituency consists of all persons who are united by the tie of common interest, irrespective of community or race. They are thus different from communal constituencies.

In India several universities have been given the right of sending their own representatives to the legislature.

Similarly, European Chambers of Commerce, Indian Merchants' Chambers and Bureaus, Mill-owners' Associations, Sardars and Inamdars have been created into constituencies by themselves. Every person who is a recognized constituent of these bodies can vote in elections which are held for the return of their representatives.

Why Communal Electorates are created

Communal electorates were first introduced in India in 1909 as the most effective, convenient and satisfactory means of protecting the interests of minorities. One of the greatest imperfections and dangers of democracy is the possibility of its degenerating into a mere tyrannical rule of the majority over the minority and the suppression of the latter. This danger is considered to be more probable and more acute in a country like India where the minority is demarcated and distinguished from the majority not only on social or political questions but on grounds of difference in religion and historical antipathy. These considerations, it is said, make it necessary to provide some safeguard against the possible danger, and the one which appeared to be the most satisfactory and convenient to Lord Morley in 1909 was the splitting up of the general Indian electorate into two or more parts on the principle of race. To such exclusively racial electorates was given the right of sending representatives from amongst themselves. They were generally formed according to the numerical proportion of the race to the total population in a specified area.

That communal electorates have a tendency to emphasize and perpetuate the existing racial and religious differences, and that they are subversive of a sense of comprehensive nationality based on the community of political interest would be readily admitted by even a

casual and superficial observer. By putting a deliberate premium upon communality they positively discourage any tendency to fusion of the fissile predilections of the different communities, and engender a narrower and selfish angle of vision. However, communal electorates are an accomplished fact in Indian polity and it is extremely difficult to undo what has been done. They have acquired the strength of a vested interest. The minority is reluctant to part with a privilege which has been in its possession. It will be a long time before other more scientific and less objectionable devices to protect the interest of the minority are suggested and the latter is persuaded to accept them.

Their Dangerous Effects

All persons born in the State are not automatically given the right of voting even under the system of adult franchise. And when the latter is not in operation, certain property and other qualifications are prescribed by law to determine the right of voting. A list is made, for a specific territorial area, of all persons who possess those qualifications and are therefore entitled to exercise their vote. This list is called the 'Electoral Roll'.

The Electoral Roll

A preliminary and tentative edition of the electoral roll is published by the Government and kept open for public inspection for a stated period of time. It may happen that names of persons who, by their possession of the requisite qualifications are entitled to get a vote, have not been included in the electoral roll through oversight or mistake. Such omissions can be brought to the notice of the Collector or other authorized official and rectified by him. A revised and final edition of the electoral roll is then published and only such persons

whose names are included therein are allowed to vote at the time of election.

(*d*) THE BICAMERAL SYSTEM OF LEGISLATURE

The Upper House and the Lower House

In the bicameral system, the legislature is composed of two separate chambers. One of them is known as the Upper House or the Second Chamber, and the other is known as the Lower House or Chamber. The electorates of the two Houses are not the same. Their powers, functions and political status are not identical. They are formed to fulfill different purposes and embody different ideals.

The higher chamber is intended mainly to represent the vested interests and the wealth of the land. It consists of the members of the historical aristocracy, big landowners, wealthy merchants and other propertied persons. A little sprinkling of a few intellectuals and public workers is also usually added to it. On the other hand, the lower chamber is more democratic in character. It is expected to contain even the poorer element in the community and therefore the franchise for its election is deliberately kept low.

The Lower House Has Larger Powers

Because the lower chamber is more representative and democratic in its structure it is usually invested with greater political power and control. It is considered only fair and natural that the body which reflects in a very great measure the nation's will should possess the dominant authority in the state. For this very reason the English House of Commons is empowered to make and unmake the executive government in that country and to dictate to it.

The upper chamber represents only the privileged few who form the higher strata of society. Its members are

not expected to be in the closest touch with the demos, or to give expression to its cherished ambitions and patiently borne sorrows. They are therefore precluded from exercising any effective control over money matters either on the income or on the expenditure side. Even in subjects other than finance the tendency of modern days is to look upon the second chamber as a brake and as a restraint on the impulsiveness of democracy. It is entrusted with the duty of amendment and revision. It is empowered to compel reconsideration of a measure which may have been passed by the lower chamber merely in a fit of frenzy. However, it is not intended that a body which represents only the aristocracy and the oligarchy of the land should be permitted to make of itself a permanent hindrance to an all-sided national progress as visualized by the large majority of citizens who are electors.

The Upper Chamber is Intended to Amend and Revise

Political thinkers are not agreed on the question as to whether two legislative chambers are necessary or desirable in a unitary state at all. There are not a few who hold the heterodox opinion that a second chamber is an unwanted superfluity and a nuisance. They feel that its existence involves an unnecessary reduplication of governmental work and consequently an enormous waste of time, energy and money. To such critics it appears that the alleged indispensability of the second chamber is not based on rational conviction but on prejudices engendered by the superstition of constitutional orthodoxy.

Controversy about the Need for a Second Chamber

The frame-work of Indian polity has been unitary since the Regulating Act. Even the Reforms did not make it federal. However the Act of 1919 introduced the

bicameral system in the Central Legislature of India by the creation of the Legislative Assembly and the Council of State. It may be conceded for the sake of argument that the dangers of an upper chamber are not likely to become really serious in a free nation. But its blind imitation in a subject country may prove perilous to national advance towards autonomy.

Its Introduction in India

The Indian Government has not yet been made responsible to the Indian people. Conditions in this land are not therefore similar to those that obtain in a self-governing dominion or a sovereign state. In the psychological and material environment of a conquered race the existence of an oligarchical legislative house may prove ruinous to political progress. It may detract from the growth of national solidarity.

2. The Growth of the Central Legislature

As the Montford Report has pointed out, the germ of the legislative powers of the Government of India lies embedded in Elizabeth's Charter which established the East India Company in the year 1600. By one of the clauses of this Charter the Company were permitted to 'make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances as shall seem necessary and convenient for the government of the same Company and for the better advancement of their trade.' They might also impose such pains, penalties, and punishments as might seem necessary or convenient for the observation of these laws and ordinances. The only precaution that was expected to be taken was that their laws must be reasonable.

The Charter of Elizabeth

Sir Courtenay Ilbert has pointed out that this power

was similar to the power of making by-laws that is enjoyed by any ordinary municipal or commercial corporation. The 'laws' must have been, in the nature of things, only regulations for the guidance of the Company's servants and officers, factors and apprentices. No copy is known to exist of any 'laws' made under the first Charter or the early subsequent Charters. The East India Company were only a commercial corporation and only so much power must have been required and exercised by them as was necessary to keep the trading affairs of the Company properly and efficiently going. No political significance attaches therefore to the regulations that might have been issued by them from time to time.

Subsequent Charters

The power of making rules and regulations given in the original Charter was renewed and occasionally augmented in the later Charters whenever circumstances demanded any addition to them. The Charter of 1726, granted by George I, invested in the Governors-in-Council in the Presidencies the 'power to make, constitute and ordain by-laws, rules and ordinances for the good government and regulation of the several corporations thereby created and of the inhabitants of the several towns, places and factories.'

After the grant of Diwani

After the grant of the Diwani in 1765, the Company obtained legal recognition and status as the accredited political agents of the Emperors of Delhi. Consistently with this status they had to discharge certain functions avowedly political and administrative in character such as the management of revenue and judicial business. This was another source of legislative power now available to the Company. They inherited all the power that had

belonged to important Viceroys under the Mogul rule. In the task of the disposal of administrative business that had now devolved upon them, the Company's officers in Bengal like Warren Hastings had to make rules and set up courts of law and to see that proper order was evolved and governmental organization formed. The Diwani was not a charter granted by Parliament or by the King of England. Power obtained under it was obtained from the ghost of a great authority and a great name whose glory had now completely faded.

It was not till the middle of the eighteenth century, after he battles of Plassey, Wandiwash and Buxar, that any territorial responsibility was directly assumed by the Company. With the acquisition and gradual expansion of this responsibility, the need began to be growingly felt that the Company should make proper arrangements for the regulated governance of the territories they had acquired. The gradual transition of the Company from a purely commercial to a politico-commercial body made it necessary that, for the proper discharge of their new duties, there should be new and specifically recognized additional powers conferred upon them.

The Regulating Act

The Regulating Act of 1773 created a Governor-General to control the Company's dominions in India. To this controlling authority, namely the Governor-General of Bengal-in-Council, was given 'power to make rules, regulations and ordinances for the good order and civil government of the Company's settlements in Bengal'. Curiously enough, these had to be registered in and approved of by the Supreme Court.

The Amending Act of 1781 tried to make the issues

clear and remove obstacles in the working of the Regulating Act. It also definitely empowered the Governor-General of Bengal-in-Council to frame regulations from time to time for Provincial Courts and Councils. Copies of these had to be sent to and approved of by the Directors. It was no longer necessary to register the Governor-General-in-Council's rules and regulations in the Supreme Court and get them approved of by that body. This is the beginning of those complex legislative powers which are to-day enjoyed by the Central Legislature.

The Act of 1797 expressly sanctioned the exercise of a local power of legislation in Bengal. It also directed that all regulations of the Governor-General-in-Council affecting the rights, persons or property of the natives should be registered in the judicial department, formed into a regular code and be printed and published in all the country languages. The Act of 1807 gave to the Governors-in-Council in Madras and Bombay the same power of making regulations as was enjoyed by the Governor-General-in-Council in Bengal. Between 1807 and 1833 all the three Councils continued to make regulations and issue ordinances and add to the volume and complexity of the legal system. Legislative power was thus vested in and exercisable by the executive Governments in the three Presidencies.

The Act of 1833

In 1833 an important innovation was introduced. The Governor-General's Executive Council was increased by the addition of a fourth ordinary member who was not to be one of the Company's servants and who was not entitled to act as a member except for legislative purposes. Further, the Governor-General-in-Council was exclusively vested with the legislative power, and the Provincial Governments

were entirely deprived of it. They were allowed only to submit drafts of laws which they desired to get passed for their respective areas. The Governor-General-in Council could make laws and regulations for repealing and altering any existing measure, for all persons, places and things, for servants of the Company and for native officers and soldiers in the employ of the Company. Laws made by the Governor-General were liable to be vetoed by the Court of Directors or the Board of Control. The supreme prerogative of the Crown was of course left unaffected. A comprehensive consolidation and codification of Indian laws was also contemplated. The Indian Law Commission were appointed and they issued the Indian Penal Code. Passing of legislation by Councils specially formed for the purpose thus began from the year 1833. Henceforth 'Regulations' give place to 'Acts', a change in name which is significant of the change in the character of the source of the legislation.

The Act of 1853

The legislative member was made an ordinary member by the Charter Act of 1853. The Executive Council was enlarged for legislative purposes by the addition of the Chief Justice of Bengal, a puisne judge and four servants of the Company of not less than twenty years' standing, nominated by the Governments of each of the provinces of Bengal, Madras, Bombay and the North-West Province. In all, for legislative purposes, there were to be twelve members including the Governor-General, Commander-in-Chief and four ordinary members. The Legislative Council thus constituted was intended for purely legislative work. It must be noted that the Legislative Council as such had no separate existence. As Strachey points out, there was only one Council known to the law. That was the

Executive Council. Additional members were invited to join when it met for legislative purposes.

A new phase was opened in 1858. The Mutiny had come and gone. The East India Company were abolished and with them the Double Government introduced by Pitt's India Act of 1784. The Crown and Parliament directly undertook the responsibility of the Indian Government.

After the Conquest was Complete

After the task of the conquest of India was completed and the Company's administration settled down into a peaceful routine, and the military outlook of administration was no longer necessary to be emphasized, attention was naturally directed to a certain extent towards the problems of a peaceful government. On the abolition of the Company and the transference of government to the Crown, a new phase was opened. The ideal of British administration in India was proclaimed to be the development and cultural and material advance of the people of India. The conquering power declared that it looked upon its conquest as a sacred trust, involving the tremendous responsibility of educating and generally uplifting the huge masses of population that by curious coincidence of circumstances came under its rule. The declared intention was to set up a peaceful, progressive, liberal sort of administration which would more closely associate the conquered classes with the conquerors and impart to them administrative and political training. The history and progress of the Indian Legislatures synchronizes with the history of the progressive stabilization of the British power in India.

By the Act of 1861, for purposes of legislation the Governor-General nominated not less than six and not more than twelve additional members who took office for

two years. Of these additional members not less than half were to be non-officials. The Legislature established by the Act of 1853 'had modelled its procedure on that of Parliament and had shown an inconvenient degree of inquisitiveness and independence.' The Act of 1861 expressly limited the function of the Council to legislation only. It could not entertain any other interrogative or deliberative motion. Measures relating to the public revenues of India or public debt, religion, military and naval matters, foreign relations, were not to be introduced without the Governor-General's previous sanction. To every Act passed by the Council the Governor-General's consent was necessary. The legislative powers of the Governor-General-in-Council were declared to extend to 'making laws and regulations for repealing, amending or altering any laws or regulations' already existing, and to 'making laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice, and for all places and things within the Indian territory, and for all servants of the Government of India within the dominions of Princes and States in alliance with Her Majesty'.

The Act of 1861

The powers of legislation taken away from the Provincial Governments by the Act of 1833 were restored to them. No line of demarcation was specifically drawn between the central and provincial subjects. The previous sanction of the Governor-General was made necessary for certain legislation by the local Legislatures and all Acts passed by them required the subsequent assent of the Governor-General and the Secretary of State.

The Act also empowered the Governor-General to establish, by proclamation, Legislative Councils

for Bengal, the North-West Province and the Punjab. They were established respectively in 1862, 1886 and 1898.

The Act of 1870 enabled the Governor-General to legislate in a summary manner for the less advanced parts of India by proclaiming certain areas as coming under this Act and then making the necessary regulations for their government through the Governor or other administrative officer who might be in charge.

The Act of 1892

The Indian Councils Act of 1892 increased the number of members of the Legislative Councils, introduced changes in the system of nomination and granted some relaxation in the rigidity of their procedure. The Governor-General's Legislative Council was now to consist of not less than ten and not more than sixteen additional nominated members. The minimum number of non-official members was increased to ten instead of the old proportion of one half of those nominated. Of these ten, five were to be nominated on the recommendations of the Calcutta Chamber of Commerce and non-official members of the Legislative Councils of Bengal, Madras, Bombay and the North-West Province. Thus there was to be an increase in the total number of members and in the proportion of non-official to official members. A modification was made of the system of nomination in such a way as to introduce the principle of election tentatively in practice. To this enlarged Legislature were given greater powers. The annual financial statement or the budget had henceforth to be regularly placed before the Legislature and members were allowed to discuss it generally, and express their opinion on it as a whole. However, power was not given to move any resolution or divide the Council on any matter concerned with the budget. Asking of

questions was authorized by this Act. The power of putting supplementary questions was however not conceded.

The Act of 1909

The Act of 1909 was an important step in Indian constitutional history. That year saw the introduction of what are known as the Morley-Minto Reforms. India had passed through a big wave of nationalistic agitation and some of her prominent political leaders were incarcerated. An insistent demand for the recognition of Indian public opinion as the controlling factor in Indian administration was sought to be met by the Indian Councils Act of 1909. The most important clauses of this measure referred to the improvement of the Legislature. The size of the Councils was materially enlarged, the maximum number of members of the Governor-General's Legislature being raised from sixteen to sixty. They were to be partly elected, partly nominated. An official majority was, however, deliberately maintained in the Central Legislature, only twenty-seven out of the additional sixty members being elected, and the remaining thirty-three together with the eight ex-officio members being nominated by Government. The principle of election which was only indirectly accepted in 1892 was now openly and explicitly introduced. The powers and functions of the Council were increased. The budget could be discussed very generally under the law of 1892. Henceforth resolutions could be moved upon any of its items and the Council could be divided upon them. Resolutions upon matters of general public importance might also be proposed and discussed and a division on them was allowed to take place. Certain subjects could not be discussed by the Council at all. Any resolution could be disallowed by the Governor-General who acted ex-officio

as the president of the Council. Further, the right of interpellation was extended by allowing the member who put the original question to ask a supplementary question.

No Principle of Responsibility

All these reforms introduced by the Act of 1909, though in themselves marking a distinct step in advance, had absolutely nothing to do with the introduction of responsible government. Lord Morley's clear disclaimer about any intention of introducing parliamentary government in India is famous. There was no question of subordinating the executive to the Legislature even to a slight extent. However, there was a distinct endeavour to associate the latter with the former more closely than before. Opinions expressed by the elected members of the Legislature were expected to indicate clearly the direction of the current of popular opinion and Government, if they so pleased, might modify their policy to accommodate themselves to the popular viewpoint. The Montford Report clearly states that the Councils were more effective than they knew.

The exact measure of such indirect influence cannot be assessed. That it might have been to a certain extent real may not be denied ; nor can it be combated, on the other hand, that such an influence was bound to be extremely uncertain, if not illusory, and that its effectiveness, in whatever small degree, was rather dependent upon the courtesy it could evoke than upon the exercise of a self-assertive right. Still, the Reforms were welcomed by some of the contemporary politicians as marking a definite step in advance in the history of India's constitutional development.

Five years after the Indian Councils Act of 1909,

extraordinary circumstances arose in the world. The deluge of War swept away time-honoured institutions and tremendously affected the moral and material condition of all important countries. India, in common with other countries, came under the influence of the new forces. The momentous pronouncement of 20 August 1917, which declared the grant of responsible government as the final goal of British policy in India, the visit of the Secretary of State to India and the passing of the Government of India Act on the lines of the recommendations made in the Montagu-Chelmsford Report, are instances of this influence on the polities of India. The new Act was passed in 1919 and came into force from 1921.

The Act of 1919

The problem that was sought to be tackled by the Montford Report and also by the Government of India Act was a complicated one. The continuance in its unmitigated and unregenerate form of a purely bureaucratic and paternal administration, completely irresponsible to the Legislature, was inconsistent with the announcement of 1917 and generally with the spirit of the times. On the other hand, the grant of full Dominion Status at one stroke was regarded as simply suicidal and fraught with the gravest danger. Out of the two extremes a *via media* was sought to be explored by the Reforms. A beginning in responsible government was to be made under proper safeguards. The most suitable field for making the experiment was considered to be the province.

The Beginning of Responsibility.

The Central Government was to be left out so far as the introduction of responsibility in any degree was concerned. However, the Central Legislature was to be considerably

enlarged and democratized and larger powers were to be granted to it, so that the net practical, if not legal, result of these altered circumstances would be in the direction of making the Government of India more susceptible to popular opinion. With this end in view, the whole of the Central Legislature was thoroughly overhauled. For the first time, a bicameral system was introduced, following the invariable practice of most of the important western countries. The old Supreme Legislative Council was now replaced by two bodies, one, the Legislative Assembly and the other, the Council of State.

3. The Council of State

Constitution

The Council of State in India corresponds to the upper chambers of other countries. The total number of its members is 60. Out of these, 33 are elected by the different constituencies and 27 are nominated by Government. Of the nominated members, not more than 20 are to be officials.

The Council of State is a part of the Central Legislature and its electorate is comprised within the territorial limits of the whole of British India. Elections are not however held on a general ticket throughout the area. The existing political divisions are taken as units, and seats are assigned to them approximately in proportion to their population, to their territorial extent and so on. The total elected number of thirty-three is thus distributed among the various provinces which are taken as electoral units. A similar distribution also takes place of nominated seats.

The great diversity of political and economic conditions in the various provinces makes a uniform franchise for a chamber of the Central Legislature almost an

impossibility. The franchise for the Council of State therefore is different in the different provinces. The variation is, of course, intended only to equalize the conditions of the franchise as far as possible by taking into account the particular economic or political situation of each province and correcting and modifying the franchise in the light of those conditions. This body is intended to serve the purpose of an upper and revising chamber and therefore to consist of persons who have large vested interests in the land. They are expected to be conservative enough to stand above the radical freaks of a demos. The qualifications are therefore so contrived as to ensure that the majority of the members will belong to the richest strata of society, a small number being allowed for intellectuals.

Franchise

In the Presidency of Bombay (i) persons who pay an income-tax on an annual income of not less than Rs. 30,000, (ii) persons who are owners of land, the land revenue dues of which are not less than Rs. 2,000 per year, (iii) persons who are Sardars or Talukdars or Dumaldars or Inamdars and recognized as such by Government, are entitled to have a vote. The object and the effect of this high franchise are clear. It excludes any one who is not very wealthy or who is not a scion of an aristocratic family. The intellectual element is supplied by the further provisions that (iv) all persons who have been once President or Vice-President of a Municipality, (v) President or Vice-President of a District Local Board, (vi) persons who have been members of the Senate or fellows of a University, (vii) persons who have been once members of any legislative body in India, (viii) persons who enjoy the distinction of the title of Mahamahopadhyaya or Shamsul-ul-Ulema, have also a right to

vote. These provisions have made it possible for comparatively poor persons to contest the seats of the Council if they have to their credit some public work and influence as demonstrated by their possessing any of these qualifications.

In the elections of 1925 the total electorate for the Council of State numbered 32,126 of which Burma contributed no less than 15,555. If representatives from Burma are excluded, the remaining thirty-two members of the Council of State are elected by only 17,000 voters spread over the whole of British India.

With the exception of this small intellectual and to a certain extent democratic element, the Council of State has a predominantly oligarchical character. It therefore possesses all the characteristics that are the distinguishing features of oligarchy. It is conservative in its very elemental formation. It is always suspicious of progress. Its outlook is generally extremely narrow. Representing as it does the vested interests in the state, it is inclined to be very much self-centred and self-protecting. Not being returned by an extensive electorate it has a tendency to be exclusive in its outlook and to be left unaffected by the currents of popular opinion. The small elected majority of five is not calculated to lessen the consequences of the oligarchical nature of the body. The tenure of the Council of State is five years.

It is an Oligarchical Body

For any legislature the position and status of the president are matters of important consideration and privilege. In the case of the old Supreme Legislative Council the Governor-General was the ex-officio president. In the new dispensation of the Reforms this privilege has been taken away from the Governor-General. For the Council of State the president

President

is to be nominated by the Governor-General and from the time of its inception till very recently he has been invariably an official. At present, however, a non-official has been selected to hold that office. In this respect the Council of State is denied the privilege of electing its own president, a privilege which has been enjoyed by the Legislative Assembly.

Functions and Powers.
i. Legislative

A reference has already been made to the different kinds of powers which a legislative chamber can possess. The Council of State has been given full legislative powers. Every bill which has to be passed into an Act must receive its assent. Any member, official or non-official, may introduce a bill for the consideration of the House which may or may not pass it. No measure can be incorporated into the law of the land unless the Council of State has given its sanction to it. It enjoys in this respect the same powers as are enjoyed by the Legislative Assembly.

ii. Administrative

It can exercise control over the administration by moving resolutions or adjournments or votes of censure, or by putting questions and supplementary questions. Fifteen days' notice is required for a resolution. The Governor-General can disallow any resolution if he feels it necessary to do so in public interest. Motions for adjournment must refer to definite matters of urgent public importance and of recent occurrence. Questions and supplementary questions to elicit information on points in the routine of administration can be put by members to the executive officials. On matters affecting relations of the Government with foreign States or Indian Princes or on those matters which are *sub judice* no questions can be asked and no resolutions can be moved. The president can

disallow a question or supplementary question. He can also disallow a motion for adjournment.

iii. Financial

Lastly, the financial powers of the Council of State have to be understood. The Council of State is avowedly a body of elders, oligarchical in character and serving as an upper chamber. It has only a remote acquaintance with the beatings of the popular pulse and only a remote affinity with popular sentiments and desires. The second chambers in western countries do not enjoy the same thorough control over the nation's purse as the lower chambers possess. They are regarded as inherently unfitted to exercise this power because of their vested interests, because of their narrow representative character and because of the general conservative—if not stagnant—outlook that pervades all their thoughts and acts. The House of Lords in England for instance, cannot initiate any money bill, and after the legislation of 1911 cannot claim equal rights with the lower chamber in financial affairs ; it has been disarmed of its privilege of persistently opposing and obstructing the passage of the Finance Bill after it has been passed more than once by the lower body, the Commons.

Following this sound constitutional precedent, the Indian upper chamber is denied certain privileges in financial matters which are exclusively granted to the lower chamber. The budget is to be presented to both bodies on the same day. Both of them can discuss it thoroughly, but the voting of particular grants demanded by the heads of various departments is a special duty and privilege of the Assembly. They are not submitted to the Council of State after they are voted upon by the Assembly. The latter body is in this respect supreme, subject to the certifying veto of the Governor-General.

After the voting of grants, ways and means of revenue

have to be considered. Money has to be found for the expenditure that is voted and all proposals for taxation are embodied in a bill known as the Finance Bill. This bill has to be passed by the Assembly and is then sent up to the Council of State for its assent like any other legislative bill. The Council may pass the bill as it is or introduce amendments which must be acceptable to the originating chamber. In a deadlock the Governor-General's extraordinary powers can be exercised for preserving the proper conduct of the administration.

The Council of State's financial powers are therefore as under. The budget is presented to it at the same time as the Assembly. It has the right of having a general discussion on the budget and generally on the financial policy of the State. Its legislative powers being co-ordinate with those of the Assembly, the Finance Bill, which contains all proposals of taxation, has to be submitted for its assent and can be modified or even rejected by it. The power which the Council of State does *not* possess is that of voting supplies or grants, demands for which are made by the heads of the various departments separately. That is the exclusive privilege of the Assembly.

It might be interesting to note that the Council was originally intended to be a predominantly Government body containing a clear official majority, so that any measure required by Government could be easily passed. The Joint Parliamentary Committee however discountenanced such a proposal as reactionary and discordant with the spirit of the Reforms. An endeavour was then made to constitute a real second chamber corresponding to similar bodies in other countries. The elected non-official majority, though definitely introduced,

was made extremely small, and the franchise was pitched so high as to ensure an essentially plutocratic character for its major portion.

Criticism of the Council of State

The experience of the working of the Council during the last twelve years has revealed and confirmed the existence of the usual antagonism and cleavage between the viewpoints of a democratic chamber and those of an oligarchical house. A cent per cent increase in the salt-tax which was proposed in the budget by the Finance Member and which was vehemently opposed by the Legislative Assembly was approved of by the Council of State. Nor could the Assembly's antagonism to the Princes' Protection Bill find any support in the Council of State. In fact, a constitutional crisis in the real sense of the word has not yet occurred at all. On crucial occasions of conflict between the democratic Assembly and the bureaucratic Government, the oligarchical Council of State has till now invariably thrown itself on the side of the Government. With its help and by the exercise of his power of certification the Governor-General has been able to obtain whatever he has wanted.

Even in free countries, a congregation of vested interests is always extremely sensitive and nervous about the progressive democratic impulse, and is opposed to it. In the environment of a conquered country like India the instinct of self-preservation gets immensely strengthened and naturally induces a course of intense caution on the part of the aristocratic class. Critics of the Council of State have every reason to deprecate the formation and constitution of a body which is inevitably drawn into an alliance with the bureaucracy as against the declared wishes of the popular chamber.

Statement showing the composition of the Council of State as it stood when the Simon Commission reported.[1]

Province	Nominated		Elected					
	Officials	Non-officials	Non-Mohammedan	Mohammedan	Sikh	Non-communal	European commerce	Total
Government of India ...	11 (including president)	...	...	...	...	...	...	11
Madras	1	1	4	1	...	...	...	7
Bombay	1	1	3	2	..	...	1	8
Bengal	1	1	3	2	...	...	1	8
United Provinces ...	1	1	3	2	...	...	...	7
Punjab	1	3	1	2[3]	1	...	...	8
Bihar and Orissa ...	1	...	2[3]	1	...	...	...	4
C. P. and Berar ...	...	2[2]	...	...	...	1	...	3
Assam	...	...	...	1	...	...	...	1
Burma	...	...	...	...	...	1	1	2
N.-W. F. Province ...	...	1	...	...	...	...[4]	...[4]	1
Total ...	17	10	16	11	1	2	3	60

4. The Legislative Assembly

Constitution

The lower and more democratic chamber in the Indian Legislature is known as the Indian Legislative Assembly. This body consists of a total of 144 members of which 103 are elected and 41 nominated. Of the latter not more than 25 are to be

[1] Report, vol. I, p. 167.

[2] One of these is nominated as the result of an election held in Berar.

[3] At alternate general elections there are three non-Mohammedan seats for Bihar and Orissa and only one Mohammedan seat for the Punjab.

[4] The distribution of nominated seats may be varied at the discretion of the Governor-General but the officials cannot exceed twenty.

officials. It is thus evident that both in its size and in the larger proportion of elected to nominated members the Assembly is distinguished from the Council of State. The total number of its members is distributed among the various provinces according to their population and importance. The existing political divisions of the territory of India are accepted as the units for its election; and as it is a body larger and more democratic than the Council of State and possesses a wider electorate, the political sub-divisions of the province are further taken as units for the distribution of seats and for election, unlike the Council of State for which, in the non-Mohammedan constituency, the province as a whole is the unit. Thus the number of elected members representing the presidency of Bombay in the Assembly is 16 out of its elected total of 103. These are elected from constituencies, the territorial extent of which corresponds to the Commissioner's Divisions, or in the urban constituency of the City of Bombay, to the extent of the city.

Franchise

There cannot be, literally speaking, a uniform franchise for the Assembly throughout India. It varies in the different provinces according to local conditions, an attempt being made to establish similar real conditions in all the provinces. In the presidency of Bombay, (i) all persons who pay income-tax; (ii) all persons who pay an annual land revenue in an amount not less than Rs. 37-8 in the Upper Sind Frontier, Panch Mahal and Ratnagiri Districts and not less than Rs. 75 in the rest of the Presidency, have been given the franchise for the Assembly. It will be seen that this franchise is much wider than that for the Council of State and narrower than that for the Bombay Legislative Council. Members possessing a wider outlook, and elected from a wider electorate are required to

discuss all-India questions; yet the franchise cannot be too high if a largely democratic and representative character is to be maintained. The Assembly must combine in itself the characteristics of being a well proportioned all-India body, and also a predominantly democratic body, unlike the oligarchical Council of State.

The total electorate for the Legislative Assembly numbered 1,128,331 in 1926. Thus its 105 members are returned by less than twelve lakhs of voters in British India the total population of which is nearly twenty-five crores. The tenure of the Legislative Assembly is three years.

President

It was provided in the Act that the first president of the Assembly would be a non-official member of Parliamentary experience nominated by the Governor-General to hold office for the first four years. As has been stated already, the president of the Indian Legislature before the Reforms was the Governor-General ex-officio. The president of the Council of State is a nominated member, and had been an official almost till now. The Assembly has been given the privilege of electing its own president from amongst its members after the Reforms. On the expiration of the first four years, during which the affairs of the Assembly were to be guided by an experienced and well-informed parliamentarian and during which conventions and traditions could be set up by him, the right of election was to be exercised and thenceforth the chair of the president was to be adorned by one on whom the choice of the Assembly fell. Sir F. Whyte was the first nominated president. Mr. V. J. Patel was the first elected president and he was re-elected for a second term of office.

The election of its own Speaker has been an important and time-honoured privilege of the House of Commons. The historical evolution of this office is interesting.

Importance of the Office of President

From being the spokesman and leader of his colleagues and a channel of communication between them and the monarch, the Speaker has now come to be a non-party dignitary vested with all the intricate functions and powers that are necessary to guide the deliberations of a democratic legislative chamber. Constitutionally, the Speaker's or President's position carries great responsibilities with it. He presides over the meetings of the body and can adjourn them. He maintains order at the time of discussion, gives his rulings on disputed points of procedure and has to dispose systematically of the business on the agenda. He maintains the dignity of the House by properly controlling members in the use of their language ; he has to protect carefully the privileges of the House from any outside encroachment. He admits questions and grants permission to move adjournments. In case of an equality of votes the president can give his casting vote on either side. In short, to have its own elected president is one of the most cherished and one of the most useful privileges enjoyed by a legislature.

That privilege has been conceded to the Legislative Assembly by the Act of 1919. A deputy-president has been allowed to be elected from the beginning to preside in the absence of the president. The salaries of both the president and deputy-president are voted by the Assembly. Both cease to hold office when they cease to be members of the Assembly and may be removed from office by a vote of the Assembly and with the concurrence of the Governor-General.

The powers and functions of the Assembly are to be considered in the light of the classification that has been given already. The legislative powers of this body are co-ordinate with the powers of the Council of State.

Powers and Functions—Legislative and Administrative

No bill can be deemed to have been passed into an Act having force of legality unless it is passed by both bodies and has received the Governor-General's assent. All legislation must therefore pass through the Assembly. It can also move resolutions, votes of censure, motions of adjournment and any of its members can put questions and supplementary questions in the same manner as the members of the Council of State. It can thus effectively establish its supervising authority and critical control over departmental administration and unmistakably indicate its political predilections.

Financial Powers

The Assembly has, however, a wider power in the domain of finance than that possessed by the Council of State. The budget has of course to be presented to this body by the Finance Member as he used to submit it to its predecessors in pre-Reform days. It can also carry on a general discussion of the budget and of the financial policy of Government as before. But now it does not stop with moving resolutions and dividing the Council on them, as it did between 1909 and the introduction of the Reforms of 1919. For the first time in Indian constitutional history, power is given to the Legislature to vote the grants demanded in the budget. This has to be clearly understood.

Pre-Reform Period

The position after 1909 was peculiar. In the first place, the Supreme Legislative Council contained a clear official majority, so that any amounts of money that the Government wanted could be easily got by them by issuing an executive mandate concerning the manner in which official members should vote. And even if an official majority had not existed, matters would not have been much better, for the power that was conceded to the Legislature in

regard to the budget amounted only to the liberty of expressing a definite opinion on a particular item if allowed to do so. This expression of opinion was not binding upon the Government. It had not the authority of law.

After the Reforms

On the other hand, the power of voting supplies, partially granted under the Reforms, is a different thing. It has been already explained that complete control over the country's finance is one of the essential conditions of Parliamentary government. It has not been introduced in even a slight measure in the central administration of India. Yet an endeavour is made to create some shadow of Parliamentary government by conceding to the Legislature the privilege of voting a part of the total supplies required by the Government of India. The money required for certain items cannot be spent unless it is voted by the Assembly or is permitted to be spent by the certification of the Governor-General.

Non-votable Items

The proposals of the Government for the appropriation of revenues and moneys are divided into two parts, votable and non-votable. Grants coming under the latter head are not put for the Assembly's vote, nor can they be discussed by the Legislature unless the Governor-General otherwise directs. Some very important subjects are included in this group. Interest and sinking fund charges, salaries and pensions of persons appointed with the approval of His Majesty or the Secretary of State, salaries of Chief Commissioners, expenditure under the heads, ecclesiastical, political and defence, are all subjects which are non-votable. They cover about eighty-five per cent of the total expenditure.

Proposals for the appropriation of revenues in subjects other than these specified ones are submitted to the vote of the Assembly in the form of demands for grants. The

Assembly may assent to or reduce or refuse a grant.

Votable Items

Grants that have been thus reduced or rejected cannot be obtained unless the Governor-General feels that they are absolutely necessary for the discharge of his responsibilities towards Parliament and restores them by his power of certification. The Joint Parliamentary Committee made it clear that the power of certification was intended to be real, inasmuch as voting of the budget was not accompanied by any degree of political responsibility and the Governor-General-in-Council continued to be solely responsible to Parliament for peace, order and good government in India.

With the creation of an Assembly containing a large elected non-official majority and possessing a reasonably representative character because of its election on a democratic franchise, and with the partial grant to this body of the power of voting supplies demanded by Government officials, it is no wonder that the centre of political importance in the constitution of India has now definitely shifted to the Indian Legislative Assembly. The Council of State does not enjoy the privilege of voting grants. It can only approve of and discuss the Finance Bill.

Besides, the Assembly has power to appoint a standing

Finance Committee

Finance Committee, (i) to scrutinize proposals for new votable expenditure, (ii) to sanction allotments out of lump sum grants, (iii) to suggest retrenchment and economy in expenditure and (iv) generally to assist the Finance Department by advising on such cases as may be referred to it. The Committee consists of ten members elected by the Assembly with a chairman nominated by the Governor-General.

At the commencement of each financial year there is also constituted a Committee on Public Accounts,

consisting of not more than twelve members of whom not less than two-thirds are elected by the non-official members of the Assembly. The Finance Member is the chairman having a casting vote in case of an equality of votes.

Committee on Public Accounts

The Committee has to scrutinize the audit and appropriation accounts of the Governor-General-in-Council and satisfy itself that the money voted by the Assembly has been spent within the scope of the demand granted by the Assembly. It has also to bring to the notice of the Assembly every reappropriation from one grant to another, every reappropriation within a grant, and all such expenditure as is desired by the Finance Department to be brought to the notice of the Assembly.

5. Procedure of Work in the Central Legislature

Summons for meetings.—The time and place for the meeting of the Central Legislature are fixed by the Governor-General. A summons to attend the session is issued to each member by the Secretary of the Legislative Chamber.

Oath and President's Election.—If a legislature is meeting for the first time after new elections, its members are first of all called upon to take the Oath. Immediately thereafter they proceed to elect their President and after he is elected, to elect their Vice-President. Both these elections are not considered to be finally valid unless they have been approved of by the Governor-General.

At the commencement of each session the president must nominate from among the members a panel of not more than four chairmen.

In the absence of the President, the Vice-President presides. If both are absent they can request any one of the panel of chairmen to preside over the meeting.

Allotment of Days for Business.—The Governor-General

allots definite days for the transaction of non-official business. On other days only official business can be transacted unless the Government otherwise directs.

A list of business or agenda is despatched to each member before the commencement of the session.

Quorum.—Twenty-five members form the quorum for a meeting of the Legislative Assembly and fifteen members for that of the Council of State.

Questions.—The first hour of each meeting is devoted to the answering of questions. For each question not less than ten clear days' notice is required ordinarily. The president has power to disallow a question if in his opinion it constitutes an abuse of the member's right.

Any member may put a supplementary question for the purpose of elucidating any matter of fact regarding which an answer has been given. Even such questions can be disallowed by the President.

Resolutions.—A member who wishes to move a resolution must ordinarily give fifteen clear days' notice. The resolution must pertain to a subject of general public interest and may be disallowed by the Governor-General. Amendments can be moved by any member to a resolution. Non-official resolutions can be taken only on days allotted for non-official business. Their order of priority is determined by ballot.

Adjournment Motions.—Leave to make such a motion for the purpose of discussing a definite matter of urgent public importance must be asked immediately after questions are answered. If more than thirty members rise in its support the President intimates that it will be taken up for discussion at 4 o'clock in the afternoon. The debate must terminate at 6 o'clock and thereafter no question in respect of that motion shall be put.

Legislation.—Generally, a month's notice is required

for leave to introduce a bill. Every bill is required to pass through the following stages.

(*a*) A member who wants to move a bill must first seek leave of the Chamber to introduce it. In doing so he may make a brief explanatory statement. An opposing member is also allowed to make a few remarks to explain his position. Then without further debate the question is put and if the majority of members are in favour of leave being granted, the mover forthwith introduces the bill.

However, the Governor-General may order the publication of a bill in the Gazette although no motion has been made for leave to introduce it. In that case such a motion is not necessary and if the bill is afterwards introduced it is not necessary to publish it again.

(*b*) After a bill is introduced it is published in the Government Gazette.

(*c*) After a bill is introduced and published, the member in charge moves that the bill be read for the first time. Only the general principles of the bill are discussed on this occasion. Discussion on details is not permitted.

(*d*) After the first reading is passed, any one of the following motions may be made :

(i) that the bill be read a second time ;

(ii) that the bill be referred to a Select Committee ; and

(iii) that the bill be published for eliciting public opinion.

If (iii) is accepted, the bill may be referred to a Select Committee after public opinion has been elicited.

The Select Committee may hear the necessary evidence and usually has to submit its report, with dissenting minutes, if any, within two months. The Report and the minutes are published in the Gazette and also circulated among members. It is then presented to the

legislature by the member in charge of the bill with a brief explanatory speech.

(*e*) After the Select Committee's Report is presented, the mover proposes that the bill be read a second time. If this motion is agreed to by the majority the president has to submit the bill clause by clause separately for the vote of the body. Any member can move an amendment to the clause with seven clear days' notice. Votes are first taken on the amendments and then on the clauses as they originally stood or as they have been amended.

(*f*) After the second reading is finished the mover proposes that the bill be read for the third time. Only verbal amendments are allowed on this occasion and no notice is required for them.

Every bill is required to be passed three times in three readings as described above.

A bill passed by one Chamber must be sent to the other Chamber and there it has to pass through the same procedure.

After the bill has been passed by both the Chambers it goes to the Governor-General for his assent. Only after that assent is given the bill finally becomes law.

Budget.—The budget has to pass through the following stages:

(*a*) It must be presented to the legislature on such day as the Governor-General appoints. A copy of it along with detailed estimates must be despatched to each member at least seven days prior to the first of the days allotted for the general discussion of the budget.

No discussion of the budget can take place on the day on which it is presented.

(*b*) After the budget is presented, the legislative body is at liberty to discuss the budget as a whole. The Governor-General allots a definite number of days for

this purpose. This is the opportunity for members to criticize the general scheme and policy of the Government and the main principles of administration. No motion is allowed at this stage and details are generally excluded from the discussion. The Finance Member has a general right of reply at the end.

(*c*) After general discussion, the voting of demands for grants is undertaken. Not more than fifteen days are allotted for this purpose and not more than two can be taken up by the discussion of any one demand.

On the last of the allotted days for the voting of grants the president must stop all discussion at 5 o'clock in the evening and forthwith put every outstanding demand to the vote of the Chamber.

A separate demand for grant is ordinarily made for each department of Government.

The Legislature can reduce or omit but not increase the amount demanded in a grant.

Table showing the chief sources of revenue and the main items of expenditure of the Central Government[1]
(Budget figures for 1929–30 in crores of rupees)

Revenue		Expenditure	
Customs ...	51·22	Defence (net) ...	55·10
Income-tax ...	16·60	Debt Charges (net) ...	12·14
Salt ...	6·35	Civil Administration ...	12·67
Opium (net) ...	2·35	Loss on Posts and Telegraphs and Irrigation.	0·33
Railways (net) ...	6·25	Other Expenditure (including pensions and cost of revenue collections) ...	11·15
Currency and Mint ...	3·06		
Other receipts ...	5·56		
Total ...	91·29	Total ...	91·39

[1] *Simon Commission Report*, vol. I, p. 358.

6. Conflicts between the two Chambers

Conflicts between the Chambers

With the creation of two independent and co-ordinate bodies in the Central Legislature, the Government of India Act had to provide for the contingency of a conflict between the two Houses on any matter of legislation where consent of both the Houses is made obligatory by law. The contingency of a conflict is inherent not only in the duality but in the co-ordinate character of the Central Legislature. Both have equal status and equal powers and uncompromising differences between them have to be made up by providing for some method where this equality will disappear. Such conflicts have taken place in all bicameral systems of legislature and solutions for the consequent deadlock have been also provided. The monarch's unrestricted right of creating as many peers as he likes has proved the safety-valve of the English constitution on occasions more than one. The Parliament Act of 1911 has made resort to this power unnecessary. Special clauses have been included in the Government of India Act of 1919 to end differences between the Indian legislative chambers when they arise.

After a bill is passed by either of the chambers it is sent to the other chamber for its assent without which the bill cannot become an Act. Now the other chamber might accept the bill without modification and there is no hitch. If it introduces any amendment, then the bill is sent back to the originating chamber with the amendment. If the latter is acceptable to the former, matters pass off smoothly. The real conflict arises on occasions when a bill passed by one chamber is totally rejected by the other or is so altered by it as to prove unacceptable to the first chamber. Various methods are provided to

avert the conflict or to end it when it comes. For example :

Remedies to end them

(i) When a bill is introduced in either chamber and before it is referred to a Select Committee of the House in the second reading, the originating chamber may request, by a resolution, the other chamber to nominate some of its members on the Select Committee, so that, while the bill is on the anvil and passing through a searching consideration at the hands of the Committee, members of the other chamber are invited to take part in the discussion and give an expression of their views so as to enable the bill to be modified in the light of their opinion. In this way future opposition may be anticipated and a probable conflict may be averted if the motion to appoint a Joint Committee is accepted by both Houses. On such a Joint Select Committee an equal number of members from both the Houses will sit ; its chairman will be elected by itself and will have only one vote, and in case the votes are equal, the question will be decided in the negative. The time and place of the meeting will be fixed by the president of the Council of State.

Joint Select Committee

Joint Conference

(ii) When there is a difference of opinion between the chambers, they may agree to a Joint Conference where each chamber will be represented by an equal number of members. The procedure of the conference will be determined by itself. The time and place of its meeting will be fixed by the president of the Council. An amicable settlement may be arrived at as a result of the discussions in the Conference and the deadlock may be ended.

(iii) As a last resort, if the chambers are in a state of pronounced mutual disagreement, when a bill as passed

by the one is not approved of by the other and when the latter's amendments and alterations are not acceptable to the originating chamber, this last body may report the fact of the disagreement to the Governor-General or allow the bill to lapse. In case intimation of the difference is given to the Governor-General, he

Joint Sitting

may convene a joint sitting of both the chambers by notification in the Gazette. The president of the Council of State shall preside and its procedure shall apply. The members present at a joint sitting 'may deliberate and shall vote together upon the bill as last proposed by the originating chamber and on the amendments in dispute.' The majority of the votes of the total number of members present shall prevail and the bill as passed by the majority, with whatever amendments may have been accepted, will be taken as if it had been duly passed by both the chambers. It is plain that in a joint sitting the Assembly will naturally be at an advantage on account of its larger numbers.

A slightly complicated state of things arises in

Certification

connexion with the question of conflict when, in addition to the will of the chambers, a third force, the will of the Governor-General comes into operation. In the cases above discussed the Governor-General was taken to be an impartial disinterested spectator. But occasions may arise—they have arisen in recent times—when in the conflict of opinion between the two chambers the Governor-General may take a keen interest and may cast in the weight of his authority on one side. He can then end the conflict by the use of the extraordinary constitutional weapons that are provided for him. The expedient of a joint sitting proves useless for his purposes if his difference is with the

Assembly, as that body would command in the joint sitting a majority of votes. When, therefore, the disagreement between the chambers is complicated by the disagreement of the Governor-General with either of them, it has happened in practice that the process of certification has been utilized for the removal of such a deadlock.

A concrete case will illustrate the point. The Princes' Protection Bill and the clause doubling the salt-tax in the Finance Bill of 1924 were disallowed by the Legislative Assembly. The Governor-General was interested in the passing of these measures. They were therefore sent up to the Council of State with the Governor-General's recommendation about the form in which they should be passed and were passed by that body. Thus there arose occasions of conflict between the Assembly and the Council, with the Governor-General interested in getting particular measures passed in spite of the opposition of the Assembly. When the bills as passed by the Council of State were not accepted by the Assembly, the Governor-General exercised his certifying power, gave his assent to them and the measures were taken to be legally passed. Apart from the usual constitutional provision of a Joint Select Committee or a Joint Conference or a Joint Sitting, the Governor-General's extraordinary executive authority has thus indirectly tended to serve the same purpose on certain occasions, when the Governor-General himself has been a party in the conflict and has espoused a particular cause.

CHAPTER IX

The Relation of the Executive to the Legislature

1. No Principle of Responsibility

The Executive ought to be Subordinate

It has been explained already how a proper understanding of the relation between the executive and legislative parts of a country's administration is indispensable for estimating the reality of its democratic character. In a country like England with Parliamentary institutions, the subordination of the executive to the legislature is complete. And as the final goal of British policy in India has been announced to be the progressive realization of responsible government and the development of Parliamentary institutions, when the goal is achieved in practice, the subordination of the Indian executive to the Indian Legislature will also be complete. An attempt has to be made to view in a proper perspective the relations between the two parts as they exist in the present avowedly transitional period.

No consideration could have of course been given to this problem before the completion of the Indian conquest and the settling down into peaceful routine of its administration. In the beginning of British rule, Legislatures as separate bodies did not exist at all. And when they were introduced and as they were progressively developed during the latter portion of the nineteenth century, gradual additions were made to their powers. Still, the thoroughly irresponsible character of the executive administration was fully maintained.

Even at the time of the Councils Act of 1909 the

intention of even indirectly initiating something akin to Parliamentary government was expressly disowned. There was no question of the executive being controlled by the Legislature. The latter at the most could indulge in declamatory rhetoric which very often 'fell on deaf ears and beat its head against stone walls', as Sir Surendranath Banerji would have said. The enlargement of the Councils was simply due to a desire for the greater association of Indians in the administration. There was no impulse of any progressive political principle behind it. The bureaucracy was responsible only to itself and in the last resort to the distant Secretary of State and the languid British Parliament.

The Position before the Reforms

The Act of 1919 has introduced many important changes in other directions, but so far as the strictly legal position is concerned, it has left entirely unaffected and unchanged the old relations between the executive and legislative parts of Government. In strict theory, the Governor-General-in-Council continues even after the Reforms to be as autocratic as he was before. Neither he nor his colleagues are called upon to resign even after a regular vote of censure is passed upon them by the Legislature. Their salaries and rules of service are beyond the reach of the people's representatives. They may not accept any recommendation made to them by the Legislature. Their responsibility is only to the British Parliament and they hold office during the pleasure of the Sovereign. The extraordinary legislative veto that is now given to the Governor-General, otherwise known as the power of certification, is intended to prove as a corrective to any persistent obstruction on the part of the Legislature. In short, the citadel of

The Position after the Reforms

bureaucratic authority, so far as the Central Government in India is concerned, continues to be as strongly fortified as before according to the strict letter of the constitution.

2. Indirect Influence of the Legislature

The new Status and Powers of the Legislature

This is, however, a purely theoretical position. Matters are likely to differ somewhat in practice, particularly since the reforms of 1919. With Legislatures deliberately enlarged and democratized; with an elected non-official majority purposely created in them; with larger financial and deliberative powers advisedly conceded to them; and with the Viceroy's power of certification avowedly declared to be extraordinary; the indirect but none the less real influence of popular opinion as expressed in the Legislature may not be entirely insignificant. The Legislature cannot dismiss Executive Members but can certainly dismiss requests made by them for various grants necessary to keep some of the wheels of the machinery going. The refusal of such requests and the rejection or reduction of any of the demanded grants may indeed provoke a Viceregal resort to the extraordinary weapon of certification. That power may also be invoked for any other similarly rejected legislative measure. But unless certification ceases to be regarded and used as an extraordinary weapon and is invested with the routine familiarity that attaches to all normal instruments of Government, administration by certification will be regarded as uncommon and abnormal.

Importance of Public Opinion

Public opinion as focussed through representative legislative chambers carries a peculiar weight with it. It is the most disciplined and chastened expression of a self-conscious public will. A mobilized and concentrated force of this

type cannot be treated with the dilettante defiance of an unthinking autocrat. Such a defiance would prove nothing less than suicidal. No normal Government can subsist on pure negation. No Government with a human, moral basis and composition can be bolstered up by props which have a tendency to press down those very moral and human elements which are the essence of its vitality. Legally, the Government of India are entirely independent of their legislature. In practice, on the other hand, they have to be thin-skinned enough to be automatically susceptible to popular opinion to a certain extent at least and generally to abide by its wish. Sir Malcolm Hailey, speaking some time back in the Legislative Assembly, was giving a description of the actual state of affairs when he described the Government of India as having become, after the Reforms, responsive if not responsible to popular opinion, and its actions as having become indicative if not reflective of the popular viewpoint.

Influence of Publicity

An incessant use of the privilege of interpellation, of the power of moving resolutions and adjournments, of discussing the budget and voting a part of it, and of the power of sanctioning all legislative measures; in short, an incessant use of the searchlight of publicity and critical investigation, is believed to go a long way in the direction of strengthening the hands of the Legislature and making it the centre of political influence. The executive Government has to gravitate towards this centre, perceptibly or imperceptibly. The elastic adjustment of its actions to accord with the surrounding political atmosphere may be dissembled by the garb of diplomacy; yet a consolidated, sober and responsible popular will is a force which can be discarded only on occasions of the utmost gravity when an administrative breakdown appears inevitable.

Uncertain Nature of Indirect Control

The degree of the indirect influence of the Legislature upon the actions of the Executive cannot be exactly estimated or evaluated. A reference has already been made to the statement in the Montagu-Chelmsford Report before the introduction of the Reforms that such influence was very real. It may be that on some occasions the popular view as expressed in the Legislature is respected and action taken in accordance with it. After the Reforms, the Legislatures have ceased to be mere mock bodies; they have a good deal of representative character and somewhat larger powers. And, therefore, unless either the executive Government has become a thoroughly unmoral, inhuman and lifeless machine, a mere abstraction of power and efficiency, or unless extraordinary vetoes like certification are domesticated into the normality of executive powers, the imperceptible influence of the Legislature over the executive is a factor which cannot be completely ignored.

The experience of the past ten years does not justify any strong hope about the practical success of such an indirect constitutional restraint. On more than one occasion, the views of the Assembly have been disregarded. Proposals vetoed by it have been restored. Grants refused by it have been reinstated. Resolutions passed by it have been neglected. The precarious nature of a power which is allowed only on sufferance and the existence of which is made dependent upon the frailty of a generous caprice has been amply demonstrated during the last few years. Indian public opinion demands the subordination of the executive to the Legislature as a matter exercised as of right and not merely allowed as an ambiguous privilege. And even if the quality and the reality of the Legislature's indirect

influence be asserted and proved to be great, the fact of its uncertainty and its allowance by mere courtesy detract to a great extent from its utility and value.

Composition of the Legislative Assembly as it stood when the Simon Commission reported[1]

Province	Nominated		Elected						
	Officials	Non-officials	Non-Mohammedan	Mohammedan	Sikh	European	Landholders	Indian commerce	Total
Government of India ...	14	5[2]	...	...	...	...	...	...	19
Madras	2	...	10	3	...	1	1	1	18
Bombay	2	1	7	4	...	2	1	2	19
Bengal	2	2	6	6	...	3	1	1	21
United Provinces ...	1	2	8	6	...	1	1	...	19
Punjab	1	2	3	6	2	...	1	...	15
Bihar and Orissa ...	1	1	8	3	...	...	1	...	14
C. P. and Berar ...	1	1[3]	3	1	...	...	1	...	7
Assam	1	...	2	1	...	1	...	...	5
Burma	1	...	3[4]	...	...	1	...	...	5
Delhi	...	...	1[4]	...	...	...	...	...	1
Ajmer-Merwara ...	...	...	1[4]	...	...	...	...	...	1
N.-W. F. Province ...	...	1	...	...	...	...	...	...	1
Total ...	26	15	52	30	2	9	7	4	145

[1] Report, vol. I, p. 168.

[2] Nominated to represent the Associated Chambers of Commerce, Indian Christians, Labour interests, the Anglo-Indian community and the Depressed Classes. The distribution of nominated non-officials may be varied by the Governor-General at his discretion. The official membership of twenty-six is a fixed number though its distribution can be varied by the Governor-General.

[3] Nominated as the result of an election held in Berar which technically is not British territory.

[4] These five seats are filled by non-communal constituencies.

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CHAPTER X

The Growth and Formation of Provinces

Historical

The evolution of a mighty and extensive empire from very small and unostentatious beginnings is the pervading striking spectacle unfolded by the pages of Indian history during nearly three quarters of the century following the battle of Plassey. In the moral, material and intellectual exhaustion which seems to have prostrated the energies and vitality of India, province after province capitulated before the might of the foreigner and the last gasp of the dying nation was breathed in 1857 when a desperate though feeble attempt to regain what was lost ended in a total collapse.

The Nature of the Indian Conquest

The conquest of India by the British race was at once a continuous and a sporadic process. The continuity lay in the idea; the absence of symmetry and system was due to the varied and unequal nature of the opposition which was offered to the conqueror and which had to be thoroughly overcome before the conqueror's authority was finally established. There are clear, well-marked periods during which the work of expansion was carried out. Periods of incessant and aggressive activity always alternate with periods of comparative stagnation and quiet. Such spells of inaction, indeed, seem to have curiously combined in themselves the elements of both cause and effect, the latter so far as natural relaxation inevitably follows an era of feverish energy and the former in so far as an

accumulated and undisturbed spell of peace works as a restorative and further invigorates the tendency to action.

Work of a Century

Beginning with Bengal which practically became a British possession after the grant of the Diwani in 1765, the power of England had spread practically to the whole of India by 1857. Bengal and the Carnatic were being simultaneously acquired during the time of Lord Clive. With the fall of Tippu Sultan and the decline and fall of the Maratha power in 1818 the whole of south India, and almost the whole of central India bordering on its eastern side over the British possession of Bihar, that is almost the whole of the land with the exception of two countries on the western borderland, came under the suzerainty of the new masters. Sind followed in 1839; the Punjab came next in 1852, and finally in 1857 came the defeat of the forlorn and futile endeavour of desperate impotence. The history of this chequered period is filled by the glamour of the exploits of a Clive, of a Wellesley, a Hastings, and a Dalhousie, as also by the restraining influence of a Shore, a Minto or a Bentinck. The larger and longer the conquest, the more complicated and responsible became the task of preserving in good order the huge and incongruous acquisition.

No Scientific Principle in the Formation of Provinces

The fundamental fact must be borne in mind that nearly a century was required to achieve the glory of conquering the whole of India. As a consequence, that symmetry of arrangement and naturalness of division which might be expected to follow from a comprehension of completeness are conspicuous by their absence in the polity that was being evolved during a period which was partly a period of conquest and partly a

period of peace. To take an instance in practical life : it was not as if an extensive and open piece of ground was being systematically developed and a mansion, planned with careful attention to all detail, was being erected upon it. It was rather like the purchase of a site first and the gradual acquisition of adjoining sites afterwards. That a continent like India could not be treated as a coherent whole in itself was an obvious proposition. For the convenience of administration it had to be divided into various provinces so as to ensure division and clear demarcation of responsibility and to avoid fatal confusion in management. The principles underlying the formation of such sub-divisions in a vast country are various. Generally, it would be more natural for political divisions to follow cultural or linguistic divisions, so that the different entities united by ties of a common language and culture would form independent groups of their own.

Provinces not Homogeneous

No such deliberate scientific principle of division underlies the formation of provinces in India. The basis of division is neither ethnological nor linguistic nor cultural. The one factor that influenced and necessitated the division was administrative convenience. And hence some of the Indian provinces have become heterogeneous conglomerations with a great variety of languages and society. The Bombay Presidency which consists of four or five distinct cultural groups, Sind, Kathiawar, Gujarat, Maharashtra and the Karnatak, is a case in point. Sind, which was conquered in 1839, that is before the conquest of the Punjab, could not be allowed to remain dangling by itself. It was therefore merely attached to the British province geographically nearest to it. Many of the provinces were carved out of new acquisitions, and administrative convenience being the sole underlying aim

of the division, the spectacle of homogeneous units being split up into divisions and their solidarity dissipated by their inclusion in two different provinces is not uncommon. The Karnatak, Maharashtra and Berar are pertinent instances. Some of the Indian provinces are therefore mere patchwork, mere congregations of different groups which among themselves have not that inherent affinity which results from common characteristics and common possessions and which is extremely essential for common development.

Governors of Factories

Originally, settlements of the East India Company were established in the three coastal towns of Bombay, Madras and Calcutta, and so long as the Company's business was strictly commercial, it was not necessary to appoint any big political officer for the administration of the factories. The first mention of the power of appointing Governors and other high officers over their fortresses is made in the Charter that was granted in 1661 during the reign of Charles II. The Governor, along with a few senior servants of the Company formed what was known as the Council. The President of the Council and the Governor were one and the same person. Madras, Bengal and Bombay each had its own Governor and Council and each ultimately came to be known as a Presidency, as being the jurisdiction of the President-in-Council. There was no authority on the spot in India which was superior to all the three or to any one of them. Their powers and status were co-ordinate. All of them were controlled directly from England by the East India Company.

It is clear that the chief business of the officials in India was to negotiate for special privileges and concessions for their trade, to safeguard the interests of their merchants

and traders and actually to supervise their commercial transactions. They had no political mission. Sometimes, indeed, their help was sought by the reigning monarch for the suppression of his enemies; sometimes they came into conflict with the reigning monarchs over questions of disputed privileges which the Company claimed but which the monarch declined to recognize. Intricate and prolonged conflicts between Aurangzeb and the East India Company's factories, particularly on the Bengal coast, are recorded. Occasions were not wanting, either, when the aged and unbending Emperor coquetted with the English merchants and sailors in order to induce them to cooperate with him in achieving the one mission of his later life, the extinction of the Hindu power of the Marathas.

Early Officials were purely Commercial

On the whole, however, till the death of Aurangzeb in 1707, and till the liberation of the floods of fermentation that streamed over the land for half a century and more, the East India Company's officers were almost entirely officers in a business concern. Their field of activity was limited to the area of the seaports. They had political power or jurisdiction only over their own servants and only to that extent to which its possession was absolutely essential for conducting the affairs of the factory. Thus the Governor and Council of each factory were empowered to judge their servants and subjects in all causes. They were also given power to declare war or peace with any 'heathen' nation in Asia or America, or to declare martial law in their factories. The Governor was to exercise all powers of a Captain-General of the Army. In short, the Governor-in-Council was vested with those administrative powers only which were necessary to maintain the existence of the Company and to keep their activity going.

With the gradual transformation of the Company from

a commercial into a political body, the nature of the duties of the Governor and his Council, as also the extent and character of their jurisdiction and power, necessarily underwent a change. They were involved in the struggles between the native princes. The unsettled condition of Indian politics and the administrative breakdown in a large part of the country, consequent upon the destruction of the central power in Delhi, affected the position of the East India Company, and strengthened the conviction of some of their officers on the spot in India that a strong attitude alone could save the interests of the Company. The game that was being played by Lord Clive, and the active interference of the East India Company in the tangled skein of Indian politics, were indications of the change that was coming over the outlook and the attitude of the Company's Indian managers.

Acceptance of Political Responsibility by the Company

The battles of Plassey and Wandiwash were only fortunate culminations of this earlier spirit of fretfulness. The acceptance of the Diwani after a complete victory in the battle of Buxar was a systematic and confirmed acknowledgment of sovereign responsibility for the provinces of Bengal, Bihar and Orissa. British authority had also in the meantime been established over the southern province of the Karnatac. Thus after 1757 and till the passing of the Regulating Act in 1774, the Governors and the Councils of the three Presidencies had to watch with vigilance the ruffled course of politics in their respective spheres and to guard against any impending onslaught upon the new supremacy that they had acquired both in north and in south India.

As has already been stated, the Governors were all independent of each other. There was no authority in

India which could control any or all of them. And therefore every Governor looked to orders from his superiors abroad who were separated from the actual scene of operations by a distance not less than 6,000 miles. So long as the Company's business was purely commercial and so long as no further political or military complications were introduced, the Governor's duties were comparatively simple and did not involve any very great risks, either financial or political. Control from distant England did not prove inadequate. Matters stood differently when a change came over the Company. The keeping of regular standing armies, the fighting of regular battles, negotiations of treaties of peace, were no parts of the business of trade. The establishment of territorial sovereignty over a vast area, with all the responsibility of governance that it involved, urgently necessitated a reorganization of the whole system of the Company's Indian management. Whether in Bengal, Bombay, or Madras, the Company's and the local interests were the same.

Independence of the Provincial Governments

This consciousness of the oneness of the Company, wherever its actual field of operation might be, and the susceptibility of any one of its parts to the needs and dangers of the others, had to be far more intensely strengthened when the comparatively easy business of commerce was being and had been exchanged for the difficult business of statecraft. A unity of command and control throughout the Company's dominions in India, and uniformity of guidance were found indispensable for proper governance and safety. The independence of the Governors and the capricious originality in design and action which every one of them might enthusiastically try to evince, were not

Need for Unity of Control

calculated to benefit the administration. The system was found to be mischievous. Madras or Bombay might not prove very susceptible to the demands and difficulties of distant Bengal and the unseemly spectacle might be witnessed of distant provinces putting a premium upon distance and assuming an attitude of culpable indifference when any one of them, far away, was in danger. Considerations of this kind dictated the change that was introduced by the Regulating Act in 1773, amongst the many of others that were also inaugurated by it.

The Regulating Act

One of the clauses of this Act clearly laid down that the Governor of Bengal was to be supreme over the other Governors. In war and peace and also in other important administrative matters the minor Governors were enjoined to obey the Governor-General-of-Bengal-in-Council. The title of Governor-General was given to the Governor of Bengal. The very fact that he was designated Governor-General of Bengal and not of India is indicative of the absence of any wide ambition on the part of the Company's proprietors to include the whole length and breadth of India under their supreme control. The office of Governor-General was a new creation but the person who filled the office was not new. The Governor of Bengal himself became the Governor-General. The duties of the two offices were combined in one person. Direct executive responsibility for the province of Bengal proper was not separated from the duties of the Governor-General. Thus one and the same person was required to perform extremely complicated and heavy duties, disposal of local problems and imperial dictation being both left to him.

With the creation of the office of Governor-General and the definite declaration of the supremacy of Bengal over

the other Presidencies, the Governors of the latter were automatically reduced in status and were thrown comparatively into the background. They could no longer assume an air of independence. Their pretensions to equality with the Governor-General completely disappeared. Indeed, as has already been described, this reduction in status and loss of power was not easily digested by the provincial Governors immediately after the passing of the Regulating Act. They defied the relevant clause of the Act and took certain steps on their own initiative without even consulting their newly created head, and put him at times into embarrassing situations. Such insubordination, however, could only be temporary. Masterful personalities at the head could not brook their defiance and matters were soon settled, as they were intended to be settled by the Act.

Centralization

Pitt's India Act of 1784 once more emphasized the control of the Governor-General-in-Council over the other Presidencies. In fact, this control was enlarged so as to include clearly all matters connected with war, peace, revenues, army, etc. This measure also laid down that each Presidency was to have a Governor and three Councillors including the Commander-in-Chief. The Governors and the Councillors were to be appointed by the Court of Directors and could only be removed either by the Crown or by the Directors. From this time onwards, therefore, each Presidency had a form of government analogous to that of the Central Government. There was a person at the head and he was assisted by a few councillors. The Governor-General-in-Council exercised powers of superintendence and general control in all important matters concerning the provinces.

Pitt's India Act

The Charter of 1793 extended to the Governors of

Madras and Bombay the power of overriding their Councils in case of a difference of opinion between them and their Councils, and when they felt that the peace, safety or good government in the province would be endangered by the attitude taken by their Councils. Such a power had already been conceded to the Governor-General when Lord Cornwallis, wiser by the experience of Warren Hastings, specially stipulated for it in 1786. It was thought better to concede a similar extraordinary power to provincial heads also, to enable them to discharge their duties properly. The Governor's extraordinary veto against the Executive Council thus dates from the year 1793.

The Charter of 1793

In 1807 the Governors and Councils of Madras and Bombay were given the same power of issuing regulations that had been enjoyed by the Governor-General-in-Council since the Regulating Act. The Provincial Government did not need henceforth always to depend upon the Central Government to get any legislative measure, beneficial for the province, placed on the statute book. The Charter of 1813 gave to the Provincial Governments the power of taxation. The power had many limitations, but even then its deliberate grant was significant, as showing the Central Government's appreciation of the importance of Provincial Governments and the necessity and desirability of granting them freedom generally in local affairs.

The Charter Act of 1833 tended in the direction of centralization. It expressly declared that the Governor-General of Bengal should be henceforth designated the Governor-General of India. The old designation had become an anachronism after the political events and military conquests which

The Act of 1833

took place subsequent to the passing of the Regulating Act. This Act also deprived the Provincial Governments of any right of law-making. That power was exclusively vested in the Governor-General-in-Council. The Provincial Governments had merely to submit drafts if they wished any law to be passed for themselves. The appointment of a special Law Member to the Governor-General's Executive Council and the need for a comprehensive consolidation and codification of the existing law were responsible for this restriction imposed upon the Provincial Governments. Already there were five different bodies of law in operation in India, and it was thought better to secure uniformity by preventing Provincial Governments from having their own codes.

Appointment of Lieutenant-Governors and Chief Commissioners

This Act also proposed to divide the overgrown Presidency of Bengal into two provinces, one with headquarters at Fort William and the other at Agra. This step had been long overdue, thanks to the unscientific and spasmodic manner in which provinces were formed in India. Every piece of territory that was acquired after the Diwani and that was contiguous to the possessions obtained under the arrangements of the Diwani was simply added on to them. The ludicrous nature of this easy allocation of new acquisitions will be clear when it is understood that in 1833, when the Charter Act was being passed, the Presidency of Bengal included in its territorial and political jurisdiction the present provinces of Bengal, Bihar, Benares, Agra, Orissa, Assam and a large portion of territory now included in the United Provinces. It was physically impossible for a frail mortal to function as an active and efficient day-to-day administrator of this vast tract, to supervise its affairs

and at the same time to bear the responsibility of formulating a comprehensive imperial policy and of superintending provincial administrations. The Charter Act proposed to reduce this unbearable burden and make matters more convenient by dividing the whole tract into two provinces and giving them in charge of two separate Governors. But the arrangement never worked out in practice and the clause of the Act remained a dead letter.

The N. W. Province or U. P.

However, the Governor-General was empowered in 1836 to create a Lieutenant-Governorship for the North-West Province. This province later on came to be rechristened the United Provinces of Agra and Oudh in 1902 and is still known by that name. The appointment of a Lieutenant-Governor relieved the great pressure of work upon the Governor-General.

Bengal and Punjab

The Charter Act of 1853 authorized the appointment of a separate Governor of Bengal, and till he was appointed it authorized the Directors and the Board to nominate a Lieutenant-Governor for the province. Such a Lieutenant-Governor was appointed in 1854, the appointment of a Governor being postponed till the year 1912. The Governor-General of India was relieved of direct executive responsibility for the administration of any province and could now devote his undivided attention to fulfilling his duties as a supervising and controlling central power. The Charter also gave authority to the Directors either to constitute one new province with a Governor and Council, or to appoint a Lieutenant-Governor. Accordingly a Lieutenant-Governor for the Punjab was created in 1859. No new Governor was appointed.

Oudh, which was annexed in 1856 and put under the

authority of a Chief Commissioner, was merged in the North-West Province in 1877.

C. P., Burma, Assam and N. W. Fr. Province

By an Act of 1854 the Governor-General-in-Council, with the sanction of the Directors and the Board, could take by proclamation under his immediate authority and management any part of the territories in possession of the Company and then give orders for its administration. The mode in which this power was used was by the appointment of Chief Commissioners to whom the Governor-General delegated the necessary powers. Chief Commissioners were accordingly appointed for the Central Provinces in 1861 and Lower Burma in 1862. Berar, taken over from the Nizam in 1903, was linked with the Central Provinces. On the conquest of Upper Burma and on its addition to the province of Lower Burma in 1886, a Lieutenant-Governor was appointed to administer them in place of the old Chief Commissioner. Assam had been annexed to Bengal in 1826 and was formed into a separate Chief Commissionership in 1874. In the partition of Bengal in 1905, Assam, together with the eastern half of Bengal, was converted into one Lieutenant-Governorship. When the partition was annulled in 1912, Assam once more became a Chief Commissionership. The North-West Frontier Province was formed in 1901 by detaching the frontier districts from the Punjab. Delhi was created into a separate province under a Chief Commissioner when it was made the capital in 1911.

The Government of India were empowered by the Act of 1854 to define the limits of the various provinces. The Act further expressly vested in the Governor-General-in-Council all residuary authority not given to the local Governments. The additions to the British territory

made by Lord Dalhousie and the urgent necessity of splitting up the tremendously overgrown province of Bengal at last goaded the home authorities to take steps which would authorize the formation of new provinces and help in the systematization of their management.

Three Types of Provinces

Henceforth three different types of provinces are visible. The first type included the old Presidencies or Governors' Provinces, the second included provinces under Lieutenant-Governors and the third those under Chief Commissioners. The first type naturally enjoyed a higher status as being the more ancient and as being in the enjoyment of some special privileges. After the abolition of the East India Company, the power of appointing Governors of the Presidencies was vested in His Majesty acting on the advice of the Secretary of State. The Lieutenant-Governors and Chief Commissioners were appointed on the recommendation of the Governor-General. The Governors had also the privilege of being in direct correspondence with the Secretary of State, it being only necessary for them to send copies of such communications to the Governor-General. Lieutenant-Governors and Chief Commissioners on the other hand had a comparatively lower status, particularly the Chief Commissioners, who were mere delegates of the Governor-General in respect of the necessary powers of administration that were granted to them. One more distinction has to be noted. The Governors' Provinces necessarily possessed Executive Councils. It was not so with either Lieutenant-Governors' or Chief Commissioners' provinces.

The Reforms Act of 1919 has entirely done away with this distinction and all provinces are now declared to be Governors' Provinces. However, the old difference in the authority which makes the appointments remains.

Changes made by the Reforms

Governors of the three old Presidencies continue as before to be nominated from England on the advice of the Secretary of State. They are persons outside the Indian Civil Service and have often been prominent party leaders or Parliamentarians. They have naturally a higher status. All the other Governors are nominated on the recommendation of the Governor-General and are usually men who have put in a successful and long period of service in India. These are prize posts for the ambitious and capable members of the bureaucracy and they are generally left in the gift of the chief authority on the spot, namely the Governor-General. Such provinces cannot have, therefore, the status of the old Presidencies. The Act of 1858 expressly gave the Governor-General the right of appointing Lieutenant-Governors.

Regulation and Non-Regulation Provinces

Another distinction in the provinces was introduced when the practice was initiated of administering newly conquered territories like Assam, the Punjab, Saugar, etc., not under the laws and regulations in force in the old provinces like Bengal and Bihar, but under instructions issued by the Governor-General-in-Council. Such provinces came to be known as Non-Regulation Provinces as distinguished from the old Regulation Provinces of Madras, Bengal and Bombay. In the Non-Regulation Provinces great discretion was allowed to officers and the administration was conducted in accordance with simpler codes, modified to suit the circumstances of each special case. However, in course of time, the distinction practically disappeared and, just before the introduction of the Reforms, was almost non-existent except for some difference in the terminology of officers.

In the Non-Regulation Provinces, for instance, the Collector was designated the Deputy-Commissioner and the Deputy-Collector was known as the Extra Assistant Commissioner. After the Reforms, all provinces were raised to the dignity of Governors' Provinces and therefore the distinction has altogether disappeared.

Table showing the area and population of the different provinces in India according to the Census of 1921

Name of the province	Area in thousands of square miles	Population in millions			
		Total population	Hindus	Muslims	Others
Including Indian States and tribal and agency territory within the provincial boundary: Bombay[1] ...	195	28·9	22·7	4·8	1·4
Madras[1] ...	153	47·8	41·1	3·2	3·5
Bengal[1] ...	82	47·6	20·8	25·5	1·3
United Provinces[2] ...	112	46·5	39·5	6·7	0·3
Punjab[2] ...	137	25·1	8·8	12·8	3·5
Bihar and Orissa[2] ...	112	38·0	31·6	3·7	2·7
Central Provinces[2] ...	131	16·0	13·1	0·6	2·3
Assam[2] ...	61	8·0	4·4	2·2	1·4
Burma[2] ...	234	13·2	0·5	0·5	12·2
North-West Frontier Province[3] ...	39	5·1	0·2	2·1	2·8
Delhi, Ajmer, Coorg and Andamans ...	8	1·2	0·8	0·3	0·1
India (including all States, etc.) ...	1,805	318·9	216·7	68·7	33·5

[1] Presidencies under Governors who are not members of the Indian Civil Service.

[2] Governors' Provinces where Governors are members of the Indian Civil Service.

[3] Under Chief Commissioners appointed by the Viceroy.

Growth of Provincial Legislatures

The Indian Councils Act of 1861 restored the power of legislation to Bombay and Madras, the power which had been taken away in 1833. The Councils of the Governors were expanded for legislative purposes by the addition of more members. However, no clear line of demarcation was drawn between central and provincial subjects. The Central Government imposed certain restrictions upon the legislative powers of the provinces. A detailed reference to them is made elsewhere.

This short account of the various stages in the establishment of the provinces and in the growth of their powers will suffice to give to the reader a clear idea of the various factors that modified the formation of provinces. A further detailed working of provincial government has now to be studied.

CHAPTER XI

The Relation between the Central and Provincial Governments or the Growth of Provincial Autonomy

1. The Pre-Reform Period

The Government of India are a Unitary Government

The Government of India have all along been and continue to be today a unitary Government. The division of the territory under their jurisdiction is intended only to serve administrative convenience. The provinces are the mere creations of the Government of India. Their number can be reduced or increased, their boundaries altered, and the arrangements for their governance modified and varied by the Government of India. Provinces in India have no federal inviolability or status of independence. Even the Montford Report emphatically stated that the changes that were contemplated by its joint authors had nothing to do with a federalizing process. Their business was one of devolution. The local Governments were in fact to continue to be agents of the Government of India even after the Reforms recommended by them. According to the Report, 'the last chance of making a federation of British India was in 1774 when Bombay and Madras had rights to surrender. The provinces have now no innate powers of their own and therefore have nothing to surrender in foedus. The Government of India must give and the Provincial Governments must receive.' The future map of India may indeed present

the external semblance of a great confederation composed of various smaller self-governing units. But that will only be a delusive appearance; it will not be the reality of a federation, as long as the theory of India's being a unitary state continues to hold the field.

The bonds that connect the Government of India with the Provincial Governments can best be studied under three heads: (*a*) Administration; (*b*) Legislation; and (*c*) Finance. Control is exercised on all the three counts and it would conduce to clearness of exposition if each of the heads were considered separately. The point to be remembered in connexion with all the heads is the conception of the Government of India as one indivisible whole with entire responsibility to the Parliament of England for the proper discharge of their allotted task.

(a) Central Control over Provincial Administration

The Montagu-Chelmsford Report has pointed out that the administrative control exercised by the Government of India over the provinces is too general and extensive to admit of any analysis. 'The Government of India have regarded themselves in the past as distinctly charged with the duty of framing policy and inspiring reforms for the whole of India.' They were responsible to Parliament for the administration of the whole country. Before the Regulating Act of 1774 the three Presidencies which formed the Indian dominion of the Company were mutually independent and directly subordinate to the Home authorities of the Company.

The Regulating Act

The process of centralization, which resulted in and is evidenced by the subordination of two of the Presidencies to one, commenced from the time of Warren Hastings' assumption of the office of Governor-General under the new Regulating Act. For some time the control of the central authority

over the provinces was more or less nominal. The aggressive and unwise policy of the Bombay and Madras Governments involved the Governor-General in political and financial difficulties. The geographical isolation of the provinces, which were separated from the seat of the central authority by a wedge of independent territory, helped in the attenuation of the power of the Central Government over them. It was only when the task of conquest was completed and contiguous boundaries connected the central authority's dominion with that of the provinces that the latter came under effective central control. Lord Wellesley declared that 'all measures relating to the general defence and protection of India, to the levying of war or making of peace, to the general administration of revenue of all Presidencies, and, finally, to every point affecting the general interests, whether civil, military or political, of the Company's possessions, form the exclusive duties arising out of the superintending powers of the Governor-General-in-Council.

All the newly acquired provinces were supposed to come under the direct authority of the Governor-General-in-Council. He exercised it by delegating the necessary functions to subordinate officers like Lieutenant-Governors and Chief Commissioners, specially appointed by him to administer them for him. The Presidency of Bengal, which was originally in the direct charge of the Governor-General-in-Council, was entrusted to a Lieutenant-Governor in 1854 and since then there has been no big territory directly administered by the Government of India. They have become a supervising and guiding authority over the administration of the entire country without any immediate territorial jurisdiction.

Naturally some functions of government were and have been kept entirely in its own hands by the Central

Government, consistently with the responsibility for the government of the whole country which was left on its shoulders. Questions like those of defence, of diplomatic dealings with frontier countries and foreign nations, of political relations with the Native States, were kept as their own distinct charge by the Government of India. Tariff, currency and exchange, the post office, railways, and similar other heads of all-India concern were also kept as an undivided charge by the central authority.

Central Subjects

On the other hand, authority over and responsibility for the remaining heads were shared with the Provincial Governments in a varying measure. In the case of such departments the Government of India functioned, not as a first-hand initiating authority, but as a revising and appellate power. For example the Home Department of the Government of India supervised the administration in the provinces in subjects of law and justice, police, jails, internal politics, medical service, the Indian Civil Service in the provinces, etc. The Revenue Member supervised similar administration in the subjects of land revenue, surveys, forests, agriculture, etc., and the Finance Member that in opium, stamps, income-tax, etc. In all these departments the primary jurisdiction belonged to the Provincial Government, but the Government of India could interfere unquestioned, either on their own initiative or in their appellate capacity. The degree of this interference and control would obviously vary with the circumstances of each case.

Control over Provincial Subjects

In many respects India is one single undivided country and in these respects a uniformity of administration is extremely desirable. In questions like the development of trade, industry and science, the tendency has been

definitely towards the formulation of a uniform policy, even a uniform administration. In cases like these the tendency to concentration is inevitable. It combats any unhealthy divergence in the conditions of the various provinces. It avoids dissipation of energy and money in dispersed efforts that cannot in fact stand alone. It must also be remembered that the main Services which carry out the mandate of the Provincial Governments are recruited by the Secretary of State and their terms of service are fixed by him. So that on many questions concerning them the Provincial Governments cannot interfere at all.

Uniform Action Necessary

There is one more force which indirectly helped the process of centralization. The Government of India thought it necessary to exercise control over the provinces from above, to infuse in them the fresh vigour and enlightenment that comes from a detached judgment of a problem of administration. The authority on the spot, with its excessive attention to detail and its saturation in the colour of its immediate surroundings, may not always be able to form a proper judgment and take a bold stand. The Government of India, standing apart from and above mere details, can make a comprehensive survey of the whole problem and enunciate and enforce fresh principles. Their superior authority was believed to prove a beneficial corrective to the narrow-visioned concentration on detail which the Montagu-Chelmsford Report has pointed out as being the penalty of absorption in the task of day-to-day administration.

Central Control as a Corrective

The responsibility of the Secretary of State to Parliament and the consciousness that to that body they were accountable for the peace and good government of the

whole of the land, actuated the Government of India to exercise close supervisory control over the provinces and to maintain a high standard of public and personal morals. In the absence of popular control, their control from above had a good restraining effect.

(b) Central Control over Provincial Legislation

(*b*) Legislation: The power of making regulations was extended to the Presidencies by the Charter of 1807. However, with the gradual tightening up of the control of the central authority, the importance of this power was gradually diminished. In 1833 all legislative power belonging to the Presidencies was taken away and the Governor-General-in-Council's laws were made binding upon the whole of the land, including the provinces. This gave an extensive jurisdiction to the central law-making authority which henceforth began to make laws even for the provinces. To the latter was restored the right of independent legislation in 1861. Still, the Government of India's legislative authority continued concurrently to extend to the whole of India as before. In local matters, indeed, freedom began to be allowed to the provinces to pass their own legislation. Yet, in the theory of the constitution, till the Reforms of 1919, the Legislative Councils were only enlargements of the executive Government for purposes of law-making. Legislative power residing in them as distinct from the executive Provincial Governments was not recognized. The Provincial Legislatures, therefore, did not possess any genuine independence.

Delegation of Powers to the Provinces

Subject to certain restrictions, local Legislatures in the provinces were allowed to make laws for the peace and good government of the provinces. The Central Legislature could not efficiently cater for the needs of distant provinces. Therefore it delegated its function, subject to its superior

control, to Provincial Legislatures. Local Councils were not allowed to amend any Act of Parliament or to repeal or alter without previous sanction any Act of the Governor-General's Legislative Council. Previous sanction of the Governor-General was necessary to consider any law affecting religious usages of any class of British subjects in India or the regulation of patents and copyrights or the relations of the Government with Princes of Indian States. These restrictions would not appear to be stringent. Yet in practice they limited the freedom and discretion of Provincial Governments to a great extent.

Many Laws were already passed by the Central Legislature

As the Montford Report has pointed out, most of the Provincial Legislatures were very young institutions and a great part of the field which would have been otherwise covered by them had been already filled by the Governor-General's Legislative Council, which of course was the elder body and always possessed concurrent legislative power for the whole of India. Comparatively fewer things were therefore left to the discretion and disposal of the newer bodies. Besides, the necessity and the desirability of having a uniform policy in important matters induced the Central Legislature to take comprehensive action in them for the country as a whole. For instance, the Penal and Procedure Codes and the Evidence Act; laws for prisons; laws about marriage, minors, succession; civil laws regulating contracts, trusts, transfer of property, easements, arbitration, etc.; business laws for patents, trade marks, weights and measures, insurance, insolvency; laws for forests, mines, factories, wireless, electricity; labour laws about breach of contract, emigration, apprentices, etc.; legislation about public health, poisons, leprosy, lunacy, epidemics; laws about

religious endowments, charitable societies, plays, and cinematographs, motor vehicles, ancient monuments and treasure troves—on all this miscellaneous mass, legislation was passed by the Government of India. Laws were also passed by them on subjects essentially their own, like military and marine, foreign relations, currency and finance, customs, and tariff, etc.

Legislation on the subjects in the miscellaneous list given above could have been undertaken by the provinces. There are precedents in western countries to show that legislation in these subjects may not necessarily have the uniformity that accompanies centralized control. Still, it was considered that on the whole such uniformity would conduce to greater national benefit. The Government of India therefore undertook legislation themselves and laid down the principles of policy and administration in all of them. This directly reduced the scope of action and legislation of the Provincial Governments.

Previous Sanction of the S. of S. and G.-G.

Over and above these circumstances, the cumulative effect of which was greater control exercised by the Central over Provincial Governments in matters of legislation, there was another factor of considerable importance and effect. The previous sanction of the Government of India and the Secretary of State was declared necessary for all projects of provincial legislation before their introduction. Even private bills could be brought under the operation of this executive control by the fact that leave for introducing the bill had to be given by the Council. As in many of the Councils the Provincial Governments could, if they chose, successfully oppose the granting of such permission, the Government of India, by executive direction, could compel the Provincial Government to

oppose such a measure. Moreover, in the case of all private bills which affected revenues, the sanction of the Government of India to their introduction was necessary. The assent of the Governor-General to all provincial legislation after it had been passed by the Provincial Legislatures was also necessary. The necessity of the previous sanction of the Government of India to the very introduction of legislative projects effectively curtailed provincial initiative and scope of independent action. The Decentralization Commission came to the conclusion that a substantial measure of legislative devolution was necessary in the interest of the administration of subjects of local importance.

(*c*) Finance: The East India Company were a commercial corporation and their accounts were kept on commercial principles. This was the foundation for the policy of centralized finance even after the commercial character of the East India Company had disappeared and they had definitely assumed political responsibility. Full control over the revenues of the whole of India was retained by the Central Government in its own hands, in theory at least. All sources of income and all the amounts of such income, collected in any part of British India, were credited to the Government of India's treasury. Revenues from all parts of the country converged into one reservoir and from this reservoir money flowed back in large or small dribblets to serve the diverse needs of the administration, including expenditure of the provinces. It is obvious, therefore, that the provinces in this instance were mere managing agents for the Government of India. The sources of taxation, the amount of taxation, the manner of collection and the authority for expenditure were all dictated from headquarters. The

(c) Central Control over Provincial Finance—
(i) Centralization

Provincial Governments had simply to do as they were asked. They had no interest in the collection of taxes. As the executive agents of the Government of India they mechanically carried out their superiors' mandates.

Distribution of money among the Provinces

The Government of India distributed money among the various provinces to enable them to fulfil the obligations delegated to them for the convenience of administration. The principle of such a distribution was not to proportion the amount of the grant to the amount of income yielded by the province. The needs of the province were generally considered and the grant was fixed at a figure approximately commensurate with the needs. Such a wholesale centralization, in an extensive country like India, imposed an extremely heavy burden of financial administration upon the Government of India.

General Strachey pointed out how the distribution of the public income degenerated into a scramble, and how, very often, that province which was aggressive and loud in its protestation got what it wanted and not the one which was more needy but less vocal and agitative. Local economy brought no local advantage, as all surplus accumulated at the Government of India. Therefore the incentive to avoid waste was completely absent. Local growth of income and larger realization of money from local taxation could not serve as a means to improve local conditions, as all money collected, from whatever source and place, was directed to the treasury of the Government of India. In the absence of any stimulus to the development of local revenue, the general interest in the improvement of the public income was brought down to the lowest level.

After the completion of the conquest of India and

with the end of the Mutiny, the military bias of the administration gradually disappeared. The financial responsibilities assumed by the Government of India were extremely difficult to discharge. The unwieldy centralized system did not confer the benefit either of greater economy or of greater efficiency. It only caused embarrassment to the Government of India and created just grievances among the provinces. 'The Provincial Governments were allowed no discretion in sanctioning fresh charges. If it became necessary to spend £20 on a road between two local markets, to rebuild a stable that had tumbled down or entertain a menial servant on 10s. a month the matter had to be formally reported for the orders of the Government of India.'

(ii) Decentralization—1870

Lord Mayo's Government made the first attempt at decentralization. Larger financial power and responsibility were delegated to the Provincial Governments. Certain departments like police, jails, education, medical sciences, hospitals, sanitation, registration, printing, roads and communications, civil buildings, were given for management to the provinces under certain conditions. Departmental receipts from these heads were allowed to the provinces and in addition a fixed grant of money totalling altogether Rs. 4,68,87,110 was annually assigned to them. With this income they were to cover the expenses of management. Discretion was left to the provinces to obtain a larger revenue by additional taxation and better management. For the Government of India was retained income from the remaining sources and the administration of the remaining departments.

Lord Mayo's Scheme

It must be clearly understood that this process of decentralization was not based on any principle of

federal finance. It was not intended to invest the provinces with any degree of financial independence. The scheme of provincial devolution as initiated in 1870 was inspired only by considerations of administrative convenience and facility. The Central Government was not voluntarily abdicating any of its functions but simply transferring them to subordinate agents in the interest of division of labour, which led to administrative efficiency. Even in those subjects, therefore, which were 'provincialized', the Governor-General's superior control and supervision were expressly maintained. However, in spite of its various defects and shortcomings, the scheme, on the whole, realized the aim of its author. It helped to bring about greater harmony between the Central and Provincial Governments. It allowed greater freedom and scope to the provinces and encouraged them to undertake works of provincial utility and benefit.

No Federal Finance

The next step in the direction of devolution was taken in 1877 in the time of Lord Lytton. To the departments which were given over to provincial management in 1870, several new ones were now added. These included excise, stamps, law and justice, and some other items varying from province to province. Instead of making any corresponding addition to the earlier fixed grant for meeting the expenditure, revenues from these departments were allowed to the provinces. Any surplus above the estimated income was shared to the extent of half with the Government of India; the latter also undertook to meet deficits to the same extent if and when they occurred. This did not amount to conferring powers of fresh taxation upon the provinces but was intended to improve the quality and the economy of the administration. Contracts on this basis

1877

were formed with each province separately, and they were to have a duration of five years.

Assam and Burma were backward provinces and were treated differently. Instead of a fixed allotment, Assam was given a share of the land revenue of the province. Burma was similarly given a share of the land revenue and also of the income from forests, and export duty on rice and salt. The new principle in the settlement of these two contracts was that, instead of making a fixed assignment of money to make good the excess of provincial expenditure over provincial income, a share in the imperial revenues was granted. The principle adopted here was later on extended to other provinces. Sir J. Strachey and Lord Lytton were the sponsors of this change.

Lord Ripon and Major Baring introduced further improvements. Arrangements with the different provinces needed co-ordination. The experience of the new arrangement soon began to indicate that, financially, it had not proved as successful as it was expected to. When the time came therefore for renewing the settlements of 1877 some important modifications were introduced. The original lump grants made since the time of Lord Mayo were abolished. Instead, all revenues from certain specified heads, like civil departmental receipts or civil buildings, were made over entirely to the provinces. Of the remaining heads which had been already transferred to the provinces, forests and registration were divided almost equally between the two contracting parties and the deficit that was still left in the provincial budgets was not made good by the grant of lump sums but by a fixed share of the land revenue.

1882

The division of Government departments into three

groups dates from this time. Heads like defence, foreign relations, customs, currency, etc. were purely imperial; heads like land revenue, registration and forests were divided; and some minor heads like civil buildings and civil departmental receipts were purely provincial. The Provincial Governments were relieved of any burden resulting from the occurrence of calamities like war and famine, unless the calamities were of an exceptionally severe character. The contracts of 1882 were quinquennial.

Central, Provincial and Divided Heads

From 1884 a necessary minimum balance had to be maintained by the Provincial Governments with the Government of India. The latter often usurped the balances accumulated by the provinces with great difficulty, and this caused considerable embitterment and ill-feeling. However, settlements were renewed at the end of each five years without any great change of principle. The position in 1897 was as follows. Generally speaking the Provincial Government retained the whole of the receipts from the provincial rates, courts of law, jails, police, education, medical and local marine services, minor irrigation works, certain State railways and major irrigation works, buildings and roads, stationery, etc. Stamps, assessed taxes, forests and registration receipts were divided half and half; of excise and land revenue three quarters were taken by the Government of India and one quarter was allowed to the provinces. On the expenditure side, the provinces had to incur expenditure on most of these heads and generally had to pay a share in the cost of collecting. The share was proportional to their receipts from the various departments.

1897

The settlements being quinquennial, the dread of a

revision at the end of the fifth year was a standing cause of restlessness. It marred the continuity of provincial administration. Any contemplation of great projects of development was utterly impossible. After the cessation of their exchange trouble, the Government of India were persuaded to reconsider the question. Lord Curzon's Government therefore in 1904 tried to remove the defects of the existing system. The old division into imperial, divided, and provincial heads was of course continued, but the respective shares of the two powers were revised. Expenditure on purely imperial heads was to be incurred as before entirely by the Government of India. Expenditure incurred on the divided heads was to be divided between the provincial and central administration. The settlements were declared to be quasi-permanent and were to be revised only in grossly unjust or extremely difficult circumstances. The old uncertainty, the danger of appropriation of the provincial resources by the Government of India and consequent absence of any incentive to economy now disappeared. A greater certainty and freedom were allowed to the provinces in financial matters.

1904

Lord Hardinge's Government took the final step in the development of the system. The quasi-permanent settlements were declared to be permanent in 1912. It was laid down that the Provincial Governments were not to budget for a deficit except under abnormal conditions. The Government of India curtailed their intervention in the making of provincial budgets. The unseemly quinquennial conflicts, which punctuated the relations of the Government of India with the provincial administrations up to 1904 and which had practically ceased after the introduction of the

1912

semi-permanent settlements of that year, were now given a decent burial.

Summary of the Position before the Reforms—Central Subjects

The position, therefore, before the Reforms can be summed up thus. Subjects of all-India importance requiring a uniformity of policy and administration like defence, foreign relations, customs, posts and telegraphs, mint, famine relief, railways and irrigation were declared to be wholly central subjects; income from them, expenditure on them, and executive control over them vested exclusively in the Government of India.

Provincial Subjects

The second group of subjects, known as provincial heads, consisted of a few departments, the revenue from which and expenditure on which were wholly the concern of the province. All civil departmental receipts and those from public works departments came under this category. The administration of the other departments in this group, which included jails and police, education, medical, printing, roads and civil buildings, was primarily vested in the provinces; the Government of India interfered to enunciate important principles of policy, or to revise and check actions of the provincial executive if they were wrong or mischievous.

Divided Subjects

The last group consisted of what are known as the divided heads. In it were included subjects like land revenue, stamps, excise, income-tax, forests, registration, irrigation, etc. Revenues from these sources were divided in a certain ratio between the Central and Provincial Governments, the ratio of the share of one to the share of the other being fixed after a comprehensive deliberation. The expenditure in these departments was also shared;

and so was administrative control over them. The provinces took the initiative in local management and the Government of India retained their general supervision and guiding control. As the Government of India had a share in the revenue, they had a strong motive for interfering even in the details of the administration. They exercised a close supervision over land revenue settlements and over works in which expansion and development depended upon capital outlay.

It is thus easily intelligible, how, apart from the administrative control directly enjoyed as such by the Government of India over the Provincial Governments' actions, a good deal of indirect but very real administrative control followed as an inevitable corollary of the then existing financial organization.

Powers of Taxation

The Government of India retained complete control of all taxation imposed in British India. It was thought politically inexpedient to allow any large freedom to the provinces in this matter as long as the provincial administrations were irresponsible bureaucracies. Superior control from above was the only safeguard against unjustifiable or mistaken actions of these officials. Hence it was expressly laid down that no province could, without previous sanction of the Governor-General, consider any bill or measure affecting the Government of India's revenues. Even in those resources which an ingenious Provincial Government might seek as not coming within the bounds of this inhibiting clause, the Central Government could exercise its controlling power by what were known as 'instructions' to provincial administrations. They required all projects of law to be approved of by the Secretary of State. A proposal for

provincial taxation would have, therefore, to be naturally referred for sanction to the Government of India, the Finance Department of which would analyse it with cleverness and vigilance. Even the budgets of Provincial Governments, before their submission to Provincial Legislatures, had to be submitted in their draft form to the Central Government, which could introduce any alterations or additions in them. The subordination in which the Provincial Governments were held was thus close and the scope of their action was much limited.

Powers of Borrowing

The provinces were never allowed to borrow on their own credit in an open money market. They could not pledge their solvency in order to find effective means of self-expansion and improvement. It was thought absolutely unwise, in larger interests, to concede this power in any measure to any authority other than that of the Central Government. The market for loans was believed to be limited and sensitive, and it was feared that credit was likely to be impaired by indiscreet ventures. The Decentralization Commission considered this question and declined to relax the rigidity of this rule.

Executive Instructions and Codes

Lastly, through the instrumentality of various codes and instructions, such as the Civil Service Regulations, Civil Accounts Codes, Public Works Codes, and the like, the Central Government's control over the provinces was immensely strengthened in practice. These codes imposed definite restraints upon the powers of provincial administrations to create new appointments or increase the emoluments of the existing ones. Competitive and ruinous generosity between the provinces had to be stopped. A mass of regulations affecting recruitment,

promotion, leave, foreign service, and so on had arisen out of this necessity. The control over provincial expenditure from above exercised with such strictness and rigidity was intended to make good the lack of effective popular criticism. In the absence of powerful local Legislatures, the necessity and the value of such control were regarded as above dispute.

Thus, in all the three respects of Legislation, Finance and Administration, the provinces were allowed only a small amount of independence and freedom before the Reforms.

2. After the Reforms

Introduction of Responsibility

After the Reforms, the state of things changed. The provinces were regarded as the proper domain for constitutional experiments. The first steps in the introduction of responsibility were to be taken in them and a new standpoint altogether was now introduced in the consideration of the question. Mr. Montagu visualized them as autonomous self-governing principalities federated by one Central Government. Responsibility in the provincial administration was incompatible with bureaucratic control from above. The largest possible measure of independence in legislation, administration and finance had to be conceded to the provinces in the inevitable logic of this new angle of vision. This independence and freedom is connoted in the now familiar expression 'provincial autonomy'. Indeed there was no idea of creating a federation; it was expressly disavowed. However, a larger measure of liberty was now to be extended to the provinces, not only for the administrative convenience of the Government of India, but in response to the urgent call for such a liberty in the interests of an

all-sided provincial development and the growth of self-governing institutions.

(a) Demarcation of Central and Provincial Spheres

Endeavour was therefore made to demarcate the legislative sphere of the Government of India from that of the provinces. As far as possible, each was to be made independent of the other. Their respective spheres of action were to be clearly distinguished. The old group of divided heads, which had interlocked their mutual interests, their dual control, and their joint responsibility, and had engendered a good deal of bitterness and ill-feeling, were now to be abolished. In short, the two jurisdictions were to be maintained as distinct as possible. The central and provincial budgets were to be separated, the former recording only direct transactions of the Government of India. The new viewpoint inclined in the direction of the utmost relaxation of the control of the Government of India over the provinces in all provincial matters and in the acknowledgement of the provinces as the only proper centres for effective popular development.

The Central and Provincial Lists

With the idea of giving effect to this new principle, inquiries were instituted to explore methods for the bifurcation of central and provincial functions. As a result of the inquiry and on a discussion of the general bearings of the question, it was found possible to prepare two separate lists of administrative subjects, and to hand over one to the Central and one to the Provincial Governments. As far as possible, the lists were to be mutually exclusive. There was to be the least possibility for the two authorities to come to clash on a common ground. The principle of division was of course the most obvious one, namely the necessity of

a unity of control and uniformity of policy in central subjects on the one hand, and the desirability of provincial and local freedom on the other hand.

Questions of all-India importance, like defence and foreign relations of India, or those like customs, posts, telegraphs and currency, in which a uniformity of principle and a sameness of administrative system are of paramount importance, would naturally lie within the Central Government's sphere. On the other hand, in questions like education and local self-government or agriculture, diversity of management might be allowed—nay, might be necessary—on account of the great diversity in local conditions. Such departments might best be left to be entirely administered by local administrations. After the Government of India Act of 1919, the old divided heads were abolished.

Chief Heads in the two Lists

Thus only two distinct lists now remain, the central and provincial. The central subjects comprise, among others, the following departments: defence; external relations; relations with Native states; railways, shipping and navigation; posts and telegraphs; customs; cotton excise duty; salt-tax; income-tax; currency and coinage; public debt of India; opium; copyright; emigration and immigration; archæology; ecclesiastical; the Public Services Commission; census and statistics, etc. The important subjects in the provincial list are education, local self-government, medical administration, public health and sanitation, irrigation, land revenue, famine relief, agriculture, co-operation, forests, excise, industries, police and justice, weights and measures, etc.

The compilation of these separate lists was followed by consideration of the possibility of relaxation of

administrative, legislative and financial control over the provinces. On each of these points definite recommendations were made and were accepted as matters of constitutional practice, if not as the letter of the law.

(b) Relaxation of Administrative Control

Regarding the relaxation of administrative control, it was pointed out that, after the introduction of partial responsibility in provincial administrations, they would be naturally divided into two parts, one bureaucratic and the other popular. In the former part, they would function as agents of the superior central administration. In the latter part they would have to be amenable to the Legislature's will.

In Transferred subjects

It is laid down that in this popular side of provincial administration, that is in those subjects which are transferred to the popularly elected ministers, the Central Government should not ordinarily interfere. Even on occasions when it is felt that the steps contemplated by the ministers are likely to prove injudicious and harmful, the Central Government is enjoined to try persuasion only and to allow the liberty of committing mistakes as the best method of learning wisdom. In all such matters, therefore, interference from above is strictly limited to those extreme and extraordinary circumstances in which the interests of the whole of India are jeopardized or conflicts arise between province and province. The Government of India have not abdicated their responsibility for the peace, order and good government of the land. There is therefore no legal restraint upon their powers of interference even in the self-governing half of the provincial administrations.

A slightly varying convention is recommended for the

bureaucratic half of the Provincial Governments, doing the agency work for the Government of India. The departments represented by this portion are known as reserved. Here no transference of control and management from an irresponsible executive to a body of responsible ministers has taken place. It is therefore thought consistent with constitutional theory that the only safeguard against the vagaries of an irremovable executive would be its subordination to a superior power. This latter is represented by the Government of India and therefore they retain in the reserved half a greater power of interference than in the transferred half.

In Reserved Subjects

All the same, the fact that Provincial Legislatures are greatly enlarged, the fact that franchise for them is kept democratically low, the fact that these very Legislatures have been thought fit to enjoy the rights and privileges of political responsibility, have all tended to give them a unique importance. As the ultimate aim of British policy is avowedly the full development of responsible institutions, it is recommended that the interference of the Government of India even in the reserved half of provincial administration should be restricted only to cases of unimpeachable necessity. Particularly when the Executive and the Legislature in a province are unanimous in their opinion on a certain problem, the Central Government's veto should not be ordinarily exercised at all. Thus a larger measure of liberty is allowed to the provinces, if not by an alteration of the letter of the law, by the institution of sound constitutional conventions.

When the Legislature and Executive agree

Similar additions have been made to the financial

powers of the Provincial Governments. In the first place, the central and provincial budgets are now entirely separated and the former embraces only the direct transactions of the Government of India. Definite sources of income have now been allocated to the provincial administrations. Receipts from provincial subjects, a list of which has been already given, a share in the growth of the revenue from income-tax collected in the provinces, proceeds of new taxation which the Provincial Governments may impose or of the loans which they may float, balances standing to the credit of the provinces at the time when the Government of India Act came into force, are some of these allocated sources.

(c) Relaxation of Financial Control

The power of borrowing which had never been enjoyed by the provinces before has now been conferred upon them. Loans may be incurred to meet capital expenditure on any work of a material character, or a project of lasting public utility, if such an expenditure cannot be met out of current revenues. They may be incurred for irrigation purposes or for maintaining famine relief works or for the repayment or consolidation of earlier loans. It is laid down that the previous sanction of the Governor-General-in-Council for all loans floated in India, and of the Secretary of State for all loans floated in England, is necessary. These authorities may fix the amount of the loan and the conditions on which it is borrowed.

Power of Borrowing

The power of taxation which was exclusively possessed by the Government of India in pre-Reforms days has now been delegated to the provinces. They can now impose taxation without the previous sanction of the

Governor-General under the following heads: a tax on land put to uses other than agricultural; a tax on succession; a tax on gambling; a tax on advertisements; a tax on amusements; a tax on any specified luxury; a registration fee; and a stamp duty. The Presidency of Bombay has exercised this power and introduced the Entertainments Tax and enchanced the Court Fees.

Power of Taxation

However, certain restrictions and limitations still continue to be exercised over provincial expenditure. The most important of these was the newly created obligation of what are known as provincial contributions. In the new dispensation of decentralized finance and of a complete separation of imperial from provincial heads, it was found that the Central Government could not be self-sufficient. The resources handed over to it as its own did not suffice for its expenditure. The only suitable and simple remedy to make up its deficit was to ask the provinces to make compulsory annual payments, which would be put as a first charge upon their revenues. The total amount of such a deficit was estimated to be ten crores. This sum was distributed among the provinces according to their capacity as judged from various standpoints. It was an extremely difficult and intricate task and a special committee under the presidency of Lord Meston made definite recommendations about the distribution. They recommended two schedules. One provided for a transitional period of seven years and suggested definite sums to be collected from every province in each of the seven years. This period was regarded as necessary for equalizing provincial conditions and correcting diversity. The second schedule gave the permanent and standard ratio at which each province should be taxed in order to

Provincial Contributions

wipe out the central deficit. The details are given below.

Per cent contributions to deficit in seven consecutive years beginning with the first year of contribution (rounded off to even halves)

Province	1st year	2nd year	3rd year	4th year	5th year	6th year	7th year
Madras ...	35½	32½	29½	26½	23	20	17
Bombay ...	5½	7	8	9½	10½	12	13
Bengal ...	6½	8½	10½	12½	15	17	19
United Provinces	24½	23½	22½	21	20	19	18
Punjab ...	18	16½	15	13½	12	10½	9
Burma ...	6½	6½	6½	6½	6½	6½	6½
Bihar and Orissa	nil	1½	3	5	7	8½	10
Central Provinces	2	2½	3	3½	4	4½	5
Assam ...	1½	1½	2	2	2	2	2½
Total ...	100%	100%	100%	100%	100%	100%	100%

In the financial year 1921–2 contributions were to be paid to the Governor-General-in-Council by the local Governments mentioned below according to the following scale:

Name of province	Contribution (in lakhs of rupees)
Madras	348
Bombay	56
Bengal	63
United Provinces	240
Punjab	175
Burma	64
Central Provinces and Berar ...	22
Assam	15

Every province has complained against the inequity of the Meston Award and officials and non-officials have condemned with equal severity the unwisdom of the

contributions. The Reforms Inquiry Committee also wrote against the arrangements. A revision of the Meston Settlement, if not its complete abolition, was unanimously and persistently demanded by both official and non-official opinion in the provinces of India. It is gratifying to record that Sir Basil Blackett, Finance Member, announced in his budget speech for 1928–9 'the complete and final remission of provincial contributions'. To the extent of this remission a larger margin would be left to the provinces out of which expenditure on nation-building departments could be incurred.

Their Abolition

Steps have been taken also in the direction of legislative devolution. As has been already noted, the liberty of legislation that was granted to the provinces in earlier years could not be utilized to the fullest extent because the field which would have legitimately fallen to Provincial Governments had been already covered by imperial legislation. After the Reforms, it was enunciated that the previous sanction of the Governor-General was not necessary for legislation in purely provincial subjects. However, (i) for all legislation which aims at repealing or modifying laws passed before 1861, unless otherwise declared by the Governor-General-in-Council; (ii) for all legislation which is likely to affect central subjects or foreign relations or the discipline of His Majesty's military, naval or air forces; and (iii) for all legislation upon provincial subjects which are in whole or part subject to Indian legislation, the previous sanction of the Governor-General-in-Council is made obligatory. Besides, copies of all Acts which have received the Governors' assent have to be sent to the Governor-General for his assent, and until that is given, an Act

(d) Relaxation of Legislative Control

does not get legal validity. An Act of the Provincial Legislature assented to both by the Governor and the Governor-General can be reserved for the assent of His Majesty-in-Council. In such cases the Act shall not have validity until His Majesty's assent has been notified by the Governor-General.

Criticism of Previous Sanction

The minority report of the Reforms Inquiry Committee has suggested measures for the enlargement of legislative devolution. The power of veto which rests with the Governor-General is justified as constitutionally indispensable. It exists in all responsible systems of Government and is very sparingly used. The obligation of previous sanction is, however, another matter. The area of the application of this restricting clause should be as much circumscribed as possible. Liberty ought to be allowed to the provinces to legislate without interference on all matters which are strictly provincial but on which laws have been already passed by the Central Legislature. The minority recommended that the spheres of action in regard to legislation of the Central and Provincial Governments should be clearly defined as is done in Canada or Australia. Following further the Canadian model, the residuary power should be left with the Central Legislature. The majority report of the Inquiry Committee has also recommended that the existing stringency of control of the Central Government over provincial legislation, arising out of the provision for previous sanction, be modified by changing the rules.

After the Reforms, therefore, the relations of the Central to the Provincial Governments have considerably altered. The grant of greater autonomy to the provinces has necessarily meant a diminished control from the top. A clear demarcation of the spheres of their activity and

The Beginning of Provincial Autonomy

a definite allocation of legislative, administrative and financial responsibility to the provinces are deliberate steps in the direction of their emancipation from unnecessary and inconvenient restraints imposed upon them by the central authority. Numbers of such restrictions have continued, indeed, to exist even after the Reforms. Attempts are being made and agitation is being carried on to remove them. The importance of the Act of 1919, however, consists in the definite acceptance of the principle of provincial freedom and independence in order to secure a proper and all-sided development in an extensive and diversified country like India.

CHAPTER XII

The Provincial Executive

1. The Governor

Historical

The classification of provinces into those of Governors', Lieutenant-Governors' and Chief Commissioners' has already been referred to. Before the Reforms, heads of provincial administrations were officials holding either the status of a Governor or a Lieutenant-Governor or a Chief Commissioner. The first mention of the power to appoint Governors is found in the Charter of 1661. Since then, these officers continued to be appointed to administer the important territorial acquisitions of the East India Company. The power of appointing them lay with the Directors. After the abolition of the Company, they were nominated to hold office on the recommendation of the Secretary of State, and Lieutenant-Governors and Chief Commissioners on that of the Governor-General.

Appointment and Tenure

After the Reforms, all provinces have been elevated to the status of Governors' Provinces. Now there are no Lieutenant-Governors or Chief Commissioners excepting in the small areas like Ajmer-Merwara or Coorg. However the old distinction in appointment has remained. The Governors of Bombay, Madras and Bengal, which are known as presidencies, are still appointed directly from England. They are not men who have been previously in service in India under the Crown. Like the Governor-General, they are selected from the public life of Britain and several of them happen to have been members of Parliament occupying

important positions in their respective parties and sometimes even in the Government. The office of Governor is, however, considered to be essentially a non-party office and Governors do not change with a change of ministry in England.

Governors of all provinces other than the three presidencies are appointed by the Governor-General though technically the appointment has to be approved of by His Majesty. Their selection is made from the senior members of the Civil Service in India. They are thus bureaucratic officials of long standing. The prospect of being able to rise to the position of a provincial governor is one of the great attractions to the young English entrant to the Indian Civil Service.

A Governor's office is held for five years and he is allowed to enjoy leave for a maximum period of four months, once during the period of his tenure.

His Powers and Functions; his Relation to the Executive Council

The Governor is the head of the province. His powers and privileges are numerous. He is given the assistance of an Executive Council of which he is, ex-officio, the president. He has the power to nominate a vice-president to preside during his absence. He makes rules and regulations for the conduct of the business of the Council and has to distribute the different portfolios amongst its members. The Governor presides over such meetings and has a casting vote in case of a tie. The decision arrived at by the majority is taken as final and orders are issued in accordance with the decision. The meetings of the Executive Council are held generally once a week and all important matters in the various departments are put before the Council for discussion and decision by the respective members in charge.

In exceptional cases, however, when the Governor feels

that the decision of the majority is not only wrong but is fraught with grave danger to the interest of the administration, extraordinary power has been conferred upon him to override this decision of the majority and to have his own wishes carried out. A similar extraordinary power is enjoyed by the Governor-General. The Charter Act of 1793 extended it to the provincial Governors.

As in the case of the Governor-General, so in the case of the provincial Governors, the Secretaries of the various departments, though directly subordinate to the member in charge of their department, are allowed direct access to the head of the administration. They keep him informed of all important matters that are being disposed of by the departmental heads.

His control over the Legislature

Up to the Reforms of 1919 the provincial Governors were ex-officio presidents of their Legislatures, and enjoyed therefore all the powers that are enjoyed by the president of a legislature. The Reforms have done away with this anomaly of the head of the executive being also the head of the Legislature, and, to the extent to which the president exercises direct control over the actual working of the Legislature, the Governor has lost his former power. Still he retains large powers over the legislative part of Government. It is the Governor who has the power to summon, prorogue or dissolve the Legislative Council and order fresh elections. He has to give permission for resolutions to be admitted for discussion in the Council, and for bills which private members may want to move. His assent is necessary to all bills that are passed by the Legislature.

The Reforms have given to the Governor, as they have also given to the Governor-General, an extraordinary

veto against his Legislature which is described as the power of certification. Any grant not voted by the Legislature or reduced in amount by it, and which the Governor feels is absolutely essential for the safe conduct of administrative business, can be restored by him in his own power, against the expressed wishes of the Legislature. Any bill proposed by Government, or any of its clauses, even if thrown out by the Legislature as unnecessary or mischievous, can be certified by the Governor as necessary and can then immediately get the force of law as much as if it had been passed by the Legislature. The possession of extraordinary vetoes, one against the Executive Council and the other against the Legislative Council, makes the constitutional position of the Governor extremely formidable.

Certification

Still further importance has become attached to the position of the Governor since the inauguration of the Reforms and the introduction of dyarchy in the Provincial Governments. The Governor is instructed generally to abide by the wishes of the Ministers in matters of disagreement between the two, but in cases in which he sees sufficient cause he may dissent from them and overrule their actions. Complaints were made before the Reforms Inquiry Committee by some of the ex-Ministers that the Governor's interference and overruling were found in practice to be excessive. Both the majority and minority reports of the Committee point out that the exercise of this power by the Governor is intended to be strictly exceptional. They refer to the Joint Parliamentary Committee's comment that ordinarily the Governor shall allow the Minister full liberty to work out his plans even when the Governor thinks them to be

His Position in Dyarchy; his Relation to Transferred Subjects

mistaken, for 'there is no way of learning excepting through experience and by the realization of responsibility.' This generous interpretation of the power given to the Governor constitutes in their opinion a great check upon its use and would be more in harmony with the spirit of the Reforms.

His Financial Powers

The allocation of the provincial revenues and balances between the two halves of Government that are introduced under the dyarchical form, the reserved half and the transferred half, is decided at a joint meeting of Members and Ministers. The amount going to each half is settled after mutual consultation and understanding between the representatives of the two sections. It may happen that sometimes an amicable settlement is found impossible; that Members and Ministers simply cannot agree and that therefore there arises a deadlock in the Executive Government itself. In such a contingency the Governor of the province is authorized to make the allocation of funds himself, irrespective of the agreement or disagreement of Members and Ministers and thus to prevent the machinery of Government from coming to a standstill through the starvation of funds. In no province has the necessity arisen as yet to take recourse to this extraordinary method of allocation. The Governor is the supreme appellate authority in all matters of disagreement between the two groups of his colleagues.

The Government of India Act also expressly lays down that no proposal for the appropriation of revenues or other moneys for any purpose shall be made except on the recommendation of the Governor. This has meant, in practice, a large financial power to the Governor.

In fact the Governor's task and responsibility have

His position as a Mediator between the two halves

been considerably increased in his new role as the mediator and arbitrator between the two divisions that have been deliberately created in the provincial executive as a measure of reform in the direction of the introduction of responsible government. To the Governor is assigned the power of selecting Ministers from among the elected members of the Legislative Council. In making the choice he has to safeguard the efficiency of the administration and also to secure the Legislature's support. The constitutional status of the reserved and transferred halves is mutually incongruous; their methods of work are different; their problems and responsibilities are divergent. It is not improbable that, instead of running together with delicate smoothness, they may clash with each other and generate friction in the normal operation of the administrative machine. To the Governor is left the important task of managing matters in such a fashion that conflicts as far as possible may not arise at all, and when they arise, may be settled in a spirit of perfect harmony and co-operation. He has to maintain the equipoise between the two warring elements and save the innovation of dyarchy from being destroyed on the rocks of differences and disputes.

Details of departmental administration can be supervised by the Governor. The general broad policy of the Government in all matters is decided after consultation with him. The interests of the Services both in the transferred and in the reserved half have to be carefully safeguarded by him. In short, the Governor is much more than a constitutional ruler; he has very real and all-round powers in the administration; his personal opinions, his initiative, his active participation in the daily routine work of Government influence the policy of the administration

and the nature of the various measures that are promulgated under its direction.

His Emergency Powers

In emergencies like the one which arose in Bengal and in the Central Provinces when the Swarajists created a deadlock in the administration by refusing offices themselves and refusing to sanction salaries for others who might hold them, the Governor is empowered to take over the transferred departments in his own charge and to make arrangement for their administration. The Governors of Bengal and the Central Provinces had in fact temporarily taken over the control of the transferred departments in their provinces in pursuance of this power conferred upon them.

He represents the Sovereign

Lastly, the Governor of a province, like the Viceroy, possesses the prerogative of mercy and pardon, and he represents His Majesty in his dealings with the Indian States that are put under the jurisdiction of his authority. The Viceroy and the Political Department of the Government of India have retained, however, their general powers of superintendence and control in such matters and the Governors have to act in the light of their instructions.

The executive Government in the provinces now consists of two parts, one constituted by the Executive Council and the other by the Ministers. It will be convenient to treat each of these parts separately and then to discuss their relations.

2. The Executive Council

The Provincial Governments were given the assistance of Executive Councils by the Act of 1784, more commonly known as Pitt's India Act. A clause of this Act specifically stated that a Council consisting of

three members including the Commander-in-Chief in the province be created in each province. The old Presidencies of Madras and Bombay have each been ruled by a Governor-in-Council since then. Even before this enactment the senior members in the service of the Company formed an advisory body to assist the Governor in the discharge of his duties. The number of the members of the Council in Madras and Bombay was reduced to two in 1833. Later on it was increased to three and stood at that figure till the introduction of the Reforms in 1919. After the abolition of the office of separate Commanders-in-Chief of the provinces, their places in the Councils were taken by ordinary members.

Historical: *Councils for Madras and Bombay*

It must be understood that newly created provinces did not come under the operation of this clause in Pitt's India Act, for they had not the status of Governors' Provinces. They were under the charge of either Lieutenant-Governors or Chief Commissioners. Thus the North-Western Province, Assam, the Punjab, and the Central Provinces had no Executive Councils till the introduction of the Reforms. The responsibility of their governance devolved solely upon the heads of those to whom, in constitutional theory, necessary powers were delegated by the Governor-General. The only province which was not a Governor's Province and which still had an Executive Council was the province of Bihar and Orissa, which was created after the annulling of the partition of Bengal and the reshuffling of the provincial areas.

No Councils for other Provinces

After the Reforms, the difference between the status of the different provinces was abolished and all provinces were declared to be Governors' Provinces, with an Executive Council in each to assist the Governor. The

North-West Frontier Province and the province of Delhi were originally excepted from this arrangement. But in 1932 the North-West Frontier Province was raised to the status of a Governors' province and a modified scheme of dyarchy was introduced in it. Even this province therefore has now an enlarged legislature and a responsible minister.

After the Reforms

The Montford Reforms brought about the division of provincial subjects into two groups. One of these, known as the transferred half, was given over to ministers who were made responsible to the legislature. The other, known as the reserved half, was entrusted to the care of the executive council. This body is not responsible to the provincial legislature and not removable by it.

Present Constitution

The number of Executive Councillors varies in the different provinces. The major provinces, that is the older and larger provinces of Bengal, Madras and Bombay, have now Councils each consisting of four members. In the presidency of Bombay, however, on account of financial pressure and the imperative need for retrenchment, the number of Executive Councillors has been reduced from four to two since last year. In the remaining provinces the Councils usually consist of two members.

It has been laid down in the Act that one of the Councillors must be a person who at the time of his appointment has been at least for twelve years in the service of the Crown in India. Usually half the number of the total members—one in the minor and two in the major provinces—are selected so as to satisfy this particular clause of the Act. The others are recruited from among non-official Indians in pursuance of the policy of the larger association of Indians in the business of government.

It was during the time of the Morley-Minto Reforms

that one Indian was admitted into the provincial and the central Executive Councils. This number has now been increased to two in the major provinces. Members of the executive council are technically appointed by His Majesty under the Royal Sign Manual. In practice the Governor is bound to exercise considerable influence in the matter of their appointment. Their tenure of office is five years.

Method of Working

The Councils work on the portfolio system, each member being given definite charge of certain departments and disposing of ordinary details in the department by himself in his authority as the head. Matters of importance and all points of dispute and all lines of general policy have to be put before the meeting of the Executive Council over which the Governor ex-officio presides, or in his absence the vice-president nominated by him from among the members. The decision of the majority is binding upon all, the president giving a casting vote in case of a tie. Even the Governor has to accept the decision of the majority, except in those rare cases when he feels that the peace, tranquillity and good government of the province are in danger. On such occasions he is empowered to override the majority. The orders given by the members individually, by the members in consultation with the Governor, by the Executive Council as a whole, or in his own special prerogative by the Governor, are all promulgated as orders of Government. The Governor makes regulations for the transaction of the business in the Council.

No Responsibility

This part of the Government is entirely responsible to His Majesty's Government through the Secretary of State and the Governor-General. Officials in the Executive Council are not removable by an adverse vote of the Legislature.

They are answerable for their actions to the two controlling authorities from above and are entirely subordinate to them so far as the maintenance of British interests and good administration are concerned. Their salaries are not dependent on the vote of the legislature which has no power to dismiss them from office.

However, moneys required for the departments managed by the executive council have to be provided by the provincial legislature at its discretion in so far as the votable items of the budget are concerned. All laws pertaining to reserved subjects have also to be passed by the legislative council. Thus, in fact, if not in theory, an attempt is to be made to accommodate the actions of this portion of the provincial executive to the will of the elected representatives of the people.

3. The Ministers

Transferred Departments

The other part of the provincial executive is constituted by what are known as Ministers. These officers were newly created after the Reforms of 1919, when in fulfilment of the promise of the graduai introduction of responsible government, officially given by the Secretary of State in Parliament on behalf of His Majesty's Government, an endeavour was made to introduce the first instalment in that direction in the provinces, as a beginning. That part of the Provincial Government which is administered by the Executive Council, is known as the reserved half. That which is given over to the management of the Ministers is known as the transferred half.

This division between transferred and reserved is to be distinguished from the other division that has also been inaugurated under the Reforms and has been already described, that is, the division between central and

provincial subjects. The first distinction is introduced only in those subjects that are known as provincial. There is therefore no central subject which can be described as either reserved or transferred. Dyarchy has not been introduced in the Central Government and there is a complete absence of any measure of responsibility in the departments conducted by the Governor-General and his Executive Council.

It was thought dangerous, in the present backward condition of the Indian electorate, to transfer the whole of the provincial administration to the representatives of the people. The successful shouldering of political responsibility postulates the existence of constitutional traditions and experience, the absence of which in Indian conditions was considered to be a serious drawback in the introduction of complete responsibility. A compromise was therefore suggested.

Ministers' Responsibility to the Legislature

As has been stated before, administrative business in the provinces has been divided into two halves by the Act of 1919. One half is given over for management to the executive council. The other is placed in the hands of a new kind of officials known as Ministers. They are to be appointed by the Governor from among the elected members of the legislative council but they are primarily responsible to the legislature for their administration. Their salary as also funds required for their departments are voted by the legislative council. On an adverse vote of that chamber ministers have to tender resignation of their office. Thus, in this part of government, the supremacy of the legislature over the executive machinery is clearly recognized.

The number of Ministers is not the same in every province. Generally, in the major provinces, it is three

and in the minor provinces it is two. Bombay, Bengal and Madras have three Ministers each. However, since 1932 the number of Ministers in Bombay has been reduced from three to two on account of financial stringency and the need for reducing the expenditure of the provincial government.

Their Appointment

The power of appointing Ministers is vested in the Governor. But at the same time their subordination to the legislature is definitely established. It is therefore obvious that the Governor's choice cannot be entirely unrestricted and arbitrary. The persons selected by him to hold the office of Ministers must have at least some influence with the legislature. They must be able to command a not inconsiderable portion of its votes. A well-organized political party, occupying a majority of seats of the legislative council will be naturally able to get its own nominees appointed to the ministry by the Governor. The possibility of the Governor's power of the selection of Ministers degenerating into a mere patronage in his hands will be extremely remote if members of the legislative council are sufficiently self-conscious and organized to carry out their desires regarding the formation of the Ministry.

Their Tenure and Salary

There can be no fixity of tenure for ministerial office as there is for a member of the executive council. Technically speaking, a Minister's term of service may be said to end when the legislative council itself is dissolved. But if he loses the confidence of that body even before the date of its dissolution, he is bound to resign his post immediately. On the other hand he may be able to retain his office even for a second and third term if the legislative chamber so desires.

Originally by the Act of 1919 the same salary was

provided for Ministers as was given to members of the executive council. However the legislature was empowered to reduce it if it felt inclined to do so. The legislature has taken action in that direction in several provinces. In Bombay, for instance, the salary of the Minister was brought down from Rs. 64,000 per year to Rs. 48,000 by the first Reformed Council.

Effect of the Nominated Element

It must be admitted, however, that the presence of a proportion of thirty per cent of nominated members in the Council—official and non-official—is a solid asset in the hands of the executive. The inevitable assimilation with Government members of representatives of special constituencies like those of landholders on account of financial interests or of communal constituencies like those of Europeans on account of racial affinity raises the proportion of thirty per cent much higher. It all presents a considerable organized force which it becomes convenient for the Minister to propitiate.

Ministers have, as a matter of fact, felt encouraged rather to win the favour of this bloc than to win the sympathy of a large majority of elected members. These latter are divided in their opinions; they represent different currents of thought and it becomes very difficult to bring such heterogeneous elements under one banner. On the other hand, a Minister with a small faithful personal following can be maintained in office in opposition to the wishes of a large number of elected members if he has managed to secure official support.

Responsibility to the legislature thus tends to be demoralized into subservience to an irremovable executive. The Raja of Panagal is reported to have once declared in the Madras Legislative Council that he was responsible to the Governor and not to the Council at all! And he was

the Chief Minister of the Madras Government for two terms in succession.

Distribution of Portfolios

After the appointment of Ministers to their posts, it is the duty of the Governor to allocate to each of them the charge of a department or a group of departments from subjects which have been declared transferred. This corresponds to the assignment of portfolios to the members of the Executive Council and is absolutely the prerogative of the Governor. Each Minister then assumes charge as the head of the departments that are consigned to his care and disposes of departmental details on his own authority and responsibility. On the more important matters he has to consult the Governor and issue an order, after agreement has been arrived at between his own viewpoint and that of the Governor.

Governor's Interference

The Governor has the right to supersede the Ministers in matters where the interests of other departments are concerned or where certain actions of the Ministers are likely to do injustice to members of the Imperial Services. There are regular days fixed by the Governor on which to meet the Minister and to discuss matters of State with him before any final decision is arrived at.

Secretaries

As in the case of the reserved, so in the case of the transferred departments, just below the Ministers there are Secretaries in their respective groups. Officially speaking, they are subordinate to the Ministers. However, these Secretaries have direct access to the Governor independently of their immediate superiors, the Ministers, and it is their duty to keep the Governor informed of every important matter in the transaction of business in their departments.

However, the intention of Parliament being the grant

of responsible government and the ultimate development of self-governing institutions, and the appointment of Ministers responsible to the Legislature being the first step taken in that direction, the Joint Parliamentary Committee definitely recommended that the Governor's interference in the work of the Ministers should be as small as possible. It should be strictly limited to those cases where the Ministers' actions are likely to cause grave injustice or to give rise to an unprecedented and difficult situation. They deliberately expressed their faith in the doctrine of learning wisdom through mistakes and hoped that the Ministers' initiative would be left as unfettered as possible. Such an interpretation of the Governor's powers alone was consistent with the spirit of the Reforms.

Nothing would remain of the responsibility and the freedom of the Ministers if they were constantly overruled by the Governor and required to conform to his dictation and judgment. Under such a constant control the responsibility of the Government in the transferred half would be reduced to a mockery. It would be the very negation of the fundamentals of a responsible system of administration. Hence the explanatory comment of the Joint Parliamentary Committee and a reiteration of the Joint Parliamentary Committee's view by both the majority and the minority reports of the Muddiman Committee.

Individual Responsibility of the Ministers

It is to be understood that the Ministers do not form any corporate body as the members of the Executive Council do. The Ministers do not form a Ministry, a phrase which will be explained later on. They do not form even a Council which regularly meets at stated intervals, is presided over by a president, for the transaction of business, in which regular rules of

procedure are formed, and decisions of which, taken by majority, are binding upon all the members including those in the minority. All important matters in the reserved departments have to be put for discussion before the whole Council by the member in charge. The Governor may preside over the meeting and give his vote, but the final verdict in the matter will be pronounced by the majority of the votes of those present. No such joint meeting is necessary for the disposal of business in the transferred half. There, not the Governor-in-Council, but the Governor acting with his Minister, in the singular, is the form in which announcements of orders are made. Each Minister, constitutionally speaking, is self-sufficient and has nothing to do with his immediate colleagues. No mutual consultation among the Ministers is provided by law; there cannot be, therefore, any binding character to the vote of the majority, even if, informally, opinions are taken and the views of all the Ministers are ascertained.

4. Dyarchy and its Working

Meaning of Dyarchy

It will be evident from all that has been said in the foregoing pages that the Reforms have introduced in the provinces of India a form and method of governance which are unique. Two kinds of officials, having a constitutional status fundamentally different from each other, have been harnessed, under the control of the Governor, to carry on the work of administration. Such a system of government where the executive is partly responsible to the legislature and partly to bureaucratic control from above is described as 'Dyarchy', a word which is almost new in political usage.

The co-existence of two different types of officials in

the same government is intended to be only a temporary phase. It is the characteristic of the transitional period intervening between the past era of complete irresponsibility and the coming era of complete responsibility. In the operation of a system which consists of such a nicely balanced and intricate mechanism, difficulties of a formidable nature may inevitably arise. Some kind of remedies have to be provided against them.

It is a Transitional Phase

The spheres of Ministers and Executive Members are intended to be sufficiently distinguished from each other. Each half is held finally responsible and competent to pass any orders within its own sphere. That is to say, Ministers cannot interfere in reserved matters, nor can members interfere in transferred matters. Mutual friendly consultation may be held between the two halves and such consultation and expression of opinion might appreciably influence their mutual policies. That is not impossible. Legally speaking, however, the complete independence of each of the two spheres is guaranteed by the Act. Any dispute about jurisdiction that might arise between them, or any other matter of conflict, is left to be decided by the arbitrament of the Governor whose decision in such matters is declared to be final.

Demarcation of Two Spheres

It has, however, been discovered that the demarcation of two separate units in the same executive Government cannot be so accurate and precise as to make the two divisions absolutely watertight compartments. There has been considerable entanglement between the subjects of the two halves. Sir K. V. Reddi said that he was Minister of Agriculture minus Irrigation and minus the administration of the Agricultural Loans Act. Both the

Overlapping of Subjects in the Two Halves

majority and the minority reports of the Muddiman Committee have discussed this question and both have come to the same conclusion that a perfect differentiation which entirely avoids any mutual overlapping of transferred and reserved subjects is impossible. The opinion is endorsed by the Bombay Government and also by some of the ex-Ministers who had occasion to work out the reforms under the dyarchical form.

'All evidence has agreed in pointing out how any important measure put forward by a member or a Minister cannot fail to affect, and therefore to involve a reference to, the authorities in charge of that half from which the measure has not emanated, but whose interests are threatened as a result of the reaction of the proposed measure.' The minority have emphasized the impossibility of effecting a clear-cut and mutually exclusive division of subjects as an inherent defect which vitiates the whole system of dyarchical government.

It might be repeated once more that, wherever any ambiguity arises as to the jurisdiction of the reserved or transferred half, the sole authority to remove the ambiguity and pronounce the final judgment is the Governor of the province, to whom all such cases have, by law, to be referred.

Budget Meetings

There is only one occasion on which both the reserved and transferred halves must be called together to hold a joint meeting. This is at the time of preparing the budget. Two different types of officers, with a constitutional position divergent from each other, and with a difference in the method of their working, have been thrown together under the new dispensation. The connecting, the correcting and the co-ordinating link between them is supposed to be provided by the presiding officer, the Governor.

The question was discussed, when the scheme was under consideration, as to whether the two spheres should have independent finances, each having its own separate purse or source of income, and a field for its expansion. The idea was definitely rejected by the Joint Parliamentary Committee as being impracticable and even mischievous, and a similar opinion has been expressed by both the majority and the minority report of the Muddiman Committee. The latter states that a separate purse would clearly aggravate the difficulties instead of mitigating them.

Joint Purse

Under a joint purse, all the revenues, collected from whatever source, belonging to the province must go to one and the same exchequer. The collecting and receiving authority being the Provincial Government, all money is pooled together in one reservoir. The reserved and the transferred halves have, by mutual agreement, to decide the shares that will be spent by each of them. Joint meetings of Members and Ministers have to be summoned by the Governor to provide for each section the sinews of the administration. Such meetings may at times involve prolonged and stormy debates, particularly because the points of view of elected Ministers responsible to the Legislature, and of irresponsible executive officials nurtured in bureaucratic traditions, may not always coincide, and bickering and friction between them may consequently arise. At times the Ministers' demands may amount to the abandoning of a course of policy, over which may have gathered a crust of past precedent.

Great self-restraint and a spirit of compromise and mutual give and take have to be exhibited by both parties in order to arrive at an amicable settlement. An unbending obstinacy on the part of either of them may dash the

delicate mechanism of dyarchy to pieces. An immense premium is therefore put upon the qualities of amity and flexibility for the successful working of the scheme of a joint purse as contemplated by the Joint Parliamentary Committee and as incorporated in the Government of India Act. Complaints were made before the Reforms Inquiry Committee by several ex-Ministers that the nation-building departments were starved by the arrangement. The minority report has given figures showing the proportion of the expenditure over the reserved and transferred halves in the provinces of Madras, Bengal, Assam and Bihar and Orissa for the three years 1921–3, and the average proportion would appear to work out approximately as 65 to 35 between them respectively.

Spirit of Compromise necessary

Lastly, it may be stated again, that if the two parts do not agree and the budget meeting ends in a deadlock, neither party yielding its ground, power is left to the Governor to end the deadlock by allocating funds between the disputants as he may think fit, irrespective of the claims made by them. He can thus prevent the administrative machinery from being clogged and brought to a standstill. The minority report has pointed out that in regard to differences arising out of financial matters the Governor's position as a judge must be extremely delicate and embarrassing. He is ultimately responsible to Parliament for the administration of the reserved subjects, of which finance forms a part ; therefore the tribunal to which alone the Minister can appeal is far from satisfactory. The contingency of such a deadlock has not yet arisen in any province in India and funds have been divided by mutual agreement.

Governor's Power to end Deadlocks

We now pass on to a discussion of the statement that

in Indian provinces there are Ministers but not Ministries.

Ministers, but not Ministries

A large body of evidence tendered before the Muddiman Committee by several ex-Ministers clearly disclosed the fact that the administration of the transferred half was not conducted on the principle of the joint and collective responsibility of the Ministers to the Legislative Councils. Joint responsibility is, as the majority report has pointed out, the essence of the cabinet form of government prevalent in England, and intended to be evolved in due course of time in the polity of India.

The British Cabinet is a Homogeneous Whole

In England the Cabinet is one indivisible whole. All actions proposed to be taken by the individual Minister are submitted first to the scrutiny of the Cabinet Members and only on their approval go out to the world as proposals emanating from the Ministry. The Cabinet Ministers have a corporate existence. They come into office and go out of office together. At their head stands one of themselves who is designated the Prime Minister and who is always a great party leader. The King of England has to be in communication, not with individual Ministers, but with the Ministry or the Cabinet as a whole. The close and intimate ties amongst the Ministers which tend to make the Cabinet a thoroughly homogeneous council are dependent to a great extent on the development of sound party organizations.

No Joint Responsibility in India

On the ground of the absence of any such organizations in the present state of Indian public life, some of the Provincial Governments have expressed their scepticism as to the possibility of the introduction and successful working of the system of joint responsibility in India. The Governor deals with the Minister as one individual

head of a department, and not with a group having a cumulative responsibility for the whole mass of the transferred departments. The Ministers therefore have only an individual existence. Their appointment and continuance in office, and the lines of policy they chalk out for themselves, are matters which are concerned more with the personality of the Governor than with a deliberation between colleagues. They have no leader corresponding to the Prime Minister of the English Cabinet. They do not come to office or go out of it as a united body. Nor do they present a united front to the Governor when important issues are being disposed of in the transferred departments.

The view of the Joint Parliamentary Committee

The intentions of the Joint Select Committee are clear in this matter. The minority have quoted in their report the view of the Committee that in the ministerial portion of Government the corporate responsibility of the Ministers should be observed. Every case that arises in the transferred departments need not, of course, require for its disposal the approval of all the ministers together; such a procedure would 'militate against the expeditious disposal of business and against the accepted canons of departmental responsibility'. But in all cases of importance, they are emphatically of the opinion that the final decision should be of one or the other portion of Government as a whole.

The Opinion of the Muddiman Committee

The recommendations of the Joint Parliamentary Committee in this direction have not been carried out. Some of the Governors explain their inability to do so in the absence of strong, well-adjusted parties, and in the present stage of political development in India with a

predominance of the communal sentiment. The majority of the Muddiman Committee do not subscribe to the view that the Government of India Act implies that the Governor should act on the advice of the Minister or Ministers separately but they incline to the opinion that the wording of the Instruments of Instructions and the provisions of the Devolution Rules are faulty and might be interpreted to enunciate the individual responsibility of Ministers. They have therefore recommended that the Rules and the Instruments may be so modified and recast as to remove all ambiguity and to make it clear that the ideal to be attained in the transferred government is the creation of Ministers with a collective responsibility. The minority do not want to allow the growth of this vital principle to depend upon the personal equation of the Governor or the Ministers. They want the statute itself to be amended so as to secure the practical achievement of the fundamental principle.

Voluntary Action of Ministers

It is interesting to record, in this connexion, that the ex-Ministers in the United Provinces, Mr. Chintamani and Pandit Jagat Narayan, had prescribed for themselves a course of conduct consistent with the principle of joint responsibility and had voluntarily agreed to work in the manner of the Cabinet. It was in pursuance of this self-imposed but strictly constitutional restraint that Pandit Jagat Narayan tendered his resignation of the office of Minister in sympathy with his colleague, who had differed from the Governor on an important administrative matter and had thought it necessary to resign as a protest against his superior's overriding of his view. No such voluntary restriction has been uniformly observed by all Ministers. Several of them have, however, expressed themselves to

be unequivocally in favour of the observance of collective responsibility.

Power Concentrated in the Governor

The fact that Ministers are consulted individually, and that a practice has grown up of the Governor overriding the Minister in case of a difference of opinion, has tended to concentrate all power in the Governor's hands. The tendency to regard Ministers as mere advisers of the Governors, who may or may not accept their advice, is considered by critics to have been one of the most insidious and fatal impediments in the operation of dyarchy. The refusal of the Governors to regard themselves as mere constitutional heads, even with regard to transferred subjects, has resulted in converting the relaxation of control granted by the Secretary of State into an addition to the autocratic powers of the irresponsible Governors!

Joint Deliberation of the two halves

The dyarchical form of administration involving a bifurcation of the executive part of government was intended to be only a transitional stage before the ultimate goal of complete responsible government was achieved. In itself therefore it has no element of finality. It was meant to be an experiment and the difficulties that were likely to arise in its operation were not entirely unforeseen. Dyarchy was never promulgated as an ideal by itself. It essentially represented an endeavour to find a compromise between two diametrically opposite states—the complete subordination of the executive to the Legislature on the one hand, and the thoroughly bureaucratic form of administration with the executive irremovable and irresponsible, on the other. Dyarchy therefore partakes of all the imperfections that are associated with a compromise.

The Joint Parliamentary Committee and also Mr. Montagu had clearly visualized the probable difficulties

in the operation of this novel *via media*, and they took care to emphasize the desirability of fostering a habit of joint deliberation between the two sections of the mixed executive Governments which they were proposing to create. The ultimate responsibility for each step taken was not of course a matter of doubt. The jurisdiction of each of the two halves was clearly determined. Actions in respect of the reserved or transferred halves were to be recorded separately by the Executive Council or the Ministers. Still, members of both halves were recommended to be given opportunities for mutual consultation and expression of opinion before the final orders were passed in any department. The minority of the Muddiman Committee have quoted an extract from Mr. Montagu's speech in Parliament while moving the second reading of the Government of India Bill. Therein he stated clearly that, if all the reserved departments were to be transferred one day, the ultimate goal being the grant of full responsible government, it was absolutely essential that during the transitional period there should be opportunities for influence and consultation between members and Ministers.

Mr. Montagu's Idea

The effect that has been given to the suggestion for joint deliberation between the two halves by the Joint Parliamentary Committee and Mr. Montagu has varied from province to province. The Bengal and Madras Governments accepted the spirit of the recommendations to a great extent. In other provinces, it has either not been followed at all, or if followed, not to the extent to which it was contemplated. The minority of the Muddiman Committee are not optimistic about the success of the policy of joint deliberation —even if it is scrupulously resorted to in administrative

Effect Given to It

practice—without the element of common responsibility. It may not lead either to efficiency in the administration or to harmonious relationship between members of the Executive Council and the Ministers. They regard it as an inherent defect of the present constitution that the Government should be divided into halves. Given a dyarchical form of government, they agree that joint deliberation has its value.

The Position of the Services

The position of the Services is another interesting and intriguing problem under the reformed constitution. The appointment, salaries, dismissals and pensions of members of the Imperial Services continue as before to be controlled by the Secretary of State. The Government of India Act specially charged the Governor to 'safeguard all the members of our Services . . . in the legitimate exercise of their functions and in the enjoyment of all recognized rights and privileges'. This clause has been in practice interpreted broadly to mean the control of the Governor in everything relating to the Services—their appointments, postings and promotions—in spite of their being in the transferred departments. The Ministers, under whom many of the officers of the Services are called upon to work, have no complete control over their subordinates and cannot punish them as they will for any infringement of duty.

Causes of Discontent

There thus arises a curious and unhappy situation. The head of the department may settle a policy and issue orders; the agency which has to carry out these orders and the influence of which is strikingly felt in day-to-day administration, may disagree with the course proposed and may not carry out the orders with loyalty and enthusiasm. Such laxity or indiscipline on the part of subordinates not

being directly punishable by their immediate superior, the only alternative left to the Minister is to bring such matters of subordinate interference or indifference to the notice of the Governor, and to try to get the guilty person properly reprimanded. It is obvious that this harnessing together of a Legislature which cannot control its servants, and servants who look upon their position with a feeling of distrust, uncertainty and lack of enthusiasm, is bound to prove embarrassing to both parties.

Consequences of the Introduction of Responsibility

The centre of political gravity has now shifted definitely from outside India to India itself. The days of patriarchical government, during which a large power of shaping the policy was enjoyed by the Services and a large measure of the progress of the country depended upon their efforts, have now definitely given place to the days of popular control. The diminution in the importance and prestige of the Services is the inevitable consequence of the transference of power from the bureaucracy to the people. The constitution, methods of recruitment, and control of the Services, as they exist to-day, are incompatible with the new democratic situation and the possibility of its further development.

It is agreed that the complete subordination of the executive to the Legislature is the very essence of responsible government of the cabinet type as it prevails in England. It is no wonder that under the altered conditions in India, there should exist considerable dissatisfaction among the Services on account of the loss of their power, and also in the Legislature on account of the restraints and limitation imposed upon its powers in relation to the Services. Complaints were made before the Reforms Inquiry Committee that the members of the permanent

Services did not exhibit an adequate spirit of loyalty and co-operation in carrying out the orders of the Indian Ministers. However, instances of such apathy or disobedience are rare, and on the whole the conclusion is that the relations between the Ministers and the Imperial Services are cordial and satisfactory.

Distinction between Political and Administrative Functions

As the minority report has pointed out, friction between the Services and their superiors is bound to arise in the altered circumstances of India as long as the relations of the Services and the Legislature are not brought into closer approximation with those prevailing in England or the Dominions. The old combination of administrative and political functions in the Services is discordant with the spirit of the Reforms and inconsistent with the inauguration of responsibility. When the Services are divested of their political functions and are recognized as mere instruments for carrying out the policy of the Legislature, the criticism that is now levelled against them will be diverted to the heads of the responsible Ministers. The latter will not be members of the public Services, but will combine in themselves both political and administrative leadership as the members of the English Cabinet do. In such circumstances alone, can the Services enjoy immunity from hostile attacks or unfriendly criticism.

That a perfect sense of security and feeling of contentment must be guaranteed to the Services is a proposition which has been accepted even by the minority report. It has recommended that proper legislative steps be taken on the subject so as to put the Services beyond the reach of the fluctuations of political opinions or influences incidental to a system of democratic government. But as long as the old basis of the relation of the Services to the Legislature

is not altered in response to the altered environment, the present state of affairs will prove an embarrassing anachronism not in the least likely to induce harmony and cordiality among executive officials.

Control of the Finance Department

The last point to be noted in connexion with the working of the dual form of government refers to the control exercised by the Finance Department over the transferred half. The Finance Department is a reserved department. The Finance Member must be a member of the Executive Council. The functions of the department are stated to be to give advice on the financial aspect of administrative proposals, advice which the Ministers are at liberty to accept or reject. The evidence of almost all Ministers and ex-Ministers, however, points to such a description of the Finance Department's functions as being incomplete and theoretical. Not only does the department examine the financial aspect of the new proposals, but it also examines the policy of the proposals and its bearings upon the administration. Such an examination by an irresponsible department of the proposals put forth by Ministers responsible to the Legislature is open to grave objection. Nor can the Minister reject with impunity the advice given by the Finance Department, for it can withhold the needed funds unless and until the Minister produces the sanction of the Governor for the expenditure.

Besides, the Finance Member is not in charge of the Finance Department only. He has also under him some of the spending departments, and naturally the suspicion arises that an unconscious desire to promote the interests of these departments proves harmful to other departments, particularly to nation-building subjects that are left to be administered by Ministers. This state

of things is clearly unsatisfactory and calls for a radical reform. The appointment of a separate Councillor, exclusively in charge of finance, will not be a very helpful alternative, according to the view of the minority, so long as the Finance Member continues to be a part of the Governor-in-Council, not responsible to the Legislature.

The Governor, who is himself responsible to Parliament through the Secretary of State and the Governor-General for the administration of reserved subjects, is ill-suited to be the supreme appellate authority in all matters of disagreement between the reserved and the transferred parts, because his verdicts are likely to be those of an interested party, if not of a partisan.

Lack of Funds

A further point which has to be described in connexion with the subject of finance is the unsatisfactory character of what is known as the Meston Award. All Provincial Governments have agreed in criticizing the basis of the separation of provincial from central finance, though on different grounds. The state of the Government of India's finance, on the other hand, was rather alarming. They had accumulated deficits of 62½ crores of rupees during the short period of three years from 1920 to 1923, a period which synchronized exactly with the inaugural period of the Reforms. The want of funds is a constant difficulty which has been confronting the Ministers from the beginning. They were, for that reason, unable to pursue any policy of progressive development in the sphere of administration that was handed over to them. The majority report discovered, in this financial stringency, one of the most potent factors which led to the allegation of unkind critics that the Reforms were a sham. The allegation, according to them, could not be palpably

refuted on account of the absence of adequate resources for development and expansion. That a revision of the Meston Settlement was urgently called for became almost an axiomatic proposition. However, it has now been abolished, and the problems created by provincial contributions have therefore receded into the background for the present.

CHAPTER XIII

The Provincial Legislature

1. The Growth of Provincial Legislatures

The origin of the legislative power of the provinces goes back to the year 1807. By an Act of that year the Governors and Councils in Madras and Bombay were given the power of making regulations, a power similar to that which had been granted to the Governor-General-in-Council by the Regulating Act. From then, the regulations issued by the Governments of Madras and Bombay had legal application in their respective jurisdictions, until all the existing law was consolidated into a code, for the preparation of which orders were given by the Charter Act of 1833. This Act deprived the Provincial Governments of their independent law-making power. They were now asked merely to submit drafts to the Central Government of whatever legislation they wanted to be enacted. The Governor General-in-Council was declared to be the sole repository of legislative authority.

1833

But the inconvenience of this sort of centralization was obvious. The Governor-General's Council, in which members from the Bengal Civil Service predominated, could not be expected to give sufficient attention to the problems of distant provinces like Bombay and Madras. The concentration of legislative business over the vast area comprised by the then existing three provinces of Bombay, Madras and Bengal, in a single small Council

was evidently unsatisfactory. The Governments of Bombay and Madras constantly complained that their claims and needs were not properly considered.

1853

The Act of 1853 tried to remove the grievance of the provinces to a certain extent. It allowed representatives of each of the four Provincial Governments of Bombay, Bengal, Madras and the North-West Province to hold seats in the Governor-General's Council, which was specially enlarged for the transaction of legislative business by the nomination of additional members.

1861

A more liberal step was taken by the Indian Councils Act of 1861, when to the provinces was restored the power of legislation which had been taken away in 1833. The Councils of the Provincial Governments were expanded for legislative purposes by the addition of the Advocate-General ex-officio and other nominated members, not less than four and not more than eight, at least half of whom were to be non-officials, as in the case of the Council of the Governor-General. In accordance with this privilege, special bodies to transact law-making business were established for Bengal in 1862, for the North-West Province in 1886, for Burma and the Punjab in 1897, for Eastern Bengal and Assam in 1905 on its creation as a separate province after the partition of Bengal by Lord Curzon, and for the Central Provinces in 1913.

This concession and freedom granted to Provincial Governments did not in any degree diminish the sovereignty of the Government of India and the power of their Legislative Council to enact laws for the whole of the country. The Act of 1861 expressly declared the Governor-General's law-making power to extend to all persons and things, excepting certain Parliamentary

enactments and the general authority of Parliament and the Crown. However, in practice, the Provincial Legislatures were competent to enact laws for the peace and good government of the provinces, subject to the restrictions imposed upon them, and subject to the general supervising authority exercised by the Central Government.

This measure was soon found to be inadequate. The growth of political consciousness in the educated classes of the Indian public which had just passed through a course of western education and had become familiar with the democratic idea that characterized some of the western Governments, was a new factor in the situation. This national awakening found an organized embodiment in the Indian National Congress, an institution which was established in the eighties of the last century. This body began to hold sessions annually, moving from place to place, and to agitate for the removal of administrative defects and deficiencies. The Congress became the vehicle for the expression of the new-born ambitions and aspirations of an awakening nation. It also became a consolidating force which helped to draw together and co-ordinate the national movements and tendencies in the different provinces.

The Indian National Congress

Agitation conducted by the early Indian politicians, some of whom could be described as the creators of the Indian National Congress, had the result of clearly exposing the inadequacy of the Act of 1861 and its incapacity to enlist popular contentment and support. Hence the proposal for the Indian Councils Act of 1892. The Under-Secretary of State, Mr. (the late Lord) Curzon, explained in Parliament that the object of the new proposal was to give 'further opportunities to the non-official and

native element in Indian society to take part in the work of government, and in that way to lend official recognition to that remarkable development both of political interest and political capacity that had been visible among the higher classes of Indian society since the Government of India was taken over by the Crown in 1858'.

1892

This measure recommended the enlargement of the Councils by the addition of larger non-official numbers. The method of making the addition, however, gave rise to a considerable amount of difference of opinion. There was great opposition to the democratic principle of direct election being introduced in the then existing political and social condition of India. On the other hand, continuance of the conservative principle of nomination was not calculated to gratify politically-minded Indian citizens. Ultimately a compromise was arrived at by which the reality of election was cloaked under the garb of nomination.

A Regulation made under the Act stated that in the case of corporations like Municipalities and Local Boards, or associations like those of a University or a Chamber of Commerce or landholders, it would be convenient and advantageous for the Governor to consult their wishes in the matter of the selection of members to represent them, and to nominate only such men as might be recommended by their confidence.

Thus the principle of election was indirectly initiated. Theoretically, members continued as before to be nominated by the Governments. In practice, however, the discretion of the Government in making the selection of some of the nominated candidates was limited by the recommendations of recognized bodies and associations. Such recommendations could not be normally rejected.

Thus the Act of 1892 introduced a double reform. It

enlarged the size of the Legislatures, the number of additional members to be nominated for legislative purposes being fixed at eight to twenty for Madras and Bombay, not more than twenty for Bengal and not more than fifteen for the United Provinces. It also indirectly inaugurated the principle of election in the formation of these bodies.

This measure extended the powers wielded by the Legislatures. For the first time, they were allowed the right, subject to certain restrictions, of asking questions bearing upon actions of the executive Government. They were also given the power of discussing the annual financial statement presented by the Finance Member and making a general criticism of the policy adopted by the officials of the bureaucracy. This was an advance over the earlier measure of 1861 which had expressly confined the Legislatures to strictly legislative business.

Events, however, were moving fast in India. The Act of 1892 could not cope with the rapidly changing phenomena in Indian politics. The wider spread of western education only helped to intensify the national agitation, which was vigorously conducted during the first decade of the twentieth century. Indian political life passed through various interesting phases and vicissitudes which are yet fresh in the memories of living men. The installation of the Liberal Ministry in power in England, after an almost complete ostracism of two decades, roused some hopes for the successful termination of the great struggle that had been conducted by politicians in India on the question of Indian administrative reform. The acceptance by Lord Morley of the post of Secretary for India was regarded as a further significant event. In collaboration with Lord Minto, the Governor-General, he prepared a scheme

1909

and laid it before Parliament for its sanction which was duly given.

Larger Councils

The Morley-Minto Reforms made important modifications in the composition and functions of the Provincial Legislatures. In the first place, the total number of members of each of the Provincial Councils was considerably increased, the new figure in some cases being more than double the figure of 1892. The maximum limit of fifty additional members was fixed for the larger provinces and of thirty for the smaller ones. Secondly, the proportion of official to non-official members was modified so as to bring about a majority of non-official members in the Provincial Councils.

The difference in the two situations is clear. Official members have to vote as they are asked to vote officially. They have not to exercise their individual judgment, but must act according to the mandate they receive from above. With nominated non-officials, the case is different. In theory, at least, they may vote as they please, on the merits of the question. Their opinion is taken to be more indicative of the popular view than that of officials.

It must be understood that a non-official majority does not necessarily mean an elected majority. The non-officials may be members nominated by the Government from among persons who are not in the Services. It has already been seen how, under the Act of 1861, all non-official members were nominated and how, under the Act of 1892, the principle of election was indirectly introduced, particularly in the Provincial Legislatures.

The Act of 1909 openly accepted that principle as one of the fundamentals of the Reforms scheme. However, election was not to be direct. It was also proposed to give separate representation to the important community

of the Mohammedans. The constituencies for the Provincial Councils were formed out of municipalities and District Boards giving their votes in groups.

Their Functions Increased

These changes in the constitution and composition of the Provincial Councils were accompanied by an enlargement of their functions and powers. The right to hold a general discussion of the budget, which had been conceded in 1892, was further augmented by the right to move resolutions in a definite form upon matters pertaining to the budget, and to divide the Council on them. The power of expressing opinion in the form of a definite resolution was not confined only to matters connected with the budget, but was extended to all questions of general public importance. Certain subjects were of course excluded ; for example the army, foreign relations and other cognate matters were not subjects on which resolutions could be moved. The Governor's permission was necessary for the introduction of a resolution. The right had thus various limitations imposed upon it. Lastly, the power of asking questions, which had been conceded by the Act of 1892, was increased by allowing the member who originally put the question to put further supplementary questions if he was dissatisfied with the reply given by the Government Member. Thus, the functions and privileges of the Legislatures were to a certain extent increased.

No Introduction of Responsibility

The Act of 1909 did not even make a suggestion of the introduction of responsibility. Lord Morley, while making a speech in Parliament, distinctly disclaimed any intention on his part or on the part of His Majesty's Government to treat the reform measures as the beginning of the development of self-governing institutions. The

newly created Legislatures were neither representative nor democratic in the wider sense: their constitution did not accord with a popular form of administration; their powers were limited; they had not the least effective control over the Executive; and their existence and proceedings had an air of unreality in the absence of any greater power than that of vehement but ineffective criticism of some Government measures.

Such a defective scheme could not satisfy the aspirations of the people for Swaraj, a word which was used by the president of the National Congress in 1906 to describe the only remedy that he could discover for the solution of the Indian political problem. The disappointment and dissatisfaction that were caused by this imperfect measure grew more and more intense as its futility was realized in practical working. A new and absolutely unexpected factor soon presented itself in world's history and intervened, in India as elsewhere, with its modifying influence in shaping the polity of the land and the general philosophy of politics and of life.

Constitutional Position of the Provincial Legislatures before the Reforms

The exact position of the Provincial Legislatures in their relation to the legislative powers of the Governor-General can be summarized at this point. As has been stated more than once, the provinces in India were mere formations for administrative convenience. They had nothing about them of federal independence and liberty. The provincial Legislatures had therefore only a limited power and scope for operation. Many restrictions were imposed upon them to ensure that the Central Government's control remained intact and was actively exercised in reality. The theory of the constitution being that the Government of India were the sole and final authority having an undivided responsibility for

the safety, order and good government of the whole of the land, an active exercise of their powers was regarded to be consistent with the spirit of the constitution. If the Provincial Legislative Councils were to be regarded, technically, as mere enlargements of the executive Governments and if the latter, in a unitary state like India with a patriarchical administration, were to be completely subordinate to the mandates issued by the central authority, the independence enjoyed by the Provincial Legislative Councils as such was non-existent. Bearing this constitutional position in mind, it will be better to describe the various limitations in theory and in practice, that circumscribed the freedom of the Provincial Legislatures in pre-Reforms days.

Restrictions on their Powers

Thus, for instance, they were prohibited from attempting to affect an Act of Parliament or from altering or repealing, without previous sanction, any Act of the Governor-General's Legislative Council or of any Legislature but themselves. All-India questions like those of the public debt of India, or customs, or other taxes imposed by the Central Government, or coinage, currency, posts and telegraphs, the army and the navy, were thoroughly excluded from the provincial sphere. Further, the previous sanction of the Governor-General was made necessary before the provinces gave consideration to any measure affecting the religion or the religious rites of British subjects, the regulation of patents and copyrights, or the relation of the Government with foreign princes or Indian States. In course of time, as a result of executive directions, it was made obligatory upon the Provincial Governments to submit for the previous sanction of the Government of India and the Secretary of State, all projects for provincial legislation before their

introduction in the Councils, and, still further, all Acts of the local Legislative Councils, after their being passed and after their receiving assent from the Governors, had necessarily to receive the assent of the Governor-General before they could acquire legal application and validity.

Even in the field which was left legally unfettered for the legislative competence of the Provincial Councils, their discretion was restricted in other ways, as the Montford Report has pointed out. Because most of the provincial bodies were younger in their existence than the Central Legislature, a great part of the field that would otherwise be legitimately regarded as belonging to them was already covered over by the enactments of the elder body. Apart from subjects like the army, communications, finance, etc., which were clearly matters of imperial importance, the Government of India's Legislative Council had passed laws for matters like prisons, jails, reformatory schools, police, whipping, the personal law affecting marriage, minors, succession, and matters in civil law like trusts, specific relief, transfer of property, patents, trade marks, weights and measures, mines, factories, religious endowments, ancient monuments, etc. Thus it will be clear that the measure of independence that was enjoyed by the Provincial Legislatures in practice was extremely small.

Devolution of Power Necessary

The Indian provinces were not based on the federal model with a recognition of their separate entity. From the federal point of view, the control exercised by the Governor-General may appear to be excessive. Such centralization left to the local Legislatures a very small amount of latitude and independence. An effective measure of devolution was necessary in order to relieve the Provincial

Governments of the large number of restrictions which impeded their free action. A greater and more genuine grant of initiative and independence to them had to precede any scheme of reforms which proposed the introduction of partial responsibility as a measure of experiment, to be finally developed into the realization of the ultimate goal of complete responsible autonomy. The incorporation of the provincial budgets in that of the Government of India, and the stringent control exercised by the latter over the taxation powers of the Provincial Legislatures completed the tale of their subordination and subservience. The Provincial Governments were also required to submit to the previous sanction of the Government of India and Secretary of State all projects of legislation before their introduction. This in practice meant a limitation on the legislative freedom of the provinces.

After the Reforms

The circumstances of the War and the change in ideals that accompanied it, the Announcement of August 20, 1917 with all its implications, the Secretary of State's visit to this land, the submission of a report by him in collaboration with the Viceroy on the future of Indian constitutional development, and the final passing of the Government of India Act of 1919, are recent events. We are now concerned only with that portion of the Act which affects the position of the Provincial Legislatures. Here, as before, the Reforms have to be understood in two directions, the constitution of such bodies and their functions. The provinces being regarded as proper ground for experimentation in responsible government, it was indispensable that their Legislatures should be sufficiently enlarged and democratized and made thoroughly representative of the population in the provinces before

entrusting to them the duty of controlling the executive or a part of the executive.

2. The Bombay Legislative Council

Constitution

The following table, taken from Simon Commission's Report, gives the number of members in each Provincial Council. Not more than 20 per cent of the total members of each council are to be officials, and at least 70 per cent non-official elected members. The constituencies, as usual, are divided into general or non-Mohammedan, communal and special; also into urban and rural. In the Bombay Presidency, for instance, there are urban and rural constituencies, Mohammedan and European constituencies and those of Landholders, of the University, and of Commerce and Industry. Of the 111 total statutory minimum number of members 86 are elected and 25 nominated.

Total strength of Governors' Legislative Councils as given by the Simon Commission[1]

Province	Statutory minimum	Elected	Nominated officials plus Executive Councillors	Nominated non-officials	Actual total
Madras	118	98	7 + 4	23	132
Bombay	111	86	15 + 4	9	114
Bengal	125	114	12 + 4	10	140
United Provinces ...	118	100	15 + 2	6	123
Punjab	83	71	13 + 2	8	94
Bihar and Orissa ...	98	76	13 + 2	12	103
Central Provinces ...	70	55	8 + 2	8	73
Assam	53	39	5 + 2	7	53
Burma	92	80	14 + 2	7	103

[1] Report, vol. I, p. 134.

Composition of the Bombay Legislative Council

Elected Members

	Members
Mohammedan Rural	22
Mohammedan Urban	5
Non-Mohammedan Rural[1]	35
Non-Mohammedan Urban[1]	11
European	2
Landholders	3
Commerce and Industry	7
Bombay University	1

Nominated Members

(i) Officials (including Executive Councillors) ...	20
(ii) Non-officials	
(*a*) Depressed Classes ...	2
(*b*) Anglo-Indian	1
(*c*) Indian Christian	1
(*d*) Labour	3
(*e*) Others (cotton trade)	1
Total ...	114

[1] Of the members of the non-Mohammedan constituencies, seven must be Marathas.

The President

The president of the Council was to be a nominated non-official for the first four years after the introduction of the Reforms, and thereafter has been elected by the Council itself from among its own members. His election has to be approved of by the Governor. A deputy-president, to preside in the absence of the president, has been elected by the Council from the beginning.

The Constituencies

In forming the electorates, the district has been taken as the unit, having regard to the general homogeneity of its interests, and the facility for the preparation of the electoral roll and organization of electoral machinery that were afforded by this administrative and territorial area. Large cities are formed into constituencies by themselves. Special non-territorial constituencies have been formed for commerce and industry.

Franchise

The franchise for the Councils has been sufficiently lowered to include in the list of enfranchised persons as large a percentage of the population as possible. For instance, in the Presidency of Bombay, the payment of Rs. 3 per month as house rent in cities—Rs. 5 in Karachi and Rs. 10 in Bombay—or ownership of a house worth Rs. 1,500; and in rural areas the payment of Government dues by way of land revenue to the extent of Rs. 32 per year—Rs. 16 in Upper Sind Frontier, the Panch Mahal and Ratnagiri Districts—entitles a man to be enrolled in the list of the constituency. The enlargement of the total number of members, a very substantial elected majority, a sufficiently low franchise, and an elected president, are all changes in the direction of progress.

Table showing, province by province, the proportion of electors to population in the general constituencies[1]

Province	Population of electoral areas 1921	Electors male and female (women electors shown in brackets)	Proportion of electors to population	Proportion of male electors to adult male population	Proportion of female electors to adult female population
	Figures to the nearest thousand		per cent	per cent	per cent
Madras ...	4,23,19,000	13,65,000 (1,16,000)	3·2	11·6	1·0
Bombay ...	1,92,92,000	7,59,000 (39,000)	3·9	13·4	0·8
Bengal ...	4,62,41,000	11,73,000 (8,000)	2·5	9·7	0·3
United Provinces	4,53,76,000	15,89,000 (51,000)	3·5	12·4	0·4
Punjab ...	2,06,75,000	6,97,000 (21,000)	3·4	11·9	0·5
Bihar and Orissa	3,38,20,000	3,73,000 (nil)	1·1	4·6	...
Assam ...	67,35,000	2,50,000 (about 3,000)	3·7	14·2	0·2
Central Provinces and Berar	1,27,80,000	1,69,000 (nil)	1·3	5·2	...
Governors' Provinces excluding Burma	22,72,38,000	63,75,000 (2,68,000 in six provinces)	2·8	10·4	0·6 for six provinces

Functions

The functions of the Council have been enlarged. They are divided as usual into legislative, administrative, and financial. The relation of the Legislature to the two halves of the executive, the reserved and the transferred, have to be distinctly understood. It has already been explained that in spite

[1] *Simon Commission Report*, vo . I, p. 191.

of the division in the executive Government consequent upon the introduction of dyarchy, the province continues to be regarded as a whole unit in itself. There are no two separate legislative bodies corresponding to the two halves of the executive Government. The same Legislature has to function for both.

Legislative and Administrative

(i) Every bill intended to have legal application within the jurisdiction of the province has to be passed by the Council whether it pertains to the one or the other half of the Government.

(ii) The control over the administration is exercised in four ways which have been already explained: (*a*) by moving resolutions; the Provincial Council can discuss any matter of public interest by moving resolutions on it; permission for moving them has to be granted by the Governor (some subjects are excluded from the exercise of this power); (*b*) by putting questions and supplementary questions; permission is now given to any member of the Council, not necessarily the one who originally put the question, to put a supplementary question if he is dissatisfied with the reply given by the Government member; (*c*) by moving adjournments of the House when the House is in session on an important matter of recent occurrence; and (*d*) by moving votes of censure in order to express an unambiguous disapproval of the policy of the Government.

Financial

(iii) The budget of the whole provincial administration, reserved and transferred, has to be put for the vote of the Council and passed by it. This is a very important privilege secured to the Legislature by the Reforms. Formerly there was only the power of discussing the budget and moving resolutions; but there was no control over expenditure or

income. Things have changed now. There are, indeed, in the Provincial as in the Central Government the non-votable items, expenditure upon which is incurred irrespective of the wishes or votes of the Legislature. None the less, it cannot be denied that even the partial grant of the right of voting the budget is an innovation in the progressive direction. All proposals for taxation and appropriation are put before the Council and discussed and sanctioned by it; so are all proposals for public loans.

3. Procedure of Work in the Bombay Legislative Council

In the matter of summons for meetings, oath of allegiance, election of the President and Vice-President and nomination of a panel of four Chairmen, allotment of days for non-official business, agenda, quorum, questions and supplementary questions, resolutions and motions of adjournments, the same procedure is followed as is followed in the Legislative Assembly (see pages 146–50).

Legislation has also to pass through the same stages that have been described on pages 148–49, viz. (*a*) Leave to introduce a bill, (*b*) Publication in the Gazette, (*c*) First Reading, (*d*) Select Committee, (*e*) Second Reading and Voting clause by clause with Amendments thereon, (*f*) Third reading. Every bill passed by the Council has to receive the assent of the Governor and the Governor-General before it can become law.

The Provincial budget is presented to the Council and on a subsequent day it is thrown open for general discussion. Thereafter voting takes place on demands for grants. Not more than twelve days are allotted for that purpose. Here also the same procedure is followed as is followed in the case of the Legislative Assembly (see pages 149–50).

Table showing the chief sources of revenue and main items of expenditure of the Government of Bombay (Budget figures for 1929–30 in crores of rupees)

Revenue		Expenditure	
Land Revenue	5·12	Reserved subjects	
Excise	3·89	Land Revenue and General Administration	2·95
Stamps	1·77	Police	1·79
Irrigation (net) [1]	0·70	Jails and Justice ...	1·00
Forests (gross)	0·73	Other reserved expenditure (including debt charges, pensions, etc.)	4·58
Other sources	3·51	Total ...	10·32
Total revenue ...	15·72	Transferred subjects	
		Education	2·04
		Medical Relief and Public Health	0·91
		Civil Works	1·30
		Other transferred expenditure	1·43
		Total ...	5·68
		Total expenditure ...	16·00

Estimated revenues and expenditure of the different provinces in crores of rupees according to budgets of 1929–30

Revenue		Expenditure	
Madras	17·56		17·71
Bombay	15·72		16·00
Pengal	11 85		11·93
United Provinces... ...	13·09		12·39
Punjab	12·54		11·49
Burma	11·55		11·38
Bihar and Orissa	5·85		6·12
Central Provinces ...	5·56		5·27
Assam	2·84		2·98
Total ...	96·56	Total ...	95·27 [2]

[1] Interest on capital outlay has not been deducted.

[2] Of this amount Rs. 37·31 crores were spent on transferred departments.

CHAPTER XIV

The Relation of the Executive to the Legislature

1. In Transferred Departments

Control over Transferred Departments

It is intended to be a constitutional principle that the exercise of the multifarious powers of the Legislative Council in all matters arising out of the transferred departments shall be absolutely unfettered. The essence of responsible government consists of the complete subordination of the Executive to the Legislature and the Provincial Councils have to play the same role with reference to Ministers as the House of Commons plays with the British Cabinet. The Council's disapproval of the action of the Minister must be followed by his resignation or the dissolution of the Council and the election of a new one on the issue of the disputed point.

The state of things, where the Executive enjoys perfect immunity and security of tenure, and simultaneously where the Legislature is endowed with powers which definitely tend to control the Executive, does not exist in the administration of the transferred heads. Ministers are elected members of the Legislatures and are responsible to it. Their salary is voted by that body and so are all sums of money that are necessary for his departments. Ministers therefore are the servants of the Legislature, and in the last instance, of the constituencies which elect the Council.

The Governor's extraordinary veto over the Ministers or over the Legislative Council is intended to be used

only in the rare cases where a Minister's or Legislature's action would, in the opinion of the Governor, lead to disastrous consequences and hamper him in the fulfilment of his responsibility towards Parliament. In practice, therefore, the Council's control is supreme over the ministerial half of the Provincial Government in all matters whether of policy or of detail or of finance. There must be complete harmony between the Ministers and the Councillors. They must have the same viewpoint and angle of vision.

2. In Reserved Departments

Relation to the Reserved Half

In the reserved half, on the other hand, the situation is rather different. It is true that Legislative and financial measures necessary for the conduct of the reserved departments have to be passed by the Provincial Legislature which can also use its power of interpellation and moving resolutions in those matters. Yet there is a difference. The Members in charge of the reserved half, with the Governor at their head, are responsible ultimately to Parliament through the Secretary of State and the Governor-General. They are answerable to that body for their actions in the management of their trust. This responsibility to an extra-territorial authority has made it necessary that in case of disagreement between the Executive Council and the Legislature on questions relating to the reserved heads, the former should be given extraordinary power to have its own way even against the expressed wishes of the Legislature.

Unlike the Ministers, the Executive Members are not removable on an adverse vote of the Council; their salaries are non-votable; their final supervising and

controlling agency is not the Legislature in the province, but the Governor-General-in-Council and the Secretary of State. Hence if they are kept in a situation in which they have to depend upon the Legislature for the discharge of their duties and the performance of their functions, they must be allowed the right of following their own ideas in any conflict between themselves and such a controlling body.

Governor's Certification

Therefore the Governor, like the Governor-General, has been given the power of what is now well-known as certification. By the use of this power he can enact any necessary piece of legislation that is not agreed to by the Legislature, or restore any grant that is rejected by that body. Therefore though the budget of even the reserved half is voted by the Council there is the possibility of the Governor more frequently resorting to the weapon of certification for the restoration of rejected grants in this sphere of Government departments than in the case of the transferred ones.

Indirect Influence of the Legislature

Yet the Legislature's influence upon the Executive must prove to be great under such a condition of things. A persistent and constant defiance of the Legislature's opinion by the Executive would amount to acknowledging the existence of an autocratic rigid rule in all its severity and despotism. Such a calamity is not welcome to constitutions working under a normal mentality. It proves fatal to the moral basis of government. Hence though the effective legal powers over reserved heads enjoyed by the Legislature can be described to be but small, the placing together of a democratically elected and representative Legislature armed with powers of compliance and refusal, and of an irresponsible and irremovable Executive working

under it, cannot fail to have its own result. The Executive can effectively differ from the Legislature only through the instrumentality of what is admittedly an extraordinary weapon, namely the power of certification. In such circumstances the indirect control exercised by the Legislature will be far from insignificant. Questions, Resolutions, Adjournments, Legislation and Voting the Budget are important powers possessed by the Legislative Councils and their constant use is bound to prove very beneficial and salutary.

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GENERAL

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CHAPTER XV

Sub-Divisions of the Province and their Administration

Division of a Province

It is proposed to give here a short description in outline of the system of administration in the province as apart from the controlling organization at the headquarters. An Indian province comprises a vast area, very often as big as the area of some of the larger countries of Europe. It would be therefore physically impossible to conduct its administrative business without further sub-dividing the area into smaller units and distributing Government authority amongst smaller officers, with a supervising agency above. There is a great diversity among the conditions of the provinces. There is also some variety in the scheme of decentralization of authority within the provincial area itself. However, the district is the unit common to all provinces.

The Division

Intermediate between the district and the whole province there may be groups of districts known as divisions, in charge of officers known as Commissioners. Such officers, for instance, exist in Bombay. In most of the provinces, though not in Bombay, there is what is known as a Board of Revenue at the headquarters. It is the chief revenue authority of the province and in its judicial capacity forms an appellate court in rent cases, and serves to increase the volume of revenue.

The duties of a Commissioner of a division in a province like Bombay, where that kind of officer exists,

are those of general superintendence over a group of five or six districts that are grouped together in the division and also of acting as a court of appeal in revenue cases. The Commissioner is a senior officer of the Indian Civil Service and has been described as serving as a post office between his subordinates, the Collectors, on the one hand, and his superiors, the Government at the headquarters, on the other.

The Commissioner

The district, however, is invariably the unit of administration in all provinces and is therefore of vital importance. In size the district varies from province to province and even from place to place in the same province. Its area varies from two to ten thousand square miles and its population from one to three million souls. Its average size is given as 4,430 miles by the Montford Report. Some of the bigger districts exceed the population of Switzerland, or the area and population of Denmark. The officer in charge of the district is known as the Collector.

The District

The Collector is the representative of the British Government in the district which represents the concentrated authority of British rule. He has the dual capacity of Collector and Magistrate. As Collector, he is the head of the revenue organization in the district. As a Magistrate, he exercises general supervision over the criminal courts and directs the police work. He can get himself into touch with every inch of territory in the district through his subordinates, the Mamlatdars and the village officials. He maintains peace in the district area.

The Collector

Collectors and their staff are officers intimately known to the people coming into constant contact with them for a hundred reasons and are the vehicles for conveying the orders of the Government to the people at large.

During a large part of the year, the Collector has to move out to the different villages in his district, supervising the work of his subordinates and getting himself into direct touch with the people and the problems of administration. He is the eyes, the ears, the mouth, and the hand of the Central Government within his district and serves as its general representative to the remotest borders of the country.

Varied Nature of His Duties

The organization of the collectorate is 'so close knit, so well established, and so thoroughly understood that it simultaneously discharges an immense number of other duties with ease and efficiency. Registration, alteration and partition of holdings, management of indebted estates, loans to agriculturists, settlement of disputes, and above all famine relief, are all matters which are dealt with by this agency'. The Collector is a 'strongly individualized worker in every department of rural economy'. As Sir J. Strachey says, because he is the representative of a paternal, not constitutional Government, he has to perform a large number of functions connected with a variety of departments like police, jails, municipalities, roads, education, sanitation, dispensaries, local taxation and so on. 'He should be a lawyer, an accountant, a financier, a ready writer of State papers. He ought also to possess no mean knowledge of agriculture, political economy and engineering.' He is directed to keep himself informed and to watch the operation of everything that passes in the district. 'The vicissitudes of trade, the state of currency, the administration of civil justice, the progress of public works' must engage his attention as much as protection of life and property and maintenance of peace.

The Collector also used to preside over the District

Board till recently, as the growth of local self-government in rural areas was not regarded as sufficiently satisfactory to allow a more popular and democratic constitution of the Boards. In his capacity as chairman of the Board, the district officer had occasion to dispose of matters connected with subjects like education, dispensaries, sanitation, country roads, bridges, water supply, drainage, and fairs. Even after the democratization of Municipalities and Local Boards, the Collector's supervisory powers over their working are immense and they are frequently used.

Importance of His Office

In short, the Collector of the district is the most important officer in the bureaucracy of India because of the first-hand personal knowledge that he has the opportunity to acquire about the people and problems of his district. He is in the closest possible touch with the realities of the situation. A large measure of local independence and initiative is enjoyed by him. On his resource, efficiency and presence of mind depends the smooth course of administration in the district. Officers trained as Collectors in the various districts of the Presidency and who have therefore acquired the most valuable personal experience and information of the strange and foreign country with the government of which they are entrusted, are raised to the offices of Commissioners and Executive Councillors and some to those of Provincial Governors.

Other Officers

The capital city of the district is the Collector's headquarters. Here are stationed the heads and the offices of various specialized departments which have to function within the area of the district. Establishments for irrigation, roads and buildings, agriculture, industries, factories, co-operative credit, and medical relief, always exist with their heads in most of the districts to perform the special functions

assigned to them. The Executive Engineer, the Civil Surgeon, the District Superintendent of Police, the Assistant Registrar of Co-operative Societies, the District Judge, are all officers who respectively are the heads of their departments in the territorial jurisdiction of the district. They are controlled by their own departmental superiors and not by the Collector. They have been compared to different sets of strings connecting the Government with the people. Their policies are influenced in a varying degree by the district officer. He is always there in the background ' to lend his support or, if need be, to mediate between a specialized service and the people '.

Deputy Collectors and Mamlatdars

The district is further split up into smaller divisions. These sub-divisions are under the junior officers of the Indian Civil Service or members of the Provincial Service styled Deputy-Collectors. The general revenue and magisterial charge of the sub-division is vested in the sub-divisional officer, subject to the control of the Collector. Arrangements within the division vary in the different provinces. In Bombay, the district is sub-divided into talukas, each of which has as its head an officer known as the Mamlatdar. He is to the taluka what the Collector is to the district, though in a small diminutive measure. He has revenue and magisterial powers and has to supervise the working of the administration within his area. He has also numbers of other diverse duties. In fact, he is practically the general administrative officer of the Government in the area given to his care, namely the taluka.

Lastly, at the basis of the system comes the Indian village with its organization of great antiquity still finding a place in the new system with certain necessary modifications. The headman is the chief officer in the village

and is responsible for the collection of revenue and the maintenance of peace in the village. He has the assistance of a village accountant who has to keep the village accounts, registers of holdings and, in general, all records of land revenue. The village watchman is the rural policeman. Most of these officers were formerly hereditary and continued to be so till recently. The tendency, however, of modern times is to abolish the principle of heredity and substitute instead a competitive test. The hereditary character of the kulkarni's or accountant's post has already disappeared and perhaps other posts may follow suit.

Village Officials

CHAPTER XVI

Local Self-Government

1. Historical

History of Municipalities

Municipalities and Local Boards in India are the creations of British rule. The Presidency towns had municipal government from the early days of the Company's Government. A Municipal Corporation was established in Madras as far back as 1687. The Charter of 1726 constituted Mayor's Courts in Bombay, Madras and Calcutta. They were more judicial than administrative bodies. The Regulating Act indirectly allowed the authority of levying taxation for local purposes. Several later statutes modified the municipal constitutions of the three towns.

The Bombay Municipality was remodelled in 1856 and again in 1862. By the first Act, the municipality was composed of the Justices of the Peace and a salaried Commissioner, who was given entire executive power, and control of the police. By the other Act two representative bodies were constituted: (i) A Corporation of sixty-four members of whom one half were elected by the ratepayers and the rest nominated in equal numbers by the Justices of the Peace and the Government; (ii) a Town Council, composed of twelve members of whom eight were elected by the Corporation and the rest nominated by the Government. The Municipal Commissioner retained his executive responsibility. The Town Council was supreme in matters of finance.

Two Acts of universal application were passed by the

Governor-General's Legislative Council in 1850 and 1856. They had reference to municipal government outside the three Presidency towns. It was not, however, until 1870 that much progress was made. In that year, Lord Mayo's Government admitted the necessity of taking steps to bring local interest and supervision to bear on the management of funds which were devoted to local purposes.

Lord Ripon's Reforms

But it is with Lord Ripon's name that the establishment of local self-government in a liberal measure is associated. In 1883–4, Acts were passed which greatly altered the constitutions, powers and functions of municipal bodies. The elective system was widely extended, and many towns were permitted to elect a private citizen as chairman. Arrangements were also made to increase municipal resources. Some items of provincial revenue which were capable of better management under local authorities were transferred to them, with a proportionate amount of provincial expenditure incurred for local subjects.

His Object

Lord Ripon declared the main object of his reform to be 'to advance and promote the political and popular education of the people and to induce the best and the most intelligent men in the community to come forward and take a share in the management of their own local affairs, and to guide and train them in the attainment of that important object'. It was merely carrying out the policy of decentralization initiated by Lord Mayo with reference to finance. According to Lord Ripon this was decentralization as between the Provincial Governments and local bodies.

Local Boards are bodies which look after local affairs in rural areas. Their establishment is comparatively recent. No Local Boards existed up to 1870. As a result of the financial decentralization scheme introduced

by Lord Mayo in that year, various Acts were passed in different provinces providing for the levy of rates, and the constitution of local bodies to administer the funds raised by them. Lord Ripon's Government reorganized the whole system. Boards were established all over the country. The lowest administrative unit was to be small enough to secure local knowledge and interest. The District Boards looked after the measures that were common to all the district. The non-official element was to preponderate in the composition of the Boards and to a certain extent the principle of election was recognized. The financial resources and responsibilities of the Boards were increased. Some portion of provincial revenue and expenditure was transferred to them. There was no uniform or general system of local self-government imposed on all the provinces by the Government of India. A large discretion was left to Provincial Governments.

History of Local Boards

In 1918 the Government of India issued an important Resolution. It affirmed the necessity of removing all unnecessary official control and of distinguishing between the spheres of action appropriate for the Provincial Government and the Local Boards. It was proposed to make these bodies as representative as possible. Unnecessary restrictions in connexion with taxation, budget, and the sanction of works were to be removed. A substantial elective majority both in municipalities and Rural Boards was recommended. It was also thought desirable to keep the franchise as low as possible. Chairmen of the Boards, instead of being nominated by the Government, were recommended to be elected by the Boards.

The Resolution of 1918

Since the introduction of the Reforms, local self-government has become a transferred subject. Almost every

Provincial Government has displayed its interest and zeal for the progress of local institutions. Acts have been passed in the Punjab providing for the creation of Improvement Trusts and Village Councils. In the United Provinces, the District Boards Bill was passed in 1922, democratizing the Local Boards and increasing their powers of taxation. Similar measures were taken for municipalities. The Bihar and Orissa Legislative Council has passed important Acts having the same effect. So have the Legislatures in the Central Provinces and Assam. The Bengal Council passed the Village Self-Government Act and also other Acts for reconstituting the Calcutta Municipality and other municipalities in the Presidency. In Bombay, a bill relating to Local Boards has been passed by the Legislative Council. It has 'extended the franchise, removed the sex-disqualifications and given increased powers to Local Boards; constituting in short a very liberal and progressive piece of legislation'.

After the Reforms

The village has been the primary territorial unit of Government organization in India. Ninety per cent of the Indian population lives in villages. Through all the vicissitudes of India's political life, the village has maintained its existence intact. It has served to conserve the vitality of the Indian nation. The administration in villages was conducted in ancient times through what were known as village panchayats. Recently, endeavours have begun to be made to revive the withering old system. The Municipalities and Local Boards in India constituted under British rule have no connexion with the indigenous village system. They were entirely the creations of a series of Acts of Legislatures. The reformed Provincial Councils

Village Panchayats

in some of the provinces, including Bombay, have passed Village Panchayats Acts in order to renovate the old institutions and modify them to suit present conditions.

2. Functions and Sources of Income

Functions—Obligatory

The functions of local institutions like Municipalities and Rural Boards are divided into two classes, obligatory and discretionary. In the former category come the duties of lighting public streets and places; watering public streets and places; cleansing public streets and places; removing noxious vegetation; extinguishing fires; regulating or abating offensive or dangerous trades; acquiring and maintaining places for the disposal of the dead; constructing, altering and maintaining public streets, markets, slaughter-houses, drains, privies, washing places, drinking fountains, tanks, wells, etc.; obtaining supply of water, registering births and deaths; public vaccination; establishing and maintaining public hospitals and dispensaries; establishing and maintaining primary schools, etc.

Discretionary

Among the discretionary functions may be mentioned the laying out of public streets; constructing and maintaining public parks, gardens, libraries, museums, lunatic asylums, rest houses, dharmsalas and other public buildings; taking a census; making a survey; payment of salaries and other monetary charges incidental to the maintenance of any court of a stipendiary or honorary magistrate; maintaining a farm or factory for the disposal of the sewage, and any other measure likely to promote public safety, health, convenience or education. The functions of Local Boards are, of course, mainly concerned with objects of rural importance and rural necessity.

The enumeration of the above list will make it clear

that Municipalities or Rural Boards are entrusted with duties which can best be performed by local bodies. Local self-government is, in fact, a process of political devolution. The principle which underlies it involves the conception of local autonomy. Both in the larger interests of the State and in the narrower interests of the local area and its population, the delegation of powers and freedom to local bodies is considered to be desirable. It secures efficiency and economy of administration. What is more important, it has an excellent educative effect, inasmuch as it supplies a training ground for politicians and public workers. The consciousness of liberty and the sense of responsibility and personal interest in the management of administrative affairs are moral influences in themselves.

The Need for Local Self-Government

In Bombay, the policy of freeing municipalities from external control has been carried out to a very great extent. All municipalities now elect their own presidents; the number of nominated members is reduced in each case to one-fifth of the total number. The qualifications for electors are based on a wide franchise. There are in all 33 city municipalities and 123 town municipalities in the Presidency. They appoint Chief Officers, Health Officers, Engineers and other executive officials. Services of public utility such as roads, dispensaries, water supply, sanitation and education are rendered by them.

The Position in Bombay

It will be observed that District Boards are not called upon to perform exactly the same duties as municipalities in cities, though on the whole the nature of the two duties is the same. The District Board looks after the rural area of the district; the municipality is concerned with the urban limits of the city. The needs of the two may be

slightly different, for instance the maintenance of public roads for keeping communications between village and village may be a more onerous duty for a District Board than the maintenance of streets in the city. Still, after allowing for the variation in the importance of particular items, the functions of Municipalities and District Boards are almost the same.

Sources of Income

In order to enable them to incur the expenditure that would be involved in the performance of their duties, powers of earning an income by means of taxation and fees must be allowed to local bodies. Taxes would be levied upon and fees collected from specific areas demarcated as belonging to the Municipality or the Local Board. Their jurisdiction is precisely defined. The kinds of taxes which local bodies can impose are as follows : (i) A rate on buildings or lands or both, (ii) a tax on vehicles, (iii) an octroi duty on goods or animals or both, (iv) a tax on dogs, (v) a sanitary cess on private latrines, etc., (vi) a water rate for the water supplied by the Municipality or Local Board, (vii) a lighting tax, (viii) a tax on pilgrims, (ix) a tax upon arts, professions, trades, etc., (x) a tax upon drainage, sewage, conservancy, and so on.

In the case of Local Boards, the most important source of income is the cess upon land. It is now collected at the rate of two annas in the rupee along with land revenue. Most sources of income that are available in a populated city are not available in rural areas and villages, and therefore a special source of income has to be devised for them. The imposition of local rates upon lands for local purposes is the most satisfactory method of giving income to the District Boards. The rates are collected by the same agency which collects land revenue for Government and the District Boards are not required to

spend any large amount of money for the machinery of collection.

Taluka Boards

Below the District Boards are Taluka Boards. To them are delegated certain functions which are of importance and interest to the taluka and which can be best disposed of by them. Below the Taluka Boards come the village panchayats whose jurisdiction is strictly limited to the area of the village. The important body is, however, the central District Board. Its constitution is now largely democratized. It contains an elected non-official majority and elects its own president. The franchise for its election is low. Representatives of Taluka Boards and village panchayats in the district are given seats in it. By recent legislation in the Bombay Presidency, the administration of compulsory primary education in the district areas is entrusted to the District Boards.

General Body and Executive Officials

The elected and nominated Members of a Municipality or a Local Board together form what is known as its General Body. This body elects the President and the Vice-President and various other Sub-Committees and holds frequent meetings for the transaction of business. It passes by-laws, votes expenditure and raises money by taxation and loans. It also appoints executive officials for carrying on actual administration. The Chief Officer, the Health Officer, the Engineer, the Administrative Officer of the School Board are all paid servants controlled by the Muncipality or the Local Board.

CHAPTER XVII

Judicial Administration in India

1. Historical

Early Charters

There was no possibility of the East India Company possessing large judicial powers during the earlier half of their existence, when their mission and objective were purely commercial. The incorporating Charter of Elizabeth had allowed the Company to impose pains and penalties in order to exact observance of the orders that they might issue to their servants. A proviso was added that the laws and punishment must be reasonable. This, of course, was purely a departmental power for enforcing discipline in the affairs of a commercial corporation.

The Charter of 1661, granted during the period of the Restoration, empowered the Governor and Council of each factory to judge the servants and subjects in all causes, civil and criminal, according to the laws of England. The Presidency of Madras decided to utilize the power thus granted, and appointed its Governor and Council to sit as a High Court for serious cases within its territory.

In 1669 when Bombay was granted to the Company by the Crown of England, provision was made to form two Courts of Judicature, the inferior one consisting of a civil officer assisted by two native officers and having limited jurisdiction, and the Supreme Court consisting of the Deputy-Governor and the Council whose decisions were final. It appears that this was a temporary measure.

By a Charter granted by James II in 1687, power was

given to constitute a Municipality at Madras. The Mayor and the Aldermen were to be the Court of Record with power to try civil and criminal cases. Similar institutions were established in Bombay and Calcutta in 1726. The Mayors and Aldermen, as in the case of Madras, were to constitute the Mayor's Courts with civil jurisdiction, subject to appeal to the Supreme Court of the Governor or President and Council. In cases exceeding sums of Rs. 400, the appeal lay to His Majesty-in-Council.

The Governor and Council were constituted Courts of Oyer and Terminer for the trial of all offences except high treason. European settlers in India did not submit to the indigenous law. It was assumed that they had brought their own legal system with them. At first, the tendency of the English was to make their laws public and to apply them to all those Europeans and Indians who were residing within the Company's area in any of the three Presidencies. But the Charter of 1753 expressly excepted from the jurisdiction of the Mayor's Courts all suits and actions between native Indians only. Later measures still further restricted the scope of the English law.

The Regulating Act

The Regulating Act of 1773 took the important step of constituting the Supreme Court of Judicature in Bengal which remained substantially unchanged up to 1862. It was to consist of a Chief Justice and four puisne judges, all nominated by the Crown. It was vested with all sorts of jurisdiction, civil, criminal, admiralty, ecclesiastical, and so on. Its jurisdiction in civil and criminal cases extended to all subjects of the Crown in Bengal and persons in the service of the Company and any other persons who agreed in writing to submit themselves to the Court.

The history of the unseemly disputes between the

Governor-General and the Supreme Court is well known. The vague nature of the power of the Court gave rise to the question as to who was paramount, the Governor-General or the Court. The extent of the Court's jurisdiction was not clearly defined and it was not known whether all native inhabitants in the Company's dominions were or were not included within it. The conflict grew so intense that it had to be ended by an Act of Parliament.

The Amending Act of 1781 declared that the Governor-General and Council were not to be subject to the jurisdiction of the Court for acts done in their public capacity, nor were landowners or farmers or pensioners, only because they resided in the Company's territories. In the case of the citizens of Calcutta, the Hindu and Mohammedan laws were respectively applicable in the case of Hindus and Mohammedans, and that of the defendant party in cases where the plaintiffs and defendants differed in religion. The civil and religious usages and customs of the natives were to be observed. The Provincial Courts, both civil and criminal, were specially recognized as established by the Governor-General.

The Mayor's Courts at Madras and Bombay remained as they were until 1797 in which year they were superseded by Recorder's Courts. Finally, Supreme Courts on the Bengal model were established in Madras and Bombay in 1800 and 1823 respectively.

The System under the Mohammedans

There had, of course, existed in India an indigenous system of judicial organization and of the application of law. The Mohammedan system of government was based on the combination of all authority, judicial, fiscal, and military, in the same hands. The Nabob was the Viceroy sent by the Delhi Emperor to govern

distant provinces. He had two capacities. As Diwan he collected revenue and supervised the administration of civil justice. As Nazim he exercised criminal jurisdiction and controlled the police. Below the Nabob, the zemindar or farmer of revenue, exercised civil and criminal jurisdiction. There were also special criminal courts, the highest presided over by the Naib Nazim and the others by judges who were designated Faujdars. The criminal law that was applied was exclusively Mohammedan. The civil law was either Hindu or Mohammedan as the case might require. The Diwani transferred to the East India Company the function of revenue collections and civil justice, the Nizamat being held as before by the Naib. The officials who conducted the business in both branches continued to be native.

Warren Hastings

With the declaration of the Directors in 1771 of their intention to stand forth as the Diwan and take upon themselves the direct management of revenues, Warren Hastings, the Governor of Bengal, placed the entire administration of justice as well as the collection of revenue under the supervision of English officers.

Over each district was placed a Collector assisted by a native Diwan. The Collector and Diwan constituted the court of civil justice called the Diwani Adalat. In each district was also created a Faujdari Adalat or a criminal court consisting of a kazi, a mufti and two maulvis with whom the Collector sat merely to watch the proceedings.

The appeal from the Diwani Adalat lay to the Sadr Diwani Adalat at Calcutta which was composed of the Governor and Council assisted by native officers. The Criminal Appellate Court was known as the Sadr Nizamat Adalat. It was composed of a darogha, a mufti,

a kazi and a maulvi, all appointed in the name of the Nazim. The court was first placed in Calcutta, but was later on removed to Murshidabad. Regulations for the procedure of these courts were formed by Warren Hastings and they are described as being the first attempt at English legislation in India.

In 1774 judicial business was separated from that of revenue collection and different officers were appointed to look after each. Native Amins were appointed for the administration of civil justice. In 1780, sixteen courts of Diwani Adalat were created and each was placed under the charge of a covenanted civilian styled the Superintendent. In 1781 Parliament expressly gave its recognition to the Provincial Courts of the Company in the Amending Act of that year. The Governor-General-in-Council was authorized to frame regulations for the Provincial Courts.

Cornwallis

The advent of Lord Cornwallis effected considerable changes in the judicial administration. The Sadr Nizamat Adalat was re-transferred from Murshidabad to Calcutta in 1790. It was to consist of the Governor-General and Council together with the kazi and two muftis. In 1793 four Courts of Circuit, each composed of two or three covenanted civilians and assessors were formed to transact ordinary criminal business.

In the case of civil justice, the separation between the duties of a Collector and those of a judge was finally effected. Cornwallis wrote, ' Individuals who have been aggrieved by revenue officers in one capacity can never hope to obtain redress from them in another.' The purely judicial powers of the Collector were now vested in the civil judge. Twenty-six civil judges were appointed in all.

Appeals from the civil judges lay to the four Provincial Courts of Appeal which were identical with the four Courts

of Circuit entrusted with ordinary criminal jurisdiction. A further appeal from these lay to the Sadr Diwani Adalat, that is the court formed by the Governor-General and Council. The newly created civil judges were also endowed with magisterial powers and could hold preliminary inquiries into important criminal cases and determine unimportant ones.

Wellesley and Bentinck

The two Appellate Courts, the Sadr Diwani and the Nizamat Adalat of Calcutta, were remodelled in 1801 during the administration of Lord Wellesley. Instead of consisting of the Governor-General and Council they came henceforth to be composed of three or more judges selected from the covenanted Service. Lord William Bentinck abolished the Provincial Courts of Appeal which had grown extremely notorious on account of their dilatoriness. In his time also full criminal jurisdiction was conferred upon civil district judges under the style of sessions judges and the magisterial authority formerly exercised by the civil judges was transferred to the Collector. This measure has been described as retrograde in character inasmuch as it went against the principle of separation of executive and judicial functions.

Lower Courts

Inferior courts of civil jurisdiction outside the Presidency towns had been established by Lord Cornwallis. They had a limited jurisdiction. They were called Courts of Native Commissioners. Lord William Bentinck in 1831 created a new grade known as Principal Sadr Amins whose jurisdiction was afterwards made unlimited in respect of value. These were later on transformed into subordinate judges in 1868. Similar inferior courts of civil jurisdiction within the Presidency towns, after passing through different phases, were finally shaped into Small Causes Courts

which have continued to function in that form to the present day.

Indian High Courts Act of 1861

The Indian High Courts Act of 1861 empowered the Queen to establish by letters patent High Courts of Judicature in Calcutta, Madras and Bombay. The old Supreme Courts and the Adalat Courts were abolished. Each High Court was to consist of a Chief Justice and not more than fifteen judges, of whom not less than one-third were to be barristers and one-third to be members of the Indian Civil Service. They were expressly given superintendence over, and power to frame rules of practice for, all the courts subject to their appellate jurisdiction. Power was given to establish a similar court in the North-West Provinces, which was done in 1866. In the same year, a Chief Court was established in the Punjab under an Act of the Indian Legislature.

The simplification of law was attempted to be accomplished by the issuing of uniform codes, both civil and criminal. The former was published in 1859, the latter in 1860 and the Penal Code in 1861. The Indian Legislature now regulates the constitutional jurisdiction of the ordinary civil courts. Between 1865 and 1873 Civil Courts Acts were passed for each of the ten provinces, establishing a generally uniform system. The regulations of the Criminal Procedure Code of 1872 have made the constitution of the criminal courts uniform throughout the country.

Indian High Courts Act of 1911

The Indian High Courts Act of 1911 raised the maximum number of judges in a High Court from fifteen to twenty and gave power to establish High Courts as need arose, in any part of India. Power was also given for the addition of temporary additional judges

by the Governor-General-in-Council. Under powers obtained under this Act, High Courts have been established at Patna, Lahore and Rangoon.

After dealing with the history and growth of judicial organization in India, it is necessary to proceed to a description of its existing condition.

2. Present Organization

The High Courts—Their Composition

At the head of the organization in India stand the Indian High Courts. These are bodies composed of the Chief Justice and other judges, the maximum total number in each being fixed at twenty. They are appointed by His Majesty. The Governor-General-in-Council may appoint additional judges having the same status and powers, for a period of not more than two years. The judges must be either barristers of England and Ireland or advocates of Scotland of not less than five years' standing, or members of the Indian Civil Service of not less than ten years' service, or officials in judicial service of a grade not less than the grade of a subordinate judge of at least five years' service, or pleaders of an Indian High Court of not less than ten years' standing. At least one-third of the total number must be barristers or advocates, and another third must be Indian Civil Servants. Every judge shall hold office during His Majesty's pleasure.

Their Jurisdiction

The jurisdiction of the High Courts is extremely wide, comprising as it does both original and appellate authority, including admiralty jurisdiction in case of offences committed on the high seas. They have all powers in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power

to make rules for regulating the practices of the court. They have to superintend the working of all courts subject to their appellate jurisdiction, and may for that purpose call for returns or direct the transfer of any case from one court to another and prescribe the rules of practice, and proceedings, and forms in which book entries and accounts shall be kept by them.

Their Powers

The High Courts have both original and appellate jurisdiction in civil as well as in criminal matters. They function as original courts for the Presidency towns in civil cases in which the amount of money involved exceeds Rs. 2,000 and in criminal cases when these are committed to them by the Presidency Magistrates. As appellate courts they hear appeals both in civil and criminal matters from all places in the area under their jurisdiction, entertaining appeals also from their own original sides. The High Court judges being directly appointed by His Majesty to hold office during his pleasure, and their salary being fixed under law, that degree of independence which is required in the highest tribunal is secured to them to a great extent.

There is a separate court known as the Court of the Judicial Commissioner in Sind. The High Court of Bombay has no jurisdiction over that province. The Judicial Commissioner's Court is the highest court of appeal in the province and is also the District and Sessions Court of Karachi. Since September 1923 criminal jurisdiction over European British subjects in Sind is vested in it, as also that in matrimonial suits.

Sessions Courts

Below the High Court there are subordinate courts for the disposal of civil and criminal business. To speak of the criminal courts first. Every province is divided into sessions,—divisions which

are usually identical with the area of the district. For every such division, the local Government must establish a Sessions Court and appoint a Sessions Judge or additional sessions judges. These Sessions Courts function in their prescribed territorial jurisdiction. They are competent to try all criminal cases committed to them and to inflict any punishment authorized by law. Every sentence of death passed by them is, however, subject to confirmation by the highest court of criminal appeal in the province. The Sessions Court is also a court of appeal against the decision of the magistrates subordinate to its jurisdiction.

Magistrates —First, Second and Third Class

Below the Sessions Court are courts of magistrates. These are divided into three classes. The First Class Court has power to pass a sentence of two years' rigorous imprisonment and a fine of an amount up to Rs. 1,000. The Second Class Court can pass a sentence of six months' rigorous imprisonment and a fine of an amount up to Rs. 200. The Third Class Court can pass a sentence of one month's imprisonment and a fine of up to Rs. 50. Territorial limits are assigned to the magistrates and a detailed schedule set out showing the grade of magistrates competent to try various criminal cases. They have power to commit to Sessions Courts those cases which are out of their competence.

District and Presidency Magistrates

In each district, the Collector, or the Deputy-Commissioner in the non-regulation provinces, is appointed District Magistrate and in this capacity supervises the work of other magistrates in the district. He distributes work among them. In the Presidency towns there are Presidency Magistrates and in big cities, City Magistrates, to dispose of criminal cases and to commit

the more important ones to the High Court or to the Sessions.

Honorary Magistrates

Provision is also made for the appointment of honorary magistrates in big towns. Gentlemen of good social status and desirous of doing public work are usually selected to fill the appointments. They always work in a bench. They are divided into three grades of first, second and third class, and have the same powers as stipendiary magistrates in the respective grades.

Jury and Assessors

Trial by jury in criminal cases is one of the most cherished privileges in a country like England. It has been acquired after a good deal of constitutional struggle. To the political thinker, the existence of such a privilege may or may not appear to be an unqualified guarantee of the impartial carrying out of justice. To some, it might positively appear to have large elements of imperfection which are bound to detract from the scientific and correct character of the verdicts given. The transaction of complicated judicial business by avowed amateurs, depending upon the help of their robust commonsense to discharge their duties, may not evoke appreciative enthusiasm in the phlegmatic mind of a critical theorist. But apart from the theory of the question, a description of the jury system as introduced in India is interesting.

Trial by jury is the rule in the original criminal cases before the High Courts. In the mofussil it is not considered always possible to empanel an efficient jury. Trials, therefore, are conducted either with the help of a jury or with the help of assessors. The difference between jurors and assessors is well known. The decision of the former is binding upon the judge who rarely differs from them. The opinion of the assessors, on the other hand, is not

binding and their advice may or may not be accepted by the trying judge. Where it appears to the Sessions Judge that the verdict of the jury is manifestly absurd or perverse, he has the power to disagree with them and refer the matter to the High Court which has authority to quash the sentence.

The jury consists of nine persons in trials before the High Court, and of an uneven number, prescribed by the local Government, in the mofussil courts. After the arguments of counsels of both sides and the putting forth of evidence are finished, the judge explains the whole case to the jury, dwells upon the pros and cons of the case, explains the laws under which the offence is alleged to have been committed, and leaves the final verdict to the discretion of the members of the jury. The latter adjourn for some time to deliberate among themselves and give either a unanimous or a majority opinion.

Subordinate Civil Courts—District Courts

The inferior civil courts differ in nomenclature and in other respects in the different provinces, though the essentials are the same. In Bengal, Agra and Assam there are three subordinate civil courts, the District Court, the Court of the Sub-Judges and the Munsiff's Court. In Bombay there are those of the District Judge and the Assistant Judge and the First and Second Class Sub-Judges. The officer who presides over the principal court of original civil jurisdiction in each district is known as the District Judge. He exercises control over all the subordinate courts within the district, and assigns to assistant judges the disposal of such suits as he deems fit. He has also to arrange for the guardianship of minors and lunatics and manage their property. There is no limit to the pecuniary jurisdiction of the District Court in original civil plaints. It also works as an

appellate court in cases which have been disposed of by the courts of second class subordinate judges.

Subordinate Judges

Below the District Courts there are judges of two subordinate orders in the Bombay Presidency. There are also Small Causes Courts in important towns. The first class subordinate judge can try any civil suit irrespective of the amount of money involved. He has no appellate jurisdiction whatever. Appeals from his decision lie either to the District Courts or the High Court. The second class subordinate judge has power to try cases in which the sum of money involved does not exceed Rs. 5,000. He also has no appellate powers.

Small Causes Courts

An officer of the rank of first or second class might be sometimes invested with the summary powers of a Small Causes Court judge. The jurisdiction of the Small Causes Courts in the Presidency towns is limited to cases where the sum involved does not exceed Rs. 2,000, and in other important cities to cases where it does not exceed Rs. 500. There is no appeal from decisions of this court except on points of law and in certain cases which have been specified. Courts of such summary powers are intended to facilitate the recovery of small debts.

In Bombay no subordinate judge could receive or register a suit in which any officer of Government in his official capacity was a party. The law has been altered recently. Subordinate judges can now entertain such plaints. Formerly such cases had to be referred to the District Courts which alone could entertain them. The Civil Justice Committee of 1924–5 thought that such a restriction resulted in congestion of suits against the Secretary of State or officers of Government, which the District Judge has no time to take up. Many such suits

are of a minor character and therefore a relaxation of the restriction is necessary.

Another peculiarity of the Bombay system is the duty given to District Judges of managing a large number of estates of minors which are not administered by the Court of Wards. The routine management is done by the Deputy-Nazir. In consultation with him the judge has to carry out detailed supervision over matters connected with the revenue and expenditure of the estates of the minor and over his general health and upbringing.

The District Judge and the Sessions Judge are the same Person

It must be noticed that in Bombay the District Judge presiding in the civil court is also the person who presides over the criminal or sessions court. The two courts and their jurisdiction are different, but the presiding officer over both is one and the same person. In actual practice, therefore, the District Courts, and the District Judges because of the combination of civil and criminal functions in their persons, possess extensive powers. They are courts having powers both original and appellate. They are courts having both civil and criminal jurisdictions. Besides, they control all subordinate courts in their districts and to that extent possess certain administrative functions. The District Judge's office is therefore an office of importance. It is generally filled by members of the Indian Civil Service. Most of the Assistant District Judges are junior members belonging to the same service. They perform the duties that are assigned to them by the District Judge.

Revenue Courts

Side by side with the civil court there also exist what are known as Revenue Courts. They are presided over by officers who are charged with the duty of settling and collecting the land revenue. In questions of assessment and collection,

and in purely fiscal matters, the civil courts are generally excluded from interfering. They can, however, take cognizance of all questions pertaining to the title of land, and of rent suits in some of the provinces, particularly in Bengal. The Collector constitutes the chief Revenue Court in a district, and appeal from him lies to the Divisional Commissioner.

Appeals

Considerable latitude is allowed in the Indian system in the matter of appeal. Ordinarily, two appeals are allowed in civil cases and one appeal in criminal cases. Applications for revision may also be made in criminal cases. Appeals against a decision of a second or third class magistrate lie to the District Magistrate or some first class magistrate specially empowered by him. Original convictions by first class magistrates are appealable to the sessions judges and the verdicts of the latter are further appealable to the highest criminal court in the province. The High Court can call for and examine the record of any proceedings before Subordinate Courts. In civil matters also appeal lies from the Subordinate Courts to the District Courts and from the latter to the High Court.

The Privy Council

The highest appellate court that exists for India is what is commonly known as the Privy Council. This court has no original jurisdiction and it functions in England. It is the court which hears final appeals in important cases from all parts of the British Empire and is for that reason looked upon as a common bond which connects the judicial administration of the various parts of the Empire. An appeal to this body lies from the decision of the High Court sitting as an original or appellate court. In civil cases the amount involved in the dispute must be Rs. 10,000 or upwards and in criminal cases some

substantial question of law must be involved in order that an appeal to the Privy Council may be allowed. The appeal must lie, not on a point of fact, but on a point of law. Permission must be granted by the High Court to file an appeal to the Privy Council.

It now remains to discuss two important and interesting questions pertaining to the judicial administration of India. One refers to the privileged position enjoyed by Europeans in matters of procedure. The other refers to the principle of separation between the executive and judicial functions of the Collector and other revenue officials.

3. Position of European Subjects

Early Days of the Company's Rule

Originally, in the earlier years of the East India Company, the only courts which exercised jurisdiction over Europeans resident in India were the courts in the Presidency towns. They were Crown courts as distinguished from Company courts. In fact, before 1833, it was laid down that no British subject who was not in the service of the Company was to reside without permission at a distance of more than ten miles from the Presidency towns. The abrogation of this restriction in 1834 called forth from the Directors an unequivocal acknowledgment of the principle that Indians and Europeans should be subject to the same judicial control and that there could be no equality of protection where justice was not equally, and on equal terms, accessible to all. Accordingly, Europeans were made amenable to the civil courts outside the Presidency towns in 1836. The question of their trial by all the criminal courts was raised in 1849 and in 1857 but no definite conclusion was arrived at. European British subjects were tried for criminal offences only in the Supreme Courts at the

Presidency towns. With the creation of High Courts in 1861, such trials were referred to them. In 1872 when Sir J. Stephen was the Law Member, ordinary criminal courts were empowered to try Europeans, but under a special form of procedure which was then framed.

The Ilbert Bill Controversy

As the Indian Civil Service was thrown open to competition and as Indians were allowed to occupy high offices in virtue of their having passed the test, the question arose as to whether they could be prevented from trying European criminals. In 1883 some Indian civilians reached the stage when they would be promoted to be District Magistrates or District Judges. The Government felt that any restriction on Indians in the matter of trying European criminals must be abolished. They therefore introduced what has been since known as the Ilbert Bill enabling Indian sessions judges and certain Indian magistrates to exercise jurisdiction over European British subjects. The bill aroused the most vehement opposition from European residents in India. The proposed equalization of the Indian and the European in the eyes of the law was so keenly resented and detested by them that Government had to bend to the fury of the storm, and in 1884 a compromising measure was passed which enabled Indian judges and magistrates to try European criminals and simultaneously gave to the British subject the right to claim a mixed jury, that is, a jury not less than a half of which consisted of Europeans.

The Summary of the Racial Distinction Committee

The Racial Distinction Committee, which was appointed after the Reforms to go into the whole question, thus summarized the principal distinctions between the trials of Europeans and Indians in Indian courts.

(i) No British subject could be tried by a second class

or third class magistrate or by a first class magistrate who was not a Justice of the Peace or a District or Presidency Magistrate or a European British subject.

(ii) The jurisdiction of additional and assistant sessions judges was also much restricted.

(iii) The sentences that could be passed by a first class or a District Magistrate and a Court of Sessions against European British subjects were specially circumscribed.

(iv) Europeans were entitled to claim trial by a jury of which not less than a half would be Europeans or Americans.

(v) They enjoyed more extensive Habeas Corpus privileges.

(vi) They had more appellate rights in criminal cases than Indians.

(vii) The usual terms of security for good behaviour might not apply to them if they could be dealt with under the European Vagrancy Act.

(viii) The definition of a High Court was not so wide in their case.

The recommendations of the Committee were to remove some of these distinctions. The right to claim a mixed jury, that is one composed of not less than a half of the nationality of the accused, has now been extended to Indians and Europeans alike.

4. The Separation of the Executive from the Judiciary

The question of the separation of executive from judicial functions has been engaging the attention of Indian politicians for the last half a century. In no part of British India indeed, at the present day, are executive and civil judicial functions combined in the same official.

The same may be said of important criminal trials also.

Criminal Jurisdiction of Revenue Officials

The Courts of Sessions and the High Court which are the superior criminal courts are now presided over by officers who have no executive functions. The disputed question refers to the criminal jurisdiction that is still enjoyed by an executive and revenue official like the Collector or Deputy-Commissioner, who, in addition to his civil duties, has also the designation of District Magistrate. In that capacity he is vested with extensive judicial authority and a power of control over subordinate magistrates in the districts. Similar powers are also enjoyed by Assistant and Deputy-Collectors and Mamlatdars of talukas.

The Collector is the officer who is held responsible for the peace of the district and is the superior of the district police from the superintendent downwards except in departmental matters. As a magistrate of the first class he can take cognizance of offences and exercise all powers that are exercised by a magistrate of his grade. He can hear appeals from the magistrates of the second and third class. He can also transfer a case from one subordinate magistrate to another in his district and can call for the record of any case disposed of by them and refer it to the Sessions or High Court. His criminal powers are therefore wide.

Arguments against the Combination of the two Functions

A good deal of criticism has been directed for a long time against such a concentration of power. An address embodying a criticism of the system was presented to the Secretary of State in 1889 by some distinguished members of the judicial service in India. The grounds of criticism are various. The union of judicial and executive functions is considered to violate the first

principle of equity. It is pointed out that the very natures of the two duties differ and require for their proper discharge two distinct types of mental equipment and outlook which cannot be simultaneously possessed by the same officials.

In the execution of the civil administrative business assigned to the Collectors they may come into conflict with individuals or institutions and it would be inexpedient and unsafe to invest them with judicial powers which could be utilized against these. That absolute detachment and aloofness which is necessary for the impartial carrying out of justice cannot be possessed by a magistrate who is also responsible for the peace of the district and who is therefore likely to entertain an unconscious bias in one direction or the other.

Nor is the control exercised by the Collectors over subordinate magistrates calculated to secure to them an atmosphere of cool impartiality. Sir Henry Cotton, himself a distinguished member of the Indian Civil Service, declares it to be a matter of universal knowledge that 'subordinate magistrates whose position and promotion are dependent on the District Magistrate cannot, in such circumstances, discharge their judicial duties with that degree of independence which ought to characterize a court of justice.' Threats like 'the sentence is inadequate; if this occurs again, I shall report your misconduct to Government' are quoted in his *New India* from the correspondence between a District Magistrate and his subordinate.

The combination of the two functions engenders a general distrust about the magistracy and cannot therefore advance the prestige of the Executive. The average citizen perceives in this unity of offices a danger to his civic liberty and an opportunity to Government officials

for an effective display of vindictiveness. The Public Services Commission of 1916 readily agreed that the union of executive and judicial power in the Collector and his subordinates was theoretically an objectionable anomaly.

Arguments in Favour

The arguments in favour of the continuance of the system brought forward by its advocates maintain that in India no active public opinion in favour of the punishment of the wrongdoer has yet sufficiently developed and it is therefore necessary that the official agency should be endowed with an authority 'proportionate to the weakness of the support which it requires from the community at large'. It is also urged that the speeding up of the machinery of criminal justice cannot be safely entrusted to the already-overburdened sessions judges. The advantage of the present system, it is alleged, lies, not in the actual exercise of his powers by the Collector in numerous cases, for he uses them in comparatively few cases only, but in his holding them in reserve. To deprive the Collector of this power would weaken his authority and influence in the district and would strike a fatal blow to the peace and order in the country. Arguments like these are characteristic of the protagonists of the *status quo.*

Criticism

To accuse a whole nation of a dense insensibility to crime and to credit it with a degree of indulgence which might result in the acquittal of hardened criminals is only indicative of the infinite enthusiasm with which the supporters of the system are possessed and not of their capacity for a cool and critical judgment. The plea for the maintenance of prestige is equally fallacious. Depriving the Collector of magisterial powers is not identical with diminishing the prestige of sovereignty. The separation simply implies a division

of labour. It is not necessary to concentrate all the attributes and authority of Government in one and the same person to preserve the prestige of the ruling power. As the Memorial, already referred to, points out, the Viceroy need not lose his prestige because he does not directly exercise the functions of the Collector and the District Judge. And in the same manner the Collector need not lose his prestige if his magisterial powers, the possession of which is apt to lead to miscarriage of justice and to inspire a feeling of distrust and suspicion in the administration, are transferred to another agency serving under the same Government.

To a student of the constitution the separation of executive from judicial functions appears to be prima facie necessary. That alone can keep up the equilibrium between the various aspects of Government and guarantee perfect liberty and justice to the individual. The raising of the financial bogey is futile. The scheme of separation may or may not involve a vast amount of expenditure. But even if it does, the plea of an increase in expenditure cannot be allowed to throttle such a prime and vital element in democratic polity.

It might be added that in the Presidency towns of Madras, Calcutta and Bombay, separation has already been effected, the Presidency Magistrates' courts being empowered to exercise the criminal jurisdiction which in the mofussil is exercised by the Collector. The Collector in Bombay and other Presidency towns is therefore purely a collector of revenue, and sooner or later he will function only in that capacity in all parts of the country.

CHAPTER XVIII

Land Revenue

1. Historical

A TAX upon land is one of the oldest forms of taxation. It was the principal source of income for Governments in ancient times. The State claimed a share in the produce of the land. According to the description given by Manu, in ancient India the State's share in normal times varied between one-twelfth and one-sixth of the gross produce, and sometimes rose even to one-fourth if there was any exceptional calamity. Generally, it appears, the revenue was not collected from individuals but from a whole community which was represented by the headman.

Before the Company's Rule

With the advent of the Mohammedan power and its expansion throughout India, the system of land revenue collection underwent a change. Raja Todarmal, the famous revenue reformer in Akbar's court, regulated the settlement and collection of the State's shares in the income from land. He gave orders for the measurement of land and its classification according to the fertility of the soil. The Government demand was fixed at one-third of the gross produce. It could be commuted into a money payment on the basis of the prices of the previous nineteen years. The settlements were concluded for a fixed period, usually ten years.

A number of middlemen and tax-gatherers intervened between the actual cultivator and the supreme power. They agreed to pay a lump sum of money for the portion

of the country allotted to them and were armed with large powers to make the necessary collections from the villages. This class of middleman or farmer of revenue later on developed into the zemindar class. As long as the central power was strong, the zemindar was appointed regularly by warrant which declared his duties and the amounts due from him. Usually he had to pay nine-tenths of the total collections and was allowed to retain one-tenth as remuneration for his labour. Besides, he was allowed some lands free of revenue for himself.

Zemindars or Middlemen

Originally the office of the zemindar was not hereditary. With the decline of the central power, control over the zemindars slackened. They became more and more independent and practically established their sovereignty in the territory under their jurisdiction. Their payments to the central treasury became irregular. From being mere servants charged with the duty of collecting revenue, the zemindars developed into mighty potentates and assumed the position of independent Rajas.

The East India Company found themselves faced with this situation when they acquired the provinces of Bengal, Bihar and Orissa. For a few years after the grant of the Diwani, land revenue collection was left entirely in the hands of Indian officials according to the plan of Clive. Two Naib Diwans stood at the head of the whole machinery. When this system broke down in practice, supervisors were appointed in 1769. The main functions of these officers were to 'determine the limits of estates held by the zemindars and the rent which the cultivators ought to pay them'. In 1769 the Directors had also ordered the appointment of two Controlling Councils, one at Murshidabad and the other at Patna. The system did not work satisfactorily.

The Diwani and after

The supervisors were not men of experience nor were they above corruption. The object with which they were appointed, namely efficient collection of revenue, was not achieved. In fact supervisors became a nuisance both to the landlord and ryots and to the Company.

Reforms of Warren Hastings

After the nomination of Warren Hastings to the Governorship of Bengal in 1772, reforms were introduced in land revenue collection. The Company had now decided 'to stand forth as the Diwan'. Warren Hastings therefore substituted the supervisors by new officers known as Collectors, who were to receive revenues which were farmed out for a term of five years. But even the new officers proved extremely unsatisfactory and were almost immediately withdrawn. In their places were appointed 'Indian local collectors under the supervision of six Provincial Committees' at Calcutta, Patna, Murshidabad, Burdwan, Dacca and Dinajpur. These Committees also did not work smoothly and were abolished in 1781 after investigation and report by a Commission of three officers appointed by Warren Hastings. A metropolitan Committee of Revenue was constituted in their place in Calcutta. Parliament recommended in the Act of 1784 that an inquiry should be conducted into the real position of zemindars, talukdars and jaghirdars under Mogul and Hindu governments and the amount of revenue they were bound to pay.

Permanent Settlement

Lord Cornwallis arrived in India in 1786 with definite instructions to carry out the recommendation of Parliament. He caused 'elaborate inquiries to be made and rules were issued between 1788 and 1790 for a decennial settlement.' At the same time the introduction of permanent settlement was strongly pressed and in 1793, the Directors having

approved of the suggestion, a regulation announcing the establishment of permanent settlement was issued. Sir John Shore had conducted the inquiry and come to the conclusion that the zemindars were the proprietors of the soil having full rights of inheritance, sale and mortgage. The Company could not justly deprive them of these rights. Sir John was in favour of making the settlement permanent after the agreements of 1789 had run their course. Cornwallis, however, differed and declared the settlement permanent in 1793.

Its main Features

The main features of the system were that the zemindars were declared proprietors of the areas in their possession, subject to their payment of the land revenue ; that the assessment then fixed was declared unalterable for ever ; approximately ten-elevenths of what the zemindars received in rent from the ryots was to be taken by the State, the remaining one-eleventh being left to the zemindar. The percentage of Government claims thus fixed was very high. For several years there was widespread default in payment, and lands, the revenue of which had fallen into arrears, were immediately auctioned off. Sale laws were very stringent. In twenty-two years after the permanent settlement one-third or half of the landed property in Bengal is recorded to have been transferred by public sale. Gradually, however, prices rose and the burden of the assessment became lighter and lighter.

Other Systems

As several more provinces came under British control, their assessments were gradually reduced to order. The varying circumstances of different tracts and areas were taken into account in introducing at first a tentative system and in allowing it to be crystallized in the course of time. Different systems

were thus evolved in Bengal, Madras, Bombay, the Punjab, Agra and other provinces of India according to the historical and customary practice obtaining in each part.

2. The Existing Systems of Land Tenure

Kinds of Settlement—Zemindari

Land revenue settlements in India are usually differentiated in two ways. The status of the person from whom the revenue is actually demanded forms one basis of division. When the revenue is 'assessed on an individual or a community owning an estate and occupying a position identical with or analogous to that of a landlord, the assessment is known as zemindari.' The individual or the community occupies the position of a middleman who does not cultivate the land himself but rents it out to farmers and tenants. The income from land, in which the State claims a share, is the product of the labour of agriculturists and cultivators. Government, however, does not hold them responsible for the payment of its dues. The zemindar in charge of the estate is held responsible. He therefore collects money from the tenants and out of it pays the Government revenue. There is no direct contact between the authorities of Government and the cultivators of the land.

Ryotwari

When revenue is assessed upon individuals who are the actual occupants and cultivators of smaller holdings, the assessment is known as ryotwari. Here there is no intermediary like the zemindar between the Government and the farmers. Revenue is collected by the officials directly from the tillers of the soil in a large number of instances.

Another basis of division of land revenue settlements refers to the time for which the settlement is fixed. In

a province like Bengal the amount of the share demanded by Government is fixed for ever. The contracts made in 1793 between the Government and the landlords permanently fixed the sum to be paid by the landlord. There is therefore no question of enhancing the rate or the amount of the Government tax at any future date. Such a system is known popularly as the system of permanent settlement.

Permanent

Where the amount of the State demand is not fixed in perpetuity but only for a definite period, either a year or ten years or twenty years or thirty years, at the end of which a revision has to take place, the settlements are known as temporary settlements. In such cases the share taken by the State may be increased or decreased at the end of a stipulated number of years.

Temporary

It must be remembered that the two divisions are not mutually exclusive. A zemindari settlement might be permanent or temporary. A ryotwari settlement could also be permanent or temporary. Permanence is not an invariable attribute of the zemindari settlement nor would it be correct to suppose that all ryotwari settlements must be temporary. The zemindari in Bengal is permanent; that in Agra or the Punjab or the Central Provinces is not so. There is no instance in India of a ryotwari settlement which is permanent.

The system in Bengal has been already described. The system prevailing in Bombay and a large part of Madras is ryotwari. In the beginning, attempts were made in Madras to introduce permanently settled zemindari estates as they existed in Bengal, but they met with a failure except in a few tracts. After considerable discussion, therefore, Sir Thomas Munro introduced the ryotwari system.

Madras

The cultivating proprietor is at liberty in this system to relinquish his holding.

Bombay

Most of the territory in the Presidency of Bombay was acquired after the downfall of the Peshwas in whose time the practice of farming revenues was in vogue. The British Government abolished farming, but its earlier attempts at a regular settlement did not succeed. A new system was tried in 1835. Soils were divided into nine classes based primarily upon their depth and quality of texture and fields were assigned to these classes. An assessment rate was fixed for each class after careful investigation into the possible average yield of its soil, allowing for the uncertainty of rain and other circumstances on which crops and prices depended. The rates were then applied to determine the amount of land revenue due from a particular field. The system was empirical but showed extremely encouraging results. It was soon extended to the whole Presidency, and to Sind after it was acquired and annexed to the Bombay Presidency.

Agra

The settlement in Benares was declared to be permanent in 1795. The Directors, however, refused to sanction a similar measure for the province of Agra. The first regular settlement in this part was completed between the years 1833–49. It was concluded, wherever possible, with village proprietors under a zemindari system with joint responsibility. Hereditary tenants or those who had resided in the same village for twelve years were given rights of occupancy. The assessments were fixed at sixty-six per cent of the rental assets. They were later on reduced to fifty per cent by the Shaharanpur Rules of 1855. The soils were classified and standard rates of rent were fixed for each class.

In Oudh, the talukdars were given full proprietary

rights. They contracted to pay a fixed sum of revenue for definite tracts of land. In the Punjab, as in the North-West Province, there were found bodies of villagers who claimed descent from a common ancestor who had either founded the village or received a grant of it from some ruling monarch. The system of village or mahalwari settlement was therefore adopted in the Punjab. Its term was fixed at thirty years.

The Punjab

In the Central Provinces, the zemindari system was introduced in a modified form. Revenues were farmed out to individuals known as patels or malguzars in the time of the Marathas. The villagers, however, were not connected by ties of blood as the villagers in the Punjab or Agra. The revenue farmers soon acquired a quasi-proprietary position. Their claims were allowed by the British rulers and they were held responsible for the payment of land revenue. This settlement is known as the malguzari settlement. It is liable to periodical revision.

Central Provinces

One of the most disputed questions in the Indian land revenue administration is the desirability or otherwise of extending the system of permanent settlement to the whole of India. The late Mr. R. C. Dutt was an ardent advocate of such an extension. He wrote incessantly on the subject and Lord Curzon's Government thought it advisable to review his criticism of the Government policy and to give a reply. Their conclusions were summarized in a Resolution which was issued by the Government of India in 1902.

Controversy about the Permanent Settlement

The arguments put forth in support of permanent settlement were :

Advantages

(i) That it would be a protection against the ravages of famines.

(ii) That the expenses and harassment of the assessment operations would be avoided.

(iii) That there would be no temptation to abandon cultivation on the approach of a revision.

(iv) That it would result in an accumulation of capital which could be utilized for investment in industries.

(v) That people could lead a fuller and more contented life.

(vi) That the immediate loss of revenue would be more than compensated by the indirect but certain benefit accruing from the system in the future.

Fixity of the State demand would remove any uncertainty in the mind of the cultivator about the amount that he would have to part with. There would be no lurking fear that the investment of his capital and labour in the improvement of the land might be penalized by Government claiming an increased share just when the improvements fructified. In short, it was contended that from the economic and also from the social point of view, permanent settlement was the most beneficial arrangement in land revenue administration.

Disadvantages

It was stated on the other hand in opposition to these points :—

(i) That the evidence of facts did not justify the description of permanent settlement as a protection against famines. Famines had not been less frequent nor less harmful in permanently settled areas.

(ii) That it was part of the deliberate policy of the Government to simplify and cheapen the proceedings in connexion with settlements.

(iii) That the policy of long term settlements was being encouraged.

(iv) That over-assessment was not proved to be a cause of the widespread poverty and indebtedness of the agriculturist in India.

(v) That progressive moderation in assessment was the keynote of the policy of Government.

(vi) That improvements introduced by the cultivators or the landlords were exempted from assessment even in temporarily settled areas.

(vii) That the Government had to interfere to safeguard the interest of the tenants from the tyranny of ruthless landlords.

(viii) That permanent settlements deprived the revenue system of any elasticity which could facilitate an adjustment to the variations of seasons and the circumstances of the people.

Permanence not desirable

That settlement of revenue from land in perpetuity could not be a theoretically sound proposition would be readily admitted by any student of economics. It is unjust, and even ridiculous, to tie down the hands of all future generations to a particular course of action which appeared most suitable to the present times. It is extremely disadvantageous not to allow the State to have a growing share in the increasing income of the community. Such an embargo makes it financially impossible for the State to undertake any big scheme of public welfare in the light of the most modern conditions. From the point of view of economic science also, it is absolutely unfair and crude to allow the unearned increment from land to be appropriated by a few private individuals. All economic rent ought to belong to the community, and the State as the representative of the community is alone entitled to

receive it. It may be added that the introduction of permanent settlement in only one province of India created inequality and subjected the other provinces to heavier taxation.

Revenue Assessed on Rent or Net Income

In no part of India does land revenue now represent a portion of the gross produce. In the United Provinces, the Punjab and the Central Provinces, the Government demand is theoretically based on an economic rent. It is assessed on the amount of rent paid by the tenants to the landlords. In the case of ryotwari provinces like Madras and Bombay, the assessment is based on the net produce. The figure of the net income is arrived at after deducting the expenses of cultivation from the gross income. Actual calculations might be made to find out the expenses and the net income in particular fields as is done in Madras; or, as is done in Bombay, an empirical rate may be arrived at for a certain area by taking into consideration the classification of the soil and the general economic conditions of the tract. This rate is then expressed in a sliding scale and applied to different fields in accordance with their fertility.

Land Revenue is a Provincial Subject

Since the Reforms, land revenue has become an entirely provincial subject and is one of the main sources of income for the Provincial Governments. It is, however, not a transferred subject. The Government of India therefore retains a larger control over its administration, particularly over the question of modifications in the methods of settlements. Some of the provinces have appointed committees to investigate into and make recommendations for reforming the present system. Such a committee was appointed, for instance, in the Bombay Presidency. In fact, a good deal of

interest has been aroused in the subject and discussion has centred round the question of finding out the most suitable method of improving the existing conditions. The recent agitation of peasants in the Bardoli Taluka of the Bombay Presidency has helped to focus attention on land revenue reform, particularly in the matter of revision of settlements.

Land Revenue and Income Tax

The Indian Taxation Committee considered the question from various points of view. Several thinkers have pointed out the iniquity of the incidence of land taxation as compared with that of other taxes. It is suggested that a more proper and just course would be to approximate the system of land revenue collection to that of collecting the income-tax. The question, however, bristles with difficulties and it is not possible to discuss it in all its bearings in the present work.

Land Revenue; Rent or Tax?

Reference may finally be made to a controversy which has been going on for a long time but which has now ceased to have any great importance in practice. Dispute has centred round the question whether land revenue is a tax or rent. If it is a rent, the proprietorship of the State over all the land in the country is by implication admitted. Those who do not support the doctrine of State ownership look upon land revenue as a compulsory payment made to the State just as all other taxes are compulsory payments.

Indian public opinion has generally taken this view. The report of the Taxation Committee has quoted a large amount of evidence in favour of the contention that land revenue is a tax and not a rent. Baden-Powell has been also very guarded in his statement of the position of the British Government with reference to the Indian land

system. The zemindars have been expressly acknowledged as the proprietors in large areas. Even in ryotwari tracts where the cultivator-owners are supposed to be tenants of the State, they enjoy all the privileges of ownership including the right of sale, mortgage and transfer, subject to their payment of the Government dues. As long as these are paid, the 'tenants' cannot be dispossessed of their estate by the theoretical owners. No very great significance therefore attaches to the practical aspect of the question.

Difference of opinion exists on the question whether land revenue is a direct tax or an indirect tax. The fact that it works partly as a tax on income and partly as a tax on things makes it difficult to state exactly whether it is direct or indirect. However, theoretically at least, the bias is in favour of describing it as a direct tax.

Land Revenue Administration in Bombay

In the Presidency of Bombay the work of land revenue collection and administration is entrusted to Commissioners, Collectors, Deputy-Collectors, Mamlatdars and Talaties. The Collectorate is an important unit. It contains on an average about ten talukas. The Collector is primarily a revenue officer. There are separate departments and offices for carrying out survey and settlement operations. Records of rights are accurately maintained in every village, giving particulars about the names of all persons who are holders, occupants, owners or mortgagees of land, the nature and extent of the respective interest of such persons, and the rent or revenue payable by or to any such persons. Settlement Commissioners and Superintendents and Inspectors of Land Records are special officers who supervise the working of this aspect of land revenue administration.

CHAPTER XIX

The Public Services

1. Before the Reforms

Appointments in the Earlier Days of the Company's Rule

The East India Company had to appoint a large staff of merchants, factors and writers in order to carry on their commercial business. Power of making such appointments and of making rules and regulations for the guidance of servants and officers was given in the original Charter of Elizabeth and it was further extended from time to time. The definite acquisition of political status by the Company after the grant of the Diwani in 1765 made the question of public services more important and responsible. It was not, however, till 1772 that the Directors decided that the Company should themselves stand forth as the Diwan and take over the administration of the ceded provinces into their own hands. Between 1765 and 1772 the administrative work of the Company was left to be done by the subordinate agency of Indian officials. After the decision of the Directors was announced, Warren Hastings appointed European officials known as Collectors to supervise the working of revenue collection and civil judicial business.

It was not till the time of Lord Cornwallis that the direct administration of all branches of public services was placed on a clear and permanent basis. He endeavoured to ' purify ' the services by excluding Indian officers from the superior grades and offices. A college was soon set up at Calcutta to impart training in law and oriental

languages to the newly recruited junior officers. In 1806 Haileybury College was started. Admission to this institution was obtained by nomination by the Court of Directors of the Company and the candidate had to pass a test examination after passing through a two years' course of education. The successful candidates were appointed to various posts.

1853 At the time of the Charter Act of 1853 the principle of throwing open the Civil Service to general competition was accepted and it was further reaffirmed after the transference of government from the Company to the Crown. With the growing extent of the territories of the Company and the increasing complexity of the obligations of Government, it was found necessary to nominate persons, technically outside the Company's civil service, to fill certain posts which had to be created under the exigencies of administration. Such appointments were later on validated by an Act of Parliament.

1870 In spite of the removal of disabilities of Indians to hold any post under the Crown and the throwing open of the Civil Service to general competition, only one Indian had successfully competed for that Service till 1870, and been enrolled in the Service. In that year an Act was passed which permitted Indians of proved merit and ability to be employed in the Civil Service without their passing through the course in the regular prescribed manner. Very few appointments were however made under this Act.

1879 In 1879 rules regarding such selections were reconsidered. Young men of good family and social status were to be given special preference, provided they possessed the necessary intellectual qualifications. Even under the revised regulation,

however, the scheme of making direct recruitment to the covenanted service initiated in 1870 did not prove successful and Government therefore appointed a Commission to inquire into the best possible methods of admitting Indians to higher employment in the public service. The report of the Commission was submitted to the Government of India in 1887. It made some important recommendations.

1887—Imperial, Provincial, and Subordinate Grades

Following the recommendations of the Commission the Civil Service was divided into three classes; the Indian Civil Service, the Provincial and the Subordinate Services. The old terms of covenanted and uncovenanted lost their significance. Important executive and judicial posts in the provinces were to be held by members of the Provincial Service. Admission to it was regulated by rules framed by the local Governments and approved by the Government of India. It was obtained either by nomination or by examination or by promotion. Offices like those of the Deputy-Collectors and subordinate judges were to be held by the grade. The Subordinate Services were to hold minor offices. They included most of the clerical staff of various departments. With the attempt at an all-round development of the country, need arose for the appointment of officers with special training for the handling of technical subjects, like the Public Works Department, Survey of India, Agriculture, Posts and Telegraphs, Education, Police, Salt, etc. These services were also organized into the three grades of Imperial, Provincial and Subordinate, according to the control that was exercised over them by the Government of India or the Provincial Governments.

Appointments to the Imperial grade in all branches of

the administration are made by the Secretary of State. All the Imperial officers have not to serve under the direct orders of the Central Government. Most of them, after their recruitment, are assigned to different provinces and, normally speaking, are not transferred from province to province though the Government of India may sometimes issue orders in that direction.

1912—The Islington Commission

The Royal Commission on Public Services which assembled in 1912 and was presided over by Lord Islington took a detailed review of the public services in India and explored the possibilities of the employment of Indians in the superior Services. Owing to the declaration of the War in 1914 and the preoccupation caused by its prosecution both to the British and Indian Governments, consideration of the recommendations of the Islington Committee was deferred. In the meanwhile the Secretary of State had made the famous Announcement of August 1917 putting into the forefront the contemplated increased association of Indians in every branch of the administration and the introduction of responsible government. The War had also immensely affected the cost of living. These new factors had created new circumstances and the recommendations of the Islington Committee had become quite obsolete.

Position of the I.C.S. before the Reforms

It will be better to summarize the position of the Services as it was before the Reforms. As the Islington Report has pointed out, the Indian Civil Service has always been regarded as the senior of all Services, and one upon which the responsibility of good government ultimately rests. Posts of general supervision are filled by its officers, both on the executive and

political sides of the administration. A variety of departments such as land revenue, excise, income-tax, and stamps, are controlled by them. Supervision over the working of local self-government and the maintenance of peace and order are included in their functions.

Beginning ordinarily with the headship of the district and passing through the Commissionership of divisions and membership of the Executive Council, Indian Civil Service officials may reach the posts of Lieutenant-Governors and Chief Commissioners. Similarly they may rise to the status of High Court judges.

Certain specified posts in the Services had been reserved for the Indian Civil Service. They were mentioned in a separate schedule in the Government of India Act of 1915. With the exception of the Governor-General, Governors, and some memberships of the Executive Council, practically all places of superior control were held by them.

They were the Government

As the Montford Report said, the Indian Civil Service had been in effect much more a Government corporation than purely a Civil Service in the English sense. The men in this Service are described as having been entitled not only to administer but also to advise. They are habituated to the exercise of responsibility ; in emergencies they have to depend upon their own judgment ; a large stock of practical knowledge is acquired by them. Unlike the Civil Servant in England, the Civil Servant in India takes his place in the Legislative and Executive Councils and assists in the formation of policy. He is not controllable by the people of the land but by a distant paramount power which necessarily has to leave a large amount of discretion and initiative to the men on the spot who are burdened with the responsibility of

preserving and managing the Sovereign's domains in far-away lands.

2. After the Reforms

Montagu-Chelmsford Report

After the Announcement of 1917, things necessarily changed. The Montford Report gave its consideration to this question. The demand for Indianization was unanimous and persistent. The spirit of the new policy made it indispensable that Indians should be associated in larger numbers in the various branches of the administration. It was necessary to train them in the art of government and to make their criticism more sober and practical. The Montford Report definitely stated that recruitment of a larger proportion of Indians should be begun at once. Not that there was to be a wholesale swamping out of the European element. The authors of the report did not look upon such a violent change either as desirable or as possible.

Indianization

In the Indian Civil Service they proposed a proportion of thirty-three per cent to be held by Indians, increasing annually by one and a half per cent, until the situation was again revised by a commission. They also recommended that the few remaining distinctions that were based on race in admission to the Services should be thoroughly abolished. It was further suggested that for all the public services for which there was recruitment in England, open to Europeans and Indians alike, there must be a system of appointment in India, a definite percentage of the latter being fixed.

Improvements in the rates of pay and incremental time scale and greater elasticity in the leave rules and other details were thought absolutely necessary. Lastly, the

intention of the authors was declared that any public servant, whatever the Government under which he was employed, should be properly supported and protected in the legitimate exercise of his functions. To the Government of India or the Governor-in-Council must be left unimpaired the power to secure to a Civil Servant any rights and privileges guaranteed or implied in the conditions of his appointment.

Improved Prospects

The friction which a change in the long-established system was likely to produce was sought to be avoided by inducing the habit of goodwill and toleration between the officials and the popular element of the Government. The experience and continuity supplied by the former would be, it was imagined, of great value to the latter. Even in the provinces where dyarchy was introduced, there was no intention to introduce any duality in the Services. No separate hierarchy of officials was created for the transferred half. It was not possible, in the opinion of the authors of the report, that all Europeans should be purged out of the Services in the new dispensation inaugurated under the Reforms.

The European Element Maintained

Their position indeed might be changed. They might assume the position of skilled consultants, technical advisers or inspecting and reporting officers. But for the purpose of helping to make the Indian people self-governing, the continued presence of English officers was regarded as vital. The Indian Civil Service under the new regime would have to give up its attitude of silence whenever it was criticized and attacked. The Civil Servant, like the politician, but under obvious limitations because of his position as a

Its Altered Position

Civil Servant, must explain and persuade and answer and refute.

Provisions of the Government of India Act

The Government of India Act dealt in a separate part with the Services in India. According to it, every person in the Civil Service of the Crown in India holds office during His Majesty's pleasure and cannot be dismissed by any authority subordinate to that which appointed him. An aggrieved officer has the right to complain to the Governor. The Secretary of State regulates the classification of the Civil Service, the methods of recruitment, and the conditions of Service. Functions regarding recruitment and control are to be performed by a Public Services Commission of five members to be specially appointed. Under-Secretaryships may no longer be exclusively held by the Civil Service. Similarly the Secretary, Joint Secretary and Deputy-Secretary in the Education, the Foreign and Political Departments, and the Secretary and Deputy-Secretary in the Legislative Department may be non-civilians.

Feeling of Anxiety among the Services

The new policy of the Act of 1919 had important consequences. A feeling of uncertainty and anxiety was created in the mind of the Services because they were henceforth likely to lose their bureaucratic independence and to be held answerable to the Indian public as represented through the Legislatures. The British element in the new recruitments began to dwindle. A committee under the presidency of Lord MacDowell investigated the causes of the decline and suggested certain remedies. In order, however, to solve the problem of the services more definitely, a comprehensive survey was thought necessary, and a

commission presided over by Lord Lee was appointed for that purpose in spite of the opposition of the Indian Legislature.

Recommendations of the Lee Commission

To consider the question of the Services in the light of the altered circumstances of the Reforms, the Lee Commission was appointed in 1923, in the teeth of the opposition of the Legislative Assembly which refused to sanction the money necessary for its expense, which was ultimately certified by the Viceroy. The Commission made detailed recommendations, several of which have been accepted by the Government of India. The All-India Services serving in the reserved part of the provincial administrations were to continue to be appointed and controlled by the Secretary of State and their position was to be safeguarded by legal covenants enforceable in civil courts and by the Public Services Commission to whom appeal was to lie against Provincial or Central Governments. If they were serving in transferred departments they could either retain their All-India status or enter into new contracts with the Provincial Governments or retire on proportionate pensions. Large financial concessions to European members of the Services were granted, the overseas allowances granted to officials of non-Asiatic domicile being substantially increased in a certain number of years. Further, this could be remitted to England at a favourable exchange rate of 2s. to a rupee when the current rate was only about 1s. 6d. Besides, European officers and their wives were to receive four return passages to England and one single passage for each child during the period of their service. The family of an officer who died in the Services was to be repatriated at Government expense. Attendance by medical officers of their own race was made available to

members of the Services, at some cost to the State. The pensions of members of the Indian Civil Service who had attained to the rank of Members of Councils and Governors of Provinces were substantially enhanced. The management of the Family Fund for Civil Servants was to be improved. The additional financial burden that was involved in giving effect to these recommendations was in the neighbourhood of one and a quarter crores of rupees per year and this money would have to be paid by the Indian taxpayer.

Concessions to Indian public opinion were made by the transference to the Ministers of control over future recruits in the transferred part of the administration and by provision for a larger degree of Indianization in the Services. The proportion of fifty per cent of the cadre in the Indian Civil Service was to be reached in a period of fifteen years. The report also recommended that the statutory Public Services Commission contemplated by the Government of India Act of 1919 should be established without delay. It should consist of five whole-time members and should be non-political in character. Its functions should fall into two categories, first that of recruitment, and secondly that of a quasi-judicial character with reference to the disciplinary control and protection of the Services.

The Reforms Inquiry Committee Report

Both the majority and minority reports of the Muddiman Committee have referred to the position of the Services under the actual working of the Reforms. The majority came to the conclusion that the Services had loyally co-operated with the Ministers and carried out their orders. The minority quoted an extract from the dispatch of the Government of the United Provinces in which it described the spirit and outlook of the

Services as having been completely changed after the Reforms. The constant criticism to which they were subjected created a feeling of uncertainty and insecurity and reduced their keenness and the former personal interest which they took in the administration when they shaped policy. In the opinion of the minority, however, it was an inevitable consequence of the transfer of power to the Legislature that the Services should be deprived of their privilege of shaping policy.

The fact that the control of the Services and of their recruitment did not rest with the local Government or the Government of India was an anomaly which was bound to give rise to friction and mutual distrust. The natural difference between the point of view of the popular Ministers and that of bureaucratic members of the public service, and the consciousness of the Minister that his subordinate could look to a higher power for the enforcement of his views were, they thought, factors which vitiated the harmony of working. It was the clear opinion of the minority that the present system of recruitment and control of the services was incompatible with the situation created by the Reforms and the possibility of its further development. Under responsible forms there could be only one authority which should control the Services, namely the Legislature of the land.

3. Criticism

Exclusion of Indians

Indian public opinion has viewed the question of the Services with peculiar delicacy. To the Indian, officers of the bureaucracy like Collectors and Commissioners are the embodiments of the sovereignty of the raj. Till recently, all the superior grades of the governing bureaucracy were almost entirely manned by Europeans who were

foreigners to the land. The deliberate exclusion of Indians, in spite of pompous Acts of Parliament and the Queen's Proclamation of 1858, was felt by them as derogatory to their self-respect and patriotic sentiment. It was to them a constant and standing reminder of the degree of degradation to which they had been reduced by circumstances.

Extravagant Scales of Pay

The ostracism that was imposed upon the citizens of the country was in itself sufficiently humiliating ; the injury was further deepened by the extravagant scale on which remuneration was paid to the foreign agency of servants from the revenue of a poor country. The Governor-General of India stood and still stands unique and unequalled in the hierarchy of officials of the whole world in point of his salary and sumptuary allowances. Even the President of the wealthiest democracy in the world, the United States of America, and the Prime Minister of the mightiest empire in history, the British Empire, go down in comparison with him. Members of the Indian Civil Service also still stand unique in comparison with their brethren in other countries. The monetary drain that results from this top-heavy agency is immense. With the retiring of officials from the country at the end of a long period of service, all the accumulated volume of administrative experience acquired by them also leaves the shores of the country.

No Scope for Indian Administrative talent

But the evil is not only financial. It is moral. As the late Mr. Gokhale pointed out, under the atmosphere of foreign domination, a kind of dwarfing or stunting of the Indian race has been going on. The upward impulse, the healthy ambition to rise to the loftiest heights, which is cherished in an atmosphere of democratic

freedom is being dried up by continued existence in an environment of abject inferiority. The administrative and military talents which have been the glory of the country's history in the past are bound to deteriorate and finally disappear owing to sheer disuse. This is inevitable in the absence of proper opportunities for their complete or even partial exercise.

The admiration showered upon the marvellous efficacy and machine-like systematic working of a bureaucratic Government might be relished by the conqueror's instinct of self-preservation and self-exaltation. It might even find an echo in those amongst the conquered community who can be abstract and objective appreciators of organized efficiency. Yet achievement in this direction is not the only criterion of the success of a hierarchy of officials.

Lord Morley's Opinion

Lord Morley was led to imagine that 'our administration would be a great deal more popular if it were a trifle less efficient and a trifle more elastic. Our danger is the creation of a pure bureaucracy, competent, honourable, faithful, industrious, but rather mechanical, rather lifeless, perhaps rather soulless.' No administration can be progressive or beneficent which crushes out the self-reliance of a people and gives no latitude for the realization of their natural aspirations.

Fifty years ago, a responsible statesman like Lord Salisbury could plainly ask, 'Is there any man who would have the hardihood to tell me that it is within the range of possibility that a man in India should be appointed Lieutenant-Governor or Chief Commissioner or Commander-in-Chief or Viceroy without any regard whatever to his race? It is well to avoid political hypocrisy. . . . There never was a country and there never will be one in which the government of foreigners

is really popular. It will be the beginning of the end of our Empire when we forget this elementary fact and entrust greater executive powers in the hands of natives. Our Governors of provinces, our magistrates of districts and their principal subordinates ought to be Englishmen under all circumstances.' However, sentiments like these are presumed to be out of tune with present-day imperial notions. Therefore they may be taken to have been automatically discarded in the promise of the grant of self-government of a responsible type.

CHAPTER XX

Education

Early History

In the earlier days of the Company's rule no serious attention could be paid to the education of the subjects on account of the uncertain and restless times. Their efforts were confined to the establishment of a Mohammedan or Sanskrit college of the old type. Warren Hastings and Lord Cornwallis took steps in this direction. In 1782 Hastings founded the first college in Bengal to encourage the study of Arabic and Persian. A similar college was established in 1791 for the cultivation of Hindu laws, literature, religion, etc. in Benares.

New influences were, however, soon at work. A knowledge of English became a means of livelihood for Indians under the rule of the English speaking people. A demand arose for facilities in English instruction in Presidency towns. A struggle was going on between the old and the new schools. The orientalists wished to maintain the study of oriental classics in accordance with methods indigenous to the country. The Anglicists urged that all instruction should be given through the medium of the English language and should be in accordance with modern ideas.

Macaulay's Minute

Lord Macaulay was the famous supporter of the Anglicist school. He recorded his opinion in a separate minute which vigorously expressed his contempt for oriental learning. His influence was irresistible. Lord William Bentinck decided upon the promotion of European lore as the greatest object

of British rule. A Resolution of the Governor-General in 1834 plainly declared for English as against oriental education. Lord Auckland's minute in 1839 finally closed the controversy. Since that time, the value of English instruction has been recognized and the spread of western knowledge has been regarded as one of the duties of the State.

Dispatch of 1854

In 1854 the education of the whole people of India was accepted as a duty of the State. The Board of Directors issued their famous dispatch which is described as the 'Charter of Education in India'. A number of changes were proposed; '(i) the constitution of a separate department for the administration of education; (ii) the institution of universities in the Presidency towns; (iii) the establishment of institutions for training all classes of people; (iv) the maintenance of the existing Government Colleges and High Schools and a further increase of their number; (v) the establishment of new Middle Schools; (vi) increased attention to vernacular schools for elementary education; and (vii) the introduction of a system of grants-in-aid.' The vernacular was to be the medium of instruction in lower branches and English in the higher. There was to be perfect religious toleration. Female education was to be cordially supported and encouraged by Government. Sir Charles Wood was mainly responsible for sending this dispatch.

1859

Another dispatch was published in 1859. It confirmed the principles of the earlier dispatch, but pointed out that elementary education was not being properly promoted. The system of grants-in-aid was not thought desirable or expedient with reference to primary education, and it was recommended that Government should provide for such

education more directly through the instrumentality of its officers. A special cess upon land for primary education was also recommended for the consideration of Government.

Universities

Universities were established in Bombay, Madras and Calcutta in 1857, in the Punjab in 1882 and in Allahabad in 1887. They were all merely examining bodies. The growth of schools and colleges proceeded rapidly and by 1882 there were more than two and a quarter million pupils under instruction in public bodies. The Commission of 1882 again made useful recommendations and advised increased reliance upon private effort. According to the principles of local self-government, municipalities and Local Boards were given considerable liberty in the management of schools. In 1898, a review of the situation was made and a searching inquiry followed. A conference of educationists was convened in Simla in 1901. A Commission to investigate and report on the working of universities was appointed in 1902. The Indian Universities Act was passed in 1904 to give effect to the recommendations of the Commission.

The Act of 1904

The Act specifically recognized the wider functions of the universities including instruction of students and appointment of professors and lecturers and equipment of laboratories and museums for that purpose. Territorial limits were assigned to each university. Conditions for the affiliation of colleges were prescribed. A systematic inspection of colleges by the university was established. The term of a Senator's office was prescribed to be five years, instead of for life as before. The number of Senators and Syndics was limited and a majority of nominated members was created. New regulations of the five universities were promulgated in

1905–6. They were all affiliating universities and any number of colleges could be affiliated to them. They soon ceased to be living organisms, since their constituent parts—the different colleges scattered over the province—contributed nothing to the common life of the university.

A Resolution of the Government of India in 1913 recognized the necessity of restricting the area over which affiliating universities had control. The institution of teaching and residential universities was recommended. The strength of communal feeling and the growth of local and provincial patriotism helped in the development of the new policy. Patna, Lucknow, Rangoon, Dacca and Delhi became university centres. So did Benares and Aligarh.

The Calcutta University Commission

The Calcutta University Commission, presided over by Sir Michael Sadler, made their voluminous report in 1919. They recommended a complete reorganization of the system of higher education in Bengal. The institution of new types of bodies known as Intermediate Colleges was suggested. To them was to be transferred secondary and intermediate education. Most of the recommendations of the Commission were, however, left unheeded when, after the Reforms, the Calcutta University was transferred to the Government of Bengal and action was taken by the latter to modify the affairs of the university in 1921.

After the Reforms

Since the Reforms, education has become a transferred subject. It is administered by Ministers responsible to the Legislature. Great hopes have been entertained about the acceleration of the progress of education under the new conditions. They have not been fulfilled for various

reasons, chiefly owing to lack of funds. Endeavours are being made to combat illiteracy by providing for free and compulsory education in primary schools. The Bombay Council has already taken the lead in the matter by passing the Compulsory Education Act. Other provinces are passing similar measures. The general control of the university system has now been placed within the province of the local Governments. Many of them have passed legislation to modify the constitution of the older institutions or to create new ones altogether. The Allahabad University has been reorganized. The Madras University is also remodelled. New universities have been established at Nagpur and Agra and agitation for another in Rajputana is being carried on.

Bombay University Reform

The Bombay Government was not left entirely unaffected. Recently a special committee was appointed to suggest measures of reform. Its report has been published. It has made various recommendations about the grouping together of colleges in the city of Bombay so as to develop a University area. It has recommended an alteration of the constitution of the University in order to make it more democratic and elective. Separate universities for Poona in the first instance and for Gujarat, Karnatak and Sind in course of time are also recommended. The question of the determination of the medium of instruction is left to the universities themselves. Action upon the report was taken by the Legislature recently.

Its Present Constitution

The Bombay University Act passed in 1928 has considerably altered the constitution of the University. The Senate, which till then contained an overwhelmingly large nominated majority has now been given a predominantly

elective character. In addition to the Chancellor, the Vice-Chancellor, the Registrar and some officials of Government who are ex-officio members, the Senate is to consist of members elected by different constituencies. Principals of Colleges and University Professors elect thirteen members; College Professors (including Principals) elect twenty; Headmasters of schools elect five. Public associations or bodies in British India like municipalities, Indian Merchants' Chambers, Mill-owners' Associations, District Local Boards, etc. send another fifteen. Registered graduates of the university are allowed to elect twenty-five. Faculties constituted by the Senate have to elect ten. Lastly, the Legislative Council of the Governor of Bombay has to send five representatives, one of whom shall be the member for the university. The total number of elected members thus comes to a total of ninety-three. The numbers of those nominated by the Chancellor is limited to forty.

The executive government of the University is vested as before in the Syndicate which will now consist of the Vice-Chancellor, the rector if any, the Director of Public Instruction, seven persons elected by the Academic Council from itself and nine persons elected by the Senate from those of its members who are not principals or professors or headmasters. The term of the Syndicate is three years and of the Senate five years.

A new body called the Academic Council has been created to regulate purely educational matters like teaching and examinations, courses of study, scholarships and prizes, etc. It is to contain representatives of university professors, headmasters and Boards of Studies in addition to five representatives of the Senate.

CHAPTER XXI

Famine Relief

In a predominantly agricultural country like India the calamity of famines is not of unusual occurrence. It is one of the important duties of Government to avoid famines as far as possible and when they come, to mitigate the evils which accompany them. The protection of the country from foreign invaders and the preservation of peace and order in its internal administration are factors which remove the artificial causes of famines. The most frequent cause of famines is, however, the absence or shortage of rainfall and an inadequate water supply for the growth of crops. Measures for the prevention of famine have the objective of providing large stocks of water which can irrigate fields and tracts even in the absence of rain.

Early History

No systematic attempt at regulating and organizing famine relief was made during the earlier years of the Company's rule. Disconnected and spasmodic efforts were made to relieve distress whenever famines actually occurred. After the transference of government from the Company to the Crown, the responsibility of providing a proper machinery for relieving the distress caused by famines fell upon the Government of India. The great Orissa famine occurred in 1866. The principles and methods of relief were still unsettled and unformed. Therefore a Commission under the presidentship of Sir George Campbell conducted an inquiry and made suggestions for the adoption of a humane policy. When rains fell off in 1868 and 1869 in

Rajputana, the North-West Province and the Punjab, unprecedented action was taken by Government to relieve distress and a large expenditure was incurred. A similar course was taken in 1873 when the province of Bihar was affected. But reaction immediately set in. In 1876–8 really great famines burst upon Madras and Bombay, the North-West Province, Oudh and the Punjab. Relief proved inadequate and mortality was great. Again a Famine Commission under the presidency of General Strachey were appointed to investigate and make a report.

The Commission of 1880

This Commission gave out their report in 1880. It formulated general principles for the proper treatment of famines and also suggested particular measures of a preventive or protective character. The obligation imposed upon the State of offering means of relief to those in distress was recognized though it was not to be so administered as to discourage thrift and self-reliance among the people. The Famine Code was framed accordingly. It was put to a crucial test in the famine of 1896–7. Another Commission were appointed in 1898 and they fully vindicated the wisdom of the policy of the earlier Commission. A severe drought again occurred in 1899 and the Famine Commission of 1901 were instructed to inquire into the whole question of famine relief administration.

The Commission of 1901

This Commission made detailed recommendations. The first danger that they pointed out in the practical working of the scheme of relief was the danger of unpreparedness. Experience had demonstrated the unexpected nature of most of the famines. It was therefore best to be always completely prepared to face them. An efficient

system of intelligence, effective programmes of relief work, reserves of establishments, reserves of tools and implements were suggested as safeguards. A careful look-out was to be kept for the regular, premonitory symptoms of distress. Failure in rainfall, rise in prices, contraction of private charity, contraction of credit, increase in crime were described as the warnings of the approaching calamities. When they at last occurred, systematic distribution of relief should begin. Test works should be opened to give employment to able-bodied people and lists should be prepared of disabled persons entitled to gratuitous relief. Private charity should be vigorously organized. Suspension of land revenue should be granted if necessary. The recommendations of the Commission were accepted and the present famine relief policy is shaped in that light.

Funds for Famine Relief

Before 1878 no special financial provision was made to meet the obligations imposed by periodic recurrence of famines. They were treated as extraordinary calamities and expenditure entailed by them was also regarded as extraordinary. From 1878 an annual sum of one and a half crores of rupees was set aside for 'famine insurance'. It was to be utilized in actual distribution of relief when famines occurred. In prosperous years, when it was not directly required for relief, 'protective' works like railways and irrigation were constructed out of it. Even 'productive' works which would otherwise necessitate fresh borrowing were sometimes constructed out of this grant.

Since the Reforms, famine relief has become a liability upon the Provincial Governments. They are required to maintain a Famine Insurance Fund by contributing from their resources a fixed sum of money every year. Bombay is required to provide Rs. 63,60,000 annually for

expenditure upon famine relief and insurance. Out of the annual contribution, funds can be spent on the construction of protective irrigation works and on relief measures when necessary. The balance to the credit of the fund is regarded as invested with the Central Government which pays interest on it. The annual contributions may be suspended when the accumulated total of the fund is not less than six times the amount of the annual assignment.

Prevention of Famines—Irrigation Works

Measures for the relief of famines are different from measures to prevent them. The extension of the system of railways and the introduction of cheap and rapid means of communication make it possible to equalize the abundance in one part of the country with the scarcity in another part. Movement of food-stuffs and migration of people become easy under these conditions. The construction of irrigation schemes which provide water, independent of rainfall, is another effectve measure of prevention. The sinking of wells, building of tanks and canals and accumulation of rain-water in artificial reservoirs are some of the forms of irrigation works. In a large part of the country extensive projects of this type have been already carried out and to that extent the horrors of famines are reduced. Expansion of railways and irrigation works are among the chief remedies to avert the dangers of famines.

Improved Agriculture

Improved agriculture is a further remedy. Special measures have been taken to constitute separate Agricultural Departments. Colleges for imparting education in agriculture are also specially established, as for example in Poona. Experimental farms are maintained to demonstrate the efficacy of improved methods. Endeavours are made to

improve the quality and the quantity of the yield of the soil and to make agriculture on the whole more prosperous and paying.

Starting of Industries

The establishment of separate departments for industries is another step in the same direction. The creation of industries will offer a variety of occupations to the people and the burden upon land will thus be diminished. The destruction of Indian industries has had the effect of leaving only one kind of occupation to the Indian labourer. That is agriculture. The establishment of different industries will add to the national income and increase the staying power of the people. They will then be in a stronger position to face the disastrous consequences of famines. The monotony of life will disappear and a diversification of employments will be afforded.

Relief of Indebtedness

All measures taken to relieve agricultural indebtedness in the long run reduce the acuteness of the misery of famines. They make agriculturists better equipped to resist the evil when it occurs. Advances like takavi loans enable them to purchase seeds or implements or cattle, or to sink wells. Acts like the Deccan Agriculturists Relief Act or Gujarat Talukdars Act are specially passed to help them in their sad plight of bondage to the money-lender. Co-operative credit societies are formed for the same purpose. The cumulative result of these and similar steps is the infusion into the agriculturist of a larger degree of vitality and sustaining power and a general cheerfulness of outlook.

CHAPTER XXII

Railways and Irrigation

1. RAILWAYS

RAILWAYS were first constructed in India in 1854 during the Governor-Generalship of Lord Dalhousie. Different companies were formed to carry on the work of construction and to conduct the administration of railways. The East Indian, the Great Indian Peninsula, the Bombay Baroda and Central India, and the South Indian, were some of the railway companies so started. They were guaranteed a certain rate of interest by the State and were entrusted with the management of railways under the supervision and control of Government. The latter had power to decide the standard and details of construction, the rates and fares to be charged, the expenditure to be incurred, and so on. Option was also given to the Government to purchase the lines after twenty-five or fifty years.

Guaranteed Railways

Attempts were made later on to secure capital for railways without the guarantee of interest. They were unsuccessful. For several years after 1869 the State itself undertook to spend the capital that was required for starting new ventures. The Indus Valley, Punjab Northern, Rajputana Malwa, and North Bengal, were lines that were constructed directly by the agency of the State between 1869 and 1880. But progress in the construction of railways was considered to be slow. The Famine Commission of 1880 recommended an extension of

Direct Railway Construction by the State

railways even by private enterprise. In accordance with these suggestions the old guarantee system was renewed and fresh contracts were formed with new companies. It was thought impossible for the State to go beyond a particular sum in its annual borrowings. The terms of the new contracts were, however, much more favourable to the State. In the case of all the companies, old and new, the State had reserved the right of terminating the contracts at the end of a certain period and purchasing the companies outright by means of annuities.

State Ownership and Company Management

Many of the companies were purchased by the State as soon as the period for terminating their contracts was reached. State ownership over many of the railways was thus established. State ownership did not, however, mean State management. After the purchase of the railways, the Government entered into fresh agreements with the same companies, allowing them to manage the working of railways on certain conditions. The new agreements were financially more favourable to the State. The lines were the property of the State. It controlled the capital expenditure and the incurring of fresh loans. It maintained control and supervision over the administration of the railways including the fixing of rates. Lastly the contracts were terminable at the option of the Government at specified dates.

There were therefore different types of railways in India. Some railways were both owned and managed by the State. Some were only owned but not managed directly by the State. Lastly, there were others which were neither owned nor managed by the State. This class has, however, vanished, as the State has exercised its right of purchasing in all cases.

The Acworth Committee were appointed, after the

introduction of the Reforms, to investigate the working of railways and to recommend the most suitable policy for their further development. The report of the Committee was not unanimous. The majority, including the president, declared unequivocally in favour of the abolition of the system of company management. They recommended that the State should undertake the direct administration of railways as soon as the contracts with the companies expired. The minority did not favour direct State management and recommended the formation of new companies on different conditions.

The Acworth Committee: 1920-21

The Government of India did not accept the majority report as final, but, as a measure of experiment, decided to take over the management of the East Indian and Great Indian Peninsula Railways, contracts with whom were just due to expire. The question of deciding the final policy will be taken up at the end of the five years of State working. Indian public opinion has generally favoured the idea of direct State management. It is believed to be the right policy from the economic and financial point of view. State management is also expected to be more susceptible to the opinion of the people and to provide for their comforts and conveniences more readily than was the case with the old companies.

State Management

Railways in India have not been financially prosperous from the beginning. In fact, up to the beginning of the twentieth century, the State had to incur expenditure out of the proceeds of taxation in order to make up the guaranteed interest. It was only after the year 1900 that railways became a paying concern and began to yield an income to the State. The Acworth Committee

Separate Railway Budget

recommended that the railway budget should be separated from the general budget. The proposal has been accepted by the Government of India. The railways now pay a fixed contribution to the State under contracts which are made with them for a specified number of years. A reorganization of the Railway Board, appointment of Railway Advisory Committees and the creation of a Rates Tribunal, are changes which have been introduced recently in the interest of the better management of railways.

2. Irrigation

Irrigation works are of immense use in an agricultural country like India. The characteristics of Indian rainfall have been described to be 'its unequal distribution over the country, its irregular distribution throughout the seasons and its liability to failure or serious deficiency'. The frequency of famines and scarcity is a constant menace to the peaceful life of the country. Irrigation works have been known in India from ancient days. The construction of canals and tanks is recorded as having been undertaken by the Hindu Rajas in early times and by the Mohammedan monarchs after the establishment of their rule in India. After the advent of the British Government the construction of irrigation works was commenced in north and south India about 1836–7. They proved eminently successful. Attempts were then made to promote Indian irrigation by the agency of private companies. They proved financially unsound and were therefore given up.

The Irrigation Commission 1901

The continuous occurrence of famines during the last decade of the nineteenth century demonstrated the inestimable utility of irrigation works. The need for their further expansion began to be growingly felt. The whole question was therefore referred to an Irrigation

Commission which were appointed in 1901 and made their report two years later. They came to the conclusion that exactly in those parts which were subject to the calamity of famines and droughts—the Deccan, Madras and the Central Provinces—there was no prospect of irrigation works proving remunerative, financially speaking. However, such works, if constructed, were bound to mitigate the intensity of famines. The report sketched out a rough programme of works, recommending an expenditure of nearly £30,000,000 during the following twenty years.

This report has been the basis of the irrigation policy of the Government of India. In the Bombay Presidency the area irrigated by canals increased from 250,000 acres in 1877 to 1,477,000 acres in 1917–8. The Bhandardara and Bhatgar store works which have now been completed are expected to irrigate 450,000 acres annually. The Sukkur Barrage in Sind will be providing a perennial supply of water to an area of about 1,850,000 acres which is at present inadequately supplied, and to irrigate further over three millions of acres. It is stated that the total area irrigated by Government works alone in British India will soon reach a total of forty million acres.

Classification of Irrigation Works

Irrigation works in India are divided into different classes. There may be non-storage works, perennial canals, inundation canals, or storage works. There is also another classification based on the financial aspect. Some works are described as productive, others as protective, and others still as minor irrigation works. Productive works are big undertakings which are expected to yield an amount of income sufficient to cover the expenses of maintenance and the payment of interest on capital spent on them. Only such works can be financed from loans. Protective works are constructed with a

view to guard against the necessity of periodical expenditure to relieve distress in tracts where rainfall is precarious. They are financed from current revenues, generally from the annual grant for famine relief. There is no expectation of direct financial remuneration from such works. Minor works include very small works. They are not very important.

Since the Reforms, Irrigation has become a provincial subject. Responsibility for constructing and maintaining irrigation works now devolves upon the local Governments. The Presidency of Bombay recently undertook the construction of huge works in Sind under the famous Sukkur Barrage scheme. A special loan was floated to finance the venture, which is expected to cost over twenty crores of rupees.

PART VI

ENACTMENTS AND STATUTES

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The account given in the following pages is based upon
Sir Courtenay Ilbert's Historical Introduction

CHAPTER XXIII

From 1600 to 1858

1. The Charter of Elizabeth, 1600

I. Circumstances leading to the grant of the Charter.

The closing of Constantinople by the Sultan of Turkey and the consequent attempts to open up new trade routes to eastern countries ended in the discovery of the Cape of Good Hope. The nation which led in the development of Indian trade was Portugal. To that nation was awarded India when, by the famous Bull of May 1493, Pope Alexander divided the whole of the undiscovered Christian world between Spain and Portugal. Holland soon entered the arena as a rival of Spain and sent out two big organized expeditions to Java by the Cape in 1595 and 1598. English merchants did not like to see all the eastern trade pass into the hands of foreigners. They held a meeting at Founder's Hall, London, under the presidentship of the Lord Mayor in September 1599, and resolved to form an association for the purpose of establishing direct trade with India. The charter was granted fifteen months later, in 1600.

II. The constitution of the Company as prescribed by the Charter of 1600.

(i) The total number of members who were incorporated in the Company was 217.

(ii) Further admissions to membership depended upon the candidate's being either a son, twenty-one years of age, of an original member; or being an apprentice

or a servant or a factor of the Company; or simply being elected to membership by the general body or the Court. These would be naturally persons who would offer suitable contributions to the capital of the Company.

(iii) A Governor was to be elected annually by the members. He was to be the chief executive official of the Company.

(iv) Twenty-four committees, each consisting of an individual, were to be annually elected by the members and the Company's work was to be distributed among them; for instance there were separate committees for looking after voyages, provision of shipping and merchandise, sale of merchandise returned, and so on. The assembly of the committees was called the 'Court of Committees' to distinguish it from the 'General Court' or the general body of members. The twenty-four committees later on came to be designated the Board of Directors.

III. Legislative powers of the Company.

(i) The Company might assemble themselves in any convenient place 'within our dominions or elsewhere' and there 'hold court' and 'make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances as to them shall seem necessary for the good government of the Company and of all factors, masters, mariners and other officials and for the advancement of traffic and trade.'

(ii) They might impose pains, penalties and punishments for the observation of these ordinances.

(iii) Their laws and punishments were to be reasonable and not contrary or repugnant to the statutes of England.

This power was similar to the power of making

by-laws exercised in modern days by an ordinary municipal or commercial corporation. 'The laws' were mainly regulations for the guidance of the Company's servants and officers. Historically, they are the germs out of which Anglo-Indian codes have ultimately developed. No copy of the earlier regulations is known to exist.

IV. The privileges of the Company.

(i) The chief privilege was the exclusive right of trading between the Cape of Good Hope and the Straits of Magellan. The monopoly was to continue for fifteen years.

(ii) The only restriction on the privilege was that the Company were not to trade in any country belonging to a Christian Prince or State which was in alliance with England, without the permission of the said Prince or State.

(iii) A command was issued to subjects that violation of this privilege of the Company was liable to punishment.

(iv) The Company were allowed to grant licences of trade to others.

Such monopolies were in accord with the ideas of the times and justified by circumstances. Modern conditions of trade did not exist then. There was no universally acknowledged international law. Competition in trade meant war. 'For the successful prosecution of the Eastern trade, it was necessary to have an association powerful enough to negotiate with Native Princes, to enforce discipline among agents and servants and to drive off European rivals with strong hand. The independent trader was, through his weakness, at the mercy of the foreigner, and through his irresponsibility, a source of danger to his countrymen.' It was only later on

that the monopoly became unbearable when it outlived the original necessary conditions.

V. The nature of the commercial working of the Company.

(i) There is an absence of any reference to the capital of the Company in the original charter.

(ii) There is no mention of qualifications to regulate the voting power of the members. There appears to have existed equal voting power for all members irrespective of the amounts of their contributions. Any member appears to have been eligible to be elected to the committees.

(iii) There was no joint stock. The Company came under the class of Regulated Companies. Members were subject to certain common restrictions and had some common privileges, but each one traded on his own capital and for every separate voyage. After 1612 all contributions were thrown into a joint stock and the Company became a joint-stock company.

2. The Regulating Act

I. Clauses which made changes in the constitution of the Company.

(i) The qualification for a vote in the Court of Proprietors was raised from £500 to £1,000.

(ii) The Directors, instead of being annually elected as before, were to hold office for four years, a quarter of the number being annually re-elected.

II. Clauses relating to the Government of Bengal.

(i) For the Government of Bengal, a Governor-General and four Councillors were appointed. In them was vested the whole civil and military government of the Presidency. The old system of government by a

President and Council or by Select Committees introduced by Clive was abolished. The first Governor-General and the four Councillors were named in the Act. Later on the patronage was to be vested in the Company.

(ii) Their tenure of office was to be five years and they were not to be removable during the period except by the King on the representation of the Directors. This temporary enactment is believed to be the origin of the custom which limits the tenure of important offices in India like those of Governor-General, Governors or Executive Councillors to five years.

(iii) The Governor-General and Council were bound by the votes of the majority of those present at their meetings. In the case of an equal division the Governor-General was to have a casting vote.

In so far as a regular executive machinery was provided for the province of Bengal by these clauses of the Act, there was an improvement over the earlier situation. However, in practical working, the system proved disastrous. Out of the four Councillors that were nominated by the Act, three were antagonistic to the Governor-General and opposed him in all important measures. As they formed a majority and as the decision of the majority was, by law, binding on all, the Governor-General was subjected to the mortification of being compelled to carry out the mandates of his opponents. Very often, the responsible head of the administration was required to do things which he did not approve of. His casting vote could not be given unless there was a tie. Such occasions were rare as long as the Council, together with the Governor-General, consisted of five members. Francis was a sworn enemy of Warren Hastings and harassed him with a constant

and merciless opposition. These unseemly dissensions in the executive Government were demoralizing. They detracted from the efficiency of management and caused widespread embarrassment and confusion. The Governor-General was placed in a most awkward and impossible position and bitter recrimination and bickering prevailed in the mutual relations of the Company's chief officials in Bengal.

III. The supremacy of the Bengal Presidency over the other Presidencies was definitely declared. The Governor-General and Council were given power to superintend and control the government and management of the Presidencies of Madras, Bombay and Bencoolen (in Sumatra).

This was a wise step. It secured a unity of control and a uniformity of policy throughout the growing territorial possessions of the East India Company in India. The administration of the different Presidencies and factories needed co-ordination and the sense of their being parts of a coherent whole had to be developed. The creation in India of a commanding and superior authority was therefore a step in the right direction. However, the provisions of the Act in this respect were not clear. The Governors of the Presidencies of Madras and Bombay continued to defy the newly-created supreme authority and to undertake military ventures on their own initiative. The war with the Marathas and the war with Hyder were the results of the actions of the Governments in the Presidencies. They involved the Governor-General in financial embarrassment and complicated political responsibility. It was therefore necessary to strengthen the inadequate clause which declared the supremacy of the Governor-General.

IV. The Governor-General and Council were to obey

the orders of the Court of Directors and keep them constantly informed of all matters relating to the interest of the Company. The Indian official's subordination to the authorities in England was thus clearly emphasized.

V. The Directors were to keep the Treasury informed, within fourteen days of their receipt of Indian dispatches, of the civil, military and revenue affairs of the government of the Company.

The control of the British Parliament and its right to be acquainted with the affairs of a private corporation were here clearly demonstrated.

VI. A Supreme Court of Judicature was established in Bengal. It was empowered to exercise civil, criminal, admiralty and ecclesiastical jurisdiction and to establish rules of procedure. Its authority extended to all British subjects residing in Bengal Bihar and Orissa under the protection of the Company. It consisted of a Chief Justice and three other judges.

But, (i) the Governor-General and the Councillors were exempted from its jurisdiction; (ii) when natives of the country were concerned, suits and actions could be heard by it where the defendant native had agreed to go to the Supreme Court; (iii) appeals against this Court could be made to the King-in-Council.

In many respects the Act was defective and obscure. (i) Which of the two authorities, the Council or the Court, was paramount? How far could the judiciary control executive officials without sapping civil authority? (ii) What law was the Court to administer? 'Apparently it was unregenerate English law, insular, technical, formless, tempered by the quibbles of judges and obstinacy of juries and capable of being the instrument of a most monstrous injustice when administered in an atmosphere different from that in which it had grown

up.' Neither Hindu nor Mohammedan nor any other indigenous law was applicable by the Court. (iii) What persons came under the jurisdiction of the Court? It was difficult to define the persons who came under the class of British subjects. Sir Courtenay Ilbert thinks that probably it included only European British subjects and not native inhabitants of India residing in the three provinces. It was also difficult to define what exactly constituted employment in the service of the Company. Could a native landowner farming revenues be described as a servant? There was no authority to give rulings in such doubtful cases.

The Court claimed to have jurisdiction over the whole native population. The quarrel on this point culminated in the famous Cossijurah case. The Sheriff and his officers, who were attempting to execute a writ issued by the Court against a zemindar, were in this case driven off by sepoys acting under the orders of the Council. The action of the Council was not disapproved of by the Directors and practically the Court was defeated on the point. The Court also claimed the right to try English and Indian officers of the Company for acts done by them in their official capacity. On this point it was successful, against the wishes of the Council to the contrary. The Supreme Court further declared that it was competent to try actions against the judicial officers of the Company for acts done in the execution of their judicial duties. In the famous Patna case, the Supreme Court gave judgment in favour of an Indian plaintiff against officers of the Patna Provincial Council, acting in their judicial capacity. Hastings tried to remove the friction between the Supreme Court and the country courts by appointing Impey as judge of the court of the Sadr Diwani Adalat.

The original object of establishing an independent

Supreme Court for the administration of justice was not realized in practice. The Court did not prove to be a protection against the despotic actions of the executive; on the contrary, it became itself an instrument of terrorism. Its creators did not realize the dangerous consequences of the ambiguous character of its jurisdiction and the indefinite understanding of its relations with the executive.

A borderland warfare was constantly going on between the two authorities. Nor did the application of English law improve matters to any extent. In the first instance, it was absolutely unknown to the Indian people and was out of accord with their traditions, customs and history. Further, the English law, which the Supreme Court was administering, was itself an impure and unreformed clumsy mass which could not stand the test either of commonsense or of ethics. The Amending Act of 1781 settled some of the disputed questions and made the administration of justice more systematic and less confused.

VII. The Governor-General-in-Council was given power to issue rules, ordinances, and regulations for the government of the Company's dominions. This is the beginning of the law-making power of the Government of India. The regulations were to be registered and published in the Supreme Court.

VIII. Liberal salaries were provided for the Governor-General, Councillors and judges.

IX. All servants, high and low, were prevented from taking bribes and presents.

X. No private trade was to be undertaken by the Company's servants.

The last two clauses were intended to purify the

administration, officers in which had grown extremely corrupt and extravagant.

3. Pitt's India Act

I. (i) A Board of six Commissioners for the affairs of India, popularly known as the Board of Control, was established. It consisted of the Chancellor of the Exchequer, one of the Secretaries of State and four other Privy Councillors appointed by the Crown and holding office during pleasure.

(ii) They were unpaid and had no patronage.

(iii) They were empowered 'to superintend, direct and control all acts, operations and concerns which relate to the civil or military government or revenues of the territorial possessions of the East India Company'. They were to have access to all papers and instruments of the Company and could demand copies of all minutes, orders and dispatches sent or received by the Directors.

(iv) The Directors had to pay obedience to and to be bound by the orders of the Board. The latter might disapprove of or modify any of the dispatches.

II. A Committee of Secrecy of not more than three members was to be formed out of the Directors. Secret orders to India were to be transmitted by this body.

III. The Court of Proprietors lost its chief governing faculty. It could no longer revoke or modify the proceedings of the Court of Directors.

IV. The Governor-General's Council was reduced from four to three members including the Commander-in-Chief.

V. The Presidencies of Madras and Bombay were to have a Governor and three Councillors including the Commander-in-Chief.

VI. The Governor-General, Governors of Presidencies,

Commander-in-Chief and Members of Councils were to be appointed by the Court of Directors. They and any other officers could be removed from office either by the Crown or by the Directors.

VII. The control of the Governor-General and his Council over the Governments of the other Presidencies was enlarged and extended to all transactions about war or peace or expenditure of revenues.

VIII. The Governor-General-in-Council was not to enter into war or peace or treaty without the express authority of the Directors or the Committee of Secrecy.

IX. All British subjects were declared amenable to all courts of competent jurisdiction in India or England, for acts done in Native States.

X. A special Court consisting of three judges, four Peers and six members of the House of Commons was constituted for the trial in England of offences committed in India.

XI. Every practicable retrenchment and reduction in expenditure over civil and military establishments in India was to be made.

This measure was based on the principle of placing the Company in direct and permanent subordination to a body representing the Parliament of Britain. The Board of Directors retained their patronage and their power of revision ; but they were subjected to the control of representatives of the British Government. This system has been described as Double Government by constitutional writers because the Board of Directors represented a shareholders' corporation whose activities were primarily responsible for the acquisition of a considerable Empire ; and the Board of Control symbolized the sovereignty of

the British State which had to exercise a beneficent supervision.

4. The Charter Act of 1833

I. The Company's revenues and territories were to be held for a further period of twenty years but 'in trust for Her Majesty and her heirs'.

II. The monopoly of the China trade and of the tea trade was taken away.

III. The Company were required to close their commercial business and wind up their affairs as quickly as possible. Their territorial and other debts were charged to the revenues of India.

IV. The Company retained their administrative and political powers and rights of patronage over Indian appointments.

V. The Governor-General-in-Council of Bengal was named Governor-General-in-Council of India. He was to be responsible for the government of the whole of India.

VI. A fourth ordinary member was to be appointed to the Council for legislative purposes. He was not to be chosen from among the Company's servants. (The first legal member was Lord Macaulay).

VII. The overgrown Presidency of Bengal was to be divided into two distinct Presidencies. (But the provision never came into operation.)

VIII. Changes were made in the legislative powers of the Government. At this time there were five different bodies of law in operation in India: (i) the statute law introduced by the Charter of George I; (ii) all subsequent English Acts which were expressly extended to any part of India; (iii) regulations of the Governor-General-in-Council; (iv) regulations of

the Madras Council; (v) regulations of the Bombay Code.

Three leading defects in the existing legal system were pointed out to Parliament; (i) the nature of the laws and regulations; (ii) the ill-defined authority from which they emanated; (iii) the anomalous and conflicting judicatures by which the laws were administered.

The Act of 1833 introduced the following changes: (i) The legislative power of the Indian Government was exclusively vested in the Governor-General in-Council. The Provincial Governments were deprived of their lawmaking power. (ii) The Governor-General-in-Council was empowered to make laws and regulations; (*a*) for repealing or altering any existing measure; (*b*) for all persons and all Courts of Justice; (*c*) for all places and things and for all servants of the Company; and (*d*) for Indian officers and soldiers in the military service of the Company and for the administration of courts-martial over them.

The restrictions put on this power were that: (i) the Act of 1833 was not to be changed in any way, nor also the laws about some military matters; (ii) the prerogative and the sovereignty of the Crown and the authority of Parliament were not to be affected; (iii) the right of Parliament to legislate for India and to repeal Indian Acts was expressly maintained; (iv) laws made in India were subject to disallowance by the Court of Directors acting under the Board of Control.

IX. A comprehensive consolidation and codification of Indian laws was contemplated. The Indian Law Commission were appointed to inquire into the jurisdiction, powers, and rules of the existing Courts of Justice and the nature and operation of all laws prevailing in the country. Their labours resulted in the preparation of the

Indian Penal Code and, indirectly, of the later Code of Civil and Criminal Procedure.

X. It was declared lawful for any natural subject of Her Majesty to live in any territory which was under the government of the Company. No licences were required for this purpose as before. Lands could also be held by them. Indians were to be protected from any insult to their persons or religion by the European population.

XI. No subject because of his birth, descent, or colour was precluded from holding office.

XII. Slavery was abolished.

It will be seen that important changes and alterations were introduced by the Act of 1833 in the constitution of the East India Company and the system of Indian administration. The times were generally times of reform. The Reform Bill had just been passed in England. Slavery had just been abolished by the reformed Parliament. Careful inquiries were made as usual when the time came for the renewal of the Company's Charter in 1833. Lord William Bentinck had just finished his peaceful administration. The conquest of India had been practically completed. There is no wonder, therefore, that the Act of 1833 brought about important modifications in the affairs of the Company.

5. The Act of 1853

I. No definite term of years was fixed for the continuance of the Company.

II. The number of Directors was reduced to eighteen, of whom six were to be appointed by the Crown.

III. The appointment of a separate Governor for Bengal was authorized. Until he was appointed, the Directors and the Board of Control might authorize the

appointment of a Lieutenant-Governor of Bengal. He was appointed in 1854. (No Governor was appointed till the year 1912.)

IV. Power was given to the Directors either to constitute one new Presidency with a Governor and Council or to authorize the appointment of a Lieutenant-Governor. (One such was appointed for the Punjab in 1859.)

V. The legislative member was made an ordinary member.

VI. The Council was enlarged for legislative purposes by the addition of the Chief Justice of Bengal, of a puisne judge, and four representative members nominated by Bengal, Madras, Bombay and the North-West Province. In all, therefore, for legislative purposes, there were twelve members including the Governor-General, the Commander-in-Chief, the four ordinary members and the six additional members.

VII. The sittings of the Legislative Council were made public and the proceedings were officially published.

VIII. English Commissioners were appointed to examine and consider the recommendations of the Indian Law Commission appointed in 1833.

IX. Patronage was taken away from the Directors. The Board of Control was empowered to frame rules and regulations for appointments. The Indian Civil Service was thrown open to general competition.

6. The Act of 1858

After the Indian Mutiny the system of Double Government received a death-blow.

I. India was to be henceforth governed by and in the name of the Crown.

II. A Secretary of State was appointed, to whom were transferred all the powers of the Court of Directors and the Board of Control.

III. He was to be assisted by a Council.

(i) It consisted of fifteen members, of whom eight were appointed by the Crown and seven elected by the Directors.

(ii) At least nine of the members must have served in India for ten years.

(iii) Vacancies could be filled by the Crown.

(iv) Its members were precluded from becoming members of Parliament.

(v) The Secretary of State was to be its President.

(vi) He had power to overrule its decisions in case of difference of opinion.

(vii) The Council had to conduct the business transacted in the United Kingdom in relation to the Government of India.

(viii) A permanent establishment was created for the Secretary of State in Council.

IV. Patronage, which was important, was left to the Crown and the Secretary of State. The Lieutenant-Governors could be appointed by the Governor-General.

V. New rules were made for the Indian Civil Service examination, which was thrown open to all.

VI. The property of the Company was transferred to the Crown. The expenditure of the revenues of India was to be controlled by the Secretary of State, and was to be charged with a dividend on the Company's stock and with their debts.

VII. A special auditor for the accounts of the Secretary of State was appointed.

VIII. The Board of Control was formally abolished.

IX. The Secretary of State was given a quasi-corporate character.

X. All the military and naval forces of the Company were transferred to the Crown. Their separate local character was however retained.

All these changes effected by the Act of 1858 were formally announced in India by the Queen's Proclamation of November 1, 1858.

CHAPTER XXIV

From 1859 to 1919

1. The Indian Councils Act of 1861

I. A fifth ordinary member was added to the Governor-General's Executive Council. The Commander-in-Chief could be an extraordinary member.

II. Power was given to the Governor-General to appoint a President to preside over the Executive Council in his absence.

III. (i) For legislation, the Council was to be reinforced by additional members, not less than six and not more than twelve, nominated by the Governor-General and holding office for two years. Of these, not less than one-half were to be non-officials.

(ii) The functions of the new body were strictly limited to legislation. The Council was expressly forbidden to transact any business like asking questions, moving resolutions, etc.

(iii) The Governor-General's assent was required to every Act passed by the Council.

(iv) The legislative power of the Governor-General-in-Council was declared to extend to all persons and things. Certain Parliamentary enactments were, however, excepted.

IV. The Governor-General was given power to issue ordinances in emergencies. They could remain in force for not more than six months.

V. It had been the practice to administer newly-acquired territories like Saugor, the Narmada Territories, Assam, Pegu, the Punjab, etc., not under the laws and

regulations in force in the old provinces of Bengal and Bihar but under instructions issued by the Governor-General-in-Council. Such provinces were known as Non-Regulation Provinces. The Act of 1861 declared that all such rules and regulations were perfectly valid. Doubts were thus expressly removed.

VI. The power of legislation was restored to Bombay and Madras. (It had been taken away in 1833.)

(i) The Councils of those provinces were expanded for legislative purposes by the addition of the Advocate-General and other nominated members, not less than four and not more than eight, at least half of whom were to be non-officials, as in the case of the Governor-General's Council.

(ii) No line of demarcation was drawn between central and local subjects.

(iii) The previous sanction of the Governor-General was made necessary in certain cases.

(iv) The assent of the Governor-General was made necessary, in addition to that of the Governor, for every Act passed by the Provincial Legislatures.

(v) Their procedure and functions were to be strictly legislative.

VII. The Governor-General was directed to establish a Legislative Council for Bengal and was empowered to establish similar bodies for the North-West Province and the Punjab.

VIII. Power was also given to constitute new provinces, to appoint Lieutenant-Governors to administer them, and to alter the boundaries of existing provinces.

2. The Indian Councils Act of 1892

I. The size of the councils was enlarged. The Governor-General's Council was henceforth to contain

between 10 and 16 additional members. The Bombay and Madras Councils were to contain between 8 and 20, that of the province of Bengal not more than 20, and of the United Provinces 15 additional members.

II. The Governor-General-in-Council was empowered to make rules regulating the conditions under which the additional members were nominated. The principle of indirect election was introduced under these rules. Nominations of some of the non-official members were made on the recommendations of some recognized bodies and corporations.

III. Discussion of the annual financial statement as also the asking of questions but not supplementary questions on important matters of administration was authorized. But power was not given to move resolutions or to divide the Council.

IV. Local Legislatures were enabled, with the sanction of the Governor-General, to repeal or alter Acts of the Governor-General's Council affecting their provinces.

3. The Indian Councils Act of 1909

I. The size of the Legislative Councils was materially enlarged. The maximum number of additional members for the Governor-General's Council was raised from 16 to 60, that for the Bengal, Madras and Bombay Councils from 20 to 50, and for the United Provinces from 15 to 50.

II. Members were to be partly elected and partly nominated. The proportion of elected to nominated members was to be fixed by regulations made under the Act. Nominated members could be either officials or non-officials representing certain interests or possessing special qualifications. The elected members were returned by constituencies like Municipalities, Local

Boards, Universities, Chambers of Commerce, trade associations, landholders, tea planters, etc.

The regulations created non-official majorities in all Provincial Legislative Councils and maintained an official majority in the Supreme Legislative Council. Of course this did not mean a majority of elected members. As Mr. Montagu said: 'Their legislation bears the quasi-executive stamp of an official majority.'

III. The Legislatures' functions were enlarged. Power was given to move resolutions on the budget and on any other matter of general interest and to divide the Council upon them. The resolutions were in the form of recommendations. Power was also given to put supplementary questions. The member who originally put the question and was not satisfied with the answer could now put further questions to elicit information.

IV. The Governor-General, the Governors, and the Lieutenant-Governors were to appoint vice-presidents of their Councils to preside over the Legislatures in their absence.

V. The maximum number of the ordinary members of the Executive Councils for Madras and Bombay was raised from two to four, of whom half at least must have served for twelve years in the service of the Crown in India.

VI. The Governor-General could establish by Proclamation Executive Councils for Lieutenant-Governors, subject to disallowance by either House of Parliament. Bengal was, however, given an Executive Council immediately.

Lords Minto and Morley expressly disclaimed any desire or intention on their part to advance towards Parliamentary or responsible Government. Lord Morley

declared: 'In all that I have said, I shall not be taken to indicate for a moment that I dream that you can transplant British institutions wholesale into India. Even if it could be done, it would not be for the good of India. That is a fantastic and ludicrous dream.' This Act was intended simply to associate Indians in a larger measure with the administration.

By executive direction one Indian member was appointed to the Executive Council from the time of the Morley-Minto Reforms.

4. Changes Introduced by the Government of India Act of 1919

(*a*) *Changes affecting the Secretary of State and his Council*

I. The salary of the Secretary of State should be paid out of moneys provided by Parliament and the salaries of his Under-Secretaries and any other expenses in his department might be paid out of the revenues of India or out of moneys provided by Parliament.

II. The Council of India should consist of not less than eight and not more than twelve members. The term of office of a member should be five years. The salary of every member should be £1,200 per year. Persons domiciled in India at the time of their appointment should receive, in addition, an annual subsistence allowance of £600.

III. Provision was to be made for the appointment of a High Commissioner for India in the United Kingdom and for his pay, pensions, powers and duties. The officer was to transact the commercial and agency business of the Government of India which had been until then transacted by the Secretary of State himself. He was to

be appointed by the Government of India and controlled and paid by them.

IV. The Secretary of State might, by rules, regulate and restrict the exercise of the powers of superintendence, direction and control vested in the Secretary of State in order to give effect to the purposes of the Government of India Act of 1919.

(b) Changes affecting the Central Government

V. The number of members of the Governor-General's Executive Council should be such as His Majesty thought fit to appoint.

VI. Provision was to be made for the distinct classification of central and provincial subjects and for the devolution of authority in respect of provincial subjects to local Governments.

VII. The Indian Legislature was to consist of two bodies. The Council of State was to consist of not more than 60 members, of whom not more than 20 were to be officials and 33 were to be elected. The Legislative Assembly was to be formed of a total number of 140 members of which 100 were to be elected. Of the nominated members, 26 were to be officials. The right of electing its own president was conceded to the Assembly. It was to be exercised after the expiration of the first four years of the Reforms.

(c) Changes affecting Provincial Governments

VIII. The provincial subjects were divided into two halves, reserved and transferred.

IX. The transferred subjects were given for administration to Ministers selected by the Governor from the elected members of the Legislative Council.

X. The Ministers were made responsible to the

Legislatures for the administration of the transferred departments.

XI. The reserved subjects were to be administered by Executive Councillors who were not removable by the Legislatures.

XII. The Provincial Legislatures were greatly enlarged and the franchise for them was largely widened. They were given the power of voting the provincial budgets and controlling the transferred departments. The presidents of the Provincial Councils were to be elected by the Councils themselves at the expiration of the first four years of the Reforms.

(*d*) *General*

XIII. At the end of the ten years after the passing of the Act, a Commission were to be appointed to investigate into the working of the Reforms and to recommend steps for further advance in the direction of responsible government.

PART VII

THE SIMON COMMISSION REPORT, THE ROUND TABLE CONFERENCE, AND THE WHITE PAPER

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CHAPTER XXV

The Simon Commission Report

I. The general principles of the constitutional proposals.

(i) The new constitution should, as far as possible, contain within itself provision for its own development. Constitutional progress should be the outcome of practical experience. It should not result from the arbitrary demands of a fixed time-table. The length and number of stages in the journey need not be laid down. Those who have to work a temporary constitution tend inevitably to fix their minds upon the future instead of upon the present. (Thus the provision made in the Reforms Act of 1919 for the appointment of Royal Commissions at the end of ten years is recommended to be abolished.)

Care should be taken to see that the constitution will contain some elements of elasticity enabling adjustments to be made in accordance with the conditions actually obtaining in any given province at a particular time.

(ii) Constitutional changes in British India must have regard to the future development of India as a whole, including the Indian States. British India and Indian States are closely interwoven, geographically, politically, economically. Their problems and needs are, to a great extent, common. The new constitution should provide an open door, whereby, when it seems good to them, the ruling Princes may enter on just and equitable terms.

(iii) The ultimate constitution of India must be federal.

It is only in a federal constitution that units differing so widely as the British provinces and the Indian States can be brought together while retaining their internal autonomy.

Besides, India is gradually moving from autocracy to democracy. There is a very definite correspondence between the dimension of area and population and the kind of constitution that can be operated successfully. A democracy of nearly 250 million people is unprecedented. If self-government is to be a reality, it must be applied to political units of a suitable size. Even the United States is a federation of forty-eight States.

In a federal structure sufficient elasticity can be obtained for the union of elements of diverse internal constitution and of communities at very different stages of development and culture.

The present administrative areas have grown haphazard. They have not been deliberately formed with a view to their suitability as self-governing units within a federated whole. The present provincial boundaries should therefore be reviewed and, if possible, resettled. Burma should be separated from India. Each province should have a unitary Government responsible to a Legislature elected on an extended franchise.

The British Parliamentary model is not likely to be the proper model according to which responsible government at the centre for India can be evolved. It must be sought elsewhere. The Central Government must become an association of units, formed mainly for the purpose of performing functions on behalf of all federating units.

(iv) Adequate safeguards must be provided in any scheme of constitutional progress for (*a*) securing

efficient defence arrangements, (*b*) maintaining internal peace and order, and (*c*) guarding the interests of minorities.

(At present the constitution is unitary. British India and the Indian States are independent of each other.)

II. The Governors' Provinces.

(i) The existing provincial boundaries embrace areas and peoples of no natural affinity. Re-adjustment and re-distribution of areas is desirable. The case of the Oriyya-speaking people, as also of Sind, deserves urgent consideration. The Government of India should set up a Boundaries Commission with a neutral Chairman. This Commission should make detailed inquiries and work out schemes with a view to seeing how far agreement about re-arrangement of boundaries is possible.

(ii) The Executive.—There is a universal demand for constitutional changes in the existing Provincial Governments. A new constitutional framework must be constructed, into which all provinces can fit but which will leave enough latitude for adjustment to individual needs. The present rigid dyarchy either ranges Ministers against the reserved half or exposes them to the charge of being the subservient tools of the bureaucracy. The growth of real responsibility is thereby hindered.

The rigid division of subjects into reserved and transferred must therefore disappear. The Provincial Cabinet should be unitary. Joint responsibility for all its acts and policies must be accepted by every one of its members. The Ministry should be responsible to the Legislature over the whole provincial field.

The Ministers should be chosen by the Governor from the Legislature. However, he should have the power to

choose one or more Ministers who are not elected members of the Legislature. Usually, these would be experienced officials. They would not have any overriding authority and all decisions would be joint decisions of the Cabinet.

The Governor's overriding powers should continue as they are to-day. Ordinarily, the work of the Ministry could be disposed of without the Governor's being present.

A Secretary to the Cabinet should be appointed. He should be a Civil Servant and would be responsible for keeping the record. He should have direct access to the Governor, who would be thus kept fully informed of the course of business.

If there is a change of Ministry, the official Minister may continue in the new Ministry. That should be left to the circumstances of each case.

Law and order must be a provincial subject. The non-transfer of the police would concentrate on the administration of law and order the hostility of all parts of the Council. That department should not be therefore an exception to the general rule of provincial responsibility. In emergencies, the Governor's extraordinary power would be available.

(iii) The Legislature.—The life of the Provincial Legislatures should be extended to five years.

The size of the Legislatures should be raised to between 200 and 250 members. This is necessary in order to establish contact between a Member of Council and his constituency. An extended franchise would mean an extended electorate. The number of total seats must be therefore increased.

In the absence of any agreement between Hindus and Mohammedans, communal representation for the

Mohammedans of a province must continue. Sikhs also must continue to have separate representation.

Non-Brahmins in Madras need no longer have any reserved seats ; the Marathas in Bombay may continue to have them for some time.

There should be no separate electorates but reserved seats for the Depressed Classes. The proportion of such seats should be three-quarters of the proportion of the Depressed Class population to the total population of the electoral area of a province.

Europeans and Anglo-Indians should retain their separate electorates. Seats might be reserved for Indian Christians.

The present weightage in favour of the Mohammedans in the different provinces should be maintained.

The official bloc in the Councils should cease to exist.

Special protection granted to landholders might now be safely withdrawn.

No special consideration need be shown to women.

The Governor's power of nomination should be strictly limited. It might have to be used to secure proper representation for labour interests.

Indian commerce and industry and the universities should continue to be separately represented as at present.

The Provincial Legislature should have power of amending its own constitution after ten years. It might carry a ' Constitutional Resolution ' providing for changes in the number and distribution of constituencies and seats or in the franchise or in the methods of representation of particular communities. Two-thirds of the votes of the Legislature and (as part of this majority) two-thirds of the members of any community likely to be affected by

the new proposal should be made obligatory for the passing of 'Constitutional Resolutions'.

Ordinary legislative powers of the Council should remain as they are at present. The Governor's extraordinary and overriding powers should be maintained.

The distinction between voted and non-voted heads should continue.

(iv) Franchise.—The present franchise is too limited for building up representative government. The vote is an instrument of political education. However, immediate adult suffrage is impossible. A new Franchise Committee should be set up to frame schemes which would enfranchise about ten per cent of the total population. This would more than treble the existing number of voters and would make an electorate of about twenty per cent of the adult population. Female franchise should be extended to wives, and widows of twenty-five years of age, if their husbands have, or had, property qualification to vote.

(v) No recommendation is made with regard to the establishment of second chambers in the provinces.

III. The North-West Frontier Province.

The responsibility for the administration of this province cannot be separated from the responsibility for the peace of and control over the tribal area. Integrity of India's boundaries must be secured. However, geographical considerations should not prevent the political advance of this province.

It should be given a Legislative Council of about forty members with powers of legislation, interpellation, discussing resolutions, imposing certain taxes and voting some portion of the supplies. Its elected and nominated elements should be about equal. However, executive

responsibility should remain with the Chief Commissioner. This province cannot have the same degree of autonomy which other provinces can have.

It should be represented in the Central Legislature by four members, one being a Hindu.

IV. The centre.

(i) The Central Legislature.—In place of the present Legislative Assembly there should be constituted a 'Federal Assembly'. Its members should not be directly elected by constituencies of voters but by Provincial Legislative Councils by the method of proportional representation. The persons so elected might be members of the Provincial Legislature or men and women outside it who are on the electoral roll of the province.

The Federal Assembly would have a fixed life of five years. Detailed adjustments could be worked out in case there is premature dissolution of Provincial Councils.

Indirect election is proposed because otherwise constituencies become unwieldy and of extraordinary size. Where communications are extremely difficult and population illiterate, it is better to adopt the method of 'election by the elected'. Besides, for a federal constitution, representation of the provinces as such at the centre is desirable. The Provincial Fund, fed by certain indirect taxes, centrally collected, could be better managed if in the Central Legislature provinces as such were represented.

The method of proportional representation would adequately protect minorities and would get rid of communal representation in the Assembly.

The number of members of the Federal Assembly should be between 250 and 280, that is, approximately one member per million inhabitants. The seats should be distributed among the provinces on a population basis. The members of the Governor General's Executive

Council should be members ex officio. In addition, the Governor-General should have power to nominate not more than twelve officials.

Vacancies caused by any reason should be filled, in the case of the representatives of the provinces by the Governor nominating a person who would, in his opinion, be suitable.

If the Federal Assembly is thus formed on the senatorial principle, theoretically there is no need for a second chamber. However, during a difficult transitional period the Council of State should be allowed to continue. It can contain men of distinction, experience and social status and be a steadying influence. Its present number and existing powers should be maintained. Each Governor's Province should be represented in the Council by three members elected by the Provincial Legislature by the method of proportional representation. Qualifications for membership should be high. Nominated officials should not be less then twenty. The life of the Council should be extended to seven years.

In addition to the usual powers of legislation and taxation, the Federal Assembly will have the power of raising additional funds for the Provincial Governments. An inter-provincial Financial Council should be set up, consisting of all provincial Ministers of Finance. This body should take the initiative in proposing new taxes which would feed the Provincial Fund. The Assembly then should pass or reject them.

(ii) The Governor-General-in-Council.—Dyarchy at the centre is impossible. Unity in the central executive must be preserved at all costs. The Governor-General must continue to be the actual and active head of the Government.

Hereafter, the Governor-General should have the

responsibility of selecting and appointing members of his Cabinet instead of their being appointed under the Royal Sign Manual as at present. The Commander-in-Chief should not be a member of the Executive Council or of the Legislature. There should be a separate member as leader of the House.

The practice should be introduced of selecting some members of the Executive Council from among the elected representatives sitting in the Federal Assembly or the Council of State.

But the Executive Council cannot yet be made responsible to the Legislature.

(iii) Influence of the Legislature on the executive.—The British model is not the only form of responsible government. Other methods could be also devised to make the executive effectively responsible to the will of the Legislature. Federalism is the form most suitable for India. The British system is not an easy one to imitate. India must develop on lines best suited to her conditions. The influence of the Federal Assembly on the executive is bound to be great.

(iv) Relations between the centre and the provinces.—

The superintendence, direction and control of the Governor-General-in-Council over Provincial Governments should be exercisable only in the following cases (*a*) safeguarding central subjects; (*b*) matters affecting other parts of India; (*c*) supply of information; (*d*) raising of loans; (*e*) all-India Services; (*f*) safeguarding Imperial interests; (*g*) questions arising with other parts of the Empire; and (*h*) implementing international obligations.

The present distribution between central and provincial subjects should be continued but the Criminal

Investigation Department should be brought under greater central control.

V. The defence of India.

For a very long time to come it will be impossible for the Indian army to dispense with a very considerable British element, officers and troops. Such an army cannot be transferred to Ministers responsible to the Legislature. British troops are important—because they are neutrals—in maintaining internal security. There are also treaty obligations to Indian Princes.

The army expenditure is at present heavy—fifty-five crores of rupees. The object of the Indian army is the defence of the Indian frontiers from external aggression and maintenance of internal order. The size and the cost of the present army are considered to be quite necessary for fulfilling these duties efficiently.

The defence of the frontiers of India is not a matter of purely Indian interest. The whole Empire would be involved. The North-West Frontier is an international frontier of first-rate importance from the point of view of the whole Empire. On India's frontier alone is the Empire open to any serious threat of attack by land. Its defence should not be regarded as the function of the Indian Government in relation with the Indian Legislature, but rather as the function of the Imperial Government which may be represented by the Viceroy acting in concert with the Commander-in-Chief.

The Imperial authorities would undertake the obligation of Indian defence in return for continued facilities for recruitment, areas, transport, etc. There would have to be also an adjustment in the burden of finance, an annual total sum being provided by India.

Expenditure consequent on tribal activities which necessitate war operations should be borne entirely by

India ; in the case of organized attacks by foreign powers, the financial burden may be spread more widely.

For internal security Imperial troops could be lent on the express authority of the Governor of a province.

The army budget would not be votable by the Central Legislature. Its expenditure would be authorized by a certificate from the Governor-General. However a Committee on army affairs might be formed, on which the Central Legislature and Indian States would have representatives. The Committee would discuss and keep themselves in touch with military questions.

The possibility of the Government of India organizing, training and equipping certain military and naval forces of their own, not containing any British element and paid for by the Indian Government, might be considered. It would considerably help in the process of Indianization.

VI. The future of Burma.

The interests of India and Burma are divergent. The two countries should be immediately separated from each other. Inquiries should then be made regarding the future constitution of Burma.

VII. Future relations with the Indian States.

There is really only one India. It is one geographical whole. All-India problems, whether of war or peace, are really common to the whole. The Indian States cannot be ignored in framing a future constitution for the country. They must be allowed to enter into closer association with the Central Government. Federation is best suited for the purpose, though difficulties in its formation are not few.

A list should be drawn up of matters of common concern to all, such as tariffs, exchange, currency, banking, commerce, opium, salt, railways, posts and telegraphs,

defence, etc. A standing consultative body should be created (to be known as the Council for Greater India) consisting of representatives from British India and Indian States to discuss and record the results of deliberation on matters of common concern.

The desire to develop closer association between Indian States and British India should be recited in the preamble of the new Act. But there should be no artificial hastening of the process.

VIII. Indian finance ; Mr. Layton's report.

The masses of the Indian people are extremely poor. Expenditure on the primary functions of Government such as defence and maintenance of law and order is high. Expenditure on social services like education, health, etc. is far behind western standards and in many directions almost non-existent. New sources of revenue must be found if national expenditure is to be increased.

The existing scheme of financial allocation between the Central and Provincial Governments is defective because (i) although the provinces have rapidly expanding needs, the sources of provincial revenue are almost stationary while the revenue of the centre is capable of expansion ; (ii) it has treated the provinces very unequally ; (iii) it has given practically no power to the provinces to tax industrial activities.

An analysis of the present central budget shows that a surplus is likely to emerge gradually as a result of the growth of revenue, mainly due to an increase in customs. The size of the surplus will be largely affected by the extent of the reduction that can be made in the expenditure on defence which is today a very high proportion of the central budget.

Any prospective surplus will, however, go compara-

tively a little way towards meeting the needs of the provinces. The following new sources are therefore suggested :

(i) Increased yield from income-tax by lowering exemption limits, steepening graduation, taxation of income from investments in foreign countries, assessment of agricultural incomes, etc. The additional yield would be about four crores.

(ii) National excises on cigarettes, matches, etc. This might be estimated to yield about seven to eight crores in the next ten years.

(iii) Terminal taxes. These might yield about ten crores.

A complete scheme of allocation should provide for the distribution of the centrally-collected revenue among the provinces, in part according to origin and in part on a population basis. The following particulars are given:

(*a*) The duty on imported liquor should be reduced to the standard luxury rate of thirty per cent and the provinces should be given the right of imposing further duties in the form of excises on such liquors in accordance with their excise policy.

(*b*) The revenue from commercial stamps should be transferred to the centre.

(*c*) One-half of the proceeds of the income-tax paid by residents of a province should be assigned to the province concerned. Super-tax should remain entirely central. This suggestion would give the provinces about four and a half crores per year.

(*d*) In order to adjust taxation between urban and rural classes, Provincial Governments should have the option of levying a surcharge on the income-tax collected on the incomes of residents in the province. It should

be limited to one-quarter of the total tax. This might yield three crores in ten years.

(*e*) Agricultural incomes should be taxed and the proceeds should be assigned to the province of origin.

(*f*) Provinces should be empowered to levy terminal taxes.

(*g*) There should be constituted a Provincial Fund, fed by specially designated taxes including, (1) excise on cigarettes, (2) excise on matches, and (3) duty on salt when the central budget situation permits. The resources of the fund should be automatically distributed to the provinces on a *per capita* basis.

If all the preceding proposals were carried out, it would add nearly forty crores to the revenues of the provinces by 1940, of which twelve would have been transferred from the central budget.

The proposal to assist the provinces by means of a Provincial Fund is essentially a federal idea. The Finance Ministers of the provinces should form an Inter-Provincial Council that would meet once a year to consider proposals in regard to the fund. The Assembly would be the proper body to vote taxes for the fund and here the Governor-General should have no right of certification.

An Advisory Loan Council to co-ordinate the loans of provinces and to draw up standard regulations regarding loans might be set up.

The claim is made that representatives of the Indian States should be consulted on financial policy. Some sort of machinery for consultation between British India and the States would be required.

As a result of the above changes there would be four groups of taxes in India: (i) revenue raised and spent by the Central Government—customs, income-tax, commercial stamps, railway profits and profits from other

central services. In emergencies the Central Government must have the right to make surcharges on any or all taxes in groups (iii) and (iv) below ; (ii) revenues raised and spent by the provinces ; (iii) taxes collected centrally but distributed to provinces according to origin (this would include portions of the income-tax allocated to the provinces and the tax on agricultural incomes ; (iv) all-India taxes collected centrally but distributed among the provinces according to population.

IX. The future of the Services.

The security Services, that is the Indian Civil Service and the Indian Police Service should continue to be recruited by the Secretary of State who should have power to require Provincial Governments to employ these services in such numbers and in such appointments as he thinks necessary.

The rate of Indianization recommended by the Lee Commission should be maintained.

The rights, safeguards and privileges of existing members of all Services should be strictly assured to them.

Retirement on proportionate pension should remain open without limit of time to any officer.

The present conditions of recruitment for all-India Services should be continued. Increased pensions should be given to those who have risen to be Governors.

Public Service Commissions should be established in the provinces to recruit Provincial Services. Their members should be entirely free from political influences.

X. The High Court.

Administration of High Courts should be centralized and expenses should be borne by central funds.

XI. Relations between the Home and Indian Governments.

In the Governors' Provinces it should no longer be

open to the Secretary of State to issue orders on matters which are of no concern outside the province itself and which are transferred to the Ministry.

In the Central Government the principle of responsibility is not introduced. Hence, the Governor-General and the Governor-General-in-Council must remain subject to the orders of the Secretary of State as at present.

Any extension of the principle of the 'fiscal convention' should only be made with the approval by Resolution of both Houses of Parliament.

The India Council must be retained but it need not be as large as it is to-day. The interval between any member leaving India and his appointment to the Council should not be more than one year.

The concurrence of a majority of its members must continue to be necessary in questions about the Services. Its control over non-votable expenditure from the revenues of India should be maintained.

In other respects the Council would be an essentially advisory body. The Secretary of State would decide at his discretion the matters about which he would consult it.

The position of the High Commissioner is not affected by any of the new proposals.

CHAPTER XXVI

The Round Table Conference and the Premier's Declaration

THE Simon Commission had been boycotted by all the leading political parties in India who considered it a humiliation that not a single Indian was selected to be a member of the Commission. The Labour Ministry, which in the meantime had come into office, therefore made an important announcement after the publication of the Simon Report. It was stated by them that they had decided to convene a Round Table Conference in London in order to give opportunity to Indian political leaders to participate actively in the discussions about the future constitutional form of the Government of India. The Indian National Congress, however, declined to co-operate with the Conference and boycotted it because the status of a Dominion was not assured to India in the Ministerial announcements.

The Conference was to be a preliminary to final legislative action by the British Parliament. It was composed of representatives of the three important political parties in Britain, namely Conservative, Liberal and Labour and of prominent Indian politicians and Princes who were nominated by the Viceroy to represent different Indian interests.

His Majesty the King-Emperor opened the first plenary session in the second week of November 1930 and the Prime Minister, Mr. Ramsay Macdonald, was later on voted to the chair. After formal speeches of a general character were delivered by different delegates, the

Conference resolved itself into several sub-committees and each committee tried to thrash out a specific problem. There were thus sub-committees for discussing (i) the federal structure of the future Indian Government; (ii) the scheme of provincial autonomy; (iii) the problem of the minorities; (iv) the separation of Burma; (v) reforms for the North-West Frontier Province; (vi) franchise; (vii) defence; (viii) the Services; and (ix) the separation of Sind. The reports of these sub-committees were drafted after extensive deliberations and were then presented to the Conference as a whole which noted them one after the other.

In the last plenary session, after reviewing the work of the Conference, which had deliberated for nearly ten weeks, the Prime Minister read out a declaration which his colleagues in the Ministry had authorized him to make on behalf of the British Government. This declaration embodied the considered view of the Labour leaders about the changes that were proposed to be introduced in the Government of India. It is thus an important document and its main contents are therefore summarized below.

(i) The responsibility for the Government of India should be placed upon Legislatures, central and provincial, with such provisions as might be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances; and also with such guarantees as might be required by the minorities to protect their political liberties and rights.

In such statutory safeguards as might be made for meeting the needs of the transitional period, it would be a primary concern of His Majesty's Government to see that the reserved powers were so framed and exercised

as not to prejudice the advance of India through the new constitution to full responsibility for her own government.

(ii) The Central Government should be a federation of all India, embracing both the Indian States and British India in a bi-cameral Legislature. This had been unanimously agreed to by all parties in the Conference.

(iii) With a Legislature constituted on a federal basis, His Majesty's Government would be prepared to recognize the principle of responsibility of the executive to the Legislature in the Central Government.

But the subjects of defence and external affairs would be reserved to the Governor-General who would have also emergency powers to maintain tranquillity and to protect minorities.

The transfer of financial responsibility would be subject to such conditions as would insure the fulfilment of the obligations incurred under the authority of the Secretary of State and the maintenance unimpaired of the financial stability and credit of India. A reserve bank might be useful in this direction.

Subject to these provisions, the Indian Government would have full financial responsibility for methods of raising revenue and for control of expenditure on non-reserved services.

(iv) The Governors' Provinces would be constituted on the basis of full responsibility. Their Ministries would be taken from the Legislature and would be jointly responsible to it. The range of provincial subjects would be so defined as to give them the greatest possible measure of self-government.

There would be reserved to the Governor that minimum of special powers which is required in order to secure

the preservation of tranquillity and to guarantee the rights of the public services and the minorities.

Differences of religion, sect, caste or race would not in themselves constitute civil disabilities.

(v) At the instance of the British commercial community, the principle was generally agreed to that there should be no discrimination between the rights of the British mercantile community, firms and companies trading in India and the rights of Indian-born subjects of His Majesty. An appropriate convention to this effect on the basis of reciprocity should be entered into.

The existing rights of the European community in India with regard to criminal trials should be maintained.

This declaration made by the Prime Minister on behalf of the Labour Government was broadly and in general terms assented to by the leaders of the Liberal and Conservative parties.

After the conclusion of the Conference, a vigorous effort was made in India to bring about reconciliation and truce between the Government on the one hand and the Indian National Congress on the other. Mahatma Gandhi, the Indian leader, had been carrying on the Civil Disobedience movement since March 1930, and a large number of prominent Indian men and women in all parts of the country had courted arrest and been sentenced to serve various terms of imprisonment. With a view to create an atmosphere of goodwill and facilitate peace negotiations, all the imprisoned leaders were released. Lord Irwin, the Viceroy, held prolonged conversations with Mahatma Gandhi and after elaborate discussions, a settlement satisfactory to both parties was arrived at. The terms of the agreement were officially published by

the Government of India and the Civil Disobedience movement was called off.

Later on, in its sessions held at Karachi at the end of March 1931, the National Congress lifted the boycott on the Round Table Conference. Mahatma Gandhi was elected as the sole representative of the Congress to attend the Second Session of the Round Table Conference and accordingly he proceeded to London in the latter half of the year 1931. Leaders of other political parties and communities also assembled in England for the same purpose.

Just about this time the Labour Ministry resigned and Parliament was dissolved. After the elections, the National Government was formed containing a predominatingly large element of Conservative politicians of Britain. A new Secretary of State for India was appointed.

The Second Round Table Conference held prolonged deliberations but no definite and final conclusions of a practical nature were reached. The different Indian communities could not arrive at an agreed solution of their conflicting claims. The minorities demanded special protection. When the Conference dispersed in London it was decided to continue its work in India by means of a Consultative Committee formed out of it and meeting under the presidency of the Viceroy.

This Conference however appointed small Sub-Committees to investigate into and report on important problems arising out of the proposed Reforms, as, for example, the problems of Federal Structure, Federal Finance, Franchise, etc. These Committees came out to India and carried on extensive inquiries. Their reports were then submitted to the Prime Minister and published.

Immediately after the return of Mahatma Gandhi to

India in the beginning of 1932 after the Second Round Table Conference was finished, there was a revival of the Civil Disobedience Movement due to a combination of circumstances. As a result Mahatma Gandhi and other leaders of the Congress were sent to jail.

Soon after these events, prominent members of the Consultative Committee, meetings of which were called by the Viceroy but which were quite inconclusive, informed the Viceroy that they could not come to a mutual agreement about communal claims; and that they were therefore prepared to leave the settlement of the question to the arbitration of the Prime Minister whose decision would be accepted as final.

The Prime Minister accordingly gave his Communal Award about the middle of 1932. A few days later Mahatma Gandhi announced his intention of fasting unto death as a protest against those proposals in the Award which referred to the Depressed Classes and which in his opinion were bound to disrupt Hindu society. There was naturally a great stir. Hurried conversations and negotiations were held behind prison bars and ultimately an agreed solution was arrived at which was embodied in what has since been known as the Poona Pact. The Prime Minister agreed to modify his Award in the light of the modifications suggested in the Poona Pact and Mahatma Gandhi broke his fast.

Late in 1932 the Third Round Table Conference was convened in London. It considered the Reports of the various Sub-Committees appointed by the Second Round Table Conference and formulated its own recommendations. His Majesty's Government agreed to give full consideration to the opinions expressed in the Conference and to present to Parliament, at an early date,

their own definite proposals for constitutional reform in India. The Third Round Table Conference dispersed by the end of 1932.

At last in the third week of March 1933, the detailed proposals made by His Majesty's Government for an Indian Constitution were published in a White Paper and some days later both Houses of Parliament were invited to set up a Joint Select Committee to consider these proposals in consultation with Indian representatives. Both the Houses have accepted the suggestion and the Joint Select Committee has been already set up.

The Committee is expected to record evidence and examine witnesses. It will make a report of its own conclusions which will be laid before Parliament. It will then be the duty of His Majesty's Government to introduce a Bill embodying their own final plans. A few Indian representatives have already left for England to take part in the work of the Joint Select Committee.

A short summary of the important proposals contained in the White Paper is given in the following chapter.

CHAPTER XXVII

A Brief Summary of the Important Proposals made in the White Paper of March 1933

INTRODUCTION

THE FEDERATION OF INDIA

THE proposals made in this Paper are intended to make clear the principles which His Majesty's Government have followed with regard to political reform in India.

The existing Government of India Act will be repealed *in toto* and will be replaced by another Act to be known as the Constitution Act.

It is proposed to set up a Federal Legislature, consisting of elected representatives of British India and of representatives of Indian States to be appointed by their Rulers. It is also proposed to set up a Federal Executive, consisting of the Governor-General representing the Crown, aided and advised by a Council of Ministers, who will be responsible, subject to certain qualifications, to the Legislature.

The office of Governor-General will be constituted by Letters Patent and that document will set out the powers which he will exercise as the King's representative. It is intended that the Viceroy shall, in future, be recognized as holding a separate office. He will exercise the powers of the Crown in relation to the States outside the Federal sphere.

The first step requisite in the transfer from a unitary to a federal polity is to create provinces with an autonomy of their own and to assign to them a defined and exclusive

share of the activities of Government. It is proposed to do so.

Provincial autonomy may have to precede the complete establishment of the Federation at least by a short period and provision will be made accordingly.

The transfer of responsibility at the centre will not be complete. There will be certain Reserved departments in which the responsibility of the Governor-General will be to Parliament.

The Federal Legislature will be bi-cameral. The British Indian seats in the Upper Chamber will be filled by indirect election by the Provincial Legislatures. The franchise of the Lower Chamber will, for practical purposes, be the existing franchise for the present Provincial Legislatures.

The Reserved Departments cannot be administered in complete isolation. A prudent Governor-General will keep his Counsellors and Ministers in the closest contact. Joint deliberation among them all will be specially recommended.

In departments not Reserved, Ministers will be responsible to the Legislature. However, a 'special responsibility' would be considered to devolve upon the Governor-General for certain general purposes and in fulfilment of it he will have power to act as he will, notwithstanding his Ministers' advice.

The proposals relating to responsibility for Finance of the Federation are based on the assumption that before the first Federal Ministry comes into being, a Reserve Bank, free from political influence will have to be set up by Indian legislation and be already successfully operating. It would be entrusted with the management of currency and exchange.

Apart from Reserved departments and 'special

responsibilities' the Governor-General will have certain specified powers called 'discretionary', e.g. summoning legislatures, assenting to bills, etc.

For the proper discharge of his duties the Governor-General will have power to take action notwithstanding an adverse vote of the Legislature. Such measures will be clearly known as the 'Governor-General's Acts' and thus the Ministers' or the Legislative Councillors' position would not be compromised.

The budget will be framed by the Finance Minister in consultation with his colleagues and the Governor-General. Appropriations for the Reserved departments will be taken by the latter on his own responsibility. If he feels also that the Ministers' proposals for appropriations are insufficient to enable him to fulfil his 'Special responsibilities', he will be entitled to append to the budget statement additional proposals for appropriation under any head. These will be distinguished as such and whether they relate to non-votable or votable heads of expenditure, the legislature will not be invited to vote upon them.

After the legislature has voted upon those proposals for appropriation which are submitted to its vote the Governor-General will be called upon to authenticate them by his signature. In doing so he will be entitled to include the additional sums required both in the Reserved and the non-Reserved side.

The Governor-General will have power of ordinance-making both in the Reserved and the non-Reserved heads.

When a complete breakdown of the constitutional machinery has occurred, the Governor-General or the Governor will be given plenary authority to assume all powers that he deems necessary for the purpose of carrying on the King's Government.

Thus, in short, the Governor-General will have two kinds of responsibilities—an exclusive responsibility for Reserved heads and a 'special responsibility' for certain defined purposes outside the range of the Reserved departments and he will have special powers to fulfil them notwithstanding the opinion of Ministers or the vote of the Legislature. Subject to this limitation Ministers will be responsible to the Legislature.

THE GOVERNORS' PROVINCES

The Provinces will become autonomous units being administered by a Governor representing the King, aided and advised by a Council of Ministers responsible to the Legislature of the Province. The Governor will be guided by the advice of his Ministers unless so to be guided would be, in his judgment, inconsistent with his 'Special responsibilities'. For fulfilling the latter he will be entitled to act as he deems requisite, notwithstanding the advice of his Ministers.

There will be no 'Reserved departments' in the Provinces. 'Special responsibilities' of the Governor will be almost identical with those of the Governor-General. Certain additions will be necessary.

Governors will have the power of issuing ordinances.

The Provincial Legislatures will be enlarged and wholly elected. In Bengal, U. P., and Bihar they will be bi-cameral. The franchise will be lowered. In all the Provinces together the electorate would be in the neighbourhood of 14 per cent. of the total population or some 27 per cent of the adult population.

THE FEDERATION AND THE UNITS

There will be a statutory demarcation between the legislative competence of the Federal and Provincial

Legislatures respectively. There will be lists of subjects exclusively Federal, exclusively Provincial and Concurrent.

Certain matters will be placed outside the competence altogether of both Federal and Provincial Legislatures, e.g., the Royal Family, the Army Act, the Air Force Act, the Naval Discipline Act and the Constitutional Act itself.

In certain cases, previous sanction of the Governor-General or the Governor to the introduction of a Legislative measure will be made necessary.

The following Statement gives a general and brief idea of the division of powers and resources between the Federation and the Provinces.

Sources of Revenue	Powers of Legislation	Allocation of Revenue
Import Duties; Railways and Federal Commercial Undertakings; Profits on Coinage and the Reserve Bank	Exclusively Federal	Exclusively Federal
Export Duties, Salt, Tobacco Excise, other Excise Duties except those on Liquors, Drugs and Narcotics	Do.	Federal (with power to assign a share or whole to Units)
Terminal Taxes on Goods and Passengers, certain Stamp Duties	Do.	Provincial, with power to the Federation to impose a Federal Surcharge
Land Revenue, Excise, Stamps, Forests and the Miscellaneous Sources at present enjoyed by the Provinces	Exclusively Provincial	Exclusively Provincial

Sources of taxation not specified in any schedule will be ordinarily Provincial. Half of the Jute duty must be assigned to the producing units. The Super-tax on the Profits of Companies will be entirely Federal. All legislation regarding other taxes on income except agricultural income will be Federal. Receipts from such taxation will be divided between the Federation and the Governors' Provinces, a certain percentage being assigned to the former—the percentage being not less than 25 and more than 50.

The Federal Legislature will be empowered to impose surcharges on taxes on income. Their proceeds will exclusively belong to them. The Provincial Legislatures will be empowered to impose surcharges on taxes on the personal income of residents in the Province, the net proceeds going to the Province. Collection would be carried out by the Federal agency and the surcharge would not exceed 12½ per cent of the rates of taxes.

In the early years the Federation will be allowed to retain for itself a block amount out of the proceeds of the Income-tax distributable to the Provinces.

Certain Provinces would be given subventions from the Federal revenues.

The 'Contributions' taken by the Crown from some of the Indian States at present should be transferred, as long as they are received, to the Federation. However it is intended to abolish them gradually.

THE JUDICATURE

A Federal Court is essentially needed to interpret authoritatively the Federal Constitution itself. It is proposed that this Court should have both Original and Appellate jurisdiction.

The Federal Legislature will also be empowered to set up a Supreme Court of Appeal if it thinks necessary to do so.

THE SECRETARY OF STATE'S ADVISERS

The existing India Council is no longer necessary or appropriate though a small number of advisers will be necessary to the Secretary of State. These will continue to be appointed.

THE PUBLIC SERVICES

Recruitment to the Indian Forest Service and the Indian Service of Engineers will cease after the new Constitution comes into being.

All persons appointed by the Secretary of State in Council, already in service or appointed after the new constitution commences working, will continue to enjoy all rights that they have at present.

The I. C. S., the Indian Police Service and the Ecclesiastical Service will continue to be recruited by the Secretary of State. At the end of five years after the new Act comes into operation a Statutory inquiry will be held into the question of future recruitment to these Services.

THE STATUTORY RAILWAY BOARD

The actual control of the administration of State railways should be placed by the Constitution Act in the hands of a statutory body so composed and with such powers that it could perform its duties without being subject to political interference.

A declaration of Fundamental Rights would not be incorporated in the Act but it may be included in the

Royal Pronouncement with which the New Constitution may be inaugurated.

The Proposals

THE FEDERATION

The Federation of India will be a union between the Governors' Provinces and those Indian States whose Rulers signify their desire to accede to the Federation by a formal Instrument of Accession. By this Instrument the Ruler will transfer to the Crown, for the purposes of the Federation, his powers and jurisdiction in respect of those matters which he is willing to recognize as Federal matters.

The Federation will be brought into existence by the issue of a Proclamation by His Majesty after the latter has received intimation that the Rulers of States representing not less than half the aggregate population of the Indian States and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber have signified their desire to accede to the Federation and after Parliament has prayed for the issue of the Proclamation.

THE FEDERAL EXECUTIVE

The Executive authority will be exercisable, on the King's behalf, by a Governor-General to whom an Instrument of Instructions will be issued. His salary, allowances and other personal expenses will not be votable by the Federal Legislature.

The Governor-General will himself direct and control the administration of the departments of Defence, External Affairs and Ecclesiastical Affairs. In the administration of these Reserved departments he will be assisted by not

more than three Counsellors whose salaries and conditions of service will be prescribed by Order in Council.

For the administration of the remaining departments there will be a Council of Ministers who must be members of the Federal Legislature. The Governor-General will be enjoined to select such persons to be ministers as will be able collectively to command the confidence of the Legislature. The Governor-General may preside at meetings of the Council of Ministers and frame rules for the transaction of business.

The Governor-General will be empowered to appoint a Financial Adviser to assist him in the discharge of his 'special responsibility' for financial matters. His salary will not be subject to the vote of the Legislature to whom he will not be responsible.

Apart from his exclusive responsibility for the Reserved departments, the Governor-General will be declared to have a 'special responsibility' in respect of (*a*) peace or tranquillity of India, (*b*) financial stability and credit of the Federation, (*c*) interests of minorities, (*d*) interests of the Public Services, (*e*) prevention of commercial discrimination, (*f*) protection of the rights of any Indian State, (*g*) matters affecting the administration of Reserved departments.

In any case in which the Governor-General feels that a 'Special responsibility' is imposed on him, he will have full discretion to act as he thinks fit, subject to the direction of the Secretary of State, notwithstanding any advice tendered by the Council of Ministers.

The Federal Legislature

The Federal Legislature will consist of the King, represented by the Governor-General and two Chambers, the Council of State and the House of Assembly. The

former will have a tenure of seven years and the latter of five years.

The Council of State will consist, apart from the Governor-General's Counsellors, of not more than 260 members of whom 150 will be elected from British India and not more than 100 will be appointed by the Rulers of States and not more than ten non-officials nominated by the Governor-General.

The Assembly will consist, apart from the Governor-General's Counsellors, of not more than 375 members of whom 250 will be elected from British India and not more than 125 appointed by Rulers of Indian States.

Money bills must be initiated in the Assembly. No bill can become law until it has been agreed to by both the Chambers. In case of disagreement between them the Governor-General may summon a joint session in which the view of the majority will prevail.

In order to enable the Governor-General to fulfil his responsibilities for the Reserved departments and also his 'Special responsibilities' he will be empowered to declare by message a bill to be essential and if it is not passed by the two Chambers as required he will be empowered to enact it as a 'Governor-General's Act'. Such an Act will be fully valid and will clearly bear the Governor-General's own responsibility.

PROCEDURE WITH REGARD TO FINANCIAL PROPOSALS

The budget will be presented to both Chambers and the votable and non-votable items will be clearly distinguished. Those additional proposals which pertain to 'Special responsibilities' of the Governor-General will be stated separately.

Proposals for the appropriation of revenues, if they refer to the following heads of expenditure will not be submitted to the vote of the Legislature but will be open for discussion; (i) Interest, Sinking Fund Charges and Loans Expenditure; (ii) the salary and allowances of the Governor-General, of Ministers, Governor-General's Counsellors, Financial Adviser, Chief Commissioners, Governor-General's personal and secretariat staff and the staff of the Financial Adviser; (iii) expenditure required for the Reserved departments or for the discharge of duties imposed on the Secretary of State; (iv) salaries and pensions of Judges of the Federal and Supreme Courts; (v) expenditure on Excluded Areas and Baluchistan; (vi) salaries and pensions of certain Services.

At the conclusion of the budget proceedings the Governor-General will authenticate by his signature all appropriations which will then be laid before both Chambers but will not be open for discussion. In the appropriations so authenticated the Governor-General will be empowered to include any additional sums which he regards as necessary for the discharge of any of his 'Special responsibilities'.

EMERGENCY LEGISLATION

The Governor-General will have the power to issue ordinances for discharging his responsibilities in the Reserved departments, for fulfilling his 'Special responsibilities' and also, in consultation with the ministers, for emergencies in the administration of non-Reserved Departments.

If a breakdown of the Constitution is threatened, the Governor-General will be empowered to assume to himself all such powers vested by law in any Federal authority

as appear to him to be necessary for effective government.

The Governors' Provinces

The Provincial Executive

In a Governor's Province the executive authority will be exercisable on the King's behalf by a Governor to whom will be issued an Instrument of Instructions. His salary and allowances will not be subject to the vote of the Legislature.

For the purpose of aiding and advising the Governor there will be a Council of Ministers who must be members of the Legislature. The Governor will be enjoined to select such persons to be Ministers who will collectively be able to command the confidence of the Legislature.

The Governor may preside at meetings of his Council of ministers and frame rules for the transaction of business.

The Governor will be declared to have a 'special responsibility' in respect of (*a*) peace and tranquillity in the province; (*b*&*c*) interests of minorities and services; (*d*) commercial discrimination; (*e*) rights of any Indian State; (*f*) excluded areas; (*g*) execution of orders lawfully issued by the Governor-General; (*h*) Tribal and Trans-border areas; (*i*) Sukkur Barrage.

In any case in which the Governor feels that a 'special responsibility' is imposed on him, he will have full discretion to act as he thinks fit, subject to the direction of the Secretary of State, notwithstanding any advice tendered by his Ministers.

The Provincial Legislature

For the provinces of Bengal, U. P. and Bihar there will be a Legislature consisting of the King, represented by

the Governor and of two Chambers to be known as the Legislative Council and the Legislative Assembly. For the remaining Governors' Provinces the Legislature is to consist of the King, represented by the Governor and of one Chamber to be known as the Legislative Assembly. The Council will have a tenure of seven and the Assembly of five years.

In order to enable the Governor to fulfill his 'special responsibilities' he will be empowered to declare by message a Bill to be essential and if it is not passed by the legislature as required he will be empowered to enact it as a 'Governor's Act'. Such an Act will be fully valid and will clearly bear the Governor's own responsibility.

PROCEDURE WITH REGARD TO FINANCIAL PROPOSALS

The budget will be presented to the Legislature and votable and non-votable items will be clearly distinguished. Those additional proposals which pertain to the 'special responsibilities' of the Governor will be stated separately.

Proposals for appropriation of revenues, if they refer to the following heads of expenditure will not be submitted to the vote of the Legislature but will be open for discussion; (i) Interest, Sinking Fund Charges and Loans expenditure; (ii) the salary and allowances of Governors, Ministers and of the Governor's personal and Secretariat staff; (iii) salaries and pensions of High Court and Chief Court Judges; (iv) expenditure required for the discharge of duties imposed on the Secretary of State; (v) salaries and pensions of certain services.

At the conclusion of the budget proceedings the

Governor will authenticate by his signature all appropriations which will then be laid before the legislature but will not be open for discussion. In the appropriations so authenticated the Governor will be empowered to include any additional amounts which he regards as necessary for the discharge of any of his 'special responsibilities'.

EMERGENCY LEGISLATION

The Governor will be empowered to issue Ordinances for the discharge of his 'Special responsibilities'. He will have that power also generally, if the Legislature is not in session and if the ministers are satisfied that an emergency exists.

If a breakdown of the Constitution is threatened, the Governor will be empowered to assume to himself all such powers vested by law in any provincial authority as appear to him to be necessary for effective government.

RELATIONS BETWEEN THE FEDERATION AND THE FEDERAL UNITS

The Federal Legislature will have exclusive power to make laws for the peace and good government of the Federation with respect to matters set out in Appendix VI, List I.

The Provincial Legislature will have exclusive power to make laws for the peace and good government of the province with respect to matters set out in Appendix VI, List II.

The Federal Legislature and the Provincial Legislatures will have concurrent powers to make laws with respect to matters set out in Appendix VI, List III.

The consent of the Governor-General will be required

to the introduction in the Federal Legislature of legislation which refers to an Act of Parliament or to a Governor-General's or Governor's Act or Ordinance or to a Reserved subject or to coinage and currency or the Federal Reserve Bank in relation to its management of currency and exchange or religion or proceedings against European criminals.

The consent of the Governor-General will also be required to introduction in the Provincial Legislatures of measures enumerated above.

The Federal and Provincial Legislatures will have no power to make laws subjecting in British India any British subject (including companies, partnerships, associations etc.) in respect of taxation, the holding of property of any kind, the carrying on of any profession, trade, business or occupation or the employment of any servants or agents or in respect of residence or travel within the boundaries of the Federation, to any disability or discrimination based upon his descent, caste, colour or religion or place of birth.

The Federal and the Provincial Legislatures will have no power to make laws subjecting any British subject domiciled in the United Kingdom (including companies, institutions, etc.) to any disability or discrimination if an Indian subject of His Majesty or a company etc. would not be subject in the United Kingdom to any disability or discrimination of the same or similar character.

An Act of the Federal or Provincial Legislature however which, with a view to encouragement of trade or industry authorizes the payment of grants, bounties or subsidies out of public funds will not be held to fall within the terms of the two preceding paras.

It will be the duty of a Provincial Government so to exercise its power and authority as to secure that due

effect is given within the province to every Act of the Federal Legislature which refers to the Province.

It will be the duty of the Ruler of a State to secure that due effect is given within the territory of the State to every Act of the Federal Legislature which applies to that territory.

ALLOCATION OF REVENUES

Revenues derived from sources in respect of which the Provincial Legislature has exclusive or concurrent power to make laws will be allocated as provincial revenues. Revenues derived from sources in respect of which the Federal Legislature has exclusive power to make laws will be allocated as Federal Revenues.

The net revenues derived from the following sources will be assigned to the Governor's Provinces: Duties on property changing hands at death, taxes on mineral rights and personal capital, terminal taxes on railway, water and air borne goods and passengers, and stamp duties.

A prescribed percentage, not being less than fifty per cent and not more than seventy-five per cent of the net revenue derived from the following sources will be assigned on a prescribed basis to the Governors' Provinces: Taxes on income (other than agricultural income) except taxes on the income or capital of companies.

The Federal Legislature will have power to impose surcharges for federal purposes on taxes on income (other than agricultural income).

Provision will be made for subvention to certain Governor's Provinces out of Federal revenues of prescribed amounts due for prescribed periods.

The Federal Government will have power to borrow for any purposes of the Federation upon the security of

the Federal revenues and the Provincial Governments will have the power to borrow for any provincial purpose on the security of provincial revenues but in certain cases the consent of the Federal Government will be required.

The Judicature

THE FEDERAL COURT

The Federal Court will consist of a Chief Justice and other Judges appointed by His Majesty. They must retire after attaining the age of sixty-two years. Their salaries, pensions and other allowances will be fixed by order in Council.

Persons who have been judges at least for five years or who are barristers, advocates or High Court pleaders of at least fifteen years' standing are eligible for appointment to the Federal Court.

The Federal Court will have exclusive original jurisdiction in (i) any matter involving the interpretation of the Constitution Act and (ii) any matter involving interpretation of any agreement entered into between the Federation and a Province or a State or between two Provinces or between a Province and a State.

The Federal Court will have exclusive appellate jurisdiction from any decision so far as it involves the interpretation of the Constitution Act.

THE SUPREME COURT

Provision will be made enabling the Federal Legislature to establish a Supreme Court of Appeal for British India. The President and Judges of this Court will be appointed by His Majesty and must retire after attaining the age of 62 years.

The Supreme Court will be a Court of Appeal from the

High Courts in British India. On the establishment of this Court a direct appeal from a High Court to His Majesty in Council, i.e. the Privy Council, will be barred. It will be allowed in civil cases only by leave of the Supreme Court. In criminal cases no appeal will be allowed.

THE PROVINCIAL HIGH COURTS

The existing High Courts will be maintained. The existing provision which requires that one-third of the judges of a court must be barristers or advocates and that one-third must be members of the I.C.S. will be abrogated.

THE SECRETARY OF STATE'S ADVISERS

The Council of India as at present constituted will cease to exist. But the Secretary of State will be empowered to appoint not less than three nor more then six persons (of whom two at least must have held office for at least ten years under the Crown in India) for the purpose of advising him. The term of office of such a person will be five years.

The salary of the advisers will be defrayed from monies paid by Parliament.

The Secretary of State will be free to seek their advice either individually or collectively on any matter. But he will be bound to consult them and obtain the concurrence of their majority on questions affecting the Public Service.

THE PUBLIC SERVICES

The rights and privileges of the existing members of the Services will be maintained.

After the commencement of the Act, the Secretary of State will make appointments to the Indian Civil Service,

the Indian Police Service and the Ecclesiastical Department. Their pay, pensions, allowances, discipline, conduct, will be regulated by rules made by the Secretary of State. The latter will be also required to make rules regulating the number and character of the civil posts to be held by persons appointed by the Crown, by the Secretary of State in Council, or by the Secretary of State.

At the expiration of five years after the Constitution Act comes into operation a statutory inquiry will be held into the question of future recruitment for those services except the Foreign department and the Ecclesiastical department.

The Federal and Provincial Governments will appoint and determine the conditions of service of all persons in the Federal and Provincial services other than persons appointed by the Crown, by the Secretary of State in Council or by the Secretary of State.

Public Service Commission

There will be a Federal Public Service Commission and a Provincial Public Service Commission for each Province. But by agreement the same Provincial Commission will be enabled to serve two or more provinces jointly.

The members of the Federal Public Services Commission will be appointed by the Secretary of State who will also determine their number, tenure of service, pay, allowances, leave etc.

The members of the Provincial Commission will be appointed by the Governor who will determine their conditions of service etc.

The emoluments of the members of the Public Service Commissions will not be subject to the vote of the Legislatures.

Transitory Provisions

The Constitution Act, though treating the Federation as a whole, will contain provisions enabling the Provincial Constitutions for which it provides to be brought into being, if necessary, before the Constitution as a whole comes into being.

APPENDIX I

Composition and Method of Election to the British India Side of the Federal Council of State

136 seats will be filled by election by means of the single transferable vote by the members of the Provincial Legislatures, the number of seats elected by each being as follows :

Madras, Bombay, Bengal, U. P., Punjab, and Bihar, 18 each; C. P. with Berar, 8; Assam, N. W. F. Province, Sind and Orissa, 5 each.

Ten non-Provincial communal seats will be reserved in the Council of State, 7 for Europeans, 2 for Indian Christians, 1 for Anglo-Indians, these seats being filled by election by members of the Provincial Councils belonging to the three communities.

APPENDIX II

Federal Assembly—British India Side

The Constituencies will all be provincial excepting four. Sikhs, Muslims, Indian Christians, Anglo-Indians and Europeans will vote in Separate Communal constituencies. Seats will be reserved for the Depressed Classes out of the general seats in plural member constituencies. There will be special constituencies for special interests.

Composition of the Federal Assembly—
British India Side

Number of General, Communal and Special seats

General—105 (including 19 reserved for Depressed Classes)

Sikhs ...	... 6	Commerce and Industry Special	... 11
Muslims ...	... 82	Landholders Special	... 7
Indian Christians	... 8	Labour Special	... 10
Anglo Indians	... 4		
Europeans	... 8		
Women Special	... 9	Total	... 250

Number of Seats by Provinces

Madras ...	... 37	Ajmir ...	... 1
Bombay ...	... 30	Baluchistan	... 1
Bengal ...	... 37	C. P. with Berar	... 15
U. P. ...	... 37	Assam ...	... 10
Punjab ...	... 30	Sind ...	... 5
Bihar ...	... 30	Delhi ...	... 2
N. W. F. P.	... 5	Coorg ...	... 1
Orissa ...	... 5	Non-Provincial	... 4

APPENDIX III

Provincial Legislative Assemblies

For Mohammedans, Europeans, Sikhs and Anglo-Indians there will be communal electorates. Seats will be reserved for the Depressed Classes out of the General seats. Special constituencies will be formed for special interests like commerce, industry, landholders, etc.

Composition of the Provincial Legislative Assemblies (Lower Houses)

Total Number of Seats in each Province

Madras	215	Bombay ...	175
Bengal	250	U. P.	228
Punjab	175	Bihar	152
C. P. and Berar ...	112	Assam	108
N. W. F. P. ...	50	Sind	60
Orissa	60		

The Bombay Legislative Assembly

Number of General, Communal and Special Seats

General—119 (including 15 for the Depressed Classes)

Backward Areas	1
Muslims (including one woman)	30
Indian Christians	3
Anglo-Indians	2
Europeans	3
Commerce and Industry, Mining and Planting Special	7
Landholders Special	2
University Special	1
Labour Special	7
Total ...	175

Provincial Legislative Councils (Upper Chambers)

Total Number of Seats in each Province

Bengal—65, including 10 nominated by the Governor
U. P.—60, including 9 nominated by the Governor
Bihar—30, including 5 nominated by the Governor

APPENDICES IV AND V

Voters must have attained the age of 21.

It is intended to include in the Electoral rolls of Provincial Assemblies approximately 10 per cent of the population of the Depressed Classes (to be designated hereafter as the Scheduled Castes). For the Federal House of Assembly this percentage is intended to be 2.

Franchise for the British Indian Seats in the Federal House of Assembly from the Presidency of Bombay

(1) The existing franchise—rural and urban—for the Bombay Legislative Council.

(2) Assessment to income-tax.

(3) Passing the Matriculation or School Leaving Examination.

(4) Being a retired, pensioned or discharged officer or soldier of the Regular Forces.

(5) Franchise for Special Constituencies almost as at present.

Franchise for the Bombay Provincial Legislative Assembly

Non-Special Constituencies

(*a*) Payment of land revenue of Rs. 8 and over.

(*b*) Payment per year of house rent of Rs. 60 in Bombay City, Rs. 30 in Karachi and Rs. 18 in other cities.

(*c*) Assessment to income-tax.

(*d*) Having passed the Matriculation or the School Leaving Examination.

(*e*) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council.

(*f*) Being a retired, pensioned or discharged officer or soldier of the Regular Forces.

(*g*) In the case of the Scheduled Castes, literacy and being a village servant are proposed as differential qualifications. A reduced property qualification will also be proposed, if necessary, to bring up the percentage of the enfranchised to 10.

For Special Constituencies the franchise will be almost the same as at present.

Franchise for the Provincial Upper Houses

It is intended that the franchise for the Upper House, in the provinces in which it will be created, shall be based on a high property qualification and a service in certain distinguished offices such as High Court Judge, Minister, Executive Councillor, Vice-Chancellor of a University and so on.

APPENDIX VI

List I—Subjects Exclusively Federal

Defence, Army, Navy, Air Forces, Cantonment Areas, Chiefs' Colleges, Benares University, Aligarh University, Ecclesiastical Affairs, Emigration and Immigration, Railways, Maritime Shipping, Posts, Telegraphs, Telephone, Wireless, Currency, Coinage, Public Debt, Post Office Savings Banks, Opium, Arms and Ammunition, Copyright, Inventions, Bankruptcy, Customs, Salt, Corporation Tax, Geological and Botanical Survey of India, Meteorology, Census, Income-Tax, Terminal Taxes on goods and passengers etc.

List II—Subjects Exclusively Provincial

Local Self-Government, Hospitals, Asylums, Public Health and Sanitation, Education, Public Works, Light and Feeder Railways and Tramways, Water Supplies and

Drainage, Land Revenue and Tenures, Agriculture, Co-operation, Forests, Alcoholic Liquors and drugs, Administration of Justice, Stamp Duties, Registration, Mines, Provincial Industries, Electricity, Gas, Weights and Measures, Police, Prisons, Surcharge upon Income Tax, the Raising of Provincial Revenue, Poor Relief, etc.

Annexure

Sources of provincial income

(1) Revenue from the public domain, lands, buildings, mines, forests, etc. (2) Revenue from public enterprises such as irrigation, electric power, water-supply, markets, drainage, tolls, etc. (3) Profits from banking and investments and loans. (4) Fines and Penalties. (5) Court Fees, Local Rates and dues, registration of vehicles, firearms, births and deaths, marriages, documents etc. (6) Capitation Taxes. (7) Taxes on land, including death or succession duties. (8) Taxes on personal property such as those on houses, animals, windows, vehicles, sumptuary taxes, taxes on trades, professions and callings. (9) Taxes on employment. (10) Taxes on alcoholic liquors. (11) Taxes on Agricultural incomes. (12) Stamp Duties. (13) Taxes on entertainments and amusements, betting, gambling, lotteries. (14) Any other receipts accruing in respect of subjects administered by the Province.

List III—Concurrent Subjects

Jurisdiction, powers and authority of all Courts (excepting the Federal, the Supreme and Revenue Courts) with respect to the subjects in this list; Civil Procedure, Evidence and Oaths, Marriage and Divorce, Adoption, Wills, Transfer of Property, Arbitration, Insurance, Criminal Law and Criminal Procedure, Control of Newspapers and Presses, Mines, Factories, Workmen's Com-

pensation, Trade Unions, Labour Disputes and Welfare, Ancient and Historical Monuments etc.

APPENDIX VII

This Appendix gives in detail the principal existing rights of officers appointed by the Secretary of State in Council and those appointed by authority other than that. These rights include protection from dismissal by any authority subordinate to the appointing authority, right to be heard in self-defence before dismissal, regulation of conditions of service, pay and allowances, discipline and conduct by the Secretary of State in Council, non-votability of salaries and pensions, reservation of certain posts to the I.C.S., personal concurrence of the Governor to any order affecting emoluments, pensions, censure or an order of posting, right of complaint to the Governor against any order of an official superior and right of appeal to the Secretary of State in Council, etc.

The salaries and pensions of the following persons are non-votable.

(*a*) Persons appointed by or with the approval of His Majesty or by the Secretary of State in Council before the commencement of the Constitution Act or by a Secretary of State thereafter.

(*b*) Persons appointed before April 1, 1924 by the Governor-General in Council or by a Local Government to services and posts classified as superior.

(*c*) Holders in a substantive capacity of posts borne on the cadre of the I.C.S.

(*d*) Members of any Public Service Commission.

APPENDIX VIII

This Appendix gives a detailed list of the Scheduled Castes in each Province.

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