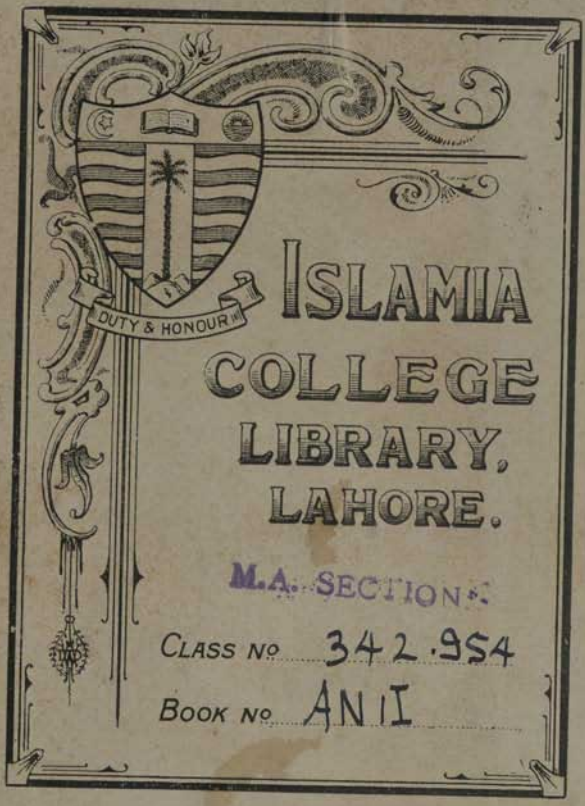
AN INTRODUCTION TO THE HISTORY OF GOVERNMENT IN INDIA.

PART II.

THE BRITISH PERIOD.

A. C. KUNI LAL ANAND.



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PART II.

THE BRITISH PERIOD.

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PREFACE
TO THE FIRST EDITION.

This volume forms part II of the work entitled "An Introduction to the History of Government in India." Part I dealing with government in ancient and mediaeval India will soon follow. By reason of great pressure from a large number of my pupils I have brought out the second part before the first.

At the present moment when constitutional problems are of such absorbing interest a historical survey of constitutional development cannot but be of considerable value. I have endeavoured to present the main outlines of the subject in simple language avoiding technicalities of law and detail wherever possible. Numerous quotations have been given from Hansard's Parliamentary Debates and other documents of constitutional importance which, though all accessible, the average reader has seldom the patience or time to read. I have also given in the appendices extracts from the Reports of the three Committees whose conclusions have been, in the main, enacted by the reformed Indian legislature.

Owing to some unavoidable circumstances the book has been hurried through the press in less than five weeks' time with the result that the proof reading has not been very satisfactory and some mistakes, though all of a minor character, have escaped attention. I hope, however, that the defect will be remedied in the second edition.

LAHORE,
March 4th, 1923.

C. L. A.

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An Introduction to the History of Government in India.

PART II.

THE BRITISH PERIOD.

CHAPTER I

Growth of the Anglo-Indian Constitution under the East India Company.

(1). Two periods in the history of the East India Company.

The history of the East India Company may roughly be divided into two periods. The first, sometimes described as the period of charters, commenced in the year 1600 with the grant of a Charter by Elizabeth and terminated with the grant of the *diwani* or fiscal administration of Bengal, Behar, and Orissa by Shah Alam, the Sultan of Delhi, in 1765. During this period the company were primarily a body of traders, enjoying important mercantile privileges, holding a number of factories on the coast, but had not yet assumed direct government of any considerable portion of the country. The second is

the period of territorial sovereignty commencing with the year 1765 and ending in 1858 when in consequence of the mutiny the British Parliament transferred all the political powers of the Company to the Crown.

(2). Reasons for which the Company sought for a Charter.

The first Charter of the East India Company was granted by Queen Elizabeth in 1600. There were two reasons for which the merchants, who formed an association to establish direct trade with India found it expedient and even necessary to seek for a royal charter. To assure a reasonable prospect of success in the adventure the company asked for a trade monopoly, and special privileges which could be conferred only by the crown. A charter was necessary also to make the association sufficiently powerful to negotiate and deal with Indian potentates, to count on state aid, to drive off the European competitors, and to enforce discipline among its own servants.

(3). The Charter of 1600.

The charter described the corporation by the name of 'Governor and Company of Merchants of London trading with the East Indies.' No reference was made to the capital of the Company or the qulification and voting powers of its members, nor was anything said of the terms on which an outsider could gain admission. The Company were given for a period of fifteen years

the exclusive right of trading "into and from the East Indies, in the countries and ports of Asia and Africa, and into and from all the islands, ports, havens, cities, creeks, towns, and places of Asia and Africa, and America, or any of them, beyond the Cape of Bona Esperenza to the Straits of Magellan." They were to elect annually from among the shareholders or members of the company a governor and twenty-four persons called "Twenty-four Committees" who were to be entrusted with general superintendence and management of all the affairs of the Company. For the good government of the Company and of its agents and for better advancement of trade powers were given to make "such and so many reasonable laws, constitutions, orders, and ordinances" as seem necessary and convenient provided such laws are not 'contrary or repugnent to the laws, statutes, and customs' of the realm.' Sir Courtney Ilbert observes: "the powers of making laws and ordinances granted by the Charter of Elizabeth did not differ in their general provisions from, and were evidently modelled on, the powers of making by-laws commonly exercised by ordinary municipal and commercial corporations. No copies of any laws made under the early charters are known to exist. They would doubtless have consisted mainly of regulations for the guidance of the Company's factors and apprentices. Unless supplemented by judicial and punitive powers, the early legislative powers of the Company could hardly have been made effectual for any other purpose. But they are of historical interest, as

the germs out of which the Anglo-Indian codes were ultimately developed."*

(4). Renewal of the Charter.

The Charter of Elizabeth was renewed by James I in 1609 and made perpetual "subject to determination after three years' notice on proof of injury to the nation."

(5). The Charter of 1661.

The Charter of 1661 made an important change in the constitution of the Company by introducing the joint stock principle and giving a vote for every £ 500 subscribed to the Company's stock. The company were empowered to appoint governors and other officers for the government of fortresses to despatch ammunition and war materials for defence of their factories, to erect fortification, and to appoint commanders and other officers with power to make peace or war with non-christian nations. For better administration of justice the governor and council of each factory were authorised to judge all persons living under them, in all causes, whether civil or criminal.

(6). The ports and island of Bombay granted to the Company.

In 1669 by a charter the King granted to the East India Company the port and island of

* Ilbert's Government of India p. 10.

Bombay investing it at the same time with powers of their civil and military government. A few years later by another charter the company were authorised to coin their own money at Bombay.

(7). The Charter of 1683.

A charter of 1683 gave the Company full powers to raise military forces, to exercise martial law in case of foreign invasion or domestic insurrection, and to make peace and war with any of the "heathen nations." A court of judicature consisting of "one person learned in the civil law, and two assistants" was established to adjudge mercantile and maritime cases.

(8). The Charter of 1686.

In 1686 a charter was granted empowering the company to raise naval forces, to appoint admirals and other sea officers, and to coin money in their forts.

(9). Establishment of a Municipality and Mayor's Court at Madras.

By virtue of a power conferred by the Crown a Municipality and a Mayor's Court were established at Madras in 1687.

(10). Legality of the Company's trade monopoly questioned.

In the meanwhile the rivals and opponents of the East India Company were actively agitating against it. In the case of the *East India*

Company v. *Sandys* (1683-85 a constitutional question was raised whether the Crown had the prerogative to grant a trade monopoly and the issue was decided in favour of the Company. In 1691 the point was again argued before the Privy Council and a judgment was given this time too in favour of the Company. In 1693 the directors being informed that a private ship called *Redbridge* was lying in the Thames, believed to be bound for countries within the charter-limits of the East India Company, detained it, and the question of detention was brought to the notice of Parliament whereupon the House of Commons passed a resolution "that all subjects of England have equal rights to trade to the East Indies unless prohibited by Act of Parliament."

The above resolution of the House of Commons in 1694 was the first active interference by Parliament with the privileges and immunities which the East India Company had enjoyed for a century under the charters granted by the Crown. From 1698 the trade monopoly was secured to the Company by Acts of Parliament in return for loans made to the state from time to time.

(11). Reorganisation of Judicial Institutions.

In 1726 the Municipal and Judicial Institutions at Bombay, Madras, and Calcutta, were, under a charter, reorganised.

(12). The Charter of 1753.

By the Charter of 1753 suits and causes in which both the parties were Indians or non-

Europeans were excluded from the jurisdiction of the Mayor's Court.

(13). The Act of 1754.

An Act of 1754 made provisions for the military forces of the Company corresponding to the provisions in the English Mutiny Acts. It also made the offences committed by Company's presidents or councils cognizable and punishable in England.

(14.) The Charter of 1758.

The Charter of 1758 empowered the Company to cede, restore, or dispose of any fortresses, districts, or territories acquired by conquest from any of the Indian princes or governments.

(15.) The Company's Political fortunes and the grant of Royal *Firmand* 1765.

Having seen how by successive Charters and Acts of Parliament the East India Company gradually armed itself with sovereign powers, let us now turn to its political fortunes.

The situation created in India by the sudden collapse of the Moghal Empire was singularly favourable to political aggrandisement. Even at his deathbed Aurangzeb saw the rising smoke of the coming catastrophe. The growing storm came like a whirlwind and within half a century of the Emperor's death the magnificent empire of Akbar and Shahjahan "had gone glimmering in the dream of things that were." The Sikhs shattered the Moghal power in the Punjab, the Marhattas

rose supreme in the peninsula, the Rajpoot states declared their independence, the governors in Oudh, Bengal, and Deccan threw off their allegiance, an Afghan soldier of fortune seized Rohelkhand, and two Marhatta warriors, Holkar and Sindhia, partitioned Malwa founding new dynasties. In the midst of all this confusion and anarchy two strong rival European powers, the French and the English, had established a foothold. The French East India Company, originally a trading concern, possessed at this time the districts of Pandichary and Carical, and a number of factories and forts at Surat, Mahi, and Chundernagar. The victories of Clive, however, in 1752 shattered the rising French influence in Deccan beyond all hope of recovery, and the battle of Plassey, five years later, made the English Company virtually masters of Bengal, Behar, and Orissa. In 1760 Clive had already obtained for the Madras Government the grant of Northern Sirkars, and now on 12th August 1765 the Emperor Shah Alam conferred on the Company the Diwani or the right of collecting revenues, of Bengal, Behar, and Orissa in return for a yearly payment of twenty-six lacs of rupees. The battle of Plassey had made them sovereign *de facto* of the three provinces, the grant of *Diwani* made them sovereign *de jure*. The Royal Firmand established a dual system of government under which the Company were to collect the revenues and maintain an army while the criminal jurisdiction or *Nizamat* was to continue in the hands of the Nawab at Moorshedabad. The Firmand which was briefly worded ran as follows :—

" At this happy time our Royal Firmand, indespensably requiring obedience, is issued ; that whereas, in consideration of the attachment and services of the high and mighty, the noblest of exalted nobles, the chief of illustrious warriors, our faithful servants and sincere well-wishers, worthy of our royal favours, the English Company, we have granted them the *Diwani* of the provinces of Bengal, Behar, and Orissa, from the beginning of the *Fussul Rubby* of the Bengal year 1172, as a free gift and *Ultumgau*, without the association of any other person, and with an exemption from the payment of the customs of the *Dewanny*, which used to be paid to the Court, it is requisite that the said Company engage to be security for the sum of twenty-six lakhs of Rupees a year for our royal revenue which sum has been appointed from the Nawab Nudjum-ul-Doula Bahadur, and regularly remit the same to the royal *Circar*; and in this case as the said Company are obliged to keep us a large army for the protection of the Provinces of Bengal, etc., we have granted to them whatsoever may remain out of the revenues of the said Provinces, after remitting the sum of twenty-six lakhs of rupees to the royal Circar, and providing for the expenses of the *Niz amat*."

(16.) Effect in England of the Company's territorial acquisitions.

The territorial acquisitions of the East India Company produced a startling effect in England, and a general demand was made for immediate parliamentary intervention. It was alleged that

expensive wars had been wantonly entered into and shamefully conducted to satisfy the avarice and interested views of individuals ; that the " nabobs " or the company's servants had by unscrupulous methods amassed colossal fortunes which cught to be confiscated ; that an inquiry he made into the conduct of these agents and their crimes and offences punished. The Company, it was said, had abused its powers and the only safe and possible redress was to bring its affairs under the immediate inspection of the officers of the Crown. As a first step the House of Commo ns in November, 1766, appointed a committee to report on the Company's state of affairs, and the following year the Parliament passed no less than five Acts with reference to the Indian affairs. For the next seven years, beginning with February 1767, the Company were required to deposit into the Exchequer an annuity of £ 400,000 as a tribute to the state in consideration of their retaining the territorial acquisitions and their revenues. The large annual sums of money by which respite was purchased from Government deferred scheme of regulation " until the impossibility of annual payment to the state, and the annual increased dividends to the proprietors roused both proprietors and ministers out of their lethargy, caused the sharpest dissentions amongst the former, and animated the latter to the prosecution of their original scheme of deriving power to themselves, out of the innumerable disorders of the Company."*

* Hansard's Parliamentary Debates Vol. XVII p. 527.

(17). Col. Burgoyne's motion for appointment of a Select Committee.

On April 13, 1772, Colonel Burgoyne moved for a select committee of thirty one members to inquire into the nature and state of the East India Company and of the affairs in the East Indies. The necessity for an enquiry was urged on grounds of precarious situtation of affairs in India, the late distress of Indians due to famine and other causes and the consequent depopulation of the country, and the alleged oppresive and arbitrary condut of the agents of the Company. Colonel Lutterel, Mr. Townshend and many others objected to an inquiry being made by a select committee as it tended to secrecy and the members could easily be influenced by the "Nabobs". The motion for a select committee was, finally, carried without a division.

(18). Mr. Sullivan's East India Judicature Bill thrown out.

In the meantime Mr. Sullivan presented to the house his East India Judicature Bill. Mr. Cornwall objected to its reading till the Select Committee appointed on Indian affairs made its report and Mr. Townsend who supported him pointed out the absurdity of the argument, "that because a tailor had a general idea of making a coat, he would be able to fit his particular person without having seen or even measured him." To this Mr. Whiteworth replied that though they "had never taken the exact measure of the people of Bengal and there-

fore could not exctly fit them with a coat, yet, as they were absolutely naked, it was but charity to send them a few rags to cover their nakedness. On a successful division in favour of the bill the House resolved itself into a committee to consider its provisions but the bill was finally thrown out on the second reading.

(19). A bill hurriedly passed restraining the Powers of Directors.

On the opening of the sixth session of Parliment on November 26, 1772, the King referred again to the imperative necessity of regulating the affairs of the East India Company, and on the same date Lord North moved that a committee of secrecy be appointed to enquire into the state of Company's administration and trade. The motion was agreed to. As an immediate result of the report of the Secret Committee leave was given to bring in a bill to restrain the Directors, for a time to be limited, from making any appointment of commissioners for superintending and regulating the Company's affairs in the East Indies on the ground that the Company were unable to bear the expense. The billled to a storm of opposition. The Company, through Mr. Sullivan, presented a petition against it. Mr. Burke denounced the measure as an infringement of the constitutional rights of the Company, as "an unconstitutional act founded on unconstitutional motive, springing from unconstitutional act founded on unconstitutional motive." The bill was,

however, hurriedly got through both the Houses, five of the lords entering protest on the journals.

(20). Resolutions of Lord North.

The Secret Committee having presented its third report on Indian affairs, the House, once more, on May 3, 1773, resolved itself into a Committee to take into further sonsideration the affairs of the East India Company. Lord North in opening the debate made a long speech in which he proposed that the Court of directors should, in future, be elected for four years: six members annually, but none to hold their seats longer than four years, no person to vote at the election of directors who had not possessed stock for twelve months ;stock qualification to be £ 1,000 instead of £ 500 ; to establish at Calcutta a supreme court consising of a Chief Justice and three puisine judges ; and superiority to be given to the Presidency of Bengal over other presidencies in India. Lord Clive who had been accused in the report of the Secret Committee, of misappropriating the revenues of Bengal, threw the whole blame for misgovernment on the head of the directors who "either through ignorance or design had kept the affairs of the Company a secret." "The mismanagement abroad," he said, "was founded upon mismanagement at home." The resolutions proposed by Lord North were accepted and on being reported to the House on the following day leave was given to bring in a bill for regulating the Government of the East India Company, both in England and in India.

(21). General Burgoyne's Resolutions.

Meanwhile the House of Commons continued to be a scene of heated debates and sharp criticism. On May 10, General Burgoyne moved three resolutions: "that all acquisitions made under the influence of a military force or by treaty with foreign princes, do of right belong to the state; that to appropriate acquisitions so made to the private emoluments of persons entrusted with any civil or military power of the state is illegal; that very great sums of money and other valuable property have been acquired in Bengal from princes and others of that country by persons entrusted with civil and military power of the state, which sums of money and other valuable property have been appropriated to the private use of such persons." "Merchant sovereigns," said Sir William Meredith, "are always dangerous for their rule of selling is to take as much as they please, and the rule by which they buy is to pay as little as they please." To the fierce attacks of General Burgoyne and Sir William Meredith the Baron of Plassey gave a pathetic reply. "After having nearly exhansted a life full of employment for the public welfare and for the particular and advantageous emolument of the East India Company, I little thought," he said, "transactions of this kind would have agitated the minds of my countrymen." General Burgoyne's motiou was negatived and at the suggestion of Mr. Wedderburn it was passed that "Robert Clive did at the some time render great and meritorious services to this country."

(22). The Regulating Act, 1773.

On May 18,1773, Lord North introduced in the House of Commons the East India Company's Regulation Bill. Though the bill did not afford a complete redress of the evils in the Company's system of government, it was, nevertheless, an important step in that direction. The bill was passed by the Commons on June 10, and after a warm discussion by the Lords on June 19. The measure is usually spoken of as the Regulating Act. It made important modifications in the company's government both in England and in India.

(*a*) Its Provisions

The home government in 1773 consisted of a Court of Directors and a General Court of Proprietors. The directors were twenty-four in number elected annually, the qualification for a director being holding of £ 2,000 stock. In the Court of Proprietors every holder of a £ 500 stock had a vote. The Regulating Act provided that instead of an election of twenty-four directors to serve for a space of one year only, there shall be chosen six directors for a term of one year, six for a term of two years, six for three years, and another six for a term of four years. Every year six new directors were to be chosen in place of such whose term had expired, and the retiring directors were declared incapable of being re-elected. A director was to hold office for four years. The qualification for a vote at an election of directors was raised to £ 1,000 stock, provided

also that the voter was possessed thereof for a year. A proprietor possessing £ 3,000 capital stock was entitled to two votes; if possessing £ 6,000 he had three votes; and when possessed of £ 10,000 he was entitled to four votes.

In India, in 1773, the Governments of three presidencies were independent of each other and responsible direct to the Court of Directors in England. The Regulating Act appointed a Governor-general and four councillors for the Government of the Presidency of Fort William in Bengal who were to hold office for five years and were not to be removable in the meantime, except by the King on the representation of the Court of Directors. Though the first Governor-general and councillors were named in the Act, at the end of five years the patronage was to vest in the Company. The Governor-general and Council were to be bound by the votes of majority of those present at their meetings, and in the case of an equal division the Governor-general was to have a casting vote. They were given the power of superintending and controlling the government and management of the presidencies of Madras and Bombay which were required to pay "due obedience" to the orders of the supreme Government By Sec. XXXVI of the Act the Governor-general and Council were authorised "to make and issue rules, ordinances, and regulations for the good order and civil government of the said United Companys' settlement at Fort William aforesaid, and other factories and places subordinate, or to be subordinate thereto, as shall be deemed just and

reasonable (such rules, ordinances, and regulations not being repugnant to the laws of the realm)." These rules and regulations, however, were not to have any effect until duly registered in the Supreme Court of Justice with its assent and approbation, and besides they could be disallowed by the King in Council.

The Crown was empowered to establish, by Charter and letters Patent, a Supreme Court of Judicature at Fort William to consist of a Chief justice and three other Judges, who were to be barristers of at least five years' standing and to be appointed by the Crown from time to time. The court was invested with civil, criminal, admiralty and ecclesiastical jurisdiction, and was authorised to establish rules of practice and process. It was, however, laid down that "the said court shall not be competent to hear, try, or determine any indictment or information against the said Governor-general, or any of the said Council for the time being, for any offence (not being treason or felony) which such Governor-general or any of the said Council, shall or may be charged with having committed in Bengal, Behar, or Orissa" The Governor-general, the members of Council, and the Judges, for the time being, were not liable to be arrested or imprisoned upon any action. suit, or proceeding (civil) in the Supreme Court. All the offences of which the supreme Court had cognizance were to be tried by a jury of British subjects resident in Calcutta. Suits may originate in the Supreme Court or may be brought by appeal from a provincial court, and subject to limitations precribed in the

charter an Appeal from the Supreme Court was to lie to the King in Council.

The Governor-general in Council were to act as Justices of the Peace and for that purpose to hold quarter sessions.

If the Governor-general, Governor, or any of the Council, or Judges of the Supreme Court commit any offences, the same could be tried and determined in the Court of King's Bench in England.

(*b*) Its Constitutional importance.

The Regulating Act is a landmark in the constitutional history of India. It was the first measure of the British Parliament interfering materially with the Company's Government *in* India. It settled beyond doubt the right and power of the British legislature to regulate the administration of the Company's territories, and is the first Act of Parlinment which prescribed a definite form of Government for British India. It distinctly recognised the political functions of the Company.

(c) Its defects.

The Regulating Act left the respective jurisdictions of the Supreme Court, and the executive government undefined. The result was a complete anarchy in the Government of Bengal. The things were reduced to such an extremity that the Bengal Government found it necessary to employ military force to overpower the judiciary, and judges on their part resolved to pursue vigorous measures for enforcing

the authority they assumed. During the debates in the House of Commons on February 12, 1781, Mr. Bouton Rouse observed : " Civil discard has taken place ; the powers of Government are at war with one another ; and it would not much surprise me to learn by the next advices, either that the Supreme Court has inflicted death on the members of your Government, or that your Governor-General and Council have shipped off His Majesty's Judges for Great Britain." The attempt to establish the English Courts, laws, and forms of justice irrespective of the ancient institutions and usages of the people of Bengal had been a fundamental error. Mr. Warran Hastings while putting an end to the dual system and transferring the seat of Criminal Court at Calcutta had, at the same time, reorganised the judicial institutions of the country, departing from the old only where it was absolutely necessary. He interfered not with the civil judicial institutions of the country, and allowed the republican punchayat, the system of arbitration, and powers of the zemindars and head farmers to continue. The new Court of Judicature, however, refused to recognise the judicial authority of the Provincial Courts of Zemindars and their members were punished to ruin as well as personal infliction, for the discharge of their functions. " The astonished and terrified natives of Bengal, now beheld the extraordinary spectacle of English bailiffs, accompanied by considerable body of armed Europeans, traversing the country, at the distance of some hundreds of miles from Calcutta, to execute by force the decrees of the new Judicature, founded

upon laws and distinctions which they were utterly incapable of comprehending." In enforcing the decrees, the bailiffs, ignorant of the usages of the land, violently broke into the apartments of women and places of domestic worship, and idols which had been sanctified by the reverence of ages " were dragged from their places by profane hands, and thrown amongst the heap of household furniture and lumber, which were collected to answer the ends of the execution." The methods of lawyers alarmed the Governor-General and Council who on one occasion had to employ military force to arrest the bailiffs and send them up as prisoners to Calcutta. While the Government of Bengal confirmed the authority of the Provincial Courts of Zemindars, the Supreme Court imprisoned their functionaries and issued writs of *habeas corpus* to release all confined by them for arrears of rent. A district treasurer who had been imprisoned on charge of embezzlement by the Provincial Court was granted *habeas corpus* by the Supreme Court and on the Company's attorney pleading to its return that the person had been confined by the authority of the Provincial Court of the Chief, the judges of the Supreme Court replied, " we know not what your Provincial Chief and the Council are : you might as well have said that he was confined by the king of the fairies."

The Supreme Court not only declined to recognise the authority of the Provincial Courts, but also refused to administer the personal laws of inhabitants. The people of Bengal were to be forced to accept " the transported laws of freedoms."

They beheld with wonder that law was one thing and equity another, a distinction which no linguist could interpret in their own language. One of the first achievements of the Court was the hanging of Raja Nand Kumar for an act committed many years before the Court was instituted, and in accordance with an English statute which could never extend to India.

There were many unsettled questions in the Act which led to a sharp controversy between the Governor and Council, and the Supreme Court. The jurisdiction of the Supreme Court was by the Act declared to extend to "all British subjects," and to "any person employed by or in the service of the Company," but the questions what constituted employment by the Company and whether Indians, who still nominally owed allegiance to the Emperor of Delhi, were to be classed as British Subjects were left undetermined As the matters stood the Supreme Court claimed jurisdiction not only over the European British subjects but also over the whole native population. It also claimed the right to try revenue and judicial officers of the Company for any illegal acts done by them in their official capacity.

The system under which the decisions of the Governor-General were left at the mercy of an irresponsible majority in the council was also found unworkable.

The practical results of the Regulation Act, therefore, were far from satisfactory. "The object of the Act," as Mr. Bouten Rouse described in the House of Commons, "was good, but the system that it established was imperfect." The governor-general and Council, and British subjects residing

in Bengal, Behar, and Orissa sent up petitions to Parliament against the Supreme Court at Calcutta. On April 9, 1781 Lord North observed in the House of Commons that it was desirable that the Governor of Bengal might in future be something more than a mere *primus interpares*. "For his part he was an enemy to absolute power, but if the genius, the habits and religious prejudices of India were inconsistent with a free government, the necessity would justify Parliament with a degree of absolute power, to be exercised by him with moderation and discretion".* On May 25 the House resolved itself into a committee to consider the Indian affairs and their investigations resulted in the passing of an Act called the Amending Act of 1781.

(23). The Amending Act, 1781.

The Act provided that the Supreme Court is not to have any jurisdiction in matters concerning the collection of revenue ; and that the judicial officers in the country Courts shall not be liable in the Supreme Court for acts done in judicial capacity. The appellate jurisdiction of the Governor-General and Council in country cases was recognised and confirmed. The Governor-General and Council were empowered from time to time to make regulations for the Provincial Courts and Councils. It was provided that rules and forms for the execution of process in the supreme court were to be accomodated to the religion and usages of the people of India. The Supreme Court was to have jurisdiction over all inhabitants of Calcutta in all manner of actions and suits "provided that their inherit-

* Hansard Vol. XXII p. 111.

ance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined in case of Mohammedans, by the laws and usages of Mohammedans, and in case of Gentus by laws and usages of the Gentus."

(24). Mr. Fox's East India Bill thrown out.

The passing of the Bengal Judicature Bill did not terminate the agitation regarding the affairs and government of the East India Company. On November 18, 1783, Mr. Fox moved for leave to introduce the East India Bill. Mr. Fox described the Company's government in India as "critical beyond description," "a government of anarchy and confusion." Mr. Dundas said that the fault lay not with the directors but with their servants in India. "If a man wishes to read the finest system of ethics, policy, and humanity, he would find it in the letters of the Court of Directors to the Company's servants abroad; but if the reverse of all this should be looked for, it might be found in the manner in which the orders of the directors were observed in India." The plan proposed by Mr. Fox was to replace the existing Courts of Directors and Proprietors by a Board of Seven Commissioners who were to be invested with full powers to appoint and displace officers in India and to administer company's territories, revenues, and commerce. These Commissioners were, in the first instance, to be named in the Act and not to be removable except upon an address from either House of Parliament, and any vacancy in the Board was to be filled by the King. The Board was to be assisted in the matters of

trade by a subordinate body of nine "assistants" chosen by the legislature from amongst the proprietors. These "assistants" were, in the first instance, to be appointed for five years and any vacancy was to be filled up by the Court of Proprietors.

The bill was read for the first time on November 20. Mr. W. Grenwille attaked the measure as "of a most alarming nature" tending "to erect a despotic spstem which might crush the free constitution of England." "The bill," he said, "was calculated to increase the influence of the Crown, and that in a degree beyond all precedent, enormous, and alarming. Its obvious and unavoidable effect would be to transfer the boundless patronage of Indies to the Crown, or rather to vest it for five years in the person of the minister, and his adherents, whether in or out of power." Mr. Pitt "dreaded the idea of seeing ministers armed with an influence which could not fail of rendering them dangerous to the state." Mr. Wilberforce asked "if the present Bill passed we might not see the Government of Great Britain set up in India instead of that of India in Great Britain." Mr. Burke supported the Bill as "a system which would operate to the deliverance of the empire." The Bill was read for the third time in the House of Commons on December 3, and was passed by a large majority of 208 against 102. It met with a still fiercer oppostion in the House of Lords. Earl Temple described it as an "infamous" measure. Lord Thurlow observed, "it was a most atrocious violation of private property." The King, in violation of the principles of the

English constitution, having signified his dissent while the Bill was still under discussion, the House of Lords took their cue and immediately rejected it. This unconstitutional step of the King alarmed the House of Commons. Mr. Fox, speaking on december 17, said with some warmth, "the deliberations of this night must decide whether we are to be freemen or slaves whether the house of commons be the palladium of liberty, or the organ of despotism; whether we are henceforth to possess a voice of our own, or to be only the mere mechanical echo of secret influence." The rejection of the Bill led to a change of the Ministry. On December 19, 1783 Lord North took his seat on the oppositisn bench and he was soon followed by Mr. Fox, Mr. Dundas, Mr. Burke, General Convey. General Burgoyne, and Mr. Mansfield. The Parliament was not dissolved, the administration having been taken up by new ministers headed by Mr. Pitt. The regulation of the Company's Government, however, continued to be the matter of first importance.

Mr. Pitt while agreeing with Mr. Fox that the British Government ought to exercise a beneficial control over the Company's affairs did not wish to interfere with their rights of property and patronage. He had denounced the scheme of Mr. Fox "which grasped at everything which they enjoyed." His own plan, he said, "aimed at a beneficial control"; he meant "not to rob nor to steal the rights of the Company." Early in 1784 Mr. Pitt made his first attempt to bring in a bill but the opposition was too strong and his bill was thrown out at the initial stage. The

Parliament after a stormy session was dissolved on March 25, 1784.

(25). The Pitt's Act 1784.

On the meeting of the new parliament Mr. Pitt introduced his second bill relating to the Government of India. In framing a system of Government for India, he said, it was their duty to see that 'though no charter could or ought to supersede state necessity, still nothing but absolute necessity could justify a departure from charters."

Pitt's Act established a board of six commissiners, known as the Board of Control, consisting of the chancellor of Exchequer, one of the secretaries of State, and four other Privy Councillors "to superintend, direct, and control" the civil and military Government of the British possessions in India. The Commissioners were to have access to all papers of the Company and to be furnished with copies of all minutes, despatches, orders, and other proceedings. The directors were to be bound by all orders and directions of the Board touching the civil and military Government and the revenues of India. The Court of Proprietors was deprived of the power to overrule a decision of the Court of Directors which had received the approval of the Board of Control. A committee of secrecy consisting of not more than three directors was established to transmit to India, without informing the other directors, orders of the Board requiring secrecy. The control of the Governor-General and Council over Governments of the other presidencies was extended to "all

such points as relate to any transactions with the country powers, or to war or peace, or to the application of the revenues or forces of such presidencies in time of war", and the number of members of the Council was reduced to three, one of whom was to be the Commonder-in-chief. The Governor-General and Council were not to make any declaration of war with any of the country powers without the express authority of the Court of Directors, or of the Committee of Secrecy. The Government of each of the presidencies of Madras and Bombay was to consist of a Governor and three Counsellors, of whom the Commander-in-chief of the presidency was to be one. A court consisting of three judges, four peers, and six members of the House of Commons, was constituted for trial in England of offences committed in India.

The Act virtually transferred the responsibility for Indian Government from the Court of Proprietors to the Board of Control. The Board became the sole governing power for India and the Court of Directors its instrument for the preparation of its business and the management of details. There was nothing which could have been done, previous to the passing of the Act, by the Court of Directors that the Board of Control had not now the power to do by virtue of the Act. It was the intention of the framers of the Act that the Board should have complete power. Mr. Dundas had said, "without the whole powers of government the Board of Control would be a nuggatory body." It was in the Board that

the real effective government of India resided after the passing of the Pitt's Bill of 1784. The Court of Directors, a body of 24, consisting of bankers and merchants, controlled only the distribution of partronage. The Directors were paid very low, for it was said they were "paid in patronage." The institution had a very baneful effect. It enslaved the Directors to the Indian minister by their fear that if they oppose him he may use his parliamentary influence to strip them of the patronage. It gave the Court an insatiable spirit of grasping Indian territory, and all the valuable Indian appointments for their European nominees. The distribution of patronage by the Directors as also a lavish expenditure of "secret service" money by the Indian minister secured for the Company at all times large number of supporters both in Parliament and in the country. The Act had a still graver result. By putting government of the East India Company into the hands of a government board it had the indirect effect of removing the Indian question from parliamentary politics. The parliamentary majority was, henceforth, a sure shield for the minister and his subordinates. Secrecy being the keynote of the Company's government very little of its administrative transactions was known outside the narrow body of the Board, and the Court of Proprietors. As the President of the Board was not required to lay any annual or periodical account of India before the Parliament he was practically irresponsible, and there was a complete ignorance in Parliament about the Indian affairs.

(26). Impeachment of Warren Hastings and its significance.

The governor-generalship of Mr. Warren Hastings ended in 1785. On April 4, 1786, Mr. Burke charged him in the House of Commons with sundry high crimes and misdemeanours with a view to make those charges the grounds of an impeachment before the House of Lords. Mr. Burke reminded the House that they were to discuss not merely the conduct of an individual but to settle the principle on which the government of India was to be carried on. "They were that day to vote for a set of maxims and principles to be the rule and guide of future governors of India."* Mr. Warren Hasting was acquitted but his impeachment established the resolution of the British legislature that the Indian government was to be carried on in conformity with the laws of the realm As Mr. John Morley has observed,† "looking back across the ninety years that divide us from the memorable scene in the Westminster Hall, we may say that Burke had more success than at first appeared. If he did not convict the man, he overthrew a system, and stamped its principles with lasting censure and shame..... That Hasting was acquitted was immaterial. The lesson of his impeachment had been tanght with sufficiently impressive force - the great lesson that Asiatics have rights, and that Europeans have obligations."

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* Hansard Vol. XXVI p. 39.
† Burke by J. Morley p. 195—7.

(27). The Act of 1786 and the reforms of Lord Cornwalis.

Mr. Warren Hastings was succeeded by Lord Cornwalis in 1786. An act of that year empowered the Governor-General in special cases to override the majority of Council and to act on his own responsibility, and enabled the offices of Governor-General and Commander-in-Chief to be united in the same person. Lord Cornwalis reorganised the judicial institutions. In every district was established a Civil Court, and four Courts of Appeal were erected at Calcutta, Murshidabad, Patna, and Dacca, from whose decisions an appeal lay to the Court of Governor-General and Council. In 1792 was effected the permanent settlement of revenue in Bengal. "Those," says Mr. R. C. Dutt,* "who judge the policy of Indian rulers by the amount of revenue which it produces have condemned this act of Cornwalis. Those, however, who judge it by the happiness which it secures to the people of India will admit that no single measure of British Government that can be named has been so beneficial to the people, and therefore to the Government under which they live."

(28). The Charter of 1793.

The Charter of the Company was renewed in 1793. The exclusive privileges of the Company for trade were extended for another term of twenty years; the constitution of the Board of Control was slightly modified and provision was

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* England and India p. 13.

made for the payment of its members out of the Indian revenues; procedure for the Indian Councils was prescribed; the Commander-in-Chief was not to a member of the Council at Fort William unless especially appointed; the Governors of Madras and Bombay were empowered to override the majority in Council in cases of necessity; and the Governor-General was authorised to appoint a Vice-president to act for him in his absence.

(29). War and annexation policy of the Governor-Generals.

Lord Carnwalis was succeeded by Sir John Shore, afterwards Lord Trignmouthe (1793-1798) who extended the permanent settlement to the province of Benares. His successor, Marquis of Wellesley is famous in Indian history for his successful wars and as the founder of that system of subsidiary alliances which constitutes the basis of Political Law governing the relations of the British Government with Native States in this country. On the war policy of Warren Hastings and his successors the responsible opinion in England was by no way uniform. The legislature had time and again condemned all schemes of conquest and aggrandisement in the East. On April 9, 1782, the House of Commons passed five resolutions applauding the conduct of the Court of Directors forbidding all wars in India, except in self-defence. The Act of 1784 contained a recital, repeated in the Act of 1793, that "to pursue schemes of conquest and extension of dominion in India are measures repugrant to the wish, honour,

and policy of the nation." The Court of Directors also looked with disdain on any aggressive wars by their servants in India and in many despatches emphasized the solemn declarations of the legislature. The governors in India, however, favoured more ambitious schemes, in not a few cases with the approval of the Board of Control, inspite of the intentions of the Court of Directors and the Parliament to the contrary. The two Mysore Wars of 1790 and 1799 ended in the fall of Seringapatam, the death af Tipoo Sultan and incorporation of the major part of Mysore and its dependencies in the Company's dominions. In 1790 Lord Cornwalis assumed the Government of Carnatic and eleven years later the Nawab was made to sign a treaty transferring the government and revenues of the territory to the Company in lieu of a pension. The Nawab of Surat was similarly pensioned in 1800, and the young Nawab of Farrukhabad in 1802. A treaty of defensive and subsidiary alliance was made with the Nizam, and efforts were made for similar alliances with the Gækavad, Scindhia, and the Peshwa. The long Marhatta War (1803-1805) led to a further extension of the Company's dominions.

(30). Judicial Reorganisation.

The unending wars of Wellesley resulted in a reaction to a policy of peace under his three successors. From 1805 to 1813 the administration of justice was at its lowest ebb. The destruction under Mr. Warren Hastings and Lord Cornwalis of the old police and judicial institutions led to an enormous increase in crime. The evil was reme-

died by reorganising these institutions and reappointing Indians, whom Lord Cornwalis had removed, to lower judicial offices. Lord Cornwalis had deprived collector of his judicial powers, thereby recognising the principle of separation in executive and judicial functions. Lord Hastings abandoned that principle as unsuited to the circumstances of the country, and Collector was once more invested with magisterial powers. By an Act of 1800 a Supreme Court was constituted at Madras, and by another Act of 1807 the Governors and Councils at Bombay and Madras were empowered to make regulations subject to registration by the Supreme Court.

(31). The Charter Act of 1813.

The Charter Act of 1813 extended the grant of Indian possessions and revenues to the East India Company for another term of twenty years. The monopoly of China trade and trade in tea was continued to them, but the general trade of India was thrown open. Provision was made for Church establishment in India. The Company were required to keep their commercial and territorial accounts distinct. Section 43 of the Act provided "it shall be lawful for the Governor-General in Council to direct that out of any surplus which may remain of the rents, revenues, and profits, arising from the said territorial acquisitions, after defraying the expenses of the military, civil, and commercial establishments, and paying the interest of the debt, in manner hereinafter provided, a sum of not less than one lac of rupees in each year

shall be set apart and applied to the revival and improvement of literature, and encouragement of the learned natives of India, and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories in India."

The period of twenty years following the Charter Act of 1813 is memorable in the history of Company's administration. In 1819 Montstuart Elphinstone was appointed Governor of Bombay, and in 1820 Sir Thomas Munro was appointed Governor of Madras. Munro in Madras and Elphinstone in Bombay settled the land tenures.

(32). The Charter Act of 1833.

The spirit with which the Indian problem was discussed in Parliament in 1833 cannot be properly understood without a knowledge of the political atmosphere in England at the time. For the last twenty years liberal principles had been in the ascendant and reforms were being worked out in all directions. Slave trade had been abolished in 1811; a hundred felonies were exempted for capital punishment in 1823; and Catholics were emancipated in 1829. The Government of Duke of Wellington, which had hitherto opposed the extension of sufferage, had resigned, and was succeeded by the whig ministry of Lord Grey. Thrice the Reform Bill had been passed by the Commons and thrice it had been rejected by the Lords. The ministry resigned but the liberal principles triumphed. Earl Grey returned to office with power to create as many new peers as may be needed to pass the Bill. The House

of Lords did not wait for this humiliation and the Bill became law on June 7, 1832. This was followed by further liberal legislation. Slavery was altogether abolished in 1833; restrictions on press were removed in 1836; and adequate provisions were made for popular education. It was in such an atmosphere of reform and enthusiasm that Parliament was called upon in 1833 to renew the Charter of the East India Company.

In his opening speech in the House of Commons on June 13, 1833, Mr. Charles Grant refered to two circumstances which marred the efficiency of the Indian Government. One of these, he said, was "the union of the trader and the sovereign," and the other the interference which too often took place from home. "It was essential to the well-being of India that confidence should be placed in its administration, and that, as far as possible, the interposition of the home authorities should be confined to cases of a strong and extraorninary nature, or rather to cases of a general nature. All that depended on the administration of government in India ought to be left to the admisistration there." On June 13, the House of Commons adopted three resolutions with regard to the renewal of the East India Company's Charter and submitted them to the Lords for their concurrence. The discussions in the House of Lords centred round the claim of Indians to be admitted to offices under the British Government in India. Sir Thomas Munro had written in 1807 :—

"The strength of British Government enables it to give its subjects a degree of protection which

those of no native power enjoy. Its laws and institutions also afford them a security from domestic oppression unknown in those states; but these advantages are dearly bought. They are purchased by the sacrifice of independence, of national character, and of whatever renders a people respectable. The natives of the British provinces may without fear pursue their different occupations, and enjoy the fruit of their labour in tranquility; but none of them can aspire to anything beyond this mere animal state of thriving in peace; none of them can look forward to any share in the legislation. or civil and military government of their country."*

The resolutions were discussed in the House of Lords on July 5th, 1833 and the debates showed a determination on part of the British legislature to remedy this injustice under which Indians had suffered long under the Company's Government. The Marquis of Lansdowne proposed that the people of India "as a first step be admitted to a larger share in the administration of their local affairs." "He was sure that their Lordships would feel, as he indeed felt, that their only justification before God and Providence for the great and unprecedented dominion which they exercised in India was in the happiness which they communicated to the subjects under their rule, and in proving to the world at large, and to the inhabitants of Hindostan, that the inheritance of Akbar, the wisest and the most beneficient

* Hansard, Vol. XXVII. p. 1317.

of Mohammedan princes, had not fallen into unworthy and degenerate hands".* "It was a part of the new system which he had to propose to their Lordships that to every office in India every native, of whatever caste, or religion, should be by law equally admissible, and he hoped the Government would seriously endeavour to give the fullest effect to this arrangement".† Lord Ellenborough while trusting that the time would eventually come when Indians could fill even the highest situations in their country did not look forward to period when *all* offices in India would be placed in their hands. "No man in his sense," he said, "would propose to place the political and military power in India in the hands of the natives." At this the Marquis of Lansdown interrupted and observed that what the Government only proposed was that all offices in India should by *law* be open to the natives of that country. The Duke of Wellington, who was more definite, observed: "the natives of India should, as far as possible, be employed in the revenue and judicial establishment of the country." The resolutions sumitted by the House of Commons were eventually adopted.

On July 10th, the East Indian Company Charter Bill was read for the second time in the House of Commons. Mr. Buckingham said that while it was encouraging that the Bill was going to abolish the trading function of the Company it was presposterous to leave the political government of an immense empire in the

* Hansard 3 Series, Vol. XIX, p. 169.
† *Ibid*, p. 171.

hands of a joint stock company, "whose interests were merely those of proprietors of India stock, anxious chiefly to secure payments of their dividends, but, when that was attained, having no interest whatever in the aboundonment of the happiness and welfare of the people, which was the only legitimate end of all government. He suggested that a provision be made "for admission into supreme council in India, of some few representatives of British population in India as well as of the natives, in order to make a beginning, at least, of that system of self-government to which they ought to advance with all our colonies, as fast as possible." Mr. Macaulay observed; "in India you cannot have representative institutions. Of all the innumerable speculators who have offered their suggestion on Indian politics, not a singular one, as far as I know, however democratic his opinions may be, has ever maintained the possibility of giving, at the present time, such institutions." "The destinies of Indian empire," he said, "are covered with thick darkness.....It may be that the public mind in India may expand under our system till it has outgrown that system; that by good government we may educate our subjects into a capacity for better government, that having become instructed in European knowledge, they, in some future age, demand European institutions. Whether such a day will ever come I know not But never will I attempt to avert or retard it. Whenever it comes it will be the proudest day in English history." Mr. Wyne said: "the only principle on which the empire could be justly,

or wisely, or advantageously administered was that of admitting the natives to the participation in the government, and allowing them to hold every office the duties of which they were competent to discharge.

The Charter Act of 1833, while completely abolishing the Company's trade monopoly and requiring them to wind up their commercial business, gave to its political government a further lease of twenty years. The supreme control of government in India was expressly vested in the Governor-General of India in Council. The Governments of the minor presidencies were deprived of their legislative power which was now vested exclusively in the Governor-General in Council, and the Council was enlarged *for legislative purposes* by the addition of a fourth member. The Governments of the minor presidencies were empowered to submit to the Governor-General in Council "drafts or projects of any law or regulations which they might think expedient." Such laws were to take effect as Acts of Parliaments, and not to require any registration or publication in any court of justice. The Governor-General in Council were directed to appoint an Indian Law Commission to inquire into the judicial and police establishments in the British territories. Section 87 of the Act provided that,, "no native of the said territories, nor any natural born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the Company." The Pre-

sidency, of Bengal was to be divided into two presidencies to be called the Presidency of Fort William and Presidency of Agra, each with a Governor and Council of its own, but this provision was suspended two years later by an Act of 1835 which authorised the appointment of a Lieutenant-Governor for the North-Western Provinces.

(33). The Covenanted Services still closed to the Indians.

Notwithstanding the enabling clause in the Charter Act, 1833 the 'Covenanted Services' remained closed to the Indians. In 1844 Mr, Dwarka Nath Tagore, relying on the Charter of 1833, sent out some youngmen to be educated in England, so that they might be competent to hold office in India. One of them Doctor Chukerburty attained the highest distinctions in medicine, and Mr. Cameron and Sir E. Ryan addressed a letter to the Court of Directors recommending him for appointment in the covenanted medical service but the Court of Directors replied that "they had nominated him to a situation of equal if not superior value in the Uncovenanted service."*

No sooner the Act was passed the Court of Directors sought to evade its provisions. In their instructions to Indian government they construed the Act as follows :—

"The meaning of the enactment we take to be that there shall be no governing caste in British India ; that whatever other tests of qualification may be adopted, distinctions of race

*See Hansard, CXXVII p. 1316.

and religion shall not be of the number ; that no subject of the king, whether of Indian or British or mixed descent, shall be excluded, either from the posts usually conferred on our uncovenanted servants in India or from the covenanted service itself, provided he be otherwise eligible, consistently with the rules, and agreeably to the conditions observed and exacted in the one case and in the other."*

The continued exclusion of Indians from "covenanted services" was greatly resented. Mr. Cameron, a member of the Council in Indian and president of the Indian Law commission, observed in 1853 :—†

"The statute of 1833 made the natives of India eligible to all offices under the Company. But during the twenty years that have since elapsed, not one of the natives has been appointed to any office except such as they were eligible to before the statute."

(34). Petitions from India to Parliament.

When the time for the termination of the Company's charter approached petitions were sent forth to Parliament urging the undesirability of its renewal and the need for further reforms. On February 25, 1853, the Earl of Ellenborough presented to the House of Lords a petition‡ from the inhabitants of the Presidency of Madras

*Hansard, Vol. CXXVII, p. 1271.
Hansard, CXXVII, p. 1185.
‡Hansard, CXXIV, 631.

urging, among other things, the need of construction of public works and a better provision for the education of the people. On March 4th, Lord Monteagle presented a petition from the Members of Bombay Association and other Indians of the Presidency of Bombay, signed by upwards 2,400 persons, urging the abolition of double system of government by the Board of Control and the court of Proprietors, recommending the latter to be replaced by 'an Indian Council,' and asking for the fulfilment of the pledge given by the Charter Act of 1833. This was followed by another petition* presented on April 7th by the Earl of Harrowby, signed by nearly 7,000 inhabi ants of Bengal. They complained that no effect had been given to section 87 of the Charter Act of 1833, and proposed that the Company be given a shorter lease than twenty years in order to bring its administration earlier under the review of Parliament, that instead of double system of government at home there should be a Secretary of State assisted by a council of India partly elected and partly nominated, that the Indian legislature should be distinct from the executive power and should possess to a certain degree a popular character, that the Governor-General should no longer be permitted to act on his own responsibility, contrary to the opinions of the Council, that a sort of provincial autonomy be granted, that the salaries of the higher offices be reduced and of the subordinate ones augmented and that the civil services be thrown open to all

*Hansard, CXXV, 691.

British subjects, the offices to b filled by a system of competitive examination to be held n England.

(35). Motion to appoint a Select Committee.

On April 2, 1852, ths Earl of Derby moved for the appointment of a Select Committee to inquire into the Companys' Government. "The time is far from being come," he said, "at which anything like popular institutions could he conferred upon any portion of India; but of this I am quite sure, that this is your bounden duty in the interests of humanity, of benevolence, and of morality and religion, that as far and as fast as you can do it safely, wisely, and prudently, the inhabitants of India should be gradually entrusted with more and more of the superintendence of their own internal affairs, under the control of British authority, and taught to respect that authority which is vested in the law, and which they see judiciously and firmly enforced, temperately enforced also, by the superior British authority, which they may by long habit and practice learn to imitate, and, I would hope, even to surpass."*

(36). The Charter Act of 1853.

The Charter Act of 1853 continued the Government of British India in the hands of the East India Company 'in trust for Her Majesty,

*Hansard, CXX 559.

her heirs and successors, 'until Parliament shall otherwise direct. The number of Directors was reduced from twenty-four to eighteen, and of these, three in the first intance, and eventually six were to be nominated by the Crown. The fourth or the Law Member of the Council of the Governor-General was entitled to sit and vote at the executive meetings of the Council which was now enlarged for legislative purposes by the addition of the Chief Justice and one Puisne Judge of the Supreme Court at Fort William, and one member each representing and appointed by the four Provincial Governments of Bengal, Madras, Bombay, and the North-Western Provinces, from among the members of the Civil Service. No law or regulation made by the Council was to have any force or be promulgated until assented to by the Governor-General. The Court of Directors were deprived of the privilege of patronage and appointments were directed to be filled in accordance with the regulations framed by the Board of Control, regulations which threw the covenanted civil service open to general competition. The Court of Directors were authorised to appoint a separate Governor for the Presidency of Bengal or in the alternative to appoint a Lieutenant-Governor. The power to appoint a Lieutenant-Governor was exercised in 1854, and the power to appoint a Governor was not exercised till 1912. Authority was also given to create a new Lieutenant-Governorship, which was exercised for the Punjab in 1859.

(37). The Act of 1854.

Next year was passed another important Act which made a provision for administration of territories under the direct management of the Governor-General in Council. Section 3 of the Act, 1854, laid down :—"It shall be lawful for the Governor-General of India in Council, with the sanction and approbation of the Court of Directors of the East India Company, acting under the control and direction of Board Commissioners for the Affairs of India, from time to time by proclamation duly published, to take under the immediate authority and management of the said Governor-General of India in Council any part or parts of the territories for the time being in the possession or under the Government of the said Company, and thereupon to give all necessary orders and directions respecting the administration of such part or parts of the said territories or otherwise to provide for the administration thereof : provided always, that no law or regulation in force at any such time as regards any such portion of territory shall be altered or repealed except by law or regulation made by the Governor-General of India in Council."

By virtue of this clause Chief Commissionerships were established in some territories under the direction and control of the Supreme Government.

(38). The Government of India Act 1858.

The Mutiny of 1857 sealed the fate of the East India Company. In February 1858, Lord

Palmerston introduced his bill for the abolition of double government, but shortly after its second reading he left the office and was succeeded by Lord Derby. On March 26th Mr. Desraili introduced a bill for the transfer of Government of India to the Crown. It was proposed to rest the responsibility for Indian Government in the hands of a separate minister of the Crown assisted by a Council of eighteen members of which half were to be nominated by the Crown and the other half to be elected by certain commercial bodies in England. Viscount Palmerston who was now in the opposition ridiculed Desraili's scheme. "People met one another in the street," said he,* "and one laughed, and other laughed and everybody laughed." "What are you laughing at" said one. "Why at the India Bill, to be sure. What are you laughing at"? "Why I am laughing at the India Bill too." The measure died of ridicule and had to be abandoned. On April 30th the House passed fourteen resolutions on the basis of which the bill of 1858 was subsequently drawn up and passed.

The Government of India Act, 1858, transferred the responsibility for Indian Government from the Court of Directors and the Board of Control to a Secretary of State assisted by a Council. India was to be governed directly by and in the name of the Crown. The appointments of the Governor-General, Governors, ordinary members of the Governor-General's Executive Council were to be made by the Crown; those of

*Hansard, CXLIX, 1675.

the lieutenant-governors by the Governor-General subject to the approval of Her Majesty. With regard to rights and liabilities of the East India Company arising from contracts etc. the Secretary of State for India in Council was given a quasi-corporate character to sue and he sued in the Courts of law.

(39). Queen Victoria's Proclamation.

The transfer of political power from the East India Company to the Crown was announced in India by the publication of Queen Victoria's proclamation on November 1st, 1858. "We hold ourselves," said the Queen, "bound to the Natives of our Indian territories by the same obligations of duty which bind us to all our other subjects; and those obligations by the blessing of Almighty God, we shall faithfully and conscientiously fulfil." "And it is our further will that so far as may be, our subjects of whatever race or creed be freely and impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability and integrity duly to discharge."

CHAPTER II.

SIXTY YEARS UNDER THE CROWN.

(A) THE HOME GOVERNMENT

(1). Political power transfered to the Board of Control by Pitt's Act, 1784.

With the passing of the Pitt's Act in 1784, the power of the Court of Directors except with regard to patronage had become a sham and an imposture. Lord Grenvill observed in 1813 that the Act, "did actually commit the whole authority for the political direction of India to Commissioners appointed by the Crown." Sir Charles Wood in introducing the Government of India Bill on June, 3, 1853 had said, "the home business of the Government of India may be divided into two parts. One comprises the political relations of the Government of India with other states and questions of peace and war. These questions are decided not by the Court of Directors but by the Government of this country, and their orders are sent through the Secret Committee of the India Office and for these decisions not the Court of Directors, but the Government of this country is entirely and altogether responsible." "It is quite true," he proceeded, "that the President of the Board of Control has the power of overruling, in the last resort, the Court of Directors. I, therefore, fully

admit that I am responsible to this house for any acts in the administration of India just as the Secretary of State for the Colonies is responsible for the acts of the administration connected with his department. In substance there is no difference though there may be a difference in form." Mr. Kay pointed out, "in judging of responsibility, we should remember that the whole foreign policy of the East India Company is regulated by the Board of Control; that in the solution of most vital questions—questions of peace and war—affecting the finances of the country, and therefore, the means of internal improvement, the Court of Directors have no more power than the Mayor and Aldermen of any corporate town."

(2). Dual system condemned by Mr. Bright.

This mockery of a system which obscured responsibility and deluded public opinion had time and again been condemned in Parliament. Mr. Bright during the discussions in 1853 described the dual system as one "of divided responsibility, of concealed responsibility, and of no responsibility whatever." As the matters had stood for the last seventy years the Home Government escaped criticism by throwing the blame on the Court Directors, whilst the latter complained that the Board wasted and squandered on ambitious wars the revenues which the Company collected.

(3). Madras Indians present a petition against it.

On July 16, 1855, the Earl of Albumarle presented to the House of Lords a petition* from the Indians of the Presidency of Madras, signed by nearly 14,000 persons, and praying that the territories of British India may be placed, as early as practicable, under the management of an individual and responsible authority, subject directly and immediately to the Imperial Parliament.

(4). Resolutions of the House of Commons following the Indian Mutiny.

The disaster of 1857 hastened the end of the Company's government. It was felt by all the political parties to be inexpedient to leave the government and resources of a vast empire in the hands of a joint stock corporation. After a prolonged discussion in the House of Commons six resolutions were agreed to on June 17, 1858 :—

1. "That as the territories under the Government of the East India Company are by law to remain under such government only until Parliament shall otherwise provide, it is expedient that the transfer of such government to the Crown should now take place, in order that the direct superintendence of the whole empire may be placed under one executive authority."

2. "That for this purpose it is expedient to provide that Her Majesty, by one of the respon-

* Hansard, CXXXIX—878.

sible ministers of the Crown, shall have and perform all the powers and duties relating to the government and revenues of India, which are or may be now exercised and performed by the East India Company, or by the Court of Directors or Court of Proprietors of the said Company, either alone or with the approbation of the Commissioners for the Affairs of India."

3. "That in order to assist such a minister of the Crown in the discharge of his duties it is expedient that a Council be appointed of not more than fifteen members and not less than twelve."

4. "That with a view to efficiency and independence of the Council it is expedient that it should be partly nominated and partly elected."

5. "That the Chairman be directed to move the House, that leave be given to bring in a Bill pursuant to the said resolutions."

(5) The Government of India Act, 1858.

The Government of India Act 1858, transferred the territories and the government of the East India Company to the Crown and provided that "India shall be governed by and in the name of Her Majesty." The powers and duties relating to the government and revenues of India exercised by the Commissioners for the Affairs of India, or the Court of Directors or the Court of Proprietors of the East India Company alone or with the approbation of the Board of Control, were to be exercised by one of the Secretaries of State of Her Majesty. The salaries of the Secretary of State for India and his Under-Secretaries were to be paid

out of the revenues of India. The Secretary of State was to be assisted by a Council, consisting of fifteen members, to be styled 'the Council of India,' All the territorial and other revennes of India were to be received for and in the name of Her Majesty, and applied and disposed of for the purposes of the Government of India alone. The appointments of Governor-General, Governors, and Advocate-General were to be made by the Crown, and the appointments of the Lieutenant Governors of provinces by the Governor-General of India. All appointments to cadetships, naval and military, and all admissions to service not otherwise provided for were to vest in Her Majesty.

(6). Council of India as intended to be constituted by the framers of the Act.

It was intended by the framers of the Act that the Home Government of India should combine "the promptness, the decision, the energy which are the results of the undivided authority, with the knowledge, the experience, and the practice which only can be furnished by a body of men of destinguished talents, which have had considerable acquaintance with the vast and various forms of Indian life*." Lord Stanley observed†: "it is intended that the Council should be not merely nominal but real, and that its members should he assistants to the minister and not a mere screen or pretence. But if the Coun-

* Speech of the Chancellor of Exchequer on the 1st reading of the Bill, March 26, 1858.

† Speech on June 14, 1858.

cil were to be a reality, it must possess substantial independence, and not only that, but it must be known to have that character." Mr. Willoughby* pointed out that " upon the Council of India would mainly depend the good and bad government of the country" and that "the Council, therefore, upon which so much depended, should consist of persons of knowledge, experience, and independence." Mr. Disraili said that both nominated and elected members of the Council should be as far as possible representative men, but this representation be extended only to Government departments, and commercial interests. The Parliament was averse to extend representation to the people of India. That was not a proper time for concessions. " It is impossible." said Mr. Gladstone,† " that this House can be perpetually legislating about India. It can not be perpetually considering from year to year in what manner it can frame and assert on behalf of the natives that arrangement of government and administration which shall be well adopted to bring them forward in proportion to their powers in the work of governing themselves..... But I confess I cannot conceive circumstances more unfortunate for the consideration of such a question than the present circumstances of India, when a considerable portion of the natives are still in arms against you, and the concessions you may make, if too narrow, will fail to satisfy them; while, on the other hand, if they are large

* Hansard, Vol. CL, 2046.
† Hansard, Vol. CL, 1622.

and liberal, they may be ascribed not to your deliberate conviction of what is right, but to the apprehensions which they think they have excited." It was decided, therefore, that the Council of India should consist of " old Indians," and, to preserve the ministerial responsibility, that it should be a council of advice and not a council of control. If you make it a council of control, said Mr. Rœbeck, the effect would be " to shroud the minister when in the wrong, and to hamper him when in the right, for if wrong his responsibility would be taken away, and when right he would be afraid to act in cases where it might he said that he was acting contrary to the opinions of ten or twelve persons associated with him."

The Council of India was to consist of fifteen members, eight to be appointed by the Crown and seven elected by the Court of Directors. The *major* part of the members so nominated or elected were to be persons who had served or resided in India for at least ten years and who had not left India more than ten years preceding the date of appointment. In case of a vacancy in the Council none but a person so qualified could be appointed unless at least nine of the continuing members were persons so qualified. A member of the Council was to hold office during good behaviour, and to draw a yearly salary of twelve hundred pounds out of the revenues of India. He was further declared to be incapable of sitting and voting in Parliament. The Secretary of state was to be the President of the Council and was empowered to appoint any member of the Council as Vice-President, from time to time.

The Secretary of State was to arrange for the meetings of the Council provided that at least one meeting was held in every week. The quorum consisted of five members. All powers required to be exercised by the Secretary of State for India in Council were to be exercised at meetings of the Council. In case of a difference of opinion on any question other than one with regard to which a majority of votes was declared to be necessary, the determination of the Secretary of State was final. Every order or communication proposed to be sent to India or to be made in the United Kingdom was to be placed in the Council room for perusal of the members during seven days before the sending or making thereof and a member was entitled to record in a minute book, to be kept for the purpose, his opinion with respect to every such order and communication. If the majority of the Council record their opinions against any act proposed to be done and the Secretary of State still chose not to defer to the opinions of the majority he must record his reasons for acting in opposition. Sec 26 of the Act made provision for *cases of urgency*. Where it appeared to the Secretary of State that the despatch of any communication, not being an order for which a majority of votes at a meeting was made necessary, was urgently required, he was empowered to send such communication without first submitting it to a meeting of the Council or placing is on the Council table. When the Secretary of State adopted this procedure he was to record the reasons of urgency and give a notice thereof to every member of the Council.

Sections 27, and 28 made provisions for *secret despatches* to and from India. Sec. 27 laid down: —

"Povided also, that any order, not being an order for which a majority of votes at a meeting is hereby made necessary, which might, if this Act had not been passed, have been sent by the Commissioners for the Affairs of India, through the Secret Committee of the Court of Directors to Governments or Presidencies in India, or to the officers or servants of the said Company, may, after the commencement of this Act, be sent to such Governments or Presidencies, or to any officer or servant in India, by the Secretary of State without having been submitted to a meeting, or deposited for the perusal of the members of the Council, and without the reasons being recorded, or notice thereof given as aforesaid."

Section 28 similarly provided :—

"Any despatches to Great Britain which might, if this Act had not been passed, have been addressed to the Secret Committee of the Court of Directors, may be marked secret by the authorities sending the same; and such despatches shall not be communicated to the members of the Council, unless the Secretary of State shall so think and direct."

There were certain exceptions made to the general power of the Secretary of State to override his Council. No grant or appropriation of any part of the revenues of India or of any other property coming into the possession of the Secretary of State in Council by virtue of the

Act could be made without the concurrence of a majority of votes at a meeting of the Council. The regulations for the division and distribution of patranage and power of nomination among the several authorities in India were to be made with similar concurrence. By sec. 40 of the Act this restriction also applied to the powers of the Secretary of State in Council to sell, mortgage, or purchase property, or to enter into any contracts for ths purposes of the Government of India.

(7). Unreality of control exercised by the Council over the expenditure of revenues.

The control of the Council over the expenditure of Indian revenues was not so strong as it would seem. "This check", as Col. Chesney has observed "is rendered nugatory by the power given to the Secretary of State to deal with business alone in the secret department. In the days of the East India Company the Deputy Chairman or the Chairman of the Court of Directors were associated with the President of the Board of Control on this Committee but now the secret department of the India Office is removed entirely from the views of the whole Council. And thus while the sanction of the majority of that body is required to the granting of a gratuity or a pension of a few shillings a year recommended by the Government of India on behalf of some humble applicant, a Secretary of State may order and has ordered military operations to be under-

taken by the Government of India involving an expenditure of millions of money, not only without the sanction, but without even the cognizance of the Council." Similarly Sir John Strachey observes* "the powers thus given to the Council in controlling expenditure are, however, far from being as great as at first sight seem to be, for they can only be exercised with regard to the ordinary business of the administration. Orders involving large expenditure may be given by the Secretary of State without either the consent or the knowledge of the Council." For a number of years, after the passing of Government of India Act, 1858, doubts existed as to the extent of the financial veto of the Council over the Secretary of State. In 1869 when the Duke of Argyll was the Secretary of State for India the Marquis of Salisbury suggested that as there was hardly any question in which expenditure was not directly or indirectly involved the India Council had a power of obsolute and conclusive veto by a bare majority over every decision of the Secretary of State. The Duke of Argyll, who maintained the oppsite extreme view, said that the restriction as to expenditure was limited only to grants of money to individuals or for purposes of political jobbery. "It is the opinion of all", he said, "whom I have consulted including the law officers of the crown that under the present statute it is unquestionably in the power of the Secretary of State for India to order in India any service which may appear to

*India, its Administration and Progress, p. 68.
†Hansard, CXCV, 1074.

be required. Payment for this service is made in India, and disallowance of that payment is not competent to the Council, without the sanction of Secretary of State. It follows from this argument—which I believe to be well-founded both upon the historical facts of the case and the words of the Act—that Secretary of State is supreme in all matters whatever, except simply such matters as were included under the principle of the financial veto of Mr. Pitt *i.e.*, direct grants or appropriations of money to persons either here or in India which might be made for the purposes of political jobbery. That I believe to be the state of the law; and if it be so, I need hardly say that it makes the Secretary of State practically supreme in all matters whether they do or do not cost money." With a view to settle these doubts, the Marquis of Salisbury moved on May 13, 1869, that the following clause be inserted in the Government of India Act Amendment Bill :—

"Whereas doubts have arisen as to the powers of the Secretary of State over the expenditure of the revenues of India, and whereas it is expedient that such doubts be removed, be it enacted as follows :—Sec. 41 of the said recited Act for the better government of India is hereby repealed. The expenditure of the revenues of India both in India and elsewhere, shall be subject to the control of the Secretary of State in Council, but no grants of such revenues or any part thereof, no increase in the pay or pension of any person in the service of Her Majesty, and no contract or engagement charging or involving

the appropriation of such revenues for a period more than a year from the date of such contract or engagement, or involving any payment to any other department of Her Majesty's Government shall be made without the concurrence of the majority of votes at a meeting of the Council."

The Duke of Argyll, however, resiled from his position and the amendment was, consequently, withdrawn.

(8). The Council had no initiative but a great deal of moral influence.

The Act did not give the Council any initiative authority, "The position of the Council," says Sir John Stratchey*, "differs essentially from that formerly held by the Court of Directors of the East India Company, for, unlike that body, which possessed and exercised large independent powers, it has no initiative authority. Questions of the greatest importance, notorious to all the world may be pending, but the Council can give no opinion on them until they are laid before it by the Secretary of State." Though, in theory, a mere advisory body, in practice, "most of the ordinary business passes through the Council, and consisting as it does of men possessing special experience of Indian affairs, its advice is naturally, in the great majority of cases, followed by the Secretary of State."† It was the intention of the framers of the Act that except in matters of peace and war, foreign policy or otherwise requiring

*India, its Administration and Progress, p. 67.
†*Ibid*, p. 69.

secrecy the Council of India should possess an effective moral influence. Lord Stanley* said, the question has been put, how far and in what sense is it intended that this Council should act as a check on the Minister?.....The object is, that the Council should have a moral influence and control; that the Minister's decision should be as it is practically now final on all matters, but that all the members of the Council should be empowered to publicly and formally protest, and if they disapprove of the course taken by the Minister they may compel him to record his reasons in writing. But I am convinced that there is much more danger of a minister leaving too much on his Council than of his neglecting their advice. All the habits, tendencies and ideas of English public life are such as utterly to restrain public men from desiring to assume to themselves authority and responsibility beyond that which is imposed on them by the law. A far more probable danger is that of their desiring to shift responsibility and to throw it on others. And this is the more likely to happen, where by the nature of the case, the advisers of the Minister are possessed of departmental knowledge, in which he will almost certainly be deficient..... In one word, though we think there may be occasions when it may be necessary for a Minister to act on his own authority, and though, therefore, we have thought it right to provide for such occasions yet, in my judgment, they ought to be rare and exceptional. Undoubtedly if a minister

*Hansard, C.L.I, 324—326.

were habitually, and in cases not urgently requiring secrecy, to act upon his own authority, and without consulting his Council—that is to say, if he were to extend his authority beyond what it is at present as exercised through the Secret Committee—that would be not only a gross abuse of his power, but a violation of the spirit and meaning of the Act."

(9). The Secretary of State and Parliament expected not to interfere in the ordinary task of administration.

By tranferring the responsibility for Indian Government to the Crown it was not the intention of the legislature that the Secretary of State should constantly interfere in the ordinary task of administration or to take the initiative into his own hands. India was to be governed *in* India. During the debates, on June 24, 1858, Mr. Bright said in the House of Commons, "if we are to have the details settled here I am perfectly certain we can have no good government in India*."

* Following the intentions of the British legislature the Home Government has been always reluctant to interfere with the details of Indian administration. Sir John Strachey observes : "it has often been said that one result of the transfer of the Government of India to the Crown has been to increase very greatly the interference of Home Government, and to weaken the authority of the government in India itself..... but it is an error to suppose that the Secretary of State is constantly interfering in the ordinary work of Indian administration. The description of Home Government given by Mr. J. S. Mill in the time of the East India Company is as applicable now as when he wrote :—"It is not, 'so much an

The Parliamentary control over the Indian affairs, fixed by statute, was of a very limited character. By Section 53 of the Act the Secretary of State in Council was required annually to lay before both Houses of Parliament an account of the preceding financial year together with a statement in such form as shall best exhibit the moral and material progress and condition of India. Section 54 laid down : " when any order is sent to India directing the actual commencement of hostilities by Her Majestys' forces in India, the fact of such order having been sent shall be communicated to both Houses of Parliament within three months after the sending of such order, if Parliament be sitting, unless such order shall have been in the meantime revoked or suspended, and, if Parliament not sitting at the end of such three months, then within one month after the next meeting of Parliament." Section 55 provided that except for preventing or repelling actual invasion of the British Indian possessions, or under other sudden or urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defray the

executive as a deliberative body. The Executive Government of India is, and must be, seated in India itself. The principle function of the Home Government is not to direct the details of administration, but to scrutinise and revise the past acts of the Indian Government ; to lay down principles and issue general instructions for their future guidance, and to give or refuse sanction to great political measures which are referred home for approval." The action of the Secretary of State is mainly confined to answering references made to him by the Government of India, and apart from great political and financial questions, the number and nature of those references mainly depend on the character of the Governor-General for the time being."

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expenses of any mililtary operation carried on beyond the external frontiers of such possessions. The object of this clause was not to prevent the Crown from employing the Indian forces upon any foreign expedition, for it would still be the undoubted prerogative of the Crown to employ those forces in any quarter of the globe for which by the terms of their enlistment they may be eligible, but to secure a protection of the revenues of India. As the Earl of Derby pointed out,* "if the troops were employed out of India, it would be for the Parliament to decide whether they were employed upon Indian or imperial objects. The clause did not prevent the Crown from making use of the Indian troops, subject only to this—that as a general rule the expense of these troops must be paid by Parliament ; and the same constitutional check, therefore, was imposed on the Crown with regard to troops serving in India which was imposed with respect to troops serving in every other part of the globe. If the clause were not agreed to it would be perfectly competent for any unconstitutional sovereign to employ the whole of the revenues and the troops of India for any purposes which the Crown might direct, without the necessity of going to Parliament for the advance of a single shilling."

(10). The Government of India Act 1869.

The Government of India Act, 1869, made some important amendments in the constitution

*Hansard, C.L.I, 1697.

of the Council. All vacancies in the Council were to be filled up by appointment by the Secretary of State, and a member so appointed after the passing of the Act was to hold office for ten years and ordinarily was not to be re-eligible. For special reasons of public advantage the Secretary of State may reappoint a member, whose term of office has expired, for a further period of five years, provided he records his reasons in a minute signed by himself, and the some is laid before both Houses of Parliament. A member of Council may resign office by writing under his hand, which shall be recorded in the minutes of the Council.

(11). The Council of India Act, 1876.

The Council of India Act 1876 enabled the Secretary of State to appoint, for special reasons any person, having professional or other peculiar qualifications, to be a member of the Council; and a member so appointed was to hold office in the same manner, and was to be entitled to the same salary, pension, and other rights and privileges, and subject to the same disabilities, as if he had been elected or appointed before the Act of 1869. This, however, was not to affect the provisions of Sections 7 and 10 of the Act of 1858 with reference to the members of the Council and the qualifications of the major part of the members. The special reasons for every such appointment under the Act were to be stated in a minute of the Secretary of State for India, and laid before both Houses of Parliament.

(12). The Council of India Reduction Act, 1889.

It authorised the Secretary of State to abstain from filling vacancies in the Council of India until the number was reduced to ten.

(13). The Council of India Act 1907.

No further amendment in the constitution was made till 1907 when an Act of that year provided that the Council of India shall consist of such number of members not less than ten and not more than fourteen, as the Secretary of State may from time to time determine. The provision in Section 10 of the Act, 1858, that the major part of the Council shall be persons who had served or resided in India for *ten years* was replaced by *five years*. The salary of a member was reduced to one thousand pounds, and his tenure of office to seven years. The Council of India Act, 1876 (39 vict. c. 7), and the Council of India Reduction Act, 1889 (52 and 53 vict. c. 65) were both repealed.

(B) GROWTH OF COUNCILS AND LEGISLATIVE AUTHORITY.

(1). Legislation before the Regulating Act 1773.

Some of the earlier charters of the East India Company are important in tracing the origin of legislative authority of the British Government in India. The first Charter of Elizabeth in 1601 gave the Company power "to make, ordain, and constitute such and so many reasonable laws, constitutions, orders, and ordinances, as to them or greater part of them being then and there present, shall seem necessary and convenient for the good of the said Company and of all factors, masters, mariners, and other officers, employed or to be employed in any of their voyages, and for the better advancement and continuance of their trade and traffic." Similar provisions were made in the charters of 1609, 1661, and 1669. By the Charter of 1726 the Governors and Councils of the three Presidencies were empowered "to make, constitute and ordain by-law, rules, and ordinances for the good government and regulation of the several corporations hereby created, and of the inhabitants of the several towns, places, and factories aforesaid respectively, and to impose reasonable pains and penalties upon all persons offending against the same or any of them." These regulations were to be in the spirit of English laws, and were not to be binding unless assented to by the Court of Directors.

(2). No distinction between legislative and executive authorities up to 1833.

Till 1833 both legislative and executive powers were vested in the same body. The Regulating Act, 1773, appointed a Governor-General and four Councillors for the government of the Company's settlement at Fort William in Bengal, and authorised the Governor-General with the assent of the majority of his Council to make and issue rules and ordinances, provided that such rules were just and reasonable, not repugnant to the laws of the realm, *and duly registered in the Supreme Court with its assent and approbation.* An Act of 1881 further empowered the Governor-General and Council to frame from time to time regulations *for Provincial Courts and Councils.* Pitt's Act, 1784, reduced the number of Councillors to three, of whom the Commander in-Chief of the Company's forces in India was to be one and to have precedence next to the Governor-General. The control of the Governor-General and Council over the minor Presidencies was declared to extend over all such points as related to any transactions with the country powers or to peace and war, or to the application of the revenues or forces of such presidencies in the time of war. The Government of each of the Presidencies of Bombay and Madras was to consist of a Governor and three Councillors, one of whom was to be the Commander-in-Chief of the Presidency. An Amending Act of 1786 empowered the Governor-General in special cases to override the majority of his Council and to act on his own responsibility.

By the Charter Act, 1793, the Commander-in-Chief was not to be a member of the Council at Fort William unless specially appointed by the Court of Directors. The Governor-General in Council was invested with full powers and authority to superintend, control, and direct the Governments of minor Presidencies, and all other Governments erected by the Company and such Governments were required to obey all directions of the Governor-General in Council, in all cases whatever, except when they have received positive orders and instructions to the contrary from the Court of Directors or from the Secret Committee by the authority of the Board of Control. The Governors, like the Governor-General, were given powers to override the Council and act on their own responsibility where necessary.

In 1800 the Government of Fort St. George at Madras was invested with legislative powers, similar to those conferred on the Governor-General in Council in 1781, to frame regulations for the Provincial Courts of the Presidency. Like powers were conferred on the Governor in Council at Bombay, in 1807, by an Act which also gave general legislative powers for their respective territories to Governments of both the minor Presidencies. All such laws were however, required to be registered in the Supreme Court till that was rendered unnecessary by the Charter Act of 1833.

(3). The Councils enlarged for legislative purposes.

From 1773 to 1833 there was, in British India, no legislature apart from the executive.

In that year one law member was added and the whole legislative authority was centralised in the Governor-General in Council, the minor presidencies being deprived of their independent legislative powers. The tenor of evidence given before the Committee in 1852-53 showed that the Executive Council alone was insufficient to perform the legislative functions. Mr. McLeod in his evidence observed "the Governor-General with the four members of the Council, however highly qualified those individuals may be, is not altogether a competent legislature for the great empire which we have in India. It seems to me very desirable that in the legislative government of India there should be one or more persons having local knowledge and experience of the minor presidencies, that is entirely wanting in the Legislative Council as at present constituted. It appears to me that this is one considerable and manifest defect. The Governor-General and Council have not sufficient leisure and previous knowledge to conduct, in addition to their executive and administrative functions, the whole duty of legsilation for the Indian empire."* In consequence of the report of the committee the Council of the Governor-General was enlarged for legislative purposes in 1853, and the "fourth" member was put on the same footing with the other members of the Executive Council.

The Act of 1853 which added two judges and a few representatives of the Provincial Governments to the Council of the Governor-General

* Hansard, CLXIII, 638.

was intended simply to give to that Council the assistance of local knowledge and legal experience in the framing of laws. The new Council, however, assumed the functions of a "petty Parliament" to redress grievances, and criticise the conduct of the executive authorities. The first Vice-President, Sir Lawrence Peel, in a short memorandum, expressed a decided opinion against it. "It has no jurisdiction," he said, "in the nature of the grand inquest of the nation. Its functions are purely legislative and are limited even in that respect. It is not an Anglo-Indian House of Commons for the redress of grievances, to refuse supplies, and so forth."* In moving, therefore, for leave to introduce the Indian Councils Bill 1861, Sir Charles Wood observed: "I have no intention of doing anything to make this Council a debating society." Earl DeGrey and Ripon, similarly, assured the House of Lords that the Government had decided to make special provisions in the Bill "to prevent the Council assuming again the functions of a little Parliament."

(4). The events of 1857 imputed by Mr. Syed Ahmed to lack of Indian representation on Councils.

The unfortunate events of 1857 had proved the impossibility of governing India without the association and assistance of popular representatives who alone could furnish the Government with correct knowledge of the wishes, sentiments, and prejudices of the Indian population. Mr. (after-

* Hansard, CLXIII, 639.

wards, Sir) Syed Ahmad Khan wrote in 1858: "Most men, I believe, agree in thinking that it is highly conducive to the welfare and prosperity of Government—indeed it is essential to its stability—that the people should have a voice in its Councils. It is from the voice of thepeople only that Government can learn whether its projects are likely to be well-received. The voice of the people alone can check error in the bud, and warn us of dangers before they burst upon and destroy us.....A needle may dam the gushing rivulet : an elephant must turn aside from the swollen torrent. This voice, however, can never be heard, and this security never acquired, unless the people are allowed a share in the consultations of Government. The men who have ruled India should never have forgotten that they were here in the position of foreigners—that they differed from its natives in religion, in customs, in habits of life and thought. The security of a Government, it will be remembered, is founded on its knowledge of the character of the governed, as well as on its careful observance of their rights and privileges.....The evils which resulted to India from the non-admission of natives into the Legislative Council of India were various. Government could never know the inadvisability of any of the laws and regulations which it passed. It could never hear, as it ought to have heard, the voice of the people on such a subject. The people had no means of protesting against what they might feel to be a foolish measure, or of giving public expression to their own wishes. But the greatest mischief lay in this, that the

people misunderstood the views and the intentions of Government."*

(5). The suggestion to provide representative Councils in India rejected by responsible authorities.

The atmosphere was, however, surcharged with suspicion, and it was considered inadvisable at that juncture to liberalise the Council and make a statutory provision for the admission of Indians. The proposal to have in India a representative legislative body met with the disapprobation of both Lord Canning and the Home Government. It was decided to frame the constitution of the Councils in accordance with the "extreme notions with regard to legislation which prevail in India." Sir Charles Wood said: "the notion of legislation, which is entertained by a native is that of a Chief or Sovereign, who makes what laws he pleases; he has little or no idea of any distinction between the executive and legislative functions, of Government," and this was accepted as the principle on which the fabric of the new constitution was to rest. The idea of having some *representatives* of the people of India in the Council was rejected as "simply and uttterly impossible, for you cannot possibly," said Sir Charles Wood in introducing the Bill on June 6, 1861, "assemble at any one place in India persons who shall be the real representatives of the various classes of the native population of that empire." But though no statutary provision was

* The life and work of Sir Syed Ahmad Khan by Major Graham, p. 26-27.

made for the nomination of Indians as additional members of the Council, a discretion was left with the Governor-General to admit, particularly, native chiefs, for legislative purposes, for then "they will no longer feel, as they have hitherto done, that they are excluded from management of affairs in their own country."* To those in Parliament who pressed for a statutory recognition of the right of Indians to be admitted into the Council, Sir Charles wood, the Secretary of State for India, replied, "it had been said in the course of discussion that their great object should be to obliterate the distinctions between the conquerors and the conquered in India. Now, that was precisely the policy which he wished to carry into effect. Those Bills distinctly provided that the natives should be employed in the Legislative Councils as well as in the highest judicial courts, and in the most important executive offices..... He might observe, however, he had not thought it at all desirable to name the natives expressly in the measure. He held the perfect equality before law of all Her Majesty's subjects, without distinction of race, birth, or religion, and he would not do anything which could lead to the supposition that he doubted for a moment the existence of that principle."

(6). The Indian Councils Act 1861.

The Indian Councils Act 1861, consolidated, and in certain respects amended the provisions of former Acts of Parliament respecting the constitution and functions of the Council of the Governor-

* Speech of Sir Charles Wood in the Commons, June 6, 1861.

General. The number of the *ordinary* members of the Council was raised to five, three of whom were required to be persons who, at the time of their appointment, were in the service of the Crown in India for, at least, ten years, and of the remaining two one was to be a barrister or a member of the Faculty of Advocates in Scotland of not less than five years standing. In addition to these the Secretary of State in Council was empowered to appoint the Commander in Chief of Her Majesty's Forces in India to be an extraordinary member. Power was also given to the Governor-General to frame rules and orders for the transaction of business in the Council.

"For the better exercise of the power of making laws and regulations" the Governor-General in Council was required to nominate *Additional Members*, not less than six and not more than twelve in number, who were to hold office for a term of two years, and were to be summoned to all meetings of the Council held for legislative purposes. Of these Additional Members not less than one-half were to be non-official, that is to say, persons who at the date of such nomination were not in the civil or military service of the Crown in India. The Legislative Council was expressly forbidden to transact any business at its meetings other than the consideration or enactment of the measures introduced or to entertain any motion unless the same be for leave to introduce a bill or have reference to some measure actually introduced. Except with the previous sanction of the Governor-General no measure was to be introduced affecting the Pub-

lic Debt or public revenues of India or by which any charge would be imposed on such revenues ; the religion or religious rights and usages of any class of British subjects in India ; the discipline or maintenance of Military or Naval Forces ; and the relations of the Government with foreign princes or states. The Governor-General may assent to a measure passed by the legislative Council or withhold his assent, or reserve the same for the signification of the pleasure of Her Majesty thereon. A law assented to by the Governor-General may be disallowed by the Crown acting through the Secretary of State. The Legislative Council of the Governor-General was authorised to make laws for all persons, whether native, British, or foreigners, and for all Courts of justice, and for all places and things within the territories of British India, and for all servants of the Government of India within the dominions of princes and states in alliance with Her Majesty. The Governor-General was empowered to make and promulgate ordinances in cases of urgent necessity. Every such ordinance was to have the force of law for the space of not more than six months from its promulgation unless disallowed earlier by the Crown through the Secretary of State for India in Council or superseded by some law made by the Legislative Council of the Governor-General.

To the Presidency Governments of Bombay and Madras the legislative powers were restored, and the Governors were required to nominate Additional Members, not less than four and not more than eight in number, for the purpose

only of making laws and regulations. As in case of the Legislative Council of the Governor-General no business was to be transacted at any meeting of Presidency Council for the purpose of making laws and regulations other than the consideration and enactment of measures introduced into the Council, nor was any motion to be entertained unless it was for leave to introduce some measure or had reference to some measure actually introduced. A law passed by the Council required the assent not only of the Governor, but also of the Governor-General, and could be disallowed by the Crown through the Secretary of State in Council. The Governor in Council was empowered to make laws and regulations for the peace and good government of the Presidency except for the purposes undermentioned ; that is to say:

1. Affecting the Public Debt of India, or the custom duties, or any other tax imposed by the authority of the Government of India.

2. Regulating any of the current coin, or the issue of any bills, notes, or other paper currency.

3. Regulating the conveyance of letters by the post office or messages by the electric telegraph within the Presidency:

4. Altering in any way the Penal Code of India (Act 45 of 60)

5. Affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India.

6. Affecting the discipline and maintenance of naval and military forces.

7. Regulating patents or copyrights.

8. Affecting the relations of the Government with foreign princes or states.

No regulations made by a Governor in Council affecting any of the above mentioned purposes were to be valid unless made with the previous sanction of the Governor-General or unless assented to by him.

The Governor-General in Council was empowered to establish, by proclamation, Councils for making laws and regulations for the Bengal Division of the Presidency of Fort William, the North-Western Provinces, and the Punjab, and to extend the provisions of the Act to these territories. He was also authorised to constitute, from time to time, new provinces; to appoint Lieutenant-Governors for them; and to fix or alter the boundaries of any Presidency, division, or province. Legislative Councils for the North-Western Provinces and for the Punjab, were however, not established till 1886 and 1897 respectively.

(7). Some Minor Acts.

The Government of India Act 1865 empowered the Governor-General of India, at meetings for the purpose of making laws and regulations, to make laws for *all British subjects* within the dominion of allied princes and states in India, whether in the service of the Government of India or otherwise.

By the Government of India Act 1869 the appointments of the ordinary members of the Governor-General's Council, and of the Councils of the minor presidencies were required to be

made by the King by warrant under the Royal Sign Manual.

The Indian Councils Act 1869 authorised the Governor in Council to make laws binding upon native Indian subjects beyond the Indian territories under the dominion of Her Majesty.

(8). The Indian Councils Act, 1870.

The Indian Councils Act 1870 provided that every Governor in Council, Lieutenant-Governor, or Chief Commissioner shall have the power to propose to the Governor-General in Council, drafts of any regulations, for the peace and good government of any parts of the territories under his administration to which the Secretary of State in Council shall, from time to time, declare the power to be applicable, and if such draft is approved by the Governor-General in Council it shall have the force of law. Mr. Grant Duff in moving for the second reading of the Bill observed: "some persons had praised the Government and some had blamed them for tending by these clauses towards a more despotic ideal of government in India ; but they deserved neither the praise nor the blame, for they were doing nothing of the kind. They were simply altering a clumsy expedient for a more convenient one, and when the day came when something better could be substituted for the present convenient expedient they heartily hoped it might be substituted. Viscount Halifax suggested to confine the proposed powers to the non-regulation provinces to which the Duke of Argyl replied that it was

desirable to give the same latitude to regulation provinces where emergencies, such as actual or threatened insurrection might arise calling for speedy and despotic powers. Section 3 of the Act provided that whenever the Governor-General-in-Council shall hold a meeting for the purpose of making laws and regulations at any place under the administration of a Lieutenant-Gover-or Chief Commissioner such Lieutenant-Governor or Chief Commissioner shall be an *ex-officio* Additional Member of the Viceroy's Legislative, Council.

(11). The Indian Councils Act, 1871.

The Indian Councils Acts 1871 empowered the local legislatures to confer jurisdiction over European British subjects to Magistrates, being Justices of the Peace.

(12). The Indian Councils Act, 1874.

The Indian Councils Act 1874 empowered Her Majesty, "if she shall think fit," to increase the number of the ordinary members of the Council of the Governor-General of India to six, by appointing a "member for public works purposes." Section 2 of the Act provided that whenever such a member has been appointed it shall be lawful for Her Majesty to diminish, from time to time, the number of ordinary members to five by abstaining from filling up any vacancy, other than thatof Law Member.

(13). The Indian Councils Act, 1892.

As the constitution stood before this Act no financial discussion was possible except when there was a proposal for a new tax, and even then it was to be limited only to the immediate legislative proposal before the Council. During thirty years since 1861 there had been sixteen occasions when new legislation had been called for and discussion took place, and fourteen on which there had been no discussion at all. There was no opportunity for the Government to explain its policy or to reply to hostile criticism, or for the representatives of popular views to ask for information or state their wants. Nor was there any *independent* expression of opinion on the Councils, as the nominated members felt themselves bound to act in accordance with the wishes of those who appointed them. The successes of Municipalities and the Local Boards had amply demonstrated that India was ready for more liberal reforms. Memorials were addressed to the Government of India by important public bodies and associations demanding a change. The Indian National Congress proposed that electoral principle might be introduced in the Councils and the elected members be not less than one-third of the total number (so as to leave the Government always with a majority of votes.)

Lord Dufferin early saw the desirability of further associating Indians with the government of the country, principally, as their presence at

the Council meetings and their assent to measures would popularise the acts of government hitherto regarded as proceeding entirely from alien governors. He wrote in 1886 :—

"Undoubtedly the most vital and important of notions started by reformers is the change they propose in the Legislative Councils. I confess that soon after my arrival in this country it occurred to me that improvement might be possible in this direction, and personally I should feel it both a relief and an assistance if in the settlement of many Indian administrative questions affecting the interests of millions of Her Majesty's subjects, I could rely to a larger extent than at present upon the experience and counsels of Indian coadjutors. Among the natives I have met there are a considerable number who are both able and sensible, and upon whose loyal co-operation one could undoubtedly rely. The fact of their supporting the Government would popularise many of its acts which now have the appearance of being driven through the legislature by force; and if they in their turn had a native party behind them, the Government of India would cease to stand up, as it does now, an isolated rock in the middle of a tempestuous sea, around whose base the breakers dash themselves simultaneously from all the four-quarters of the heavens."*

After much deliberation Lord Dufferin transmitted to the Secretary of State for India, in a despatch of 1888, recommendations of his Govern-

* Life of Lord Dufferin by Sir Alfred Lyall, p 427.

ment regarding the proposed constitutional changes. Lord Dufferin's despatch is an important constitutional document not only for the reason that the reforms ultimately embodied in the Act of 1892 were on the lines indicated in it, but also for the fact that it laid down the principles of decentralisation, increasing association of Indians, and maintenance in the English hands of the supreme control and authority, which in after-years were repeatedly held to be the guiding principles of constitutional changes in India. Some extracts from that comprehensive review may, therefore, be given to indicate the direction of Lord Dufferin's policy :

"Having regard to the relation in numbers, in condition, in status, and in qualifications for government of what may be called the Europeanised and the educated section of the Indian people as compared with the masses that constitute the bulk of the nation, I am convinced that we should be falling into a great error if, mascalculating the force and the value the Congress movement and the influence of its supporters and advocates, whether in the press or elsewhere, we were to relax in the slightest degree our grasp of the supreme administration of the country. On the other hand, so long as we hold firmly to this principle, and remain alive to our own imperial responsibilities, I believe that both with safety and advantage we can give full play to the legitimate and praiseworthy ambition of the loyal, patriotic, and educated classes of India who are desirous of taking a larger share than hitherto

in the transaction of the public business of their respective provinces.

"Fortunately whilst the Government of India has been occupying itself in framing proposals for reconstituting its provincial Legislative Councils, it has also, at the suggestion and with the approval of the Secretary of State, been perfecting very important arrangement for the still further decentralisation of our financial system, and for handing over to the Provincial Governments a more complete and independent control of the provincial revenues. At the same time certain powers of supplementing and increasing the local funds by provincial taxation is to be attributed to them. Thus the Provincial Councils will be admitted to a very large and improrttant field of provincial administration, and ample scope and opportunities will be given to its members, both Native and English (amongst whom an adequate number of repesentatives of the British merchantile interests should be certainly included), to display their statesmanship and their ability to provide for the wants and interests of the extensive communities over which their influence and jurisdiction will extend....."

"In two respects I should desire procedure in the Governor-General's Council to be amended. Under the existing law it is only when a new tax is to be imposed that the Finance Member is required to submit his financial proposals to the Legislative Council, or that any opportunity is given to the members of that body to make observations in regard to them. When there is no new taxation the Finance Member merely

publishes his budget in the form of a pamphlet. For my own part I think that yearly financial discussion in the Viceroy's Legislative Council would prove a very useful and desirable arrangement, and a very convenient preliminary to the subsequent debate which takes place on Indian finances in the House of Commons later in the year....."

"The second change in the procedure of the Supreme Legislative Council which I am inclined to recommend is, that, under proper restriction to be laid down by the Viceroy, its members should be permitted to ask questions in reference to current matters of domestic, as distinguished from those of imperial, interests that may have attracted public attention..... Under existing circumstances the Government of India has no adequate medium through which it can explain its policy, correct a wrong impression, or controvert a false statement, and, though up to the present time the consequences of the evils I have indicated may not have become very serious or widespread, they contain the germs of incalculable danger. Consequently it would prove as great an advantage to the Indian administration as it would frequently be a satisfaction to the members of the Council and the public at large, if reasonable opportunities were afforded of communicating to those interested the exact facts in regard to any questionable matter."

The Marquis of Lansdown actively supported the constitutional changes proposed by his predecessors and an Act of the British Parliament

in 1892 brought these changes into operation. The discussion over the Bill mainly riveted on two demands of the Indian National Congress, *viz.*, partial introduction of the electoral principle in the constitution of the legislatures, and a sufficient enlargement of their strength to make them really representative of the popular views. In their first demand the Congress had the support of Lord Dufferin, who besides dwelling on elective principle in his addresses in India had recommended it to the Home Government. It had also been recommended by Lord Northbrook, Lord Ripon, and Lord Reay. It was urged and supported with great force, in the House of Commons, by Messrs. Schwana, Smith, and others, but the Conservative Government dreaded the innovation. Mr. (afterwards Lord) Curzon, the Under-Secretary of State for India, denounced it as "essentially foreign to oriental mind," as one "not only uncongenial" but "absolutely repugnant to many classes in India." To those who pointed to the Indian National Congress, he replied, "it appears to me that you can as little judge of the feelings and aspirations of the people of India from the plans and proposals of the Congress party as you can judge of the physical configuration of a country which is wrapped up in the mists of early morning, but a few of whose topmost peaks have been touched by the rising sun."* Sir R. Temple condemned the electoral principle for, he thought, no electors could be found in India. "You would have to drag them from the highways

* Hansard 4 Series, Vol III. 66.

and bye-ways and when you got them would find it impossible for them to understand what the system meant." Mr. Schwana's amendment providing and assuring the principle of election was rejected, and the Bill empowered the Government of India to introduce some principle of representation, whether the system be election, or selection, or delegation.

The second reform urged was the enlargment of the strength and functions of the Councils. The existing Councils neither claimed to represent the public nor enjoyed the public confidence. If they were established with any idea of giving the people some voice in the framing of their laws they had signally failed in attaining that object for five reasons, *viz.*, the insufficiency of Councillors; the overwhelming preponderance of official members; the absence of representative election; the narrow limits of the Council's functions; and the inability of the local Councils to pass any laws conflicting with an Act passed by the Council of the Governor-General. The strengh of additional members of the Governor-General's Council, at this time, was not less than six and not more than twelve and the Bill now proposed to increase the number to a minimum of ten and a maximum of sixteen. Mr. Schwana described this as " a very paltry and miserable addition " and moved an amendment that the minimum number of the Additional members should be forty. The amendment was opposed by the Government and defeated. The Under-Secretary of State Mr Curzon, observed that such a scheme, if accepted, would turn the Supreme Council into a "Parlia,

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mentary body " and create an " opposition party" which would not only result in friction, but in dislocation of government altogether."

The Act fixed the number of " Additional members " of the Governor-General's Council at not less than ten and not more than sixteen, and of the Councils of Madras and Bombay at not less than eight and not more than twenty. The maximum for the Council of the Lietenant-Governor of Bengal was fixed at twenty, and for the North-Western Provinces and Oudh at fifteen. A local legislature was empowered, with the previous sanction of the Governor-General, to repeal or amend as to its province any Acts of the Central Government. The Governor-General in Council was authorised to make rules, subject to the sanction of the Secretary of State in Council, for the *discussion* of the Annual Financial statement and the asking of questions. The Governors in Council, and the Lieutenant-Governors were also empowered to frame similar rules with the sanction of the Governor-General in Council. But no member at any such Council meeting was to have power to submit or propose any resolution, or to divide the Council in respect of any such discussion, or the answer to any question asked under the authority of the Act.

By the regulations framed under the Act, of the sixteen Additional members of the Council of the Governor-General ten were to be non-official and of these latter four were to be appointed on the recommendation of the four provincial legislatures, one on the recommendation of the Calcutta Chamber of Commerce, and the five remainder

were to be nominated by the Viceroy to represent landed and other interests in the country. In the Provincial Legislatures, while retaining the official majority, the major portion of non-official seats were to be filled on recommendations by groups of Municipalities and District Boards, Chambers of Commerce, Landholders and Universities.

(14). The Minto-Morley Reforms or the Indian Councils Act, 1909.

In 1906 Lord Minto pointed out "how the growth of education encouraged by British Rule had led to the rise of important classes claiming equality of citizenship, and aspiring to take a larger part in shaping the policy of the Government," and appointed a Committee of his Executive Council to consider and report on the general question of constitutional reforms. In England, the same year, a liberal government came into power in face of what the Secretary of State for India described as "enormous difficulties which we had not created" and for the next two years there were "heavy and black clouds over the Indian horizen."* India attracted an attention in the House of Commons in far excess of what she had hitherto done. In spite of sedition and political unrest Lord Minto's Government persisted in the policy of reform and in the Home Department Letter of the 24th August 1907 they put forward certain tentative proposals, inviting

* Hansard, CLXXXIII, p. 412.

the Local Governments to submit their opinions after consulting the representatives of the various classes in the country. As a direct result of these deliberations a Despatch on reforms was addressed by the Government of India to the Secretary of State on the 1st October 1908, and a reply discussing the proposed reforms was sent by Lord Morley to the Governor-General in Council on the 27th November, 1908.

On December 17, 1908, Viscount Morley of Blackburn made his promised statement on the proposed reforms which he described as "the opening of a very important chapter in the history of the relations of Great Britain and India."* To those who argued that "oriental countries inevitably and invariably interpret kindness as fear" and that the existence of violence in Indian politics made the policy of constitutional concessions inexpedient, the Secretary of State replied: "The Government of India and myself have from the very first beginning of this unsettled state of things never varied in our determination to persevere in the policy of reform..... Who would be best pleased if I were to announce to your lordships that the Government have determined to drop the reforms? It is notorious that those would be best pleased who are the extremists and irreconcilables, because they know very well that for us to do anything to soften estrangement and appease alienation between the European and native populations would be the very best way that could be adopted to deprive

* Hansard, CXCVIII, p. 1974.

them of fuel for their sinister and mischievous designs."* Viscount Morley summarised the reforms proposed under seven heads, *viz.*, to increase the number of members of both Viceregal and Provincial Councils; to sanction election alongside of nomination, to repeal the prohibition contained in the Indian Councils Act of 1892 against resolution or division in Council in financial discussions; to invest Legislative Councils with power to discuss matters of public and general importance, and to pass recommendations to the Government; to extend the power to appoint a member on the Council to preside; to double the number of ordinary members of the Executive Councils of Bombay and Madras; and to sanction the power for the creation of Executive Councils for the Lieutenant-Governors and to define the Lieutenant-Governor's power to overrule his Council. The Government of India had proposed to reduce the official majority in the Provincial Councils to the narrowest limits by making the number of officials (excluding the head of Government) and non-officials equal. In regard to the Viceroy's Legislative Council they proposed to rely upon the public spirit of non-official members and to dispense with official majority "on all ordinary occasions." The Secretary of State while agreeing to dispense with the official majority in the Provincial Councils decided to retain it in the Council of the Governor-General. To those who saw inconsistency in

* Ibid, p. 1979.

the retention of official majority in the Viceregal Council, Lord Morley replied :—

"So it would be on one condition. If I were attempting to set up Parliamentary system in India, or if it could be said that this chapter of reforms led directly or necessarily upto the establishment of a Parliamentary system in India, I, for one would have nothing at all to do with it. I do not believe it will, in spite of the attempts in oriental countries at this moment—attempts which we all wish well—to set up Parliamentary Government. It is no ambition of mine, at all events to have any share in the beginning of that operaton in India. If my existence, either officially or corporeally, were prolonged twenty times longer than either of them is likely to be, a Parliamentary system in India is not a goal to which I for one moment would aspire."*

Another of the reforms proposed, to which, however no sanction of Parliament was necessary, was to appoint one Indian member on each of the executive Councils of the Governor-General and of the Governors of Bombay and Madras, for such an absence could "no longer be defended" and the advance was justified by reason of the enormous success which attended the appointment of two Indians to the Council of India "If it were on my own authority only," said the Secretary of State, "I might hesitate to take that step, because I am not very fond of innovations in dark and obscure ground but here

* Ibid, 1985.

I have the absolute and zealous approval and concurrence of Lord Minto himself. It was at Lord Minto's special instigation that I began to think seriously of this step."

The Marquis of Lansdown expressed his belief that popular election in India was an "exotic idea", and as to the functions of the Legislative Councils, he observed "by all means let us give them the fullest possible measure of opportunity for criticism, consultation, deliberation, interpellation, and so forth, but I think we must be extremely careful how we do anything which might have the result of paralysing the executive Government." The appointment of anIndian to the Viceroy's Executive Council, he described as "a tremendous innovation," which "whatever the technical legal rights of the case may be, ought not to be introduced until Parliament has had full opportunity of discussing the Government scheme in all its completeness."*

Lord MacDonnel also expressed a complete disagreement with regard to the change in the executive Council. "The principle," he said, "which, in my opinion, ought to direct and control our policy in India is this—the maintenance of complete and absolute control in the hands of a small body of picked officers of the Empire who formed the Government of India, and subject to that control, the fullest measure of Local Government in the provinces that each province is fit to minister." Apart from the question of principle, he said, "I believe you

* Ibid, 1995.

cannot find in India any individual native gentleman, who, as enjoying general confidence, would be able to give advice and assistance to the Governor-General in Council."

During the debates on this occassion in the House of Commons Mr. Buchanan, the Under-Secretary of State for India, observed: "The proposals were a real step forward, and went a long way to meet, in Lord Minto's words, the 'political aspirations of honest reformers.' They were intended to associate a much larger body of Indians in the work of government, to throw greater responsibility upon them both in the higher and in the lower ranges of government, to maintain British supremacy clear and unchallenged at the top but to endeavour to secure that under our guiding, directing and restraining hand the Indian should learn the work of administration and government in the only school worth anything—the school of experience."

The Indian Councils Act 1909, provided that the additional members of the Legislative Councils instead of being all nominated shall include members nominated and also members *elected* in accordance with regulations made under the Act The maximum number of additional members for each Legislative Council was laid down, but the actual number of members, quorum, term of office, etc., were left to be determined by rules. The maximum number fixed for the Legislative Council of the Governor-General was 60; for Madras, Bombay, Bengal, United Provinces, and Eastern Bengal and Assam 50; and for the Punjab and Burma 30.

The members of either of the executive Councils of Madras and Bombay were not to exceed four in number, as directed from time to time by the Secretary of State in Council, and of these two at least were to be persons who at the time of appointment had been in the service of the Crown in India for not less than twelve years. In case of equality of votes at a meeting of the Council the President was to have two votes or the casting vote. Power was given to the Governor-General in Council, with the approval of the Secretary of State in Council, to create an executive Council for the Lieutenant-Governorship of Bengal and for any other province under a Lieutenant-Governor, provided that in the latter case a draft was laid, for the time specified, before both the Houses of Parliament and no address was presented within that time to His Majesty by either House against the draft or any part of it. Power was also given to the Governor-General in Council, and the Local Governments to make rules authorising at any meetings of their respective legislative Councils the discussion of the annual financial statement, and of any matter of general public interest, and the asking of questions subject to such conditions and restrictions as may be prescribed. Such rules if made by the Governor-General in Council required the sanction of the Secretary of State in Council, and where made by a Local Government required the sanction of the Governor-General in Council and were not to be liable to alteration or amendment by the Legislative Council. The Governor-General in Council was further empowered to make

regulations, with the approval of the Secretary of State in Council, as to the conditions under which and manner in which persons were to be nominated or elected as members of the Legislative Councils. All proclamations, regulations, and rules made under the Act were to be laid before both Houses of Parliament as soon as may be after they were made.

(15). The rules made under the Act in respect of composition of Councils, franchise, discussion of budget, etc.

By the Regulations made by the Governor-General in Council in exercise of the powers conferred by section 6 of the Indian Councils Act 1909, the Additional Members of the Legislative Council of the Governor-General were ordinarily to be sixty in number, consisting of not *less* than 25 elected members and not more than 35 nominated. The nominated members were to consist of officials and non-officials, of whom the former were not to be more than 28 and the latter not so many as to make the majority of the Council non-official. There were to be four classes of electorates, *viz.*, the *Provincial Legislative Councils*, and the District Councils and Municipal Committees of the Central Provinces; the *landholders* of Madras, Bombay, Bengal, United Provinces of Agra and Oudh, Behar and Orissa, and Central Provinces; the *Mohammedan community* of Bengal, Bombay, Madras, United Provinces, and Behar and Orissa, and the *chambers of commerce* of Bengal and Bombay.

The seats assigned to these electorates were 13 in the first case, 7 in the second, 5 in the third and two in the fourth.

A person was declared to be ineligible for election if he was an official, female, adjudged to be of unsound mind, under twentyfive years of age, insolvent, dismissed from the Government service, ex-convict, or one declared by the Governor-General in Council to be of such reputation and antecedents that his election would, in the opinion of the Government, be contrary to the public interest. The term of office for an Additional Member was to be three years except in the case of official members or members nominated as possessing expert knowledge of subjects connected with proposed or pending legislation who were to hold office for three years, or such shorter period as the Governor-General may at the time of nomination determine. The quorum for transaction of business consisted of fifteen or more Additional Members All disputes as to the validity of elections were to be inquired into and decided by the Governor-General in Council. In case of a constituency consisting of members of a local legislature the franchise was restricted to the non-official members. In the Central Provinces the right of election vested in a body of 5) delegates, 25 of whom were to be selected by the District Councils and 28 by the Municipal Committees. The right to vote in the case of landholders depended on the possession of certain Government titles, or property qualifications evidenced by the payment of taxes or

land-revenue which varied with the provinces to suit local conditions. In the case of Mohammedan electorates the franchise qualifications were the possession of certain annual income, holding a Government title, receiving pension as a gazetted or commissioned officer, being fellow of a University or an Honorary Magistrate or graduate of an Indian University of certain years' standing.

In exercise of the powers conferred by section 5 of the Indian Councils Act, 1909, rules were made by the Governor-General in Council, with the sanction of the Secretary of State for India in Council, for the discussion of the annual financial statement. The Finance Member was every year to present to the Legislative Council the Financial Statement *i. e.*, the preliminary financial estimates of the Government of India for the financial year next following, together with an explanatory memorandum. On the day fixed for discussion any member could move a resolution relating to any alteration in taxation, etc., of which he had given a notice in writing to the secretary at least two clear days before the commencement of the stage of the discussion to which the resolution relates. A resolution was to take the form of a specific *recommendation* addressed to the Governor-General in Council, and the President could disallow any resolution or part of a resolution without giving any reason therefor other than that in his opinion it could not be moved consistently with the public interests or that it should be moved in the Legislative Council of a Local Government. A resolution, if

carried by the majority of votes, was to have effect only as a *recommendation* to the Government. This was to be followed by the presentation of the Budget, *i. e.*, the Financial Statement as finally settled by the Governor-General in Council, and on this occasion the Finance Member was to explain why any of the resolutions passed by the Council had not been accepted, and if there had been made any changes in the figures of the Financial Statement. A general discussion ensued in which any member could offer *observations* on the budget but no resolution could be moved in regard thereto nor could the budget be submitted to the vote of the Council.

Certain heads of revenue were not to be open to discussion, such as stamps, customs, tributes from native states, army, marine, military works, etc. Certain heads of expenditure were also excluded such as interest on debt, ecclesiastical charges, special defences, state railways, political pensions, etc.

Rules were made for the discussion of matters of general public interest barring certain subjects. A member could move a resolution in the form of a specific recommendation addressed to the Governor-General in Council, of which he had given a notice in writing to the Secretary, at least fifteen clear days before the meeting of the Council at which he desired to move the same. The President might disallow any resolution or part of a resolution without giving any reason therefor other than that it could not be moved consistently with public interest. A resolution, if carried, had the effect only of a recommendation.

Rules were also made for the asking of questions at meetings of the Legislative Council. A question was to be so framed as to be merely a request for information, preceded by a proper notice, and the President might disallow it on the ground that it could not be answered consistently with public interest. A member who has asked a question might put a supplementary question for the purpose of further elucidating any matter of fact regarding which a request for information was made in his original question but the member in charge could decline to answer a supplementary question, without notice, and the President could disallow it without giving any reason therefor.

The Rules framed by the Provincial Governments for the discussion of matters of general public interest and the asking f questions were *mutatis mutandis* the same as those for the Imperial Councils. The Rules for the financial discussion were also similar except that a draft Financial statement was to be submitted to a finance Committee appointed for the purpose and its recommendations considered by the Local Government before the Revised Financial statement was presented to the Legislative Council.

(16). Mr. Gokhale's appreciation of the reforms.

The Minto-Morley reforms were not intended to be a measure of self-government, nor were they a step in that direction. They were not meant to transfer any legislative or financial

control to the Indian representatives. Their object was to bring public opinion in closer touch with the executive power and they succeeded in associating the representatives of Indian opinion with lagislation as well as every day administration. In India the constitutional changes were on the whole well-received. The Hon'ble Mr. G. K. Gokhale speaking at the Madras Congress compared the old and the new position and thus expressed his appreciation of the Reform Proposals :—

"At the present moment in regard to administration it is all confidential reports from subordinate officers to the highest till at last the top is reached, and we know nothing till the final decision is arrived at and announced, and even if the decision is unfavourable to us or we do not like it we can only express our regret in our own way and keep still. Under the new arrangement all questions affecting everyday administration which involve matters of public importance can be brought in a responsible manner before those in authority in the Legislative Councils of the Provinces. In these Councils again a non-official majority has been provided for. This non-official majority with the power of raising administrative questions is really an exceedingly important step, and I am quite sure it will very largely modify the bureaucratic character of the existing administration. Then in regard to Finance our control will be greater. The full extent of the control over Finance will not be realised until the larger scheme of Provincial Decentralisation is carried out, but that will be

known only when orders are passed on the Decentralisation Commission's report. But it is expected, and this is a matter of public knowledge that as a result of that Commission's labour the Provincial Government will be largely freed from the control which the Government of India exercises over them at present and in place of the control so removed the control of the Legislative Councils will be substituted—the control of discussion and criticism. Lastly as regards the seats of the highest power and authority, the Executive Councils, Indians are to be admitted to these Councils. They are already on the Secretary of State's Council, and we know what good work is being done by them there. They are to be admitted to the Indian Executive Councils, which means in formulating policies and determining large questions, racial considerations will recede in the background. The mere presence of Indians will prevent that. Again the Indian view of questions will be available there, and I expect nothing but good from the appointment of Indians to these Councils. Thus we shall have reasonable access to the highest seats of authority, we shall have fair opportunities of exercising influence in matters of Finance and Administration by means of debate, and we shall have got full mangement of the local affairs. More than this a non-official majority in the Provincial Councils really means preventive control over Provincial legislation. We eannot of course pass any law we please because there is the veto of the Government, but the Government cannot pass any law

it pleases without our consent because we have the majority and this means, we have secured preventive control over Provincial legislation. In regard to the Supreme Legislature the position is somewhat different. But under this new scheme the Government of India will recede more and more in the background and the Provincial Government will come more to the front, and loom larger in eyes, and we shall have all the opportunities we require for influencing the course of Provincial administration. There was a disposition yesterday to complain that for the Supreme Council the Secretary of State's Scheme is really less favourable to us than that proposed by the Government of India, and there was also a disposition to complain that the scheme of electoral colleges and the scheme of proportional representation would emphasise the importance of class representation too much..... So far as the Supreme Council is concerned, the constitution proposed is part of the whole scheme. What the Government of India proposed was that in the 8 Councils, one Imperial and 7 Provincial, there was to be a standing official majority. In regard to the Imperial Council, owing to the long distance of Calcutta from the Provinces from which official members had to come, it was provided by the Government of India that the majority should not always he present there, but that it should be called into existence whenever it was required. For all practical purposes there, the majority was there, whereas in regard to Provincial Councils also there was to be an official majority. The Secretary

of State has taken a momentous step in advance of these proposals; instead of having an official majority in all these Councils, he has freed 7 Councils out of 8 from this official majority. Of course there must be a reserve of power kept somewhere, because, at the present stage of our progress, it is not reasonable to expect that the British Government will give control over legislation and administration to us. But by concentrating an official majority in the Supreme Council, Provincial Legislatures have all been freed from the shackles of official majority. And in so far as the Government of India will recede into the background and as their official majority there is mainly a reserve power, as practical men we should be satisfied with the scheme. We must gratefully accept this scheme as it stands, because it must be accepted or rejected as a whole.

"Then about the Electoral Colleges and the representation of class interests, it is all very well to say that the end we have in view is absolute unity in the country—union among all different elements. We have many other ends in view in life, and the followers of a certain religion expect the millennium one day, but we have to deal with the existing facts as they are. There are acute class differences in the country today, and any scheme of representation which secures to important classes proper representation by means of election, representation by men in whom they have confidence, any scheme of this description which secures this really, in my opinion promotes the true interest of unity in the country, it

removes the causes of bickering, the sourness of feeling that otherwise would exist there."

(17). The Durbar announcement, 1911.

On December 12, 1911, at the Coronation Durbar held at Delhi four administrative changes were announced, *viz.*, transfer of the seat of Government of India from Calcutta to Delhi, creation at an early date of a Governorship in Council for the Presidency of Bengal, creation of a new Lieutenant-Governorship in Council administrating the areas of Behar, Chhota Nagpur, and Orisa, and creation of Chief Commissionership of Assam. These administrative changes were mainly effected under the powers conferred by the former statutes relating to the Government of India.

(18). The Government of India Act, 1912.

In order to facilitate immediate establishment section 2 of the Act authorised the creation of an executive Council for the new lieutenant governorship of Behar and Orissa. Authority was also given for the establishment of Legislative Councils in provinces under Chief Commissioners. Under this provision a Legislative Council was established for Assam on November 14, 1912, and a Legislative Council for the Central Provinces on November 10, 1913.

(19). The Government of India Act, 1915.

It was passed for the purpose of consolidating the numerous Acts of Parliament relating to the Government of India. It repealed, with a few omissions, the unrepealed provisions of 47 Acts beginning with an Act of 1770, and consolidated the law in a single Act of 135 sections with 5 schedules. Some alterations of a minor character were made by an amending measure which was introduced and passed in 1916, and was known as the Government of India (Amendment) Act.

(C). DECENTRALISATION OF FINANCE.

(1). The Financial Arrangements before 1870.

The Government of India Act, 1858, provided that "the expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council." Though the final responsibility for the expenditure of revenues was vested in the India Office, the task of governing a distant dependency rendered the delegation of large financial powers an administrative necessity, and as the statute treated the entire revenues of British India as a single fund all the financial powers, delegated in India, were concentrated in the hands of the Central Government. Under the system, thus established, the Local Governments were in the position of mere agents of the Supreme Government for collecting revenue and expending what was given them to meet the provincial charges. They had no powers of taxation or borrowing. There was no part of the revenues which they could legally claim as their own. What money was given them for expenditure was to be applied as directed by the

Supreme Government. The position occupied by the Provincial Governments under this arrangement is thus depicted by Sir John Strachey:—

"The whole of the revenues from all the provinces of British India were treated as belonging to a single fund, expenditure from which could be authorised by the Governor-General in Council alone. The Provincial Governments were allowed no discretion in sanctioning fresh charges. They could order, without the approval of the Supreme Government, and without its knowledge, the adoption of measures vitally affecting the interests of millions of people; they could make changes in the system of administration that might involve serious consequences to the state; they could, for instance (and this is a case which actually occurred), alter the basis on which the assessment of the land revenue had been made, but they could carry out no improvements, great or small, for which the actual expenditure of money was required. If it became necessary to spend £20 on a road between two local markets, to rebuild a stable that had tumbled down, or to entertain a menial servant on wages of 10 shillings a month, the matter had to be formally reported for the orders of the Government of India. No central authority could possibly possess the knowledge or find the time for the efficient performance of such functions throughout so vast a tract of country. The result was complete absence of real financial control, frequent wrangling between the Supreme and Provincial Governments, and interference by the former

not only in financial but in administrative details with which the local authorities alone were competent to deal. Under these circumstances, as Sir Richard Strachey wrote at the time, the distribution of the public income degenerated into something like a scramble. in which the most violent had the advantage, with very little attention to reason; as local economy brought no local advantage, the stimulus to avoid waste was reduced to a minimum, and as no local growth of the income led to local means of improvement, the interest in developing the public revenues was also brought down to the lowest level."*

(2) Lord Mayo's Provincial Settlements, 1871.

Lord Mayo's Government recognised that there was but one way by which local economy and efficient financial administration could be secured and that was by making each Provincial Government responsible for the management of its local finances. By a Resolution, No. 3334, dated 14th December, 1870, he commenced a policy of decentralisation which was greatly developed under his successors. Nine heads of expenditure were transferred to the Local Governments, *viz.*, jails, registration, police, education, medical services, printing, roads, civil buildings, and miscellaneus public improvements. The charges for these were to be met out of the receipts under these heads and fixed imperial grants, a Local

* India, its Administration and Progress, p. 112-13.

Government being given complete power to allot its revenues to the several heads at its discretion. The assignments made by the Resolution for "Provincial Services" were not to be altered by Governor-General in Council "unless some fiscal misfortune, such as a heavy loss in the opium revenue, or national disaster such as war or severe famine, occurs." Each Local Government was to publish its own yearly Estimates and Accounts in the Local *Gazette*, together with a Financial exposition (which should, where possible be made before the Local Legislative Council) analogous to that annually made in the Legislative Council of the Governor-General. The financial control, entrusted to the Local Government was to be exercised subject to the following conditions :—

I. Without the previous sanction of the Government of India —

(*a*) No appointment was to be created with a salary of more than Rs 250 a month ; and no addition was to be made to the pay and allowances of any officer if they exceed, or would, after addition, exceed, Rs. 250 a month.

(*b*) No *class* or *grade* of officers was to be created or abolished, and the pay of no *class* or *grade* of officers was to be raised.

(*c*) No addition was to be made to the pay or allowances of any individual or class of officers that would lead to increase in the emoluments of any public servants doing duty in the same province, whose pay and allowances are charged to the imperial revenues. The Government of India reserved to itself the right to

forbid alterations in rates of pay or allowance, which, in its opinion, would produce inconvenience in other provinces.

(*d*) No moneys were to be removed from the public treasuries for investment.

(*e*) No services then rendered to other Departments at the charge of the Departments made over to the control of the Local Governments were to be diminished and no services rendered to these Departments at the charge of other Departments were to be increased.

II. The rules of the Supreme Government in respect to Leave of Absence and Absentee, Deputation, and Superannuation Allowances were to be observed.

III. Returns, Accounts, and Estimates were to be submitted to the Supreme Government in such forms, and at such times, as may be prescribed.

The interference of the Government of India in the administration of the "Provincial Services" was to be confined "to what is necessary for the discharge of that responsibility which the Viceroy in Council owes to the Queen and her responsible advisers, and for the purpose of securing adherence to the financial conditions now prescribed, and to general policy of the Government of India." It was believed by the Governor-General in Council that the adoption of the Resolution would afford (*a*) greater care and economy, (*b*) an element of certainty into the fiscal system, (*c*) more harmony in action and feeling between the Supreme and Provincial Governments and (*d*) opportunities for the development of self-

government, for strengthening municipal institutions and for wider association of Indians and Europeans in administration.

(3). Changes made by Lord Lytton's Government, 1877.

In 1877 a further advance was made by Lord Lytton's Government. Several new heads of expenditure such as land revenue, excise, stamps, general administration, stationery, law and justice were transferred to the Provincial Governments. It had been found that under the arrangments of 1870 while the Local Governments took a considerable interest in the receipts under the transferred heads, an equal amount of diligence was not shown in the collection of other revenues. Lord Lytton's Government, therefore, to meet the additional charges, instead of raising the fixed imperial grants, transferred certain heads of revenue.

(4). The Resolution on Provincial Finance by Lord Ripon's Government, 1881.

The Resolution by the Government of India on the extension of Provincial Finance, dated September 30, 1881, introduced two new principles. In the first place the system of giving Local Governments a fixed sum of money to make good any excess of provincalised expenditure over provincialised receipts was done away with. The heads of revenue were divided into three classes—imperial, provincial, and "divided." The balance

of transfers being against the Local Governments it was rectified for each province by a fixed percentage on its land revenue (otherwise reserved as Imperial), except in Burma where the percentage was extended to the imperial rice export duty and salt revenue. The advantage of this system over the one which had hitherto generally prevailed was that it gave the Provincial Governments a direct interest, not only in the provincialised revenue, but also in the most important item of Imperial Reveuue raised within their own province. Another important change made by the Resolution was the introduction of quinquennial settlements. The financial scheme of 1870 reserved power to the Government of India to modify the resources granted to the Local Governments in the event of "some fiscal misfortune." On two occasions within a decade this reservation had been acted on, the first during the great famine of 1876-77 and the second to meet expenditure of the Afghan War. "The circumstances of the time were, without doubt, peculiar, and the strain upon the finances was undoubtedly severe. But the sudden suspension of improvements in progress, the starvation of public works, and the discouragement of care and economy by requiring a surrender of their results could not, in themselves, be otherwise than prejudicial." The Resolution of 1881, in modification of the reservation hitherto in force, declared, on the one hand, that the Local Governments must look for no special aid from the Imperial Government except in the case of severe famine, and on the other, that the Imperial

Government will make no demand on them except in the case of disaster so abnormal as to exhaust the Imperial reserves and resources, and to necessitate a suspension of the entire machinery of public improvement throughout the empire.

Paragraph 11 of the Resolution ran as follows:—

"His Excellency the Governor-General in Council is therefore, of opinion that the time has now arrived when further practical development may be afforded to the intentions of Lord Mayo's Government, and that the Provincial Government should no longer exclude from all consideration the mass of taxation under Local and Municipal management together with the similar resources still retained in Provincal control, and ignore the question of Local Self-Government. The Provincial Governments, while being now largely endowed from Imperial sources, may well, in their turn, hand over to Local Self-government considerable revenues, at present kept in their own hands, but similar in kind to many which have long been locally managed with success by Committees, partly composed of non-official members and subject only to a general remedial control reserved to the state by the legislature. At the same time such items should be generally made local as the people are most likely to be able to understand the use of and to administer well. His Excellency would, therefore, invite the Local Governments to undertake a careful scrutiny of Provincial, Local and Municipal accounts, with the view of ascertaining (1) what items of receipts and charges can be transferred

from 'Provincial' to 'Local' heads, for administration by Committees.....and what items already local, but not so administered, might suitably be so; (2) what redistribution of items is desirable, in order to lay on Local and Municipal bodies those which are best understood and appreciated by the people; (3) what measures, legislative or otherwise, are necessary to ensure more Local Self-Government. Incidentally to the scrutiny they will probably notice, and might carefully consider ; (4) ways of equalising Local and Municipal taxation throughout the Empire, checking severe or unsuitable imposts, and favouring forms most in accordance with popular opinion or sentiment.' '

The Government of India made contracts or settlements with the Provincial Governments on the basis of existing financial conditions and these were revised every five years. If within that time a Local Government showed any surplus it was credited to its accounts. Taken as a whole the Provincial Governments were not satisfied with the system of periodic settlements. As Mr. G. Kale has observed :—

" Every time the contract was renewed, the Government of India tried to improve its own position by taking a slice of the Provincial revenues and leaving the Local Government to better their financial situation by economy or in other ways.

" There was thus an element of uncertainty in the whole position and the Provincial Govern-

ments were, by no means, pleased with the Supreme Government swooping down upon their savings every time the contracts were revised. These Governments therefore became indifferent to economy and extravagant, and fought among themselves and with the Government of India for a larger share of revenue."*

5). Changes made by Lord Curzon, 1904.

To remedy the evils arising from periodic revisions Lord Curzon, in 1905, made the settlements quasi-permanent, *i.e.*, they were not to be subjected to revision except in case of grave imperial necessity. In addition to the revenues secured by these the Local Governments also received from time to time lump sums from "windfalls" or unexpected surpluses, to meet the expenditure for undertaking works of public utility.

In the stage of development which it had reached at this time, the settlement system presented three main features. "*In the first place the settlements had been declared to be quasi-permanent.* The Government of India had, it is true, reserved the right of revision, but they had promised to exercise that power only when the variations from the initial relative standards of revenue and expenditure were, over a substantial term of years, so great as to result in unfairness either to the province itself or to the Government of India, or in the

* Gokhale and Economic Reforms, p. 67.

event of the Government of India being confronted with the alternatives of either imposing general taxation, or seeking assistance from the provinces *The second important principle of the system was that the distribution of revenues between the Provincial and Central Governments, was made, except on accasions of grave emergency, with direct reference not to the needs of the Central Government, but to the outlay which each province might reasonably claim to incur upon the services which it administered.* The first step taken in concluding a settlement was to ascertain the needs of the province and assign revenue to meet them ; the residue only of the income of the province coming into the imperial exchequer. *The third feature of the system was the method by which the revenue accruing from various sources was distributed.* The residue which was available for imperial purposes was taken in the shape of a fixed fractional share in a few of the main-heads of revenue which were known as divided heads. As, however, the distribution of these heads could never be so adjusted as to yield to the province, when added to the revenue from the purely provincial heads, the exact sum necessary to meet provincial charges, equilibrium was effected by means of fixed cash assignments; a deficiency being remedied by an assignment to provincial revenues from the Imperial share of the land revenue, and an excess by the reverse process."*

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* See Resolution on Provincial Finance, 1912, Para. 3.

(6). Recommendations of the Royal Commission on Decentralisation, 1909.

The Royal Commission on Decentralisation which presented report on 25th February, 1909, expressed their satisfaction, generally, with the financial relations then existing between the Government of India and the Local Governments. It, however, suggested that *(a)* when fixed assignments in any province become unduly large, they should be commuted, as circumstances permit into shares of growing revenue; (*b*) when the revenues of Provincial Governments require general increase, this might be provided by gradually provincialising certain divided heads of revenue; (*c*) in respect of services for which they pay, wholly or in part, Provincial Governments should receive the powers lately granted to the Government of India as regards creation of appointments, alteration in their emoluments etc.; (*d*) the restrictions on Local Governments in respect to the creation, abolition, or reduction in pay of classes or grades of officers should be done away with in the case of 'Provincial' and 'Subordinate' services; and (*e*) the recruitment of 'Provincial' services need not require the sanction of the Government of India. The Commissioners also thought that if Provincial Legislative Councils obtain an effective control over Provincial finances, it would be necessary here- after (*a*) to give the Provinces more distinct sources of revenue, and greater powers over their budgets, (*b*) to allow Local Governments to impose special Provincial taxation, subject to the preliminary

sanction of the Government of India and the Secretary of State, and (c) to give them larger latitude in regard to appointments belonging to 'Provincial' and 'Subordinate' services.

(7) The resolution on Provincial Finance, 1912.

In connection with the Report of the Royal Commission upon Decentalisation, the Government of India referred, for the opinion of Local Governments, a number of specific points affecting the financial relations of the Imperial with the Provincial Governments, the more important of which may be summarised as follows:—

(a) Certain problems regarding the assignment of revenue to the provinces under the quasi-permanent settlements.

(b) The desirability of provincial taxtation.

(c) The advisability of floating provincial loans in the open market.

The reports of local Governments were considered in detail by the Governor-General in Council; the orders of the Secretary of State were taken where necessary and finally on 12th May, 1912, a Resolution was issued by the Government of Lord Hardinge bringing together in one place the decisions which had been reached upon the various points at issue.

On the first of these points, mentioned above, the following rules were laid down by the Government of India with the approval of the Secretary of State:—

i. The provincial settlements will in future be permanent and not subject to revision. In

case of serious famine in a province, the question of assistance from the revenues of the Government of India will be considered. The Government of India reserve the right to call for assistance from provincial revenues in the event of grave embarrassment in their own finances.

ii. When the fixed assignment of a province becomes unduly large and hampers the expansion of its revenue, as compared with the legitimate and necessary growth of expenditure, it will ordinarily be converted, either in whole or in part, into a share of growing revenues, as soon as the state of Imperial finances permits.

iii. In the event of the grant of special allotments to Local Governments out of surplus revenues not required for the remission of taxation, the reduction of debt, or other purposes, the Government of India will retain the option of declaring the purposes for which the money is provided; but

(*a*) the grants will not involve greater interference by the Central Government than at present exists;

(*b*) they will be granted with due regard to the wishes of the recipient Government; and

(*c*) they need not necessarily be devoted to one and the same purpose in every province.

iv. A Local Government may not budget for a deficit, unless it satisfies the Government of India that the excess expenditure is due to an exceptional and non-recurring cause, and also, if the deficit involves a reduction of the provincial balance below the prescribed minimum,

that suitable arrangements will be made for the restoration of the minimum.

v. If a Local Government exhausts its own balances and receives permission to overdraw upon the general balances, it will be required to take the necessary amount as a short loan from the Government of India.

vi. Future corrections in provincial budgets by the Government of India will be restricted to (*a*) divided heads, and (*b*) the proposed totals of revenue and expenditure.

On the question of desirability of provincial taxation the Resolution observed as follows :—

"The Government of India are once again in general agreement with the Commission. Their attitude towards provincial taxation in the past has never been one of disfavour. It has frequently been employed, and still in some measure exists, as a supplement to the general revenues for purely provincial purposes. The provincial rates and taxes which have recently been remitted owed their abolition, not to their provincial character, but to the fact that they rested almost entirely on the land, which the Government of India, in pursuance of a settled policy, desire to relieve of miscellaneous burdens.

The Central Government have in the past frequently advised that provincial resources should be supplemented by small and cautious measures of provincial taxation. They have assented to the theoretical considerations that, in a vast country of greatly varying conditions, Imperial taxation must of necessity be restricted in its range, as very few taxes are suitable for im-

position in every part of the Indian Empire; that the incidence of an Imperial impost must be lighter in some areas than in others; that the provincial taxation might not inappropriately balance such inequalities; that a tax which would cause dissatisfaction in one part of the country might arouse no opposition in another; and that experiments in taxation might thus be made with safety on a small scale which would be imprudent or even dangerous if applied to India as a whole."

The commission had recommended that when the provinces are made autonomous they might have a right of taxing. The Government agreed to this theoretical consideration but said that as "in actual practice definite schemes of provincial taxation have never been pressed with any enthusiasm" it did not see the necessity to remove restrictions on the powers of taxation of the provinces. ...

With regard to the provincial borrowing also the Government did not think it advisable to remove restrictions, and this for two reasons. (*i*) A provincial loan would compete with the Imperial loans. (*ii*) The power would afford the provincial governments an inducement for lavish outlay on public works and might lead to financial embarassment.

The net result of the changes made in 1912 was that fixed assignments were abolished, the list of provincial and divided heads was recast, the settlements were made permanent, but decentralisation as regards the powers to tax and borrow was not effected.

(8). Inadequate machinery of control.

We have seen that the spending authorities in the matter of Indian revenue at this time were the Secretary of State in Council, the Government of India and the Local Governments. In regard to control over the expenditure the Central Government controlled the Provincial Governments, the Secretary of State in Council controlled the Government of India, and the British Parliament theoretically controlled all. Practically the only check which existed on the Government of India was that of the Secretary of State and where the two agreed their powers of incurring increased expenditure were almost unlimited. The machinery of constitutional control in regard to expenditure of revenues had three grave defects :—

(1) *The Council of India which was intended originally to be a check on the Secretary of State had become reduced, in course of time, to the position of a mere consultative board.* The guarantees provided by the Act of 1858 for securing the independence of members were, nearly all of them, swept away by the amending Acts of 1869 and 1876. Under the Act of 1858 the members held office during good behaviour and were not removable except on the address of both Houses of Parliament. The modifications of 1869 and the additional powers vested in the hands of the Secretary of State by the law of 1876 deprived the Council of its original dignity and independence and reduced it to the status of a subordinate board, to be composed of the

nominees of the Secretary of State. Theoretically the Council of India controlled the action of the Secretary of State in regard to expenditure but practically the machinery of Secret Department enabled the Secretary of State to order even without the knowledge of the Council *a course of action which may practically render* large expenditure inevitable. It is well known that the orders in connection with the Afghan War, 1879, were sent direct by the Secretary of State to the Government of India.

(2) As the Secretary of State for India was a member of the imperial executive with a safe majority behind him *the control exercised by the British Parliament over the administration of Indian revenues was only nominal.*

(3) The only control over expenditure that existed under the law was official control. *Real popular control, in the sense of control by tax-payers, was entirely absent from the whole system.* The budgets were presented to the Legislative Councils in India for criticism only and were not required to be passed. As Mr. G. K. Gokhale remarked in his evidence before the Welby Commission in 1897, "the position virtually amounts to this, that it is the administration of finances of one country by the Executive Government of another, under no sense of responsibility to those whose finances are so administered.

(D). JUDICIAL INSTITUTIONS.

(1) Judicial powers conferred on the Company by Royal Charters.

During the 17th century though the East India Company had established important trading settlements at Bombay, Madras, and Calcutta they were yet in the position merely of merchants and factors holding their possessions by leave of and in obedience to the Mogul Emperor except in the Island of Bombay which they held in full sovereignty. It appears, however, that from the very commencement the English residents of these factories remained subject to their own laws administered by their own officers. The first Charter of 1601, granted by Queen Elizabeth, conferred upon the Company not only a power to make reasonable laws and constitutions, but also an authority to execute such laws and provide pains and penalties in case of disobedience. In 1618 Sir Thomas Roe, the ambassador of James I, formally secured from the Mogul Emperor, with regard to the factory at Surat, the privilege of allowing English residents to refer their disputes for adjudication to their own officers. Charles II's Charter of 1661 empowered the Governor and Counil of each factory "to judge all persons belonging to the said Governor and Company or that should live under them in all causes, whether civil or criminal, according to the laws of the kingdom, and to execute judgement accordingly." The charter of 1683 which

gave the Company full power to make peace and war also established a court of judicature to be held at such place or places as the Company might direct. In 1726 the Crown by Letters Patent established Mayor's Courts of English model at Madras, Bombay, and Fort William, each consisting of a Mayor and nine Aldermen with power to hear all civil suits, actions and pleas between party and party. These were declared to be Courts of Record from whose decisions an appeal lay to the Governor and Council and in important cases a futher appeal to the Privy Council. The Governor and five seniors of the Council were required to hold quarter sessions four times in the year for the trial of all kinds of offences excepting treason. In 1753 by Letters Patent Courts of Request were established at each of the three Presidency towns for the determination of suits in which the amount involved did not exceed Rs. 20. Their jurisdiction was limited only to the Europeans and it was expressly provided that suits between Indians were not to be determined by the Mayor's courts unless by the consent of the parties, a limitation which showed an intention on the part of the British Crown not to claim rights to territorial sovereignty over any portion of India.

(2). Dual administration following the grant of diwani.

The year 1765 marked the commencement of the East India Company's territorial sovereignty. Clive succeeded in obtaining from Emperor

Shah Alam the grant of the Diwani or fiscal administration of Bengal, Behar and Orissa. The Nizamat or criminal jurisdiction continued to remain with the Nawab seated at Moorshadabad whilst the Company were to collect the revenue, maintain the army, and be responsible for the administration of civil justice. Not being familiar with the state of country in the interior the Company did not interfere with the management of civil institutions till 1772 except by the appointment of a few European officials, with superior authority, to superintend the revenue and judicial administration. At this time Mohamedan criminal law was in force throughout the country and was administered by Mohamedan courts. The principal criminal courts were of the Nawab and his deputy, and of the Faujdars. In the provinces the zemindars and farmers were responsible for the public safety and exercised civil and criminal jurisdiction over their respective districts. Their authority was practically uncontrolled except in capital cases which were reported to the Nazim.

(3). Judicial institutions in Bengal reorganised by Warren Hastings.

In 1771 the Court of Directors resolved "to stand forth as Diwan" and bring the administration of revenue and justice under the immediate control of the Company's servants. The following year Warren Hastings, who was appointed to the Governorship of Bengal, drew up a report for the reorganisation of judicial and revenue

institutions which was immediately adopted by the Government. Under this plan moffussil Dewany Adawluts, under the supervision of European collectors of revenue, were established in each district, and a Sudder Diwany Adawlut or Civil Court of Appeal presided over by the Governor and members of Council was instituted at Calcutta. Under the old system zemindars and farmers were responsible to keep the peace in their estates and in cases of robbery to produce both the culprits and the property stolen. Hastings set up Criminal Courts or Faujdari Adawluts, and transferred to these the jurisdiction formerly exercised by the zemindars. "A Kazee and a Mooftee, with the assistance of two Maulvis, appointed to expound the law, sat to hold trials for all criminal offences. The English collectors of revenue were, however, directed to superintend the proceedings of these Courts, to see that the necessary witnesses were summoned and examined; that due weight was allowed to their testimony, and that the decisions passed were fair and impartial."* The judgments of the provincial criminal courts were appealable to the Sudder Nizamat Adawlut established at Moorshadabad and presided over by an officer appointed by the Nabob. These provincial courts derived their authority and jurisdiction from the Mogul Government in whose name the Company acted as the Diwan and were consequently known as the "Company's Courts" as distinguished from the "Crown's Courts" established under the English royal charters.

* Cowell's Courts and Legisaltive Authorities in India, p. 29.

(4). A Supreme Court established at Fort William.

The Mayor's Court and other Crown Courts existing in Calcutta had no jurisdiction over the Europeans in the interior, their authority being limited to Calcutta and its dependent factories. In 1772 a Bill was introduced in the House of Commons by Mr. Sullivan providing for the establishment of a new Court in Bengal with jurisdiction over all *Christian* persons resident therein, but it was thrown out. The following year was passed the Regulating Act which established at Fort William a Supreme Court of judicature consisting of a Chief Justice and three other judges (subsequently reduced to two), all barristers of not less than five years' standing, appointed by the Crown, with full Civil Criminal, and Ecclesiastical jurisdiction, and empowered to administer English law to all British subjects and persons in the employment of the Company. Its judgments were made appealable to the Privy Council, subject to certain restrictions. The Mayor's Court at Calcutta was abolished, but the Court of Request continued to exist. The provisions of the Regulating Act and of the charter were obscure and defective as to the jurisdiction and powers of the Supreme Court. "British subjects' and persons in "employment" of the Company were to be subject to the Court's jurisdiction but whom did these classes include the Act was silent. The Supreme Court began to apply the English rules of law and procedure disregardful of the Indian con-

ditions. It refused to recognise the government of the Nabob or the authority of his agents and of the Provincial Courts. Judges of Civil and Revenue Courts could be prosecuted for acts done in the regular performance of their duties. The boundary line between the authority of the Supreme Court, which derived its existence from the Crown, and of the Council which was appointed by the Company, was left undefined. "For seven years," Mr. Cowell observes," the conflict between them raged. The Court issued its writs extensively throughout the country, arrested and brought to Calcutta all persons against whom complaints were lodged, zemindars, farmers, and occupiers of land, whatever their rank or consequence in the country. Defaulters to the revenue were set at liberty on *habeas corpus*; the government of the Nabob, which still remained in the hands of the Company, the effective instrument for the administration of criminal justice was declared by the Court to be "an empty name without any legal right, or the exercise of any power whatsoever, and the production in Court of papers containing the most secret transactions of Government was insisted on. The Court was charged with stopping the wheels of Government by the technicalities of English law, and of effecting a total dissolution of social order."*

(5). The Amending Act 1781.

As a consequence an amending Act was passed in 1781 which clearly defined the powers and extent

* Cowell's Courts and legislative authorities in India p. 52.

of jurisdiction of the Supreme Court. It provided :—

i. That the Supreme Court is not to exercise any jurisdiction in matters concerning the revenue or acts done in collection thereof according to the usages of the country or the regulations of the Governor-General in Council;

ii. That the Governor-General and Council of Bengal are not to be subject, jointly or severally to the jurisdiction of the Supreme Court for anything counselled, ordered, or done by them in their public capacity;

iii. That the Supreme Court is to have jurisdiction in all manner of actions and suits against all inhabitants of Calcutta, provided that the matters of inheritance, succession and contracts will be determined by the personal law of the parties, or where one of the parties is a Mohamedan and the other a Hindu by the laws and usages of the defendant;

iv. That rules and forms for the execution of process are to be accommodated to the religion and manners of the Indians;

v. That no action will lie in the Supreme Court against any judicial officer of the country courts in respect of any judgment or order of his court; and

vi. That the existence of civil and criminal provincial courts, independently of the Supreme Court, is recognised; the appellate authority of the Govenor-General and Council is also recognised and confirmed; and the Governor-General is empowered to frame regulations for the provincial courts independently of the Supreme Court.

(6). Courts at Bombay and Madras.

At Madras and Bombay Mayor's courts of the English Municipal model existed till 1797 when they were replaced by Recorder's Courts, subject to the same limitations as were imposed on the Supreme Court at Fort William by the Act of 1781. They had jurisdiction over British subjects resident in the territories of the Governments of Madras and Bombay or in the Native States in alliance with those Governments. Courts of Request were established by a charter of 1753. The Recorder's Courts at Madras and Bombay were replaced by Supreme Courts in 1801 and 1823 respectively. The Courts of Request also were superseded by the establishment of Small Cause Courts in 1850.

(7) The Provincial Civil Courts.

A leading feature of Warren Hasting's plan was the union of judicial and revenue authority in the same officers but in this the Governor-General was outvoted by the majority of his Council. In 1775 the business of revenue collection or management was vested in six Provincial Councils and the work of administration of civil justice was transferred from the European collectors of revenue, who were recalled, to Indian Amils who were appointed instead. The decisions of Amils were made appealable to the Provincial Councils and a second appeal lay to the Sudder Adawlut or the Governor-General in Council. The separation thus begun was completed in 1780

when by regulations passed in that year eighteen Dewani Adawluts, independent of the Councils, were established in the districts with jurisdiction over disputes relating to property and mercantile contracts while all cases regarding revenue or rent were reserved for the exclusive cognisance of the Provincial Courts or the collectors who eventually superseded them. Lord Cornwalis, who came to India as Governor-General in 1786 favoured for some time the scheme of 1772 and in pursuance thereof placed the civil courts under superintendence of the collectors but the experience of next six years convinced him of the justice of entirely separating the fiscal or executive and the judicial powers. The collectors were, henceforth, entrusted purely with the executive work of revenue collection and management under the supervision of the Board of Revenue. The Government thus finally deprived itself of the power of interfering in the administration of laws in the first instance reserving only as a Court of appeal its right to interfere, in certain cases, in the last resort.

The Sudder Dewany Adawlut, established at Calcutta and hearing appeals from the Provincial Courts, and the Board of Revenue consisted originally of the Governor-General and Council. By a regulation of 1801 it was made to consist of three Judges to be selected from the members of the covenanted service, and in 1811 of a Chief Justice and as many Puisne Judges as the Governor-General in Council should consider necessary. These regulations had the effect of separating the executive and legislative from

the judicial authority of the state. At the same time Zillah and City Courts for the trial of civil suits in the first instance, and six Provincial Courts for the purpose of hearing appeals from these were established; their jurisdictions were defined, and judges were directed to act, where no specific rule existed, in accordance with justice, equity, and good conscience. There existed at this time five classes of Provincial Civil Courts.

1. The lowest in grade were the Courts of Commissioners called Sudder Ameens and Moonsiffs empowered by a regulation of 1793 to decide civil suits of the value not exceeding Rs. 50.

2. Register Courts, empowered to try causes for amounts not exceeding Rs. 200, when authorised by the Judges. Their decrees were not valid until revised and countersigned by the Judge.

3. Dewany Adawluts or City and Zillah courts.

4. Provincial Courts, hearing appeals from the courts of the third class.

5. Sudder Dewany Adawlut, vested with the appellate jurisdiction and general power of supervision over the inferior courts in all suits of the value above Rs. 100.

Under Regulation V of 1831 several important changes were made. Register courts and the Provincial Courts of Appeal were abolished. Moonsiff's Courts were empowered to try suits of the value of Rs. 300 and to the Sudder Amins suits could be referred by Judges of which the value did not exceed Rs. 5000. Original jurisdiction was given to the Judges in all suits

exceeding in value Rs. 5,000, with an appeal direct to the Sudder Dewany Adawlut.

The system of civil courts established by Lord Cornwalis in Bengal was adopted in Madras Presidency in 1802. Revenue and Civil Courts were kept distinct. As in Bengal the judiciary in Madras consisted of the Register Courts, Dewani Adawluts, Provincial Courts of Appeal, and the Sudder Court consisting of Governor in Council. Where the value involved was Rs. 45,000 or more a further appeal lay to the Governor-General in Council. By Regulation III of 1807 the Governor ceased to be a Judge. In 1826 the heads of villages were appointed moonsiffs with power to try suits of the value not exceeding Rs. 10. Village Punchayats could also determine suit of any amount within their village jurisdiction. In 1843 the Provincial Courts of Appeal were abolished, and new Zillah Courts established.

In Bombay also Civil Courts were established after the Bengal Regulation of 1793. In 1845 the appointment of joint Zillah Judges was authorised.

(8). The Provincial Criminal Courts.

The plan adopted by Warren Hastings in regard to the administration of criminal justice was the retention of Mohamedan law and tribunals under the general control of Nabob but subject to the supervision of the Company's Government. The system did not work satisfactorily. The delay in bringing the offenders to justice resulted in the increase of crime. The

constitution of the Criminal Courts was also defective. Lord Cornwalis by Regulations made in 1790 and 1793 entirely remodelled the judicial system. Courts of Circuits composed of English Judges, and of the Cazee and Mooftee, were instituted. The authority of the Nabob Nazim was abolished, and his powers transferred to the Governor-General in Council who formed the Sudder Nizamat Adawlut, the highest of the Provincial Criminal Courts. By Regulation II of 1801 the Sudder Nizamat Adawlut was directed to be composed of a Chief Justice and Puisne Judges instead of the Governor-General and Council, and by Regulation XII of 1811 the number of these Judges was increased. The Circuit Courts failed to provide prompt administration of justice and were consequently abolished in 1829. Their powers were transferred to the Commissioners of Revenue who now became Criminal Judges in all cases of importance. But the task was found too heavy for them, and accordingly a regulation of 1831 invested Zillah and City Judges with criminal jurisdiction. In 1871 was passed the Bengal Sessions Courts Act which provided for the appointment of Sessions Judges and Additional Sessions Judges by the Local Governments in Bengal and North-West Provinces. The Act was a temporary measure and was repealed in 1872.

Judicial institutions similar to those established in Bengal were introduced in the Presidency of Madras in 1802. Four Circuit Courts and a Court of Criminal Appeal consisting of the Governor and Council were established. The

former were abolished in 1845 and their jurisdiction was transferred to the Judges of Zillah Courts.

In Bombay Magistrates, Zillah Judges, and the Court of Circuit exercised criminal jurisdiction. A special court also existed for the trial of political offences. Hindus were tried by their own criminal law, Parsis and Christians by English law. In 1841 it was enacted that political offences should be cognisable by the ordinary courts.

A separate court of Nizamat Adawlut was established for the North-West Provinces in 1831.

(9). The Privy Council.

In 1833 an Act was passed by the British Parliament determining the constitution of the Privy Council as a Court of Appeal. The right to appeal to the King in Council was first granted in connection with the judgments of the Mayor's Courts established by the Crown's Charter in 1726. The right was also reserved in reference to the Supreme Court at Fort William and Recorder's Courts (subsequently the Supreme Courts) at Madras and Bombay. In 1781 the right to appeal from the judgments of Sudder Diwani Adawlut of Bengal was also recognised, and Regulation XVI of 1797 limited this right in point of time to a period of six months from the date of judgment, and in point of value to cases where the amount involved was not less Rs. 50,000 exclusive of costs. In 1818 the right of appeal was

extended to the judgments of the Sudder Courts at Madras and Bombay. An Order in Council issued in 1838 reduced the amount for purposes of appeal from Rs. 50,000 to 10,000, a proviso which was retained by the Charters of the High Courts in subsequent years. As originally constituted in 1833 the Judicial Committee of Privy Council consisted of Lord President, the Lord Chancellor, and such of the Councillors as held or had held certain high judicial offices. By the Judicial Committee Act 1871 four paid members were added whose place was subsequently taken by the four Lords of Appeal in Ordinary appointed under the provisions of the Appellate Jurisdiction Act 1876. Under the Act of 1833 four members formed the quorum but by a later Act the number was reduced to three, (6 and 7 vict. C. 38.)

(10). Two parallel systems of Courts.

Right till 1861 there existed in British India two parallel systems of judicial institutions of entirely dissimilar origin, one in the Presidency towns where Crown Courts had been established by Royal Charters and Acts of Parliament, the other in the Moffussil where courts were organised by the Company by virtue of the powers derived from the native Governments. Until 1834 the former were amenable only to the legislative authority of the British Parliament and such Regulations of the Indian Government as the Supreme Courts might choose to acknowledge and register. The Mcffussil Courts administered Hindu

and Mohamedan laws amended and supplemented by Indian legislation, and had generally speaking no jurisdiction over the Europeans. The Crown Courts followed the English law of procedure and applied for the most part English law except in certain classes of Civil suits instituted against Hindus or Mohamedans.

(11). First step to bridge the gulf.

The first attempt to bridge the gulf was made in 1813 when by an Act of Parliament the Company's Courts were vested with *civil* jurisdiction over the Europeans in suits brought against them by Indians. But the privilege was only partly attacked since the Act gave them a distinctive right of appeal to the Supreme Court instead of Sudder Court to which an appeal lay in the ordinary course. This invidious right itself was taken away by Act XI of 1836 commonly known as the Black Act. Till 1813 European residents in India were subject to the criminal jurisdiction of only the Crown Courts in the Presidency towns. By the Act of that year (53 Geo. III, c. 155) Magistrates in the provinces were empowered to act as Justices of the Peace and to have jurisdiction over the European British subjects out of the Presidency towns in certain criminal cases. This authority was gradually extended by subsequent legislation.

(12) Second step towards amalgamation.

Another step towards amalgamation was the establishment throughout the country of a

uniform system of laws. The codification and simplification of laws was one of the greatest reforms effected during this period. The East India Company began by attempting to govern Indians by Indian law and Englishmen by English law but the system broke down as Sir Courtney Ilbert has observed * for three reasons. In the first place there was the difficulty of ascertaining the native Indian law. Secondly even where it could be ascertained it often embodied rules which were repugnant to the ideas and traditions underlying the English legal system. Thirdly the Indian law was deficient; there were large and important branches of law, such as the law of contract, tort, trust, etc. for which it supplied insufficient guidance. From an early time, therefore, there began to grow up in India a large body of Anglo-Indian case law and Regulations of the legislatures amending and supplementing the Indian laws. Many of the earlier regulations were directed to remove the glaring defects of the Mohamedan criminal jurisprudence. In 1780 the Government of Bengal issued a Code of Regulations for the administration of justice, and the following year a revised code was issued. Warren Hasting's plan of 1772 which directed that in civil suits regarding marriage, inheritance, etc. the court should follow the personal law of the parties was recognised and confirmed by the Amending Act of 1781 (21 Geo. III. C. 70). A Bengal Regulation of 1832 provided that in a civil suit the parties to which were of different

* Government of India p. 368,

persuations the laws of their religion shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. The principle of the Bengal Regulation was extended throughout British India by Lex Loci Act 1850 which declared that no person shall be liable to forfeiture of his rights, property, or inheritance, by reason merely of being excluded from his religion or caste. The Bombay Regulations gave precedence to local usage over written Hindu or Mohamedan law in the determination of civil rights. The same principle was subsequently applied to the Punjab by the Punjab Laws Act 1872. In 1833 the attention of British Parliament was drawn to the unwieldy, confusing, and obscure state of law in British India, and a consolidation and codification of these laws was urged as an urgent necessity for the proper guidance of magistrates and judges. The Charter Act of 1833 directed the Governor-General to appoint an Indian Law Commission to inquire into and report on the state of laws and administration of justice in British India. The work of the Commission fell chiefly on Lord Macaulay, and the first subject taken up was the preparation of a code of Penal laws. The draft was completed in 1838 but it was not till 1860 that it was passed into law. Two more commissions were appointed, one in 1853 and another in 1861, whose labours resulted in the preparation of several codes of substantive law and procedure which were in course of time placed on the statute book and made applicable to all courts and persons through-

out British India, superseding the native Indian law on the subjects to which they related. The first edition of the Code of Civil Procedure was passed in 1859, followed by the Code of Criminal Procedure in 1861. These were supplemented by the Indian Succession Act 1865, the Hindu Wills Act 1870, the Evidence and Contract Acts 1872, the Specific Relif Act 1877, the Negotiable Instruments Act 1881, the Transfer of Property Act and Indian Trust Act 1882, the Limitation Act 1908, etc. Substantially the whole criminal law of India was codified, but the codification of civil laws was yet far from complete. There were three difficulties which stood in the way of codification of Hindu and Mohamedan laws. In the first place great portions of these laws were believed to be of more or less divine origin and legislative interference with them was regarded politically dangerous. Secondly codification would have stereotyped rules which, under the silent influence of social and political forces, were in process of change. Thirdly there was no single body of Hindu law that was generelly recognised; it differed in different provinces, and was often modified by local or family custom.

(13). Third step.

A third step taken in the direction of uniformity was to abolish the Supreme and Sudder Courts and to constitute in their places, in each Presidency, one sole Court of Appeal with control over all the Courts both in the Presidency town and in the Moffussil. This was done by the

Indian High Courts Act 1861 which empowered the Crown to establish by Letters Patent three High Courts at Madras, Bombay, and Fort William to which were to be transferred the jurisdiction and powers exercised by the chartered Supreme Courts and the *Sudder Diwany* and *Nizamat Adawluts*. Each one of these High Courts was to consist of a Chief Justice and not more than fifteen Judges of whom not less than one-third, including the Chief Justice, were to be barristers, and not less one-third were to be members of the Indian Civil Service. Power was also given to create a fourth High Court which was exercised in 1866 when a High Court was established at Allahabad. An Act passed in the same year by the Imperial Legislative Council constituted a Chief Court in the Punjab, upon the model of the High Courts, composed of two or more Judges appointed by the Governor-General in Council and invested with the highest appellate power and original jurisdiction for the trial of certain civil and criminal cases. "The result of the establishment of the High Courts was," Mr. Cowell observes, to combine the Judges of the Supreme and Sudder Courts, and thereby to constitute a single tribunal. But as far as the policy of fusing two rival systems of judicial administration was concerned, no great advance was thereby made. The Supreme Court in reality survived as a district branch of the High Court, *viz.*, in its original side."*

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* Courts and Legislative Authorities in India, p. 235.

(14). Reconstitution of Criminal Courts under the Code of Criminal Procedure.

In 1872 was issued a fresh Code of Criminal Procedure repealing the earlier Acts on the subject. It was enacted that beside the High Courts, the Chief Court of the Punjab, and the Judicial Commissioners' Courts in the non-Regulation provinces there should be four grades of Criminal Courts in British India, namely, the Court of Session, the Court of the Magistrate of the first class, the Court of the Magistrate of the second class, and the Court of the Magistrate of the third class. Every province was to be divided into sessions divisions and there was to be a Court of Sessions and a Sessions Judge for every such division. The Local Government was empowered to appoint Additional and Joint Sessions Judges who were to exercise all the powers of the Court but to try such cases only as the Local Government directed them to try or as the Sessions Judge of the division made over to them for trial. The distinction between the three classes of Magistrates rested on the amount of sentence they were competent to award. A Magistrate of the first class might sentence upto the term of two years and impose a fine upto Rs. 1,000; a Magistrate of the second class might imprison upto six months and impose a fine upto Rs. 200; a Magistrate of the third class might imprison for one month and impose a fine upto Rs. 50. The first two might order whipping or include in the imprisonment solitary confinement, but such an order could not be made by a Magis-

trate of the third class. Magistrates of all the three classes were to be appointed by the Local Government and acted in subordination to the Magistrate of the District. The Local Government might divide a district into divisions and place a Magistrate of the first or second class in charge of a division. The Divisional Magistrate was subject to the control of Magistrate of the district, but he in his turn controlled the Magistrates in his division. In the non-Regulation Provinces the Local Government was empowered to invest the Deputy Commissioner or other chief executive officer of the district with power to try as a Magistrate all offences not punishable with death, and to pass sentence of imprisonment for a term not exceeding seven years. The Local Government was also authorised to appoint in any district special Magistrates, or a Bench of Magistrates with the powers of a Magistrate of the first, second, or third class.

(15). Special law of procedure for European British subjects.

A special chapter in the Code related to the investigation and trial of offences by European British subjects. The distinctive racial privileges given to them by the code may be summarised as follows :—

1. A judicial officer to be entitled to investigate must himself be a European British subject holding the double office of Magistrate of the first class and of Justice of the Peace, and the highest punishment which such Magistrate could

award was three months' imprisonment and a fine of Rs. 1,000. If the trying Magistrate was of opinion that such a sentence was inadequate he must commit the accused to the Court of Session unless the offence complained of be punishable with death or transportation for life or the Sessions Judge was not a European British subject in which case the commitment must be to the High Court.

2. A Sessions Judge to have any jurisdiction in reference to a European British subject must himself be of the same nationality, and the maximum sentence which he could award was one year's imprisonment and fine. Where the Sessions Judge thought such sentence to be inadequate he was to transfer the case to the High Court.

3. Convicted by a Magistrate he could appeal to the Court of Session or to the High Court, at his option. If convicted by a Court of Session he might appeal to the High Court.

4. The *High Court* was vested with power to order any European who complained of unlawful detention within its jurisdiction to be brought before it to abide its further order.

(16). Amendment in the law made by Act III of 1884.

Matters were in this position in 1883 when the Government of India announced their decision "to settle the question of jurisdiction over European British subjects in such a way as to remove from the code, at once and completely, every judicial disqualification which is merely on

race distinctions." The announcement met with a storm of opposition on the part of the European population which resulted eventually in the abandonment of the plan originally proposed by the Government. The only amendment in the law made by Act III of 1884 was that a District Magistrate or Sessions Judge was not to be disqualified from holding trial by reason merely of his non-European nationality but this was made subject to the condition that every European British subject brought for trial before the District Magistrate or Sessions Judge was to have the right, however trivial be the charge, to claim to be tried by a jury of which not less than half the number were to be Europeans or Americans. Another change made was that District Magistrates trying European British subjects with a jury were authorised to pass sentence of imprisonment which may extend to six months and fine which may extend to Rs. 2,000. The Act could not be said to have diminished in any way the privileges of the European British subjects. On the other hand it took away the summary powers of the Enropean District Magistrate and gave them a claim "which could not be made", as Sir John Strachey has observed, "by an Englishman in any Magistrate's Court in his own country."* "The legislature virtually declared that the summary powers of the European District Magistrate over European offenders should be taken away, not because this was held to be in itself desirable, but because such powers could

*India, Its Administration and Progress, p. 103.

not be given to a District Magistrate who is a native. While this change was made in the powers of District Magistrates, the law in regard to other Magistrates remained unaltered," † Other Magistrates of the first class, outside the Presidency towns, when appointed Justices of the Peace, continued to exercise summary jurisdiction over European British subjects but no Indian was appointed to act in that capacity or exercise such jurisdiction.

(17). Some noteworthy features of the Administration of Criminal Justice.

The following were some of the leading features of the system of Adminisiration of Criminal Justice established in this country :—

i. A combination of judicial and executive functions, *i.e.*, the function of the judge and prosecutor in the same officer.

ii. The differential treatment accorded to the European British subjects and their partial immunity from the jurisdiction of the ordinary courts.

iii. A general absence of the system of trial by jury.

iv. Existence on the statute-book of laws enabling the Executive Government to set up special tribunals with special rules of procedure and evidence, for the trial, particularly, of offences against state.

† *Ibid*, p. 103.

v. Complete control of the executive over appointment, promotion, etc. of the subordinate Judges and Magistrates.

vi. Restriction on the right to the writ of *Habeas corpus.* The Code of Criminal Procedure confined the right to the limits of the ordinary original jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay and specifically forbade the issue of the writ for the benefit of persons detained under the Bengal State Prisoners' Regulation, 1818, Madras Regulation II of 1819, Bombay Regulation XXV of 1827, the State Prisoners' Act 1850, or the State Prisoners' Act 1858.

vii. Want of legalism and judicial independence even in the High Courts, the highest tribunals of the country, owing to a variety of circumstances such as the provision that the judges were to hold office *at the pleasure* of the Crown unlike in England where they were removable only upon an address of both Houses of Parliament; the practice of giving Local Governments a predominant voice in the appointment of judges; and the existence of a statutary provision that at least one-third of the judges must be members of the Indian Civil Service.

viii. Exemption from the original jurisdiction of the High Courts of the Governor-General, Governors, and members of their Executive Councils for acts done by them in public capacity, or in respect of any offence not being treason or felony.

ix. Written order by the Governor-General in Council could be pleaded in full justification of

any act in any proceeding in a High Court acting in the exercise of its original jurisdiction, except so far as the order extended to any European British subjects.

(18). The Indian High Courts Act, 1911.

In 1911 only four provinces in British India were possessed of High Courts of Judicature. Charters to establish High Courts for Bengal, Madras, and Bombay were issued in 1862, and another for the creation of a High Court at Allahabad was issued in 1865. Their Letters Patent were similar in all important respects save that in the case of the High Court at Allahabad no provision was made for the exercise of ordinary original jurisdiction except as regards criminal proceedings against European British subjects. A Chief Court was established for the Punjab in 1866, consituted on the lines of Allahabad High Court, but deriving its authority from the Indian Legislature and composed of judges appointed by the Governor-General in Council. Another was created for Lower Burma at Rangoon, on the model of Presidency High Courts, with original civil and criminal jurisdiction for Rangoon. In all the remaining provinces the highest tribunal was that of the Judicial Commissioner appointed by the Government of India. The Indian High Courts Act 1911 provided for the establishment, if necessary, of additional High Courts in any part of British India, and in order to meet the needs of the increasing volume of judicial business raised the maximum

number of judges from 16 to 20. A provision was also made for the appointment of temporary additional judges by the Governor-General in Council. In exercise of the powers conferred by the Act a High Court was established at Patna in 1915, and another at Lahore in 1919.

(19). Regulations and Acts arming the executive with arbitrary powers.

The Company's Government passed a number of laws which armed the executive authorities with wide, arbitrary, or discretionary powers of constraint without obtaining trial and conviction in the ordinary courts of law. To this category belonged the Bengal State Offences Regulation 1804, the Bengal State Prisoners' Regulation 1818, Madras Regulation II of 1819, Bombay Regulation XXV of 1827, the State Prisoners Act, 1850, the State Offences Act, 1857, the Forfeiture Act, 1857 and the State Prisoners Act, 1858.

The Bengal Regulation III of 1818, and the analogous Regulations in the Bombay and Madras Presidencies provided that when for reasons of state it is necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute judicial proceedings, or when such proceeding may not be adopted to the nature of the case or may for other reasons be inadvisable or improper, the warrant of commitment shall be sufficient authority for he detention of any state prisoner in any fcrtress, ail or other place subject to the particular presidency. The Executive was made the sole

judge of necessity and the period of detention was not open to appeal or revision by any court of law.

The State Offences Act, 1857, provided that whenever the Government proclaims that any district subject to it is or has been in a state of rebellion it shall be lawful for it to issue a commission for the trial of all persons charged with having committed within such district any crime against the state or any heinous crime against person or property. A court held under such commission could pass upon persons convicted any sentence warranted by law with regard to the crime committed, and the judgment of the court was to be final and conclusive. The Act did not apply to European British subjects.

The widespread unrest and agitation for political reforms which marked the beginning of the twentieth century led to further legislation of the same description. In May 1907 two persons were deported from the Punjab to Burma under the Bengal State Prisoners Regulation (No. III) of 1818, and a similar action was taken against nine more in December 1908 in Bengal and Eastern Bengal and Assam. In the meanwhile an Ordinance was promulgated in May 1907 which required that in "proclaimed areas" notice must be given to the police of the intention to hold a public meeting for the discussion of public or political matters and any meeting likely to promote sedition or cause a disturbance of the public tranqnility might be prohibited by the District Magistrate. The Ordinance was superseded in November 1907 by the Prevention of

Seditious Meetings Act, provisions of which were substantially identical with those of the Ordinance. The Act, which, as passed, had force for three years only, was continued for a further period, up-to 31st March, 1911, by the Continuing Act, 1910. It was repealed in March 1911 by a fresh Act which consolidated and amended the law. The new Act made the previous sanction of the Government of India necessary for the notification of proclaimed areas by Local Governments, and required notice to be given only in the case of meetings for the discussion or consideration of subjects likely to cause disturbance or public excitement, and not, as the Act of 1907 did, in the case of meetings for the discussion of "any political subject." The executive was empowered to prohibit meetings whenever it apprehended disaffection or sedition.

The next of the new series of measures was the Indian Criminal Law Amendment Act of 1908 which was intended to provide "for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace." The Act applied to the province of Bengal and of Eastern Bengal and Assam and to such other provinces to which the Government of India by notification might he pleased to extend its operations. Where the Governor-General or the Local Government directed the procedure therein prescribed to be followed by a Magistrate in the proceedings of a case the inquiry by such Magistrate was to be *ex-parte*, *The accused was not to be present during the inquiry unless the Magistrate so directed, nor was he to be*

represented by a pleader, nor was any person to have a right of access to the Magistrate's Court while he was holding such inquiry. If the Magistrate found on inquiry that the prosecution evidence was sufficient to put the accused upon his trial he was to commit the accused to the High Court and forward therewith the whole record of the case. *The trial before the special Bench was to be held without a jury, and the provisions of the Code of Criminal Procedure, 1898, were not to apply to such proceedings in so far as they were inconsistent with the special procedure prescribed in the Act.* Notwithstanding the provisions of section 33 of the Indian Evidence Act, 1872, the *evidence of any witness taken by the Magistrate during the inquiry was to be treated as evidence before the High Court if the witness died or could not be produced and the High Court had reason to believe that the death or absence had been caused in the interests of the accused.*

Two years after this was put on the statute book the Indian Press Act of 1910 which had practically the effect of placing the Indian press outside the jurisdiction of law courts and entirely dependent for its existence at the caprice and mercy of the executive authorities. Every person keeping a printing press was required to deposit with a Magistrate security to such an amount, not being less than five hundred or more than two thousand rupees as the Magistrate might in each case think fit to require. Section 4 of the Act by its extremely wide and comprehensive terms vested the Local Government with a large

and unfettered discretion to forfeit the security, without warning and without trial, if any matters printed in such press were considered by the Government to be objectionable within the meaning of the Act. On making a fresh declaration under the Press and Registration of Books Act 1867 the keeper was to deposit fresh security which, at the discretion of the Magistrate, might extend to Rs. ten thousand and if, after such further deposit, the press was again used for publishing objectionable matter within the meaning of the Act, the Local Government was empowered to forfeit such further security as well as the printing press used. Sections 8, 9, 10, and 11 enacted similar provisions with regard to publishers of newspapers. The aggrieved person was given a right to apply to the High Court to set aside order of forfeiture but the only ground on which such an application could be made was that the newspaper, book, or other document in respect of which the order was made did not contain any words, etc., described in Section 4. The burden of proof was cast on the applicant to establish the negative. The High Court's power of intervention was the narrowest. It was not to pronounce on wisdom of the executive order, or on the legality of the forfeiture by reason of failure to observe the mandatory conditions of the Act. The functions of the High Court were limited to considering whether the applicant had discharged the almost hopeless task of establishing that the publication did not contain words falling in the all-comprehensive provision of Section 4 of the Act.

The Great War which broke out in Europe in 1914 led to the passing of the Defence of India Act, a temporary emergency measure, intended to secure the public safety and the more speedy trial of certain offences. The Act was to remain in force during the continuance of the war and for a period of six months thereafter. The rules made under the Act provided that where in the opinion of the Local Government there are reasonable grounds for believing that any person has acted or is about to act in a manner prejudicial to the public safety, the Local Government may by order direct that such person shall not enter, reside or remain in any area specified in the order, or shall reside or remain in any area specified, or shall conduct himself in such manner or abstain from such acts as may be specified in the order. Offences under the Act were to be tried by Commissioners appointed by the Local Government and their judgment was to be final and conclusive. They were to make a memorandum only of the substance of the evidence of each witness examined. In some cases evidence was to be admitted notwithstanding the contrary provisions in the Indian Evidence Act, 1872.

The Sedition Committee presided over by Sir Sidney Rowlatt investigated, in 1918, the growth of the revolutionary movement in different provinces and concluded that the only way to suppress anarchical crime was "the strengthening of the ordinary machinery of law and order in such fashion as to lend it permanently something of the power which it temporarily had acquired

when buttressed by the Defence of India Act." Accordingly the Government planned to introduce two Bills, one, a temporary measure, intended to meet the situation that would arise on the termination of the Defence of India Act, and the other to make a permanent change in the ordinary law of the land. Only the first of these became law and was known as the Anarchical and Revolutionary Crimes Act (XI of 1919). It was to remain in force for three years from the date of the termination of the war. Part I of the Act provided for the constitution of a special Court for the speedy trial of political offences. Section 22 empowered the Local Government to order persons whom it believed to be actively concerned in a movement likely to lead to the commission of offences against the state to furnish security of good conduct, to reside in a particular place, to abstain from any specified act, and to report himself to the officer in charge of the police station nearest to his residence at such periods as may be specified. Such an order was not to be questioned in any Court of law. The Local Government was directed to appoint an investigating committee of three persons to inquire and report to it on the propriety of any such order. The committee was to hold inquiry *in camera* and was not bound to observe the ordinary rules of evidence. The accused was to be given "a reasonable opportunity of appearing before it at some stage in its proceedings" but he was not entitled to be represented by a pleader. On the completion of the inquiry the investigating authority was to submit its report to the Local

Government which was to pass such order as it thought proper.

(26). English Principle of Rule of Law not followed.

From what is described above it would be apparent that the judicial institutions established in this country had little in common with the "Rule of Law" which formed a fundamental principle of the English constitution. Professor Dicey observes: "when we say that the supremacy or the rule of law is a characteristic of the English constitution, we generally include under one expression at least three distinct though kindred conceptions. We mean, in the first place, that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint."* "We mean in the second place.....not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals."† It means, in the third place, "that the general principles of the constitution (as for example the right to personal

* Law of the Constitution, p. 183.
† P. 189.

liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the courts; whereas under many foreign constitutions the security (such as it is) given to the rights of individuals results, or appears to result, from the general principles of the constitution."* The system set up in this country resembled more the arrangement prevalent in the continental countries of Europe where executive legally claimed wide, discretionary powers of arrest and imprisonment, where men for offences unknown could be made to suffer penance and disgrace without trial and without conviction, where certain classes were exempt from the jurisdiction of the ordinary tribunals and in some cases of the ordinary law of the land, where constitutional rights of individuals instead of following from common law and the dicta of judges were defined and limited by statute, and where Government enjoyed the power by which special tribunals could be given jurisdiction in time of war, insurrection, riot, or rebellion, over civil citizens, more or less superseding the jurisdiction of the ordinary courts.

(27.) Movement for separation of judicial and executive functions.

The legal system introduced by the British rulers was based less on theoretical reasonableness than on its suitability to local conditions

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* P. 191.

and temperaments. It was necessarily imperfect, and with the awakening of national consciousness there was a steady demand for removal of its more glaring defects. Since the foundation of the Indian National Congress in 1885 there was no matter which received a more general support or more consistent attention than the question of the separation of executive and judicial functions. The movement culminated in 1899 in a memorial addressed to the Secretary of State for India, signed by ten high judicial authorities, and setting forth eight objections which may be summarised as follows:—

(1) that the combination of judicial with executive duties in the same officer violates the first principles of equity;

(2). that while a judicial authority ought to be thoroughly impartial, and ought to approach the consideration of any case without previous knowledge of the facts, an executive officer does not adequately discharge his duties, unless his ears are open to all reports and information which he can in any degree employ for the benefit of the district;

(3) that executive officers in India, being responsible for a large amount of miscellaneous business, have not time satisfactorily to dispose of judicial work in addition;

(4) that being keenly interested in carrying out particular executive measures, they are apt to be brought more or less into conflict with individuals, and therefore it is inexpedient that they should also be invested with judicial powers;

(5) that under the existing system Collector-Magistrates do, in fact, neglect judicial for executive work;

(6) that appeals from revenue assessments are apt to be futile when they are heard by Revenue officers;

(7) that great inconvenience, expense and sufferings are imposed on suitors required to follow the camp of a judicial officer, who, in the discharge of his executive duties, is making a tour in his district; and

(8) that the existing system not only involves all whom it concerns in hardships and inconvenience, but also by associating the judicial tribunals with the work of the police and of detectives, and by diminishing the safeguards afforded by the rules of evidence produces actual miscarriages of justice and creates, though justice be done, opportunities of suspicion, distrust and discontent which are greatly to be deplored.

The Government defended the existing system on the grounds that concentration of authority was consistent with the oriental view of administration, that it was economical, and that a separation would everywhere weaken the Collector's position and thereby that of the British Raj.

(28). The Indian National Congress demand for a declaration of rights.

The movement for the repeal of arbitrary and discriminating laws culminated in a resolution

for "the Declaration of Rights of the people of India as British citizens" passed at the Special Session of the Indian National Congress held in Bombay in 1918 and reaffirmed at the ordinary annual meeting of the Congress at Delhi, in December the same year. The Resolution urged the British Parliament to provide by statute:—

(*a*) that all Indian subjects of His Majesty and all the subjects naturalised or resident in India are equal before the law, and there shall be no penal nor administrative law in force in this country, whether substantive or procedural, of a discriminative nature;

(*b*) that no Indian subject of His Majesty shall be liable to suffer in liberty, life, property, or in respect of free speech or writing or of the right of association, except under sentence by an ordinary court of justice and as a result of lawful and open trial;

(*c*) that every Indian shall be entitled to bear arms subject to the purchase of a license as in Great Britain, and that right shall not be taken away save by a sentence of an ordinary court of justice;

(*d*) that the press shall be free and that no license or security shall be demanded on the registration of a press or newspaper;

(*e*) that corporal punishment shall not be inflicted on any Indian subject of His Majesty save under conditions applying equally to all other British subjects.

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(E). LOCAL SELF-GOVERNMENT.

(1). Local self-government in ancient and mediæval India.

Rudimentary institutions of local self-government existed in India from times immemorial. The village communities were in the nature of little republics enjoying almost complete autonomy in matters of local administration. The King's Government did not interfere with their organisation so long as there was a regular payment of taxes to the exchequer. This isolation was less marked in the Hindu period than in the Mohamedan times. "In the Code of Manu the connection of the king with the village is of a direct kind, the headman himself being appointed by him. The Arthshastra describes a vast arrangement of espionage by which the king might be kept in touch with the affairs of the village. The Sukra-niti requires the king to inspect the villages personally every year."*

The staff of functionaries, artisans, and traders by means of which village communities carried on their internal government included (1) the *headman*, who acted as the general superintendent, arbitrator, and collector of revenue in the village, (2) the *accountant*, who kept the account of cultivation, (3) *watchman* who gave

* J. Mathai's Village Government in B. India, p. 33.

information of crimes, exhorted travellers, and guarded the crops, (4) the *boundaryman* who preserved the limits of the village, (5) the *Superintendent* of tanks and water-courses, (6) the *priest*, (7) the *schoolmaster*, (8) the *astrologer*, and (9) the village *artisans*, namely, the smith and carpenter, the potter, the washerman, the barber, and the poet. All these were servants of the village community and were remunerated for their public services either by grant of land or by a share in the grain.

The most important feature of village government was the *Panchayat* or Village Council, an association of inhabitants for the purposes of administrative and judicial work. The term *Panchayat* was used both to denote a general meeting of the whole community as well as the select council of it. General meetings of all the village residents were, however, rare except in the backward and aboriginal communities. Some of the South Indian inscriptions relating to the Tamil kingdoms of the tenth century A. D. describe the existence of several small committees for local administration appointed by the villagers *casting lots*. These were probably subordinate to the larger assembly * "There are references here and there to women members on village committees, and apparently women were under no absolute prohibition." † The system of election as understood in the West was unknown. As Sir Herbert Risley once expressed, "the method by which the Panchayat is elected cannot be expressed

* Mathai's Village Govt. in B. India, p. 26.
† *Ibid* p. 29.

in terms of European political phraseology. The people get together and they talk, and eventually an opinion emerges from their talk which is the opinion of all of them. There is no majority, for they are unanimous; there is no minority, for the minority has been talked over and casts in its lot with the majority. The process can only be described as selection by acclamation, in the way the earliest Greek and German popular bodies were selected, the oldest mode of election in the world."* Trifling disputes were settled by the arbitration of the headman, who also possessed power of punishing minor offences such as abusive language, assault, and trespass, but the more important ones were referred to the Punchayat. In either case the procedure was irregular and informal. The jurisdiction of the Council was as a rule confined to civil cases. It was not a fixed tribunal but was constituted for the adjudication of each particular dispute whenever the parties agreed to submit to its award. The duty of constituting and summoning the council lay, ordinarily, with the headman and the number of persons summoned might range from five or less to fifty or more. It was a court of equity and an attempt was made to give judgments which satisfied both the parties. The intimate local knowledge of the judges was generally sufficient to secure speedy and substantial justice, and except in notorious cases their decisions were final. "The chief advantage of a *panchayat* was, of course, the obligation which the very nature of the tribunal threw upon parties and witnesses to tell the

* *Ibid*, p. 30-31.

truth. In a small concentrated commnnity, it was not likely that any one who cared to live a comfortable life would mention an untruth before a council of his fellows."*

(2.) Dissolution of the old village organisation under the British.

Subject to minor local variations, these were the main features of village government which existed in India from times immemorial prior to the British rule. The anarchy and disorganisation which followed the dissolution of the Moghal Empire led to a decline of communal spirit in villages and eventually the administrative duties formerly exercised by the village commnnity were necessarily taken up by the Central Government and its subordinate agencies. The three principal officers of the village—the Headman, the Accountant, and the Watchman—continued to be important members in the village organisation but as servants of Government and not of village body, and their remunerations now took the form of payments in cash instead of grants of land or grain from the community. The institution of panchayat also gradually disappeared as the need for its continuance ceased.

(3). Attempts to revive communal life in villages and to utilise indigenous village institutions.

Attempts were made in subsequent years to revive the communal life in villages and in some

* *Ibid* p. 165.

cases to utilise the indigenous village institutions for purposes of rural administration.

Village school committees were started in connection with schools under the management of District and Local Boards, and consisting of elders of the village appointed by the Board on the recommendation of Government educational authorities. A school committee was required occasionally to visit the school, enforce discipline, report school matters to the Board, grant casual leave to the school master for a limited time, and in some cases also to repair school building and collect subscriptions for the school fund. The idea was to recreate a sense of local patriotism in connection with the village education. The plan succeeded only in the provinces where the committees were given real power and responsibility, in others it failed to stimulate local patriotism.*

The Famine Commission of 1880 emphasised the need of strengthening and using the old village agencies in connection with famine relief. It reported :—

" In most parts of India some village organisation exists which offers a ready and natural, though still imperfect, machinery for coping with famine, and it is of special importance that whatever is possible should be done towards improving and strenthening this machinery where it is present, so that it may become more thoroughly efficient for purposes of village relief.

* See J. Mathai's Village Government in British India p. 59

For the progress of the country, the encouragement of the principle of local self-government by which business of all kinds should be left more and more to local direction, is of much moment, and nowhere more so than in dealing with local distress ; and however great be the difficulties in the way of its practical realisation, it will be well never to lose the opportunity of taking any step that may lead towards it."*

In the Provincial organisation for famine relief, which came to be established, the village agencies employed were the panchayat of elders and the three local officers—the headman, the accountant, and the watchman. Whenever the Provincial Government declared that famine conditions existed in any area it was made the duty of Collector to set this machinery in motion.

(4). Village Unions and Sanitary Committees.

In addition to the district and local boards established under Local Self-Government Acts two more agencies were instituted for the purposes mainly of rural sanitation. These were 'Village Unions' and 'Sanitary Committees'. Both were artificial organisations, but while the former were constituted of a group of villages situated in closely adjacent area the latter were restricted to the administration of single villages. Village Unions were founded only in the provinces of Madras and Bengal, in either case under the direction of the rural boards. "In Madras between 1889-90 and 1902-3 the number of unions

* Report, Part I. para. 142.

increased from 248 to 379 and their income from 3½ to nearly 7 lacs of rupees.* In Bengal the union system was introduced in 1895-6 and the number of unions amounted to 57 in 1902-3. In 1911-12 the number rose to 393 in Madras but no corresponding progress was made in Bengal. The administration of a union was vested in the hands of a panchayat consisting of headmen of villages and *nominated* members. In Madras a scheme for partial introduction of elective principle was sanctioned by the Government in 1912. The Madras Local Boards Act, 1884, laid down the following duties of the Union Panchayats:—

(1) lighting of the public roads ;

(2) cleaning of the public roads, drains, tanks, wells, etc. ;

(3) with the previous sanction of the Government, the establishment and maintenance of hospitals, dispensaries, and schools ;

(4) making and repairing public roads and drains ;

(5) supply of water for domestic purposes ; and

(6) preservation of public health.

The Bengal Local Self-Government Act, 1885, further assigned to the village unions the management of cattle pounds and the control of the registration of statistics. The income of Madras Unions was derived mainly from the proceeds of a light tax on houses, and in Bengal

Imperial Gazetteer, Vol. IV, p. 304.

the Union fund consisted of money accruing under the Cattle Trespass Act and contributions made by the Local Government and the District Board.

As a consequence of Lord Dufferin's Statement of Sanitary Policy issued in 1888 Village Sanitation Acts were passed in Bombay and the Central Provinces which led to the creation of system of Village Sanitary Committees. Unlike Unions their sole function was of attending to village sanitation. In 1912 the total number of committees which had been formed in Bombay was 286 and in the Central Provinces 56. The question of Village Sanitary Committees was also taken up in the United Provinces in 1912. The Sanitary Boards established in Bombay consisted of such number of residents of the village, and magistrates having jurisdiction in the village, as was prescribed by the Government, all being nominated by the Collector. In the Central Provinces the Committee consisted of the headman and not less than four representatives of the village inhabitants chosen by election in open assembly.

(5). Judicial powers in some cases conferred on headman.

Acts were passed in several provinces conferring judicial powers on the village headman. He was constituted a Civil Court in Madras by the Madras Village Courts Act, 1889, in Bombay by the Deccan Agriculturists Relief Act 1879, in the United Provinces by an Act of 1912 and in

Burma by the Burma Village Act, 1907. He was also made in Madras, Bombay, and Burma a village magistrate to try petty cases of assault, abuse, and theft.

(6). Judicial powers conferred on Panchayats.

In a few provinces panchayat institution was incorporated by law in the ordinary judicial system. An old regulation in Madras passed in 1816 permitted trial by panchayat of a suit in which both the parties agreed to submit the dispute to panchayat. It was to be summoned by the village headman, consisting of an odd number of persons not less than five and not more than eleven, and majority was to decide. The award was to be final except in cases of gross partiality. No limit was prescribed in regard to the amount or value of the suit. Judged from its actual working the regulation was a complete failure. Mr. Mathai observes :—

" The report on civil justice in 1880 mentions ten cases as decided by village panchayats. The view of judicial authorities in Madras on this unpopularity of panchayats was thus put in 1829, in a report of the Court of Sadr Adalat : " Considering that the parties in suits referred to village panchayats are not chargeable with any costs whatever, it was natural to expect that, with these advantages, arbitration would be more generally resorted to. The result of the experiment seems to warrant the conclusion that with the great mass of the people.....its prevalence in former times was a matter of necessity, from the

want of other tribunals, rather the effect of a prepossession in "favour of an ancient institution." The existence of other courts with rather slow and elaborate modes of procedure, composed of judges who did not know local matters too closely, was undoubtedly an incentive to a party conscious of a weak case to shun panchayats. But the constitution given to panchayats under the regulation was itself a cause. The old panchayat was a thoroughly informal affair. It took its own time, met where and when it liked, was ignorant of the blessedness of odd numbers and of decision by a majority, and was not as a rule accustomed to having its decrees annulled by a petition sent over the heads of its members. It must also be remembered that the headman was becoming increasingly rather a representative of the Government than a man of the people; and the large powers given to him in the constitution and conduct of panchayats were not likely to impress the villagers with the popular character of the institution."

Judicial panchayats were also introduced in Bombay Presidency by a Regulation of 1802, modified by another of 1827. The system failed as in Madras and was finally abolished in 1861.

Act VI of 1912 authorised the establishment of panchayats in the Punjab to assist in the administration of civil justice. The Local Government was empowered to create a panchayat or panchayats in any district and fix the maximum number of members. The

Collector was authorised to order removal or suspension of any of the members. The panchayat was to take cognizance of suits not exceeding in value Rs. 20 or such higher sum, not exceeding Rs. 200, as the Local Government might, for each panchayat from time to time notify. Its jurisdiction was to be concurrent with competent Civil Courts, and rested on the consent of the parties. It was to be summoned on an application made before a Munsif and the Bench of Judges was to consist of such members of the panchayat as were nominated by the parties themselves. In the event of disagreement decision was to follow the opinion of the majority. The orders of the Bench were in certain cases revisable by the District Judge and no legal practitioner was to be permitted to appear in proceedings before the Bench.

(7). Report of the Royal Commission on decentralisation and resolution thereon of the Government of India.

Lord Ripon's Resolution on Local Self-Government, 1882, related solely to the constitution of municipal, district, and sub-district boards and the question of developing self-governing institutions in villages was not given prominence till the Royal Commission on Decentralisation presented its report in 1909. In Chapter XVIII of their report the Commission expressed the desirability of constituting village panchayats and indicated the general principles on which they should be worked. The system was suggested

not as an additional machine for the promotion of local self-government in the sense in which that term had been used in Lord Ripon's Resolution but to develop the corporate life of the individual villages and to give the villagers some interest in, and some control over, local village affairs. The Commission's proposals on the subject may be summarised as follows :—

(1) It was desirable to constitute and develop village panchayats but the system must be gradually and cautiously worked. The headman of the village, where one is recognised, should be *ex-officio* chairman of the panchayat, other members should be obtained by a system of formal election by the villagers. The panchayat should be a small body of about five members, and only in exceptional cases should different villages be brought under the same panchayat.

(2) Subject to necessary local variations the normal functions of panchayats should be (*a*) summary jurisdiction in petty civil and criminal cases, (*b*) cleansing of the village and minor village works, (*c*) construction, maintenance, and management of village school, and (*d*) management of small fuel and fodder reserves.

(3) The system, to succeed, should not be concomitant with any new form of local taxation. Panchayats should receive a portion of land cess levied for local board purposes in the village, special grants for particular objects of local importance, receipts from village cattle pounds and markets, and small fees on civil suits filed before them.

(4) Panchayats should not be placed under the control of rural boards. Whatever outside supervision was necessary must rest with the district officers.

(5) With the panchayat system thus developed it would be unnecessary to retain artificial local agencies such as village unions and sanitary committees.

The Government of India, by their resolution on Local Self-Government, while indicating the general lines on which advance was most likely to be successful, left the matter in the hands of Local Governments and Administrations. The principles suggested were as follows :—

(*i*) The experiments should be made in selected villages or areas larger than a village, where the people in general agree.

(*ii*) Legislation where necessary should be permissive and general. The powers and duties of panchayats, whether administrative or judicial, need not and, indeed, should not, be identical in every village.

(*iii*) In areas where it is considered desirable to confer judicial as well as administrative functions upon panchayats the same body should exercise both functions.

(*iv*) Existing village administrative committees, such as village sanitation and education committees, should be merged in the village panchayats where these are established.

(*v*) The jurisdiction of panchayats in judicial cases should ordinarily be permissive, but in order to provide inducement to litigants, reasonable facilities might be allowed to persons wish

ing to have their cases decided by panchayats. For instance, court fees, if levied, should be small, technicalities in procedure should be avoided and possibly a speedier execution of decrees permitted.

(*vi*) Powers of permissive taxation may be conferred on panchayats, where desired, subject to the control of the Local Government but the development of the panchayat system should not be prejudiced by an excessive association with taxation.

(*vii*) The relations of panchayats on the administrative side with other administrative bodies should be clearly defined. If they are financed by district or sub-district boards, there can be no objection to some supervision by such boards.

In their resolution on Local Self-Government issued in 1918 the Government of India modified some of the principles suggested.

It was proposed that the area under a panchayat should normally be a single village, and the seventh of the principles enunciated above was also omitted. The resolution further observed :—

"As regards the constitution of the panchayat, the points to which the Government of India attach most importance are the association of principal village officers with the panchayats and an informal election of the other members by the villagers themselves. They would, however, allow the panchayat to choose its own president and would not render it obligatory that the president should be the village headman as

suggested by the Decentralisation Commission. Of the possible functions to be assigned to panchayats the most important are, in their opinion, village sanitation and village education (in the directions indicated in paragraph 712 of the Decentralisation Commission's Report) and jurisdiction in petty civil and criminal cases. With reference to this last class of functions, it is especially desirable that the panchayat should be, as a rule, a body representing a single village, otherwise the great safeguard for the proper disposal of such cases, namely, local public opinion, will be lost.

It should also be permissible, though not as the "commission suggested universally necessary, that the panchayat should receive some portion of the land cess raised in their villages. The Government of India are also prepared, differing herein from the opinion of the Decentralisation Commission, to allow to the panchayats voluntary powers of supplementary taxation, the proceeds of which would be devoted to the special purposes for which the tax was levied."

In pursuance of this policy an Act was passed by the Bengal Legislative Council in 1919 empowering the Local Government to establish Union Boards in the non-municipal areas of Bengal.

The Boards consisted of an elected majority of members, an elected president, and an elected vice-president. They could appoint and dismiss *Dafadars* and *Chowkidars* and supervise and control them; they were charged with the duties of sanitation, digging tanks and wells, improving

local roads, establishing primary schools and dispensaries. For these purposes they were empowered to raise a Union Fund by levying rates on owners or occupiers of premises within their jurisdiction. The Union Boards were also given the power to try minor civil and criminal cases through the agency of " Union Courts. "

(8). Establishment of municipalities in Presidency towns.

Unlike the village panchayats municipalities and rural boards are essentially a product of the British rule.

In 1687 the East India Company were empowered to establish by charter a corporation at Madras with power to levy taxes, and in pursuance of this a municipality was constituted the same year. The corporation was to consist of a mayor, twelve aldermen, and sixty or more burgesses. Powers were given to levy taxes for the purposes of building a town house, a public gaol, a school for the inhabitants of Madras, and for the payment of salaries of the municipal servants including a school master.

In 1726 a charter was granted appointing or reconstituting municipalities in each of the three presidency towns of Bombay, Calcutta, and Madras. The last mentioned surrendered its old charter in 1753 and a fresh charter was issued.

(9). Failure of the Municipal Acts 1842 and 1850.

Outside the Presidency towns there was

practically no attempt made for municipal legislation till 1842, when an Act of that year, applicable only to Bengal, enabled "the inhabitants of any place of public resort or residence to make better provision for purposes connected with public health and convenience." "This Act was in advance of the times. Based upon the voluntary principle, it could take effect in no place except on the application of two-thirds of the householders, and as the taxation enforceable under it was of a direct character, the law nowhere met with popular acceptance. It was only introduced into one town, and there the inhabitants when called upon to pay the tax, not only refused, but prosecuted the Collector for trespass when he attempted to levy it."*

The principle of direct taxation having failed the Act of 1850, which provided for the constitution of Town Committees for the whole of British India, allowed indirect mode of taxation. The measure was, however, like the Act of 1842 of a permissive nature and consequently met with little enthusiasm from the inhabitants.

(10). Fresh legislation in consequence of the report of the Royal Army Sanitary Commission, 1863.

The Report of the Royal Army Sanitary Commission in 1863 resulted in further municipal measures. Acts were passed for Bengal in 1864

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*Imperial Gazetteer, Vol. IV, p. 286.

and 1868, for Madras in 1865, for the Punjab in 1867, and for the North-Western Provinces in 1868.

The municipalities constituted under these Acts were assigned the task, principally, of improving sanitation in the towns. In a number of provinces election of Commissioners was made permissive, but except in the Punjab and the Central Provinces they were all in fact nominated*

(11). No Rural Boards under the East India Company.

The Rural Boards were of a still later origin. "When the Crown took over the government of the country in 1858 such boards did not exist, though some semi-voluntary funds for local improvements had been raised in Madras and Bombay, while in Bengal and United Provinces Consultative Committees assisted the District Officers in the management of funds devoted to local schools, roads, and dispensaries."†

(12). Effect of Lord Moyo's resolution on Provincial Finance, 1870.

Lord Moyo's Resolution on Provincial Finance, 1870, made a prominent allusion to the scheme of developing local self-governing institutions in the following terms :—

"But beyond all this there is a greater and wider object in view. Local interest, supervision,

Ibid p. 287.
†Report of Decentralisation Commission, Vol. I, p. 245.

and care are necessary to success in the management of funds devoted to education, sanitation, medical charity and local public works. The operation of this resolution in its full meaning and integrity will afford opportunities for the development of self-government, for strengthening municipal institutions, and for the association of natives and Europeans to a greater extent than heretofore in the administration of affairs."

In pursuance of this policy local rates and cesses were imposed and in some provinces a portion of the income was entrusted to the management of Committees. Municipalities also increased in number. There was, however, a greater inequality in the progress made in various provinces than their respective circumstances could be held to justify. Matters such as primary education and minor public works were still in some cases reserved to the Provincial Governments. In some cases heavy contributions were levied from municipalities for police, in the administration of which they took no part. The attempts at Local Self-Government met with but little success. No real responsiblity or power was entrusted to the local bodies. Though the Municipal Acts passed for the several provinces provided the elective principle, election was brought into practical operation in only a few cases. " In Madras it was tried in four, and in Bengal in three towns ; in the North-West Provinces the experiment was made in a number of Municipalities but with only a moderate degree of success, and the Central Provinces was the only portion of India in which popular

representation was generally and successfully introduced."* The best men in many cases did not present themselves as candidates for Municipal Office. The number of actual voters was insignificant as compared with the number on the registers.

(13). Condition of Municipalities in the Punjab in 1878.

A Municipal Act was passed for the Punjab in 1873. In 1878 the total number of Municipalities in the province was 197 of which 8 were of the first class, 20 of the 2nd class, and the remaining 169 of the third class. The population within municipal limits was 2,038,193 souls. In Dharmsala alone members were appointed by election only. In four towns the members were appointed partly by election and and partly by nomination; in the remaining 192 Municipalities all the members were appointed by nomination. Of the total number of members of Committees 691 were officials, and 1,402 non-officials; 401 Europeans and 1,692 Indians. In most of the Municipalities the income was derived principally from octroi. In Murree and Dharamsala no octroi was levied, The income of the latter municipality was derived from taxes on houses and the canal water-tax. In Murree and 5 other towns it was derived from taxes on houses and lands. The average rate of municipal taxation of all

*Imp. Gazetteer Vol. IV p. 287.

kinds in the province was annas 15 per head. Other sources of municipal revenue were rents of buildings and gardens, fines, town-sweepings, and grants from Provincial Services. The total income from all sources in 1878 was Rs. 22,78,470, and expenditure Rs. 21,84,538. The main items of expenditure were office establishment, collection of income, municipal police, conservancy, dispensaries and other medical and charitable intitutions, schools, menageries, museums and libraries, roads, drainage works, water supply, buildings, public works, and repayment of debts.

(14). Resolution on Provincial Finance, 1881.

The Resolution on Provincial Finance issued by the Government of India on September 30, 1881, invited "the Local Governments to undertake a careful scrutiny of provincial, local and municipal accounts, with the view of ascertaining (1) what items of receipt and charge can be transferred from 'Provincial' to 'Local' heads, for administration by committees comprising non-official, and, wherever possible, elected members, and what items already 'Local' but not so administered, might suitably be so, (2) what redistribution of items is desirable in order to lay on Local and Municipal bodies those which are best understood and appreciated by the people; (3) what measures, legislative or otherwise, are necessary to ensure more local self-government."

In October 1881 the Government of India issued circular letters to the Local Governments indicating the branches of expenditure which appeared to it most suited for local control. It was suggested that the Magistrate and Collector should be president of the District Committee, and the Officer in charge of the Sub-division president of the subordinate committees, but in each case from one-half to two-thirds of the members of a local body should be non-officials. While providing by statute for a certain measure of control and inspection, within the limits laid down the local bodies were to be given fullest liberty of action. "It would be hopeless to expect" the resolution proceeded, "any real development of self-government if the local bodies were subject to check and interference in matters of detail."

(15). Resolution of Lord Ripon's Government. 1882.

In 1882 Lord Ripon's Government issued a fresh Resolution explaining more fully the general mode in which effect was to be given to the principle of local self-government throughout British India outside the Presidency Towns. It was explained at the outset that the extension of local self-government was advocated principally as a means of political education. The Resolution said :—

"It is not primarily, with a view to improvement in administration that this measure is put forward and supported. It is chiefly desirable as an instrument of political and popular

education. His Excellency in Council has himself no doubt that in course of time as local knowledge and local interest are brought to bear more freely upon local administration improved efficiency will in fact follow."

It was pointed out that if the experiments hitherto made in the direction of local self-government had not been encouraging it was because the principle had not as yet been, in any general or satisfactory fasnion, fully and fairly tried. Previous attempts had been practically crushed by direct official interference and in the few cases where responsibility and power had been entrusted to local bodies the results were gratifying. While recognising the absurdity of laying down any hard and fast rules of universal application in a country so vast and varied as British India, the Resclution nevertheless, set forth fundamental principles, which after every allowance was made for local peculiarities, were to be frankly adopted if the system was to have a fair trial.

It was suggested that a net-work of Local Boards, charged with definite duties and entrusted with definite funds, should be set up throughont the country. To secure among the members both local interest and local knowledge the area of jurisdiction allotted to each Board was not to be too large. The sub-division, the taluka, or the tahsil was ordinarily to form the maximum area to be placed under a Local Board. "In some provinces," the Resolution indicated, "it may be found possible to leave these sub-divisional boards to their own independent working, arranging for a periodical

district council to which delegates from each local board might be sent to settle such common matters as the rate of land-cess to be levied during the year, allotment to be made of district funds, and other questions of general interest. In other provinces, again, it may be thought best to have a district board with controlling power over the smaller local boards." The plan of municipal government in the cities and towns was also to be largely extended.

The Local Boards, both rural and urban, were everywhere to have a large preponderance of non-official members. In no case were the official members to be more than one-third of the whole. Members of the Boards were to be chosen by election wherever it might be practicable to adopt that system of choice. The Local Governments were required to establish election in some form or another as widely as local circumstances permitted.

Turning to the subject of the degree and manner of control to be exercised by the Government over the Local Boards it was observed that the control should be exercised from without rather than from within. "The Government should revise and check the acts of the local bodies but not dictate them." In the first place the sanction of Government should be required to give validity to certain acts, such as the raising of loans, the imposition of taxes in other than duly authorised form, the alienation of Municipal property, and the like. The number of such cases was to be reduced as the Boards gained in experience. In the second place the Local Governmen-

was to have power to interfere either to set aside altogether the proceedings of the Board in particular cases or in the event of gross neglect of duty temporarily to suspend the Board. Absolute suppression of a Board was in every case to require the consent of the Supreme Government. With regard to the appointment of chairmen of the Local Boards the Resolution observed as follows:—

"The Governor-General in Council is aware that many high authorities hold that the District Officer should always be *ex-officio* chairman of all the Local Boards within the district, and should directly guide and regulate their proceedings. This was indeed the view taken by the Government of India itself in the circular letters of the 10th October last, so far as the constitution of District Boards was concerned But even then the Governor-General in Council did not see his way to accepting the principle in the case of Municipal Boards and further consideration has led him to the belief, that on the whole, it is better to lay down no such general rule in the case of any class of Local Boards. There appears to him to be great force in the argument that so long as the chief executive officers are, as a matter of course, chairmen of the Municipal and District Committees there is little chance of these Committees affording any effective training to their members in the management of local affairs, or of the non-official members taking any real interest in local business. The non-official members must be led to feel that real power is placed in their hands, and they have real

responsibilities to discharge. It is doubtful whether they have under present arrangements any sufficient inducement to give up their time and attention to the transaction of public business.

"There is this further objection to the District Officer acting as chairman, that if the non-official members are independent and energetic, risk may arise of unseemly collision between the chairman and the Board. The former would be in a far more dignified and influential position if he supervised and controlled the proceedings of the Board from outside, acting as arbiter between all parties, and not as leader of any.

"The Governor-General in Council, therefore, would wish to see non-official persons acting wherever practicable, as chairmen of the Local Boards. There may, however, be places where it would be impossible to get any suitable non-official chairman, and there may be districts where the chief executive officer must, for the present, retain these duties in his own hands. But His Excellency in Council trusts that the Local Governments will have recourse sparingly to the appointment of executive officers as chairmen of Local Boards; and he is of opinion that it should be a general rule that when such an officer is chairman of any Local Board, he shall not in that capacity have a vote in its proceedings.....

"The appointment of chairman should always be subject to the approval of the Local Government, but need not be always made by it. The Governor-General in Council would be glad to see the Boards allowed, in as many cases as possible, to elect each its own Chairman."

Special stress was laid on the importance of entrusting to the Boards not merely the expenditure of fixed allotments of funds, but the management of certain local sources of revenue.

It was intended by the resolution to establish three classes of boards, the district and sub-district or taluka boards in rural areas, and municipalities in towns and cities. The plan of independent boards for areas smaller than a district was tried only in the province of Assam. In all other provinces the system adopted was that of controlling district boards with subordinate sub-district boards, and the jurisdictional area of the latter was as a rule, except in Bengal and Madras, fixed to be the taluka or tahsil. The sub-boards, however, did not prove successful. They were abolished in the United Provinces, and in the Punjab also they gradually disappeared except in a few districts. A determined effort was made by the Government of India from 1881 to 1884 to implant a system of local self-government in the country and much was said and written on the subject in those years.

During and shortly after that period a number of Acts were passed which formed the foundation of the new arrangements.

(16). Reconstitution of Municipalities in the Punjab

A District Boards Act was passed for the Punjab in 1883.

The Municipalities also were reconstituted under Act XIII of 1884. Orders were issued in

1885 for the withdrawal of the municipal system from some of the minor towns, and at the close of the year the number of towns with a regular municipal administration was 160. Most of the new Municipal Committees were composed partly of elected and partly of nominated or *ex-officio* members. In 1885 the number of purely elected bodies was ten, and of purely nominated bodies 45. As required by the new Act, rules were framed by the Local Government for the guidance of Committees, defining their powers and duties in respect of expenditure, accounts and other matters. In furtherance of the policy of Local Self-Government in financial matters certain revenues and services formerly managed by the Departments of Government were made over to the control of Municipal Committees. Arrangements were made for conversion of the District High Schools into Municipal Schools – a measure which involved the transfer of large amounts of income and expenditure from the Provincial to the Municipal accounts The charge of certain public works was similarly localised. The Committees were also made financially responsible for and entrusted with the care of ferries, cattle-pounds, rest-houses for travellers, and *nazul* properties.

There was, however, little enthusiasm about the further development of the system either in the official circles or outside and the advance made during the subsequent years was on the whole slow.

(17) Report of the Royal Commission on decentralisation, 1909.

In 1907—09 the whole field of local self-government was reconsidered by the Royal Commission on Decentralisation which made a number of detailed proposals. The Commission suggested, in the first place, as noted above, the establishment of village punchayats for the administration of certain local affairs within the villages. It also proposed to revive the institution of sub-district boards and invest them with greater independence and wider powers. The Report observed :—

" We are strongly in favour of the principle enunciated by Lord Ripon's Government in 1882 that sub-district boards should form an essential part of the scheme of Local Self-government, that they should have adequate resources and large measure of independence, and that their jurisdiction should be so limited in areas as to ensure both local knowledge and interest on the part of the members, and be at the same time a unit well-known to the people. We think that the admitted failure of the sub-disrict boards, as a whole, has been largely due to the circumscription of their powers and resources. In Madras and Assam, where they have had a freer scope, they appear to have achieved some measure of success and we consider that, as Local Self-government should commence in the villages with the establishment of village Punchayats, so the next step should be the constitution of boards of areas of smaller size than a district. We desire, there-

fore, to see sub-district boards universally established, as the principal agencies of rural board administration."*

The Commission also recommended the retention of District Boards since "local political and business talent is largely concentrated at head-quarters of districts, and it would be unwise not to utilise this for the district as a whole," They expressed their dissent to the suggestion put forward in the Government of India Resolution of 18th May, 1882, that district boards should be mere councils of delegates from the sub-district bodies for the discussion of matters of common interest, nor did they support a system under which the sub-district boards were to be mere local agencies for the board of the whole district. The commission proposed a plan *via media* "under which the sub-district boards were to have independent resources, separate spheres of duty snd large responsibilities, while the district board, besides undertaking some direct functions for which it seemed specially fitted, was to possess co-ordinating and financial powers in respect to the district as a whole."

In the year 1905—06 the rural boards and municipalities were together responsible for 35 per cent. of total expenditure incurred on roads and buildings in British India, 43 per cent. of that appertaining to medical work and sanitation, and 47 per cent. of the expenditure on education. The Commission while giving decided opinion against further extension of respon-

* Decentralisation Commission Report, Vol. 1. p. 248.

sibilities recommended a " much greater independence in respect of functions already exercised."

At this time in Bombay, Assam, and two Bengals large number of members in both district and sub-district boards were elected. In Madras members of sub-boards were all nominated, but those of the district boards were largely elected by sub-district boards. In the Frontier Province all were nominated. In the Punjab in 17 districts two-thirds of the district board members were elected and in the remaining 12 all were nominated. The Commission advised a further extension of the elective principle. The Report stated : " We consider that the nominated element in a sub-district board should not exceed the strength sufficient to secure the due representation of minorities, and of official experience, and that district board should also contain an elective majority."

In the Madras district boards the Collector was *ex-officio* President. In Bombay and two Bengals the Collector was always nominated President by the Government. In the Punjab the Collector was President in twelve districts *ex-officio*, in others by nomination. In the United Provinces members were allowed to elect but they always chose the Collector. In the Central Provinces the President was elected and was usually a non-official. In the evidence given before the Commission, official opinion was almost unanimous in favour of retaining the Collector as President while the preponderance of non-official opinion favoured appointment of an elected non-official. The

Commission, with the only exception Mr. R. C. Dutt, who added a note of dissent, reported :—

"We are of opinion that, in present circumstances, the Collector should remain president of the district board. To remove him from this post would be to dissociate him from the general interests in such matters as roads, education, sanitation, drainage and water supply, and to convert him into merely a tax gatherer and represser of crimes."

As regards the sub-district boards the Commission recommended that the President should usually be the Sub-divisional officer or the Tahsildar, but the same officer should not be President of more than one sub-district board.

Mr. R. C. Dutt maintained that presidents of both district and sub-district boards should be elected and that official control should be exercised from outside as contemplated in the Government of India Resolution of 18th May, 1882. "There is and can be," he said, "no Self-government if the people are not trusted to manage local matters without official control inside the board."

In 1880-81 there were 722 municipalities in British India; in 1890-91 there were 739; and in 1900-01 the number was 742.* The normal functions of municipalities were the construction, upkeep and lighting of streets and roads, the provision and maintenance of public

* Imperial Gazetteer, Vol. IV, p. 306.

and municipal buildings, the preservation of public health, principally with reference to provision of medical relief, vaccination, sanitation, drainage and water supply, education, and famine relief. The sources of municipal revenue were octroi, taxes on houses and lands, road tolls, taxes on carts and vehicles, rates and fees for services rendered in the shape of conservancy, water supply, markets, schools, etc.

In the North-West Frontier Province, all the members of the Municipal Council were nominated or *ex-officio*; in other provinces the Councils usually contained a considerable proportion of elected members. Taking the actual figures for 1906-07, the proportion of elected members in Municipal Councils was 13 per cent in Burma, 40 per cent in Bombay, 50 per cent approximately in Madras, the two Bengals, and the Punjab, 66 per cent in the Central Provinces, and 77 per cent in the United Provinces. The Commission suggested a further extension of the elective principle.

The Resolution of Lord Ripon's Government contemplated the election of non-official chairmen for the Municipal Councils. But the only provinces in which there was any large proportion of these were the Madras, the Central Provinces, and the two Bengals. In the United Provinces, the Punjab, and Burma chairman was always an official and so it had been in Bombay till quite recently. The observation of the Commission in this matter was as follows :—

"There is a considerable consensus of non-official opinion, especially in Madras, Bombay and the two Bengals, in favour of dissociating

the Collector and his Assistants from the Chairmanship of Municipal bodies whenever this is practicable, and we agree in thinking that the Municipal Chairman should usually be an elected non-official. The circumstances of municipalities differ from those of rural boards in that they are much less connected with the general district administration, that political education has reached a higher level, and that the jurisdictional area is much smaller and more compact."*

The Commission proposed to allow local bodies more ample control over budgets, free powers of appropriation, increased authority over establishments, and relaxation of existing restrictions in regard to outside sanction for expenditure on works of importance.

The Commission proposals were referred to the Local Governments in 1909—10 and a large mass of opinions was received during the ensuing three or four years. Eventually in April 1915 the Government of India issued a comprehensive resolution embodying their views on the proposals of the Commission. Before considering the terms of the Resolution let us briefly see the condition of Local Self government at this time.

(18). Condition of Local Self-Government in India in 1915.

In 1911-12 there were 714 municipalities in British India containing a total resident population of seventeen million people within their

*Ibid, p 282.

limits. The average size of municipalities, according to population, varied in different provinces. It was 7,000 in Assam, nearly 4,200 in Madras, 18,000 in Punjab, 17,000 in the Central Provinces, 21,000 in Burma and Bombay, 24,000 in Bengal, and 37,000 in the United Provinces. Of the total number of members in all municipalities taken together 51 per cent were elected, 14 per cent *ex-officio*, and 35 per cent nominated. Elected members were in a majority in the municipalities of Bengal, the United Provinces, Behar and Orissa, and the Central Provinces and Berar. There were no elected members in the municipalities of the North West-Frontier Province, and they numbered only 17 per cent in the municipalities of Burma, and 33 per cent in Assam. The Chairman of a Municipal Committee was sometimes nominated by the Local Government but more often chosen by the Commissioners from among themselves. Elected non-official chairmen existed in large numbers only in the Central Provinces, and in the Provinces of Bengal, Bombay, and Madras.

In Bengal the Municipal Act of 1884 provided that as a general rule two-thirds of the Commissioners in each municipality shall be elected, and that except in certain towns, the Chairman shall be elected by the Commissioners.

Bombay District Municipal Act of 1901 laid down that half the members of a Municipal Committee shall ordinarily be elected. A further advance was made in 1908 when towns, declared city municipalities were given the privilege of electing two-thirds of their councillors, and all

the municipalities, not excepted for special reasons, were empowered to select their own presidents. In 1911-12 about three-fourths of the municipalities contained an elected element.

Madras District Municipal Act of 1884 left the proportion of elected members to be fixed by the Local Government but provided that in no case more than one-fourth of the councillors were to be officials, and where election was permitted at least three-fourths of the Commissioners were to be elected. Majority of the municipalities elected their own chairmen who were non-officials.

An Act passed for the Central Provinces in 1903 laid down that not less than two-fifths of the members of a Committee shall be non-officials, while the Berar law provided that as a general rule three-fourths of the members shall be elected.

In Burma the principle of election was not widely applied. In 1912 elected members sat on only 12 out of 46 Municipal Committees, and the Deputy Commissioner was generally the President.

In the Punjab under the Municipal Act of 1911 the Local Government fixed the proportion of elected and nominated members, but it was required that as a general rule not more than one-third should be nominated officials. A Municipal Committee could elect its own president subject to the approval of the Local Government or the Commissioner. Out of 106 municipalities in existence in 1912, 74 included an elected element.

The United Provinces Municipalities Act 1900 laid down that as a general rule at least three quarters of the members of each Municipal Board shall be elected. A Municipal Committee appointed its own chairman subject to the approval of the Local Government, though in practice the District Magistrate had been usually elected.

The Corporations of the three Presidency towns occupied a special position and were constituted under special Acts. The corporation of Calcutta, as remoddled by the Act of 1899, consisted of a chairman appointed by the Local Government and fifty Commissioners, half of whom were elected at triennial ward elections. The Act also constituted a smaller body, the General Committee, consisting of the chairman and twelve Commissioners. The entire executive power was vested in the Chairman, to be exercised subject to the approval or sanction of the Corporation or the General Committee, as directed by the Act. The Corporation of Bombay was regulated by the Act of 1888 as amended, It consisted of 72 Councillors of whom 36 were elected by Wards, 16 by the Justices of the Peace, 2 by the Fellows of the University, 2 by the Bombay Chamber of Commerce, and the remaining 16 were appointed by the Government. The ordinary business was transacted by a Standing Committee of 12 Councillors. The Corporation elected its own President but unlike the Chairman of the Calcutta Corporation he was not an executive officer. The chief executive authority was vested in an officer appointed by the Government, usually from the ranks of the Indian Civil Service, but removable

by a vote of 45 Councillors. The Madras Corporation was governed by an Act passed in 1904. It consisted, besides the President, of 36 Municipal Commissioners, of whom 20 were to be elected at divisional elections. The executive authority was vested in the president, appointed by the Local Government and removable by a vote of 28 commissioners.

Compared with the number and constitution of municipalities in 1901-02 there was no marked advance. The total number of municipalities was actually less than it was thirty years earlier, due to the reduction to "notified areas" of a considerable number of the smaller municipalities in the Punjab and the United Provinces. The proportion of elected members was, on the whole, about the same as in 1901-02.

Generally speaking the income of the municipalities was small. The four cities of Calcutta, Bombay, Madras and Rangoon together provided nearly 40 per cent. of the total income. Of the others only 13 had an annual income of over Rs. five lacs. The Resolution on Local Self-government, 1915, showed that the aggregate income of 701 municipalities in existence at the close of the year 1912-13 (excluding the Presidency towns and Rangoon) amounted to Rs. 4,92,42,675 apart from loans, sales of securities and other extraordinary receipts, or an average of Rs. 70,245 a year. The taxes, etc., which might ordinarily be levied by municipalities were provided for in the municipal enactments in force in different provinces. These were imposed in most cases with the previous sanction of the

Local Government concerned, and usually took one or other of the following forms :—

(1) Tax on arts, trades and professions.
(2) Tax on buildings, lands and holdings.
(3) Water, drainage, sewage, scavenging, and lighting tax.
(4) Tax on vehicles and animals.
(5) Tax on property.
(6) Tax on domestic servants and menials.
(7) Tax on private markets.
(8) Octroi duty.
(9) Fees on registration of cattle, carts, etc.

The taxes provided for in the Acts varied in different provinces. Municipal Finance had shown a marked expanse during the last decade—an expansion which was materially assisted by contributions from Government principally for sanitation and education. Municipal Boards were also relieved of all charges for the maintenance of police within municipal limits.

The municipal functions were classified under the heads of public safety, health, convenience, and instruction. In some cases for abuse of powers or mal-administration corporations were suspended by the Government. The Municipality of Ahmadabad was suspended in 1909-10, and the Municipalities of Kaira and Rajpura in 1911-12. Government exercised large control over the Municipal Boards as regards appointments, loans, municipal budget, and alterations in taxation.

In some of the provinces certain provisions of the Municipal Acts were extended to small

towns, which were not fitted for the full responsibilities of Municipal Government. These were described as " notified areas " and under the Acts providing for their constitution a place to be declared a notified area must contain a town or bazar, must not be a purely agricultural village, and must not have a population exceeding 10,000. The total number of such areas was 195 in 1911-12 of which 104 were in the Punjab.

The system of rural self-government differed widely in various provinces. In Madras were established three classes of boards. The Act of 1884 laid down that there should be a District Board for each district, a Taluk Board for each *taluk*, and Panchayat for each union consisting of village or villages as provided by the Local Government. The unions received the proceeds of a light tax on houses, and spent them mainly on sanitation. The Taluk Boards formed the agency for local works in the administrative sections into which the districts were divided. Nearly in all cases of District Boards one-half of the members were elected, and the proportion of nominated official and *ex-officio* members was limited to one-fourth. Upto 1909 the members of the Taluk Boards were all nominated but in that year was introduced the elective system, and the proportion of elected members rose to one-half in 1912. The union panchayats consisted of headmen of villages and nominated members but in 1912 measures were sanctioned for the partial introduction of elective system.

In Bombay there were only two classes of boards, for districts and talukas respectively.

The Local Boards Act 1884 laid down that ordinarily not less than one-half of the members shall be elected, and not more than one-half of the nominated members shall be officials.

The District Boards Act passed for the Punjab in 1883 prescribed the establishment of a District Board in each district, but left the establishment of Local Boards, as well as the question whether the members of the boards were to be elected or nominated, to the discretion of the Local Government. Local Boards were gradually abolished. In 1901-02 there were 43 Local Boards in 11 districts; in 1911-12 there were only 17 confined to four districts. Seventeen of the 29 District Boards, and 13 of the Local Boards, included elected members. In North-West Frontier Province the only two Local Boards in existence were abolished in 1904 and since 1903 all the members of the District Boards were nominated by the Chief Commissioner.

The Bengal Local Self-Government Act of 1885 provided for the constitution of three grades of local authorities, the District Board, Local Boards, and Union Committees. The system of Village Unions was not extensively developed, and was introduced in only a few districts. Half the members of the District Boards were elected by the Local Boards, and two-thirds of the members of each Local Board were normally elected by rate-payers. Election was also prescribed as the normal method of appointment to the Union Committees.

The United Provinces District Boards Act, 1906, abolished the sub-district boards, and gave

power instead to District Boards to appoint local committees. The Act also provided that as a general rule at least three quarters of the members of a board should be elected.

The system prescribed by the Act of 1883 for the Central Provinces had as its basis the aggregation of villages into "circles", and in this respect somewhat resembled the Madras system of 'Unions', but there were no bodies corresponding to the Union panchayats. The Local Board area consisted of a group of "circles", while for each district there was a District Council.

In Assam District Boards were not introduced, and independent Boards were established in each sub-division.

No boards existed in Burma.

In 1911-12 there were in British India 198 District Boards and 533 Local Boards, with jurisdiction over an area of seven hundred thousand square miles and a population of 216 millions.* The total number of members was 12,878, of which 1,569 were members *ex-officio*, 5,418 nominated, and 5,780 elected; 2,765 were officials and 10,044 non-officials; 1,104 Europeans and Anglo-Indians, and the remaining Indians. Besides there were 393 Union Committees or panchayats in Madras, 56 in Bengal, and 5 in Behar and Orissa.

The degree to which elective principle had been introduced varied greatly in different parts of India. Of the total number of members of

*Statement of Moral and Material Progress of India, 1911-12, page 118.

District and Local Boards 71·7 per cent were elected in the Central Provinces and Berar, 69·3 per cent in the United Provinces of Agra and Oudh, 45·7 per cent in Assam, 44·4 in Bombay, 41·9 per cent in Bengal, 40·6 per cent in the Punjab, 23·3 in Behar and Orissa, and 11·5 per cent in Madras. There had been no elected members in the North-West Frontier Province since 1903. With regard to the appointment of presidents of these boards the Statement exhibiting the Moral and Material Progress and Condition of India, 1911-12 observed as follows :—

"The various Acts usually leave it to the Local Government to decide whether the chairman of the district board shall be elected or nominated. In most provinces the Collector has, as a general rule, been appointed, though in the Central Provinces the president is elected, and is usually a non-official. In the United Provinces election, subject to the veto of the Local Government, was prescribed by the Act of 1906, but in practice the Collector is chosen As regards the subordinate Boards, the law and practice vary."*

Generally speaking, the sub-district boards were on the footing of subordinate agencies of the district boards, but in Madras they exercised independent authority subject to the general control of the district boards. The greater part of the revenue of the rural boards was derived from a cess on land which was ordinarily collected by Government agency along with the land revenue. Their principal normal functions were

* Page 119.

the maintenance and improvement of roads and other communications, education especially in its primary stages – the upkeep of medical institutions, sanitation, the construction and maintenance of markets and rest-houses, and the charge of pounds and ferries.

The boards, on the whole, worked satisfactorily, but their success depended mainly on the energy and attention devoted by district and taluka officers. Elections generally aroused little interest and the attitude of non-official members was in many cases apathetic. This was due in part to the narrow powers and limited functions of the boards themselves. Where these powers and responsibility were increased as in the United Provinces in 1906 and in the Central Provinces in 1911 interest and zeal among both members and electors was stimulated.

The funds of district boards were derived mainly from a cess levied upon agricultural land. Since 1905 this had been supplemented by Government contributions and special grants. In 1912-13 the aggregate income amounted to Rs. 5,68,08,292. Prior to 1913 the district boards did not receive the whole of the land cess but in that year the Imperial Government made assignments to the Local Governments concerned to enable them to hand oner the entire net proceeds of the cess to the boards.

(91). The Resolution on Local Self-government, 1915.

The Resolution at the outset pointed out that the results on the whole justified the policy

out of which Local Self-government arose. The obstacles which had hitherto impeded the full and free development of local bodies were "the smallness and inelasticity of revenues, the difficulty of devising further forms of taxation, the indifference still prevailing in many places towards all forms of public life, the continued unwillingness of many Indian gentlemen to submit to the troubles, expense, and inconveniences of election, the unfitness of some of those whom these obstacles do not deter, the prevalence of sectarian animosities, and the varying character of the municipal area." Nevertheless, the Resolution observed, "on all sides there are signs of vitality and growth." The opinions submitted to the Government of India showed that Local Governments and Administrations were in general prepared to advance in the direction of the main recommendations of the Commission.

Turning to the Municipal Boards the Resolution accepted the suggestion that they should ordinarily be constituted on the basis of a substantial elective majority and that nominated element should be limited only to a number sufficient for the due representation of minorities and official experience, subject to the proviso that in places where success of the principle seemed doubtful it should be introduced gradually, and after experiment in selected municipalities.

The Resolution showed that, at this time, of the 695 Chairmen of the municipalities only 273 were non-official, of which 222 were elected and 51 nominated. The Government of India expressed their "full sympathy" with the proposal of

substituting non-official for official chairmen but the change was to be made "gradually." Discretion was to be reserved to the Local Government concerned to *nominate* a non-official as chairman. Nor were the Boards to be prohibited, under any circumstances, from electing official chairman.

On the subject of financial control the Commission had recommended that the municipalities should have a free hand with regard to their budgets, the only check being the maintenance of a minimum standing balance prescribed by the Local Government. The Government of India regarded this recommendation "as expressing a policy to be steadily kept in view and gradually realised".

As regards the suggestion made by the Commission that sub-district boards should be universally established as principal agencies of rural administration the Government of India left the question to the discretion of the Local Governments. No remark was made on the Commission's proposal that the Rural Boards should contain a large preponderance of elected members beyond that Local Governments were in general in sympathy with it. The opinion that the district and sub-district boards should continue to have official Chairmen was accepted. It was decided that the present restrictions on the powers of the boards with regard generally to budget expenditure should be gradually relaxed "with due regard to local conditions and requirements." On the suggestion for constitution and development of Village Punchayats the Govern-

ment of India desired that " where any practical scheme can be worked out in co-operation with the people concerned, full experiment should be made on lines approved by the Local Government or Administration concerned."

The resolution did not do more than indicate the general lines on which advance should be made and left to the Local Governments to determine the pace and the methods which suited the circumstances of their own provinces. " The Government of India " as the Joint Report on Constitutional Reforms subsequently observed, " were not in a position to press their views on the Provincial Governments, because from the nature of the case no authority but a Provincial Government has the necessary knowledge to foster and develop local institutions ; and yet the existing system still left the initiative in such matters to the Government of India which alone controls the resources and reserves of taxation necessary to make such a development real."*

(20). The Local Self-Government Resolution of 1918.

The resolution on the Local Self-Government policy of the Government of India issued on the 16th May, 1918, was in this respect more imperative in character. The reason for a fresh resolution was the announcement made in the House of Commons on 20th August 1917 that the policy of His Majesty's Government, in respect of the future of this country, was that of increas-

*P. 7.

ing association of Indians in every branch of administration and the gradual development of self-governing institutions with a view to progressive realisation of responsible government in British India. In commenting on this pronouncement in the Imperial Legislative Council on 5th September, 1917, the Viceroy explained that one of the roads along which advance should be made was in the domain of local self-government, the Rural Board and the Town Council. The Government of India expected the Local Governments to make a "substantial advance" on the lines laid down except in "specific cases and for specific reasons." The main principles laid down by the Resolution may be summarised as follows :—

(1) The local bodies should be as representative as possible of the people whose affairs they are called on to administer.

(2) As proposed by the Decentralisation Commission Municipalities and Rural Boards should ordinarily have substantial elective majority, nominated members being limited only to a number sufficient to provide for the due representation of minorities and of official experience.

(3) In Municipalities there ought to be a general replacement of nominated official chairmen by elected non-official chairmen subject to their right to elect an official as chairman if they so desire.

(4) In regard to the larger cities the system prevalent in Bombay was recommended as worthy of consideration.

(5) In the matter of Rural Boards Provincial Governments were urged to arrange for the *election* of chairmen, wherever possible, and in any case to encourage the appointment of non-official chairmen.

(6) Municipal Boards should be allowed to vary their taxation within the limits laid down by the municipal laws. A similar recommendation was made in the case of Rural Boards.

(7) As suggested by the Commission if a Municipal or Rural Board had to pay for a service it should control it and if it is expedient that the control should be largely in the hands of Government, the service should be a provincial one.

(8) Municipalities and Rural Boards were to be allowed a free hand with regard to their budget and the system of requiring local bodies to devote a fixed portion of their revenue to particular objects of expenditure was to be abolished.

(9) The degree of outside control over establishments of local bodies should be relaxed.

These were the main principles to be borne in mind in the development of Rural and Urban Boards. No general rules were laid down for "notified areas," or "Village Unions." They were obviously to be less non-official in character.

On the important question of organising Village Punchayats the Resolution expressed the general concurrence of the Government of India with the recommendations on the subject made by the Decentralisation Commission. The area under a punchayat was normally to be a village

unless villages are so closely connected that they might be treated as one.

The Resolution concluded that action on the lines indicated "should be taken without further delay."

(21). The Joint report on Constitutional Reforms left the work of developing local bodies to Provincial Governments.

While the programme summarised above was still under consideration the Joint Report on Indian Constitutional Reforms was issued which advocating a policy of provincial autonomy left the work of developing local bodies mainly to the Provincial Governments. "It would be highly inconsistent" the Report pointed out, "to insist on provincial autonomy, and simultaneously to leave no latitude of action to Provincial Governments in a field which is so peculiarly a matter for local development. But the proposals will constitute a basis on which those entrusted with the responsibility for such matters in future can build; and we expect the reformed Legislative Councils to carry forward the work thus begun. We may add that the reformed and representative district boards of the future could and should be utilised by the district officer for purposes of advice and consultation."

(22). Conclusion.

The extension of Local Self-Government was advocated by Lord Ripon's Government chiefly

as an instrument of political and popular education. The Municipal and Rural Boards were intended to afford a field in which Indians might be trained in the management of public affairs. In pursuance of this plan a net-work of local bodies was set up all over the country but the hopes entertained in them were hardly fulfilled. The achievements made during the thirty-six years that followed the Local Self-Government Resolution of 1882 were scarcely adequate. The educative principle, and the avowed policy of directing the growth of local bodies from without rather than from within were sacrificed to the desire for immediate results and efficiency. The presence of official element on the boards had been unnecessarily prolonged to a point at which it impeded the growth of initiative and responsibility. The local bodies were ill-equipped with funds. The principle of election was not sufficiently developed and the complaint continued that electorates as well as members were apathetic. This was due largely to the existence of excessive official control both inside and outside the local bodies. The boards had practically become departments of Government Administration. The Resolutions issued by the Government of India led to no marked improvement since they left the degree and pace of progress to be determined by the Provincial Governments who alone were supposed to have the requisite knowledge of local conditions.

(F). GROWTH OF PRESS AND PRESS LAWS.

"For he who kills a man kills a reasonable creature, but he who destroys a good book kills reason itself".—*Milton.*

(1). Freedom of discussion under native Governments.

India under her native sovereigns did not require a Milton to defend freedom of religious or political discussion. Even in the palmy days of Hindu imperialism, when Chanak expounded his doctrine of absolute kingship, there existed no restraint on research or disquisition. Though at times the Sultans interfered with religious belief of the subjects, with the exception of Aurangzeb no one prohibited the circulation of any kind of literature. Says Dow, "however surprising it might seem in absolute governments, yet it is certain that the historians of the East wrote with more freedom concerning persons and things than writers have ever dared to do in the West." There were, however, no printing presses, no newspaper editors. The "waqia navis" were only official recorders. Organised political opinion did not exist, and, as Babar pointed out in his memoirs, it was only the throne and the seats of other offices that engaged the reverence of the people. Politics was held to be the business of

kings and nobles. *Gurumata*, a name given to the annual gatherings of the "Sarbat-Khalsa," is the solitary instance of a political organisation formed in the pre-British days for the discussion of matters of civic interest. The growth of press and public opinion in India has kept pace with the expansion of Western education.

(2). Press governed by the ordinary law till 1799.

The pioneer of Anglo-Indian journalism was one James Augustus Hickey, who started on the 29th of January 1780 "Hickey's Bengal Gazette or Calcutta General Advertiser," "a weekly political and commercial paper, open to all parties, but influenced by none." Within the next twenty years several other newspapers were started, notably the "India Gazette," the "Calcutta Gazette," the "Bengal Journal," the "Indian World," the "Bengal Harkaru," and the "Telegraph". The general tone of the press was low. On the 14th of November 1780 the circulation of Hickey's "Bengal Gazette" through the channel of post office was stopped, and in 1782 Hickey was imprisoned, his types were seized, and the paper was closed. In 1784 William Duane, Editor of the "Indian World," was deported to Europe for publishing certain inflammatory articles. There existed at this time no special law for the press apart from the English law of sedition.

(3). Censorship of the press established by Lord Wellesley and abolished by Marquis of Hastings.

Beginnings of a regular press law were made in the time of Lord Wellesley, who in 1799 issued five regulations, disobedience to which was made punishable by immediate embarkation to Europe. A complete press censorship was established. No paper was to be published unless previously inspected by an authorised censor. Editors and proprietors of newspapers were required to notify their names and other particulars to the Government; printers were to give their names at the bottom, and no paper was to be published on Sabbath day. These restrictions, however, did not live long. The Marquis of Hastings, with unanimous consent of his councillors, abolished censorship in the Presidency of Bengal, and a similar step was taken by Mr. Elphinstone in Bombay. In reply to a congratulatory address presented by some of the leading European inhabitants of Madras, including the Chief Justice and other Judges of the Supreme Court, the Governor-General described liberty of the press as a 'natural right' of all British subjects "to be narrowed only by special and urgent cause assigned." In abolishing censorship on the press the Marquis of Hastings did not fail to provide fresh regulations for its guidance. Editors were forbidden to publish animadversions at the conduct of public servants. Personal criticism tending to excite dissensions in society was to be avoided, and nothing was to be discussed which might create

alarm or suspicion among the native population of any intended interference with their religious observances. These laws existed only on paper and the press suffered a degree of vulgarity and licentiousness as had never prevailed before. With impunity it accused the Chief Justice of being accessory to murders, and the Marquis of Hastings was himself charged of having intentionally caused the death of two individuals. There is no doubt that the Indian journalists of Bengal made a better use of liberty of the press than their Anglo-Indian contemporaries. There were at this time seven Indian presses at work in Calcutta alone. The Bengal publicists, notably Ram Mohan Rai and Brij Mohuna, instead of indulging in wild criticism of Government authorities and scurrilous attacks on private individuals, directed their energies in criticism of religious superstitions and social evils, a task in which their work was supplemented by the missionaries.

(4). A Licensing Regulation passed by Mr. John Adam followed by a new set of restrictions.

Lord Hastings left India in 1823 and was succeeded in authority by Mr. John Adam who did not possess the forbearance of his predecessor. Of late the "Calcutta Gazette" edited by James Silk Buckingham had become notorious for scandalous attacks on private individuals and persons in authority. Mr. Adam immediately ordered Buckingham to quit India, and in March 1823 passed a regulation by which no newspaper could

be published without previously obtaining a license which any time might be recalled and the publication suppressed at the discretion of the Government. A strong protest was lodged by the journalists at the Supreme Court of Judicature, but Sir Francis McNaghten, the Judge, decided in favour of the Government, and the regulation was ordered to be registered. On the regulation were founded a new set of restrictions which virtually privileged public functionaries from all criticism. A memorial signed by notable Indians was sent to the King praying that it was unjust "for the faults imputed to one man to punish millions." The following passage from the petition would present Indian view of the limitations :—

" The publication of truth and the natural expression of men's sentiments through the medium of the press entail no burden on the State, and should it appear to Your Majesty and the enlightened men placed about your throne that this previous privilege which is so essential to the well-being of your faithful subjects, could not be safely entrusted to the natives of India, although they have given such unquestionable proofs wisely imposed upon the press by the laws of England, your faithful subjects entreat on behalf of their countrymen that Your Majesty will be graciously pleased to grant it subject to such severer restraints and heavier penalties as may be deemed necessary ; but *legal restraints, not those of arbitrary power* and penalties to be inflicted after trial and conviction according to the forms of the laws of England—not at the will

or pleasure of one or two individuals, without investigation, or without hearing any defence or going through any of the forms prescribed by law to ensure the equitable administration of justice."

(5). Lord Amhurst takes vigorous measures.

The memorial achieved nothing. Lord Amhurst arrived in India with a determination to take vigorous measures. The notorious "Calcutta Journal" was suppressed in 1827, and this was followed by the suppression of two more Anglo-Indian papers, the "Scotsman" and the "Calcutta Chronicle." Arnot, who succeeded Buckingham as Editor of the "Calcutta Journal", and Fair, Editor of the "Bombay Gazette," were banished to Europe.

(6). A new era for the press commenced with the Governor-Generalship of Lord William Bentinck.

A new era for the press began with Lord William Bentinck, who always esteemed it "as a friend and appreciated it as an auxiliary to good Government". Though the old fetters were not removed by a legislative enactment, he never interfered with its free criticism. An Act was eventually passed in 1835, when Sir Charles Metcalfe acted as the Governor-General and Mr. Macaulay the Law Member of his Council, removing all restrictions on the press and establishing a complete freedom of religious and

political discussion. To commemorate the name of the liberator, Metcalfe Hall was erected in the town of Calcutta. In 1848 there were twenty-eight vernacular newspapers circulating in Northern India, of which seven belonged to Agra, eight to Delhi and six to Benares. Many had a merely nominal circulation, and only four boasted of over a hundred subscribers. The average circulation was under sixty copies.

(7). Liberty of the press and Western education create a spirit of loyalty to Great Britain.

Liberty of the press and Western education did not engender sedition amongst the more advanced Indians, but created a spirit of loyalty and patriotism which constituted a new link between Young India and Great Britain. This was first observed in the rebellion of 1857. Men who joined the insurrection were largely adherents of the old Hindu and Mohamedan system. The Bengal native infantry was recruited from the sacred land of Ayodhya and the cavalry from the most orthodox moslims, both of them remarkable for having been least touched by European civilisation. On the other hand Indians, whose minds had been formed in English schools and colleges, and who looked forward to improve their national institutions according to the English model, stood by Britain to a man. None stood more uniformly loyal than the anglicised Bengalis. "At Delhi everybody who spoke English was searched out and put to death. At Cawnpore

and elsewhere the 'babus' were considered proper subject of plunder and prosecutions."

(8). Licensing Act, 1857.

The liberty which the press had enjoyed since the passing of Act XI of 1835 was temporarily suspended by a Licensing Act passed in 1857. It was a measure to regulate establishment of printing presses and to restrain in certain cases the circulation of printed books and papers. The Act was to remain in force for one year, at the expiration of which the Council was "to deal with it according to the exigencies of time." The effect of this law, as the Government of India pointed out in their despatch of 4th July to the Court of Directors, was to replace the Indian press "very much in position in which it was permanently before Sir Charles Metcalfe's Government in 1835 passed Act XI of that year, whereby liberty was given to it." By the new regulation proprietor of every printing press was required to get a license which the Government may grant or refuse at pleasure or when given could revoke or change as often as it pleased. Any use of a press without such license was punishable by summary seizure, to which may be added fine and imprisonment. Applications for licenses were to be granted under such conditions as the Governor-General might think fit to prescribe. No book, pamphlet, or newspaper was to contain any observations impugning the motives or designs of the British Government, whether in England or in India,

or in any way tending to bring it into contempt, weaken its authority or that of its servants civil or military. The Act applied to both Indian and Anglo-Indian press for the Governor-General "could not see any solid standing-ground for making a distinction between Indian and European subjects of His Majesty." Though the immediate reason for passing the measure was the outbreak of mutiny in Bengal, the existence of a free press was not even remotely connected with it. There had been mutiny at Vellore before press became free and in 1857 itself there were no disturbances in Bombay, where the press was the freest, whilst there were outbreaks in Oudh, where the press had little or no power.

In spite of the Licensing Act progress in Indian journalism continued. The "Hindu Patriot" was started in 1863; "Indian Mirror" came out in 1861; the "Bengalee" in 1862; and the "Amrita Bazar Patrika" in 1868. The "Bombay Samachar" became a daily in 1860. The censorship established in 1857 was withdrawn in 1865, and the number of presses and periodicals was consequently greatly increased.

(9) Section 124 A introduced in the Indian Penal Code.

The draft Indian Penal Code contained a provision for sedition in its Section 113, but when the draft became law in 1860 that section was altogether omitted. In 1870, when Sir Fitz James Stephen was the Law Member, section 113 of the draft was amended and introduced

in the form of section 124A in the new code. It provided that "whoever, by words either spoken or intended to be read, or by signs or by visible representation, or otherwise excites or attempts to excite, feelings of disaffection to the Government established by law in British India shall be punished with transportation for life or for any term to which a fine may be added or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine." It was explained that such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to lawful authority of the Government was not to be an offence within the meaning of the section. Sir James Fitz Stephen pointed out—

"Nothing could be further from the wish of the Government of India than to check in the least degree any criticism of their measures, however severe and hostile, nay, however disingenuous, unfair and ill-informed it might be. So long as writer or speaker neither directly nor indirectly suggested or intended to produce the use of force, he did not fall within this section. This, however, must be completed with a warning. The question on trials under this section would always be as to the true intention of the speaker or writer, and this intention would have to be inferred from the circumstances of the case."

(10). State of Indian journalism at this time.

In 1871-72 there were 197 newspapers in India, of which 155 were controlled by Indians and the remaining by Europeans. Of the 36 Indian newspapers published in the North-Western Provinces the average circulation was 253. As an instrument of shaping public opinion, the vernacular newspapers in the districts were of little importance, but the Indian papers of Calcutta, exhibited "considerable talent and excessive freedom of opinion," and were "certainly an engine of some power." The press was "decidedly loyal and well-disposed towards Government, while at the same time it was distinguished by a remarkable independence of criticism." The statement exhibiting the Moral and Material Progress of India for the year 1874-75 mentioned as follows :—

"A steady improvement is reported in the native press. The circulation of twenty principal papers is believed to amount to about 20,000 copies. The general tone is decidedly loyal and favourable to British rule. The confidence felt in the good intentions of the Government and the gratitude of the natives for external security, religious freedom, material prosperity, and English education are frequently expressed with the greatest warmth and impressiveness. At the same time there is often much matter of a controversial character ; a disposition is sometimes manifested to find fault with everything that is done or omitted, and an increasing jealousy is evinced regarding the bearing of the British people towards the natives."

At the close of the year 1876 there were altogether 644 newspapers in British India of which more than four hundred were in vernacular languages. Though called newspapers, many of them were nothing but trade circulars and broad sheets. "Of the 644 newspapers on the registration lists at the end of 1876-77 no less than 142 had come into existence during the year, taking the place of 131 papers, the publication of which had been discontinued ; but these facts entirely concern the vernacular newspapers proper and shew their ephemeral character." The "Bengalee," the "Ooriyah Gazette," and the "Behar Gazette" were regarded as official organs of publication for Bengal proper, Orissa, and Behar respectively. The average circulation of a Bengalee paper was 400 copies, but the "Soma Prakash" had a circulation of 700, the "Amrita Bazar Patrika" of 2,217, and the "Salobha Samachar" of 3,000. There were 97 vernacular newspapers in Upper India, of which the most respectable and best informed were the "Agra Akhbar," with a circulation of 377 copies, the "Aligarh Institute Gazette" with 343, the "Lawrence Gazette" with 500, and the "Oudh Akhbar" with 650 subscribers. Another well-known paper in Northern India was the "Akhbar-i-Am," of Lahore. In the presidency of Bombay the "Gujrati Rast Guftar" established in 1851, and afterwards amalgamated with the "Sakkhya Prakash," and the "Marhatti Sabodka Patrika" had the largest circulation of all the vernacular newspapers amounting to about 1,600 copies; the "Gujrati Deftardum" had a circulation of about

1,000 ; and the rest ran from 50 to 500 each. The year 1887 was notable for the first female paper "Hindoo, Lalona" started in Bengal. In 1879, there were 38 vernacular newspapers in Bengal, 3 in Assam, 44 in North-West Provinces, 15 in Oudh, 29 in Punjab, 5 in Berar, 3 in Central India, 81 in Bombay and 3 in Rajputana. The circulation was still small, and the official report for 1880-81 described the Indian press to be " of little value, rarely containing an intelligent article."

(11). The Vernacular Press Act, 1878.

In 1878 was passed the Vernacular Press Act, otherwise known as the " Gagging Act." It was pointed out by Sir Alexander Arbuthnot that during the last three or four years there had been a steady increase of seditious writings in vernacular papers. The law of sedition as amended by Sir Fitz-James Stephen in 1870 punished an offender after a crime was committed, the proposed law was meant to *prevent* the commission of such an offence. The Act authorised a Magistrate, with previous sanction of the Local Government, to require the printer or publisher of any newspaper to enter into a bond binding himself not to print or publish in such newspaper anything likely to excite feelings of disaffection to the Government or hatred between different races. If a newspaper contained any such matter the Local Government might give it warning by a notification in the Gazette ; and if the offence was repeated, it may by warrant seize the plant

etc., and if any deposit had been made, might declare such to be forfeited. As most of the newspaper publishers were not well off, it was further provided that as an alternative to the above two conditions of deposit and forfeiture of security, they may undertake to submit proofs to an official censor and publish nothing which he objected to. The popular opinion in the country was that such a piece of legislation in a time of profound peace was absolutely uncalled for ; that passages from the vernacular press placed by the Police Commissioners in the hands of legislators were mistranslated and many qualifying sentences and clauses omitted ; that only two years ago in the Administration Reports for 1874-75 and 1875-76 Sir Richard Temple had mentioned that the case on behalf of the British was put by the Bengalee press with a warmth and an impressiveness hardly ever surpassed and seldom equalled by even zealous advocates among Englishmen, and that it was unreasonable to suppose that all at once the newspapers of 1877 had become seditious to such an extravagant degree as to necessitate special legislation. The Act was also resented on the ground of its making a distinction between English and Vernacular press.

(12). Repeal of the Act by Lord Ripon's Government in 1882.

The new law was immediately put into operation. Within a few months the editors of "Bharat Mihir" of Mymensingh, "Dacca Pra-

kash " and " Hindu Hitoysini " of Dacca, " Sulava Somachar " and " Shahachar " of Calcutta were called upon to furnish security. A protest meeting, attended by upwards of 5,000 persons, was held in the Town Hall of Calcutta, and a Committee was appointed to draft a petition and forward it to Mr. Gladstone in order to present it to the House of Commons. Mr. Gladstone moved that the Government of India be required to report to Parliament every case in which action is taken under the Vernacular Press Act, but his motion was rejected. The movement against the " Gagging Act," however, continued, and many other measures of Lord Lytton's administration helped to strengthen the agitation. On the 3rd of September 1879 the Indian Association of Calcutta resolved to establish a permanent deputation in England with a view " to place before the British public the views, sentiments, and aspirations of the people of this country." The overthrow of Lord Beaconsfield's ministry in 1880 was hailed by the Indian press, and a crowded meeting was held in Calcutta "to express the Indian satisfaction." The expectations were not belied, for the Act was repealed by Lord Ripon's Government in 1882. The agitation that followed the passing of this Act marks an important stage in the growth of public opinion in this country.

(13). Government of India Resolution, 1907.

From the year 1835, when Sir Charles Metcalfe repealed the Licensing Act, till 1908 press in British India was governed only by the ordinary

criminal law except on two brief occasions, the first during the dark days of the Indian Mutiny when the entire press was put under absolute control for one year and the second from 1878 to 1881 when a portion of the press was subject to the control imposed by the Vernacular Press Act, 1878. From 1870 to 1907 the law was put in motion against the press only in sixteen cases. The press was on the whole loyal in tone up to the year 1905. Lord Dufferin on March 23rd, 1888, in the course of his reply to the farewell addresses presented to him in Calcutta described the conduct of Indian Press as characterised with "sagacity, discretion, and moderation." Lord Curzon, in February 1902, as Chancellor of the Calcutta University, observed: "On the contrary I think that Native Journalism in India is steadily advancing, and that it is gaining in sobriety and wisdom." The partition of Bengal and certain other official acts and utterances during the viceroyalty of Lord Curzon were largely responsible for diverting a section of the Indian Press from a course of loyal co-operation to open hostility to Government and even to the British Rule. In this abnormal situation the Government of India issued on 3rd June 1907 the following important Resolution which marked a radical change in its attitude towards the Press:—

"Certain circumstances attending the recent outbreaks of lawlessness in the Punjab and Eastern Bengal have forced upon the attention of the Government of India the deliberate efforts made by a number of newspapers, both English and Vernacular, to inflame the minds of the

people, to encourage ill-will between classes, to promote active hostility to the Government, and to disturb the public tranquility in many different ways. The Governor-General has no desire whatever to restrict the legitimate liberty of the Press to criticise the action of the Government, and he would be most reluctant to curtail the freedom of the many well-conducted papers because of the misbehaviour of a few disloyal journals. But he is responsible for the maintenance of law and order among the vast and hetrogeneous population, and he is unable to tolerate the publication of writings which tend to arouse the disorderly elements of society and to incite them to concerted action against the Government. On these grounds he has determined that the dissemination of sedition and the promotion of ill-will between classes must be repressed by firm and sustained action under the penal law. Accordingly in supercession of previous orders on the subject His Excellency in Council empowers Local Governments to institute prosecutions in consultation with their legal advisers in all cases where the law has been wilfully infringed. He hopes that the warning now given may, in great measure, avert the necessity for numerous prosecutions, but if this hope should unhappily not be realised, he relies upon the local authorities to deal with the evil effectively."

In pursuance of these orders, during the next two years and a half, 47 prosecutions were undertaken and not one of these cases failed although in some instances the Government accepted apology and withdrew prosecutions. "Nevertheless."

Sir Herbert Risley observed in his speech on the Press Bill 1910, "We have to acknowledge defeat; we have succeeded in the minor object of punishing a certain number of offenders; we have failed in the major, the vital, the important object of curing a grave evil; we have proved that the law as it stands is sufficient to enable convictions for sedition to be obtained; but we have also proved that it is not sufficient to restrain the Press within the limits of legitimate discussion. Inspite of our successful prosecutions we see the most influential and most widely read portion of the Indian Press incessantly occupied in rendering Government by law established odious in the sight of the Indian people."

In certain localities political agitation degenerated into anarchical plot, a "murderous conspiracy," with the object of subverting the Government and making the British Rule impossible by establishing general terrorism. The political assassinations that followed at several places were attributed to the seditious teachings of the Press. "These things," Sir Herbert Risley observed, "are the natural and necessary consequence of the teachings of certain journals. They have prepared the soil in which anarchy flourishes; they have sown the seed and they are answerable for the crop. This is no mere general statement; the chain of causation is clear. Not only does the campaign of violence date from the change in the tone of the Press; but specific outbursts of incitements have been followed by specific outrages."

(14). Newspaper (Incitement to Offences) Act, 1908.

The ordinary law of sedition having failed to produce any improvement in the tone of the press two Acts were passed, one in 1908 and the other in 1910, to provide a better control of presses and means of communication and for the prevention of incitements to offences in newspapers. It was pointed out in 1908 that in the case of one newspaper, persons registered as printers and publishers had been within a comparatively short period prosecuted and convicted several times while the real authors of the incitements had concealed their identity. The new law was directed against newspapers which persistently defy the law and court prosecution by setting up "dummies for punishment." "The only way," it was suggested, "to deal with such newspapers is to put an end to their existence and this is done by means of this Bill which gives power to confiscate the printing press and extinguish the newspaper."

Sir Harvey Adamson in moving for leave to introduce the Bill observed :—

"There is one point and only one in connection with the proceedings that I am compelled to mention in order to support and justify the legislation in which we are engaged. It is the close connection between the Manicktollah conspirators and a certain section of the Press. Barendar Kumar Ghose, who declared himself to be the leader of the conspirators, is a man who created the "Yugantar" newspaper. Many of those

who are under arrest and have confessed participation in the crimes have been connected with the "Yugantar." Some have been connected with another newspaper which is not necessary for me to name. ...Now turning to the class of newspaper against which this Bill is directed I find that the "Yugantar" has been on five occasions during the past year the subject of prosecution for the offence of sedition..... Inspite of five prosecutions the "Yugantar" still exists and is as violent as ever. The type of sedition has been incitement to subversion of British Rule by deeds of violence."

Under these circumstances the Government felt, in the words of Sir Adamson, "its bounden duty not only to make adequate provisions to punish perpetrators of outrages that actually occur, but also to close the fountain head, and to insure that colleges of anarchy, assassination, rebellion and violence are not openly maintained under the guise of newspapers circulated among the public." The Act was hastily passed in a moment of panic in a meeting of the Council at Simla and the urgency of the action rendered it impossible for several non-official members of the Council to be present. Barely sixteen hours were given to the consideration of the Bill.

Section 3 (1) of the Newspapers (Incitement to Offences) Act, 1908, provided that in cases where, upon application made by order of or under authority from the Local Government, a magistrate is of opinion that a newspaper printed or published in the province contains any incite-

ment to murder or to any act of violence, such magistrate may make a conditional order declaring the printing press used, or intended to be used, for the purpose of publishing or printing such newspapers, and all copies of such newspaper wherever found, forefeited to the Government. The magistrate was to call on all persons concerned to show cause why the order should not be made absolute. On inquiry if the magistrate was satisfied that the newspaper contained matter of the nature specified in Section 3 (1) he was to make the conditional order absolute subject to a right of appeal to the High Court within fifteen days. Where an order of forfeiture had been made absolute in relation to any newspaper the Local Government was authorised to annul the declaration made by the printer and publisher of such newspaper under Act XXV of 1867 and to prohibit any further declaration being made in respect of the same newspaper or any other which was the same in substance. Proceedings taken under the Act were not to prevent any person from being prosecuted for any act which constituted offence under any other law.

(15). The Indian Press Act, 1910.

The second and the more important of these measures, *viz.*, the Indian Press Bill (3 of 1910) was introduced in Council by Sir Herbert Risley on 4th February 1910 and was on the same day referred to a select committee with instructions to report on the 8th, on which date the Bill was passed into law. The two amendments moved

by Mr. Gokhale, on which division was taken, were not only defeated "but positively slaughtered." Majority of Indian members of the Council supported the measure. Mr. S. P. Sinha described the Bill as "wise, fair and just," a measure possessed of "great influence for good on the future" of the country. Mr. G. K. Gokhale and Mr. R. N. Mudholkar supported the principle of the Bill "in view of exceptional situation in several parts of the country" but urged the duration of the Act to be limited to three years. Mr. Malaviya deprecated the idea of removing press offences from the jurisdiction of the judicial establishments of the country to control by the executive discretion. Mr. Bhupendra Nath Basu also opposed the Bill on the grounds that it "put a tax on knowledge" and provided punishment before trial.

The Act dealt not only with incitements to murder and acts of violence, but also with other specified classes of published matter including any words or signs tending to seduce soldiers or sailors from their allegiance or duty, to bring into hatred or contempt the British Government, any native prince, or any section of His Majesty's subjects in India, or to intimidate public servants or private individuals. The different sections of the Act had in view (*i*) Control over presses and means of publication ; (*ii*) Control over publishers of newspapers ; (*iii*) control over the importation into British India and transmission by the post of objectionable matter ; (*iv*) the suppression of seditious or objectionable newspapers, books, or other documents wherever found.

As regards the first of these objects it was provided by Section 3 that every keeper of printing press may be required by the magistrate at the time of making a declaration under Section 4 of the Press and Registration of Books Act, 1867, to deposit security, not less than five hundred or more than two thousand rupees, as the magistrate may in each case think fit to require. The Local Government was empowered to require similar security also from the keeper of a printing press in respect of which a declaration was made prior to the commencement of this Act. Under Section 4 (1) where it appeared to the Local Government that any such printing press was used for the purpose of printing or publishing any document containing any words, signs, or visible representations "which are likely or may have a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise" to incite to any act of violence, or to seduce any soldier or sailor from his allegiance or duty, or, to bring into hatred or contempt His Majesty's Government, administration of justice, any Indian Chief or Prince, or to excite disaffection towards the Government, etc., the Local Government might declare the security deposited and all copies of such document wherever found to be forefeited to His Majesty. Where the initial security was thus forfeited the deposit of a further security to the extent of Rs. 10,000 was required before a fresh declaration could be made under the Press and Registration of Books Act, 1867, and if thereafter the press was again used for printing or

publishing objectionable matter not only the further security so deposited, and all copies of such document but the printing press itself were to be deemed forfeited to His Majesty.

The second object was gained by similarly requiring under Section 8, every publisher of a newspaper to deposit security with the magistrate at the time of making declaration under Section 5 of the Press and Registration of Books Act, 1867, and by empowering the Local Government under Sections 9 and 11 to declare the security so deposited and all copies of the newspaper forfeited to His Majesty where the newspaper contained any words objectionable within the meaning of Section 4 of the Act.

Section 12 authorised the Local Government to declare forfeit copies of any document which appeared to it to contain any matter of prohibited description.

The more efficient control over the importation and transmission by post of publications was given by empowering the Customs and Postal authorities to retain and examine packages suspected of containing objectionable matter and to submit them to the Local Government for orders.

Section 17 provided that any person having an interest in any property in respect of which an order of forfeiture has been made may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the document or newspaper in question did not contain any words, signs, etc., of the nature described in Section 4 (i) of the Act. Except as

provided by this Section, no proceedings purporting to be taken under the Act were to be called in question by the Court, nor were any civil or criminal proceedings to be instituted against any person for anything done or in good faith intended to be done under the Act.

The provisions of the Press Act were not to be deemed to prevent any person from being prosecuted under any other law for any act or omission which constituted an offence against this Act.

The Press Bill as originally drafted made no provision for appeal to the Courts under any circumstances, and as Sir S. P. Sinha could not in the first instance persuade his colleagues in the Executive Council to agree to the insertion of such a provision he decided to resign his position as Law Member. Mr. Gokhale intervened and strongly urged the Indian Member to make one more attempt to persuade the Viceroy and other members of his Council to reconsider the question of such a provision. Eventually the Law Member withdrew his resignation and the Viceroy and other members of Council agreed to the introduction of the clause which provided for an appeal to the High Court. In this connection the following passage occurs in Lord Morley's Recollections:

"Neither I nor my Council would have sanctioned it if there had been no appeal in some due form to a court of law and you tell me that you would have had sharp difficulties in your own Council."*

* Volume II, p. 329.

Obviously the latter part of the sentence refers to the incident narrated above.

In the case of Mohamad Ali (41 Cal. 456) decided in 1913 by a Special Bench of the Calcutta High Court composed of Sir Lawrence Jenkins, C. J. and Mr. Stephen and Mr. Woodroffe, Judges, interesting observations were made on the wide scope of Section 4 and the very limited nature of intervention which High Court may exercise in the orders passed under the Act. The Bengal Government being of opinion that a certain pamphlet entitled "Come over into Macedonia and help us" was of a character likely to bring English and Christian subjects of His Majesty into hatred as a class ordered its forfeiture. Mr. Mohamad Ali made an application to the High Court against the order of confiscation on the two-fold ground *viz.*, that the pamphlet could not have the effect ascribed to it, and that the order was illegal because the notification published did not state the grounds on which the Government formed its opinion. It was admitted by the Advocate General that the pamphlet forfeited was not seditious and did not offend againt any provision of Criminal Law in India. It was contended, however, that the provisions of the Press Act extended far beyond the ordinary criminal law. Sir Jenkins, C. J. observed :—

"The provisions of Section 4 are very comprehensive and its language is as wide as human ingenuity could make it. Indeed it appears to me to embrace the whole range of varying degrees of assurance from certainty on the one side to the very limits of impossibility on the other. It

is difficult to see to what lengths operation of this section might not plausibly be extended by an ingenious mind. They would certainly extend to writings that may even command approval. An attack on that degraded section of the public which lives on misery and shame of others would come within this widespread net : the praise of a class might not be free from risk. Much that is regarded as standard literature might undoubtedly be caught".

It was held that where the Government had made an order of forfeiture the burden of proof was cast on the applicant to show that the writing impeached was innocent. So that, however meritorious the pamphlet might be, unless the applicant established the negative, the Act required that the application to the High Court against the order must fail. And in establishing this negative it was not enough for the applicant to show that the words were not likely to bring into hatred or contempt any class or section of His Majesty's subjects in British India, or that they had not a tendency *in fact* to bring out the result. He must go further and show that it is *impossible* for them to have that tendency directly or indirectly and whether, by way of inference, suggestion, allusion, metaphor, implication, "*or otherwise.*"

The High Court's power of intervention under the Act was the narrowest. The ability to pronounce on the wisdom of the executive order was withheld. Its functions were limited solely to considering whether the applicant to it had discharged what Sir Lawrence Jenkins, C. J.,

described the "almost hopeless task" of establishing that the writing in question did not contain words which fell within the all-comprehensive language of the Act. Sir Jenkins, C. J., observed :—

"I describe it as an almost hopeless task, because the terms of Section 4 are so wide that it is scarcely conceivable that any publication would attract the notice of the Government in this connection to which might not the words "directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise" apply. I have said the ability to pronounce on the wisdom or unwisdom of executive action has been withheld. There was good reason for this. Courts of law can only move on defined lines, and act on information brought before them under limited conditions. It is not so with the executive authority. It would be paralysed if it had to observe the restrictions placed on the courts. Its action can be prompted by information derived from sources not open to the courts, and based on considerations forbidden to them ; it can be moved by impressions and personal experiences to which no expression can be given in a court, but which may be a very potent incentive to action. The Government may be in possession of information which it would be impossible to disclose in a court of law and yet obviously requiring immediate action."

When the writing in question contained passages objectionable within the meaning of Section 4 of the Act the court was not to go into the question of truth or falsity of the statements, on

into the intention or motive of the writer. The duty of the court was strictly limited to the consideration of the question whether the order of forfeiture was justified by the words and tendencies of the writing. The possible results, and not the intentions, were to be considered. In the case of Farooq Ali *versus* the Crown (19 P. R. 1915), Sir Alfred Kensington, C. J., observed : –

" In estimating the results of the writing of the kind before us we are necessarily guided, to so large an extent, by the conclusion arrived at by Government under its wider knowledge of all that may be going on beneath the surface in India that we could hardly interfere with propriety unless it was obvious that there had been some palpable misunderstanding of the writing called in question."

When dealing with an application against the order of forfeiture the High Court had no jurisdiction to act as a criminal court of appeal or revision considering the nature of the sentence. It had no authority to determine whether the order of forfeiture was excessive or not, or to reduce it at discretion where it considered the same to be excessive. As Sir Alfred Kensington, C. J., observed in the case of Ghulam Qadir Khan *versus* the Crown (the "Zamindar" Printing Press Case) :—

" The terms of Section 19 are very explicit, and it is not in our power to read into them anything more than the Act says.....We are by the Act given certain extraordinary powers of interference, but these powers are strictly limited. We are authorised by statute to set aside an

order of forfeiture, but not to make any other change. In this construction of our powers it is not open to us, even if we should desire to do so, to do anything more than either reject the application or set aside the order of forfeiture as a whole."

The Act required the application against order of forfeiture under Section 4 (1) to be made within two months *from the date of the order.* It followed that a Local Government might by acting in an arbitrary manner deprive the keeper of a press of his remedy by the simple expedient of withholding notice till two months had already expired from the date of the order. In the case of Abdul Haq *versus* the Crown decided by the Punjab Chief Court in 1914 (16 P. R. 1914, Cr.) this point was urged by the counsel in view of the fact that the application in that case was made within two months from the date of service of the order. Sir Alfred Kensington, C. J., recognised the difficulty where the executive should arbitrarily withhold the notice for two months, but refused to be troubled " with fanciful speculation of the kind, being satisfied that no Government would act in the manner suggested " and, if it did, " all necessary steps would be taken to see that the person affected was not unduly prejudiced."

In the judgment delivered by the Special Bench composed of Mr. Juctice Abdul Rahim, Officiating Chief Justice, Mr. Justice Ayling, and Mr. Justice Seshagiri Aiyar in the matter of " New India Printing Works", Mr. Justice Abdul Rahim made the following observations on the scope of Section 4 and the extensive discretionary

powers which the Act vested in the Executive Government :—

"That generally speaking, the terms of the section are extremely wide and comprehensive cannot be doubted. They vest the Local Government with a discretion so large and unfettered that the keeping of printing presses and the publication of newspapers become extremely hazardous undertakings in the country. A press may be devoted to the printing of most useful and meritorious literature, or other publications of an entirely innocent and non-controversial nature, yet it will be liable to forfeiture if any matters printed in such press are considered by the Government to be objectionable within the meaning of the Act. It may be doubted if it is possible for the keeper of any printing press in the country to maintain such an efficient expert supervision over matters that are printed as to deduct everything that might be regarded to fall within the 'widespread net' of Section 4.

"Similarly a newspaper may be consistently staunch in its loyalty to the Government, its general policy may be above all reproach, the sincerity and *bona fides* of the intentions of the editor may not be liable to question, but if any letters or other writings were let in, may be through carelessness, which come within the scope of any of the clauses to Section 4, the Government may at once, without any trial or even a warning, forfeit the security, and in this way ultimately put an end to the newspaper itself. That the influence of a periodical on public life in the country is on the whole decidedly beneficial need

not be a bar to the Government's action. The Local Government, it may be assumed, will not indiscriminately exercise the power which it possesses under this enactment, but the vesting of such unlimited power in the Executive Government is undoubtedly a serious encroachment on the freedom which the press in India enjoyed before the passing of the Act."

Section 22 barred the jurisdiction of courts as regards all proceedings purporting to be taken under the Act except declaration of forfeiture under Sections 4, 6, 9, 11, or 12. An order under any other section might be passed by the magistrate in excess of his powers, but that gave the High Court no right of interference. It was held *in re* Mrs. Annie Besant (29 M. 1164) that a magistrate acting under Section 3 (1) is not a court, but only an executive officer entrusted with the performance of certain administrative duties, whose details were left entirely at his discretion, and hence an order by him requiring security from the keeper of a press, even if in excess of his powers, was not capable of being revised by the High Court. To the same effect was the judgment of the Punjab Chief Court in the case of Gulzar Mohamad *versus* the Crown decided in 1918. The Madras High Court held in the case of Mrs. Annie Besant *versus* Emperor, that in an application made under Section 17 the only question which the Special Bench of High Court can determine is whether the passages complained of did or did not contain any words of the nature described in Section 4 (1), and the court has no jurisdiction to determine any

other question, such as, whether the particular order of the magistrate demanding security was beyond his powers, or whether Section 4 or 22 of the Press Act is *ultra vires* of the powers of the Imperial legislature of India as contravening any Act of Parliament, or whether the order of forfeiture was legally made.

The Press Act rested on a wrong principle, and was hurried through the Council by suspending the standing orders and wtihout giving the country, as Mr. Gokhale pointed out during the debates, "practically any opportunity to express its opinion on it". Instead of leaving the interpretation and application of the law to the judges, the Local Government was empowered to take upon itself to decide the definition of prohibited matter, and this without giving any opportunity for hearing to the person against whom it may decide. This was a violent departure from that sacred principle of jurisprudence on which the entire system of administration of justice was built throughout the British Empire. For the same undesirable feature the Vernacular Press Act, 1878, was justly condemned by Mr. Gladstone in the House of Commons. As Mr. Gladstone then pointed out, that measure involved "a political issue of great importance, of the utmost delicacy, namely, whether it is wise for the Government to take into its own hands and out of the hands of the established legal jurisdiction the power of determining what writing is seditious and what is not." "The most unfortunate feature", he said, "which the measure presents is the removal of press prosecutions from the jurisdic-

tion of the judicial establishments of the country in order that they may be dealt with as matters of executive discretion." Contrary to all canons of criminal justice, the *onus probandi* was placed on the defence to show that the publication was innocent. What Sir Herbert Risley described in his speech introducing the Bill as " ample security against hasty and arbitrary action", "virtually an appeal to the highly competent judicial authority " proved to be merely an illusory right. In one respect the provisions of this Act were even more drastic than those of the Vernacular Press Act of 1878, for no obligation was laid on the Local Government to give warning to a newspaper before taking action. The Act improved the tone of the press, but its unwise administration added to the discontent. By rousing suspicions and alienating sympathies it defeated its own object. Free press had become a valued institution in India on account of freedom which the press had enjoyed for three-quarters of a century. The Act was, therefore, viewed by the people with suspicion and disappointment. The example of press laws of Austria, to which Sir Risley referred when asking for approval of the Council to the measure, was hardly generous. Indians were citizens of an Empire in which Rule of Law was the outstanding feature of the constitution, and in improving their institutions they were entitled to look to the British system for the model. It was wrong to suppose that sedition in the press was responsible for the genesis of anarchism. As Mr. Basu observed during the Council debates :—

"The roots of anarchy go much deeper than the ephemeral pages of the periodical press: the effusions in the press are merely the foam on waters agitated by causes working far below the surface."

It was admitted by Sir Risley that the Indian press was equally bad and seditious in 1877, and yet there was no anarchy or "murderous conspiracy". Penal Code, it was not denied, even in 1910, was quite sufficient to *punish* sedition committed through newspapers. Almost all the important offences mentioned in Section 4 (1) were already provided for in Sections 144 (A), 153 (A), I. P. C., and in Newspaper Act, VII of 1908. Section 108 of the Criminal Procedure Code, 1898, further enabled the Government to *prevent* the dissemination of seditious matter.

There was little justification for the legislature to apply such a drastic law to the whole of India, while the evil sought to be met was mainly connected with the activities of a band of young revolutionaries in one part of the country. Repetition of offence by only 6 newspapers in the country was not sufficient to show that punishments under the existing laws were incapable of having a deterrent effect when the total number of newspapers and periodicals in the year 1910 amounted to 726 and 829, respectively.

A Parliamentary White Paper published at the end of 1914 gave a return of statements showing the action taken under certain sections of the Press Act, 1910. It showed that of 22 printing presses coming under the first demand for securi-

ty 14 failed to deposit and were in consequence closed ; and of 20 newspapers treated in the same manner 14 ceased publication. The Act was not administered in accordance with the intentions of its authors. Though meant for both Indian and European press, it was never put in operation against the latter. The Press Act provided exceptional remedies for exceptional circumstances, and with the disappearance of anarchical plots the Indian opinion became unanimous for repeal of the Act. Though Mr. Gokhale's motion to limit the duration of Act to three years, and the more modest amendment of Mr. Bhupendra Nath Basu to limit its operation to " three years or for such further period as the Governor-General in Council may determine," were both defeated in the Council it was, nevertheless, hoped by the non-official members, who lent their moral support to the measure, that the Act would be repealed as soon as the political situation improved. It also came to be urged that the retention of Press Act, as of other repressive laws on the statute book, was inconsistent with the spirit of the pronouncement of August 20, 1917, and the reforms inaugurated under the Government of India Act, 1919.

(G). INDIANS IN THE PUBLIC SERVICES.

(1). Monopoly of offices by the Covenanted Civil Service recruited by a system of nomination.

The policy of admitting only Europeans to places of power and emoluments started by Warren Hastings and his successor Lord Cornwallis was followed systematically throughout the long period of the Company's government. By an Act of Parliament of the year 1793 (33 Geo- III C. 52, Sec. 56) all important offices under the Company in India, below the rank and degree of members of Council, were reserved to the Covenanted Civil Service recruited in England and promotion was made dependent on seniority. Lord William Bentinck admitted a few Indians to some of the minor offices but the progress made was scarcely appreciable and to remedy the evil a declaration was made by Parliament in the Charter Act of 1833 that "no native of India or any British subject resident therein shall by reason only of religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office or employment under the Company." The provision remained a dead letter. In explaining it the Board of Directors pointed out to the Government of India "the meaning of enactment we take to be that there shall be

no governing caste in British India" and that "fitness is henceforth to be the criterion of elegibility." All the appointments were made by the Directors of the Company by nomination and so long as the nomination system lasted no Indian was appointed to the Covenanted Service.

(2). System of nomination replaced by a system of competitive examination held in England.

The Charter Act of 1853 abolished the system of nomination and the Covenanted Civil Service was for the first time thrown open to public competition. The following year regulations were made by a Committee under the presidency of Lord Macaulay, for the holding of competitive examinations. The maximum age of candidates was fixed at twenty-three. Though seemingly the racial bar was obliterated, in fact as the examinations were to be held in England the doors remained closed to the Indians. The Act of 1858, which transferred the Government of British India from the Company to the Crown, reaffirmed the system established under the Charter Act of 1853 and empowered the Secretary of State for India in Council, with the advice and assistance of the Commissioners appointed by the Crown, to make regulations for the admission of persons to the Civil Service of India.

(3). Fresh assurance in the Queen's Proclamation of 1858.

The Charter Act of 1833 had long remained a dead letter. In 1858 the Proclamation of Queen Victoria gave a fresh assurance for the association of Indians, irrespective of race and creed, with the work of administration. It was announced:—

"We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects and those obligations, by the blessing of the Almighty God, we shall faithfully and conscientiously fulfil.

"And it is our further will that, so far as may be, our subjects of whatever race or creed, be freely and impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability, and integrity, duly to discharge."

(4). Reduction of the age limit for examination.

If pledges and solemn promises could satisfy, India now had them in plenty. The Regulations made in the year 1860 lowered the maximum age for admission to the Civil Service examination in England from 23 to 22 and in 1866 the age was further lowered to 21.

(5). Superior appointments assigned by Statute to the Indian Civil Service.

A statute of 1861 legalised certain appointments made in contravention of the terms of the Act of 1793 and enumerated in a schedule the offices under the Crown in India which were to be reserved to members of the Covenanted Civil Service. These included the appointments of secretaries to numerous departments under the Governor-General in Council, three offices of Accountants-General, and in the "Regulation Provinces" the offices of members of the Board of Revenue, Financial Commissioner, Commissioner of Revenue, Secretaries to the government departments, District or Session Judge, District Magistrate, Collector of Revenue or Chief Revenue Officer of a district, etc. The Indian Civil Service virtually monopolised and controlled all superior posts in judicial and executive administration from the top to the bottom of the scale excepting those of the Viceroy, some members of the Executive Council, and the Governorships of Presidencies.

(6). Proposals for simultaneous examinations to be held in India rejected.

During the debates on the Charter Bill of 1853 Lord Stanley (afterwards Earl of Derby) expressed "his conviction that, in refusing to carry on examinations in India and in England—a thing that was easily practicable—the Government were, in fact, negativing that which they

declared to be one of the principal objects of their Bill, and confining the Civil Service, as heretofore, to Englishmen. That result was unjust, and he believed it would be most pernicious." In 1860 a committee of five members of the India Council appointed to report how effect could be given to the Parliamentary pledges suggested the holding of simultaneous examinations for the Civil Service in India and England but this recommendation was not followed.

(7). Devices adopted to secure admission of Indians in the higher services.

In 1868 the Government of Lord Lawrence established nine scholarships, of the value of two hundred pounds each, tenable in Great Britain for a period of three years, with a view to encourage Indian students "to resort more freely to England for the purpose of perfecting their education, and of studying for the various learned professions or for the civil or other services in India." As the Secretary of State for India, the Duke of Argyll, did not approve of the arrangement it was discontinued. In 1870, for the first time, one Indian was admitted to the Civil Service as against 825 Europeans in that service.

Holding of the examinations in England, lowering of the age limit, and the social conditions in India so effectually prevented the admission of Indians to the public services that to reduce the scandel opening of some new channel was considered necessary. Sec. 6 of the

Indian Councils Act, 1870, declared it to be "expedient that additional facilities should be given for the employment of natives of India of proved merit and ability in the Civil Service" of the Crown. The authorities in India were empowered, under prescribed limitations, to appoint Indians to offices reserved for the Civil Service even though such persons had not passed the competitive examinations held in England. The Duke of Argyll, who was then Secretary of State, instructed the Government of India that recruitment in this country was not to be on the basis of open competition but "on the principle of careful and cautious selection." He gave a warning, that, "it should never be forgotten, and there should never he any hesitation in laying down the principle that it is one of our first duties to the people of India to guard the safety of our own dominion.....the maintenance and stability of our rule must ever be kept in view as the basis of our policy, and to this end a large proportion of British functionaries in the more important posts seems essential." The Act did not find much favour with the government in India. The draft rules of 1873 provided that the main qualification requisite for appointments under the Act should be a precedent term of service in the higher ranks of government employ. In a case submitted by the Secretary of State for opinion, the Law Officers of the Crown declared such restriction to be "clearly opposed" to the spirit and intention of the Act, and consequently new rules were framed in 1875 by Lord Northbrook's Government. The revised rules, however,

remained practically inoperative, only one or two appointments having been made thereunder to the judicial branch of the service.

The question was re-opened by Lord Lytton's Government in 1878. In a confidential minute the Viceroy wrote as follows:—

"The Act of Parliament (1870) is so undefined, and indefinite obligations on the part of the Government of India towards its native subjects are so obviously dangerous, that no sooner was the Act passed than the Government began to devise means for practically evading the fulfilment of it. Under the terms of the Act, which are studied and laid to heart by that increasing class of educated natives, whose development the Government encourages without being able to satisfy the aspirations of its existing members, every such native if once admitted to Government employment in posts previously reserved to the Covenanted Service, is entitled to expect and claim appointment in the fair course of promotion to the higher post in that service. We all know that these claims and expectations never can or will be fulfilled. We have to choose between prohibiting them and cheating them, and we have chosen the least straightforward course. The application to natives of the competitive examination system as conducted in England and the recent reduction in the age at which candidates can compete, are all so many deliberate and transparent subterfuges for stultifying the Act and reducing it to a dead letter."*

*Quoted in Hansard, IV Series, Vol. XIII, p. 113.

Lord Lytton's Government proposed in 1878 to meet the requirements of the statute of 1870 by the creation of "a close native service" but the proposal was negatived because it would have created an inferior service and would not have carried out the intentions of the Act. The following year rules were made by the Government of India which provided that (1) a proportion *not exceeding one-fifth of the total number* of civilians appointed by the Secretary of State to the Civil Service in any one year should be Indians selected in India by the Local Governments; (2) each selection should be subject to the approval of the Governor-General in Council, and (3) the selected candidates, save under exceptional circumstances, shall be on probation for two years. The proposals appeared alarming to the Home Authorities. The proportion to be recruited in India was reduced to *one-sixth* and as a set off, the maximum age limit for the competitive examinations in England was reduced to 19 years.

(8). Agitation for larger Association of Indians in the task of administration continued.

The law guaranteeing one-sixth of the appointments gave no satisfaction to the people who disdained concessions and claimed but fair and equal opportunities and open competition with the English youth for admission to the public services. The number of Indians appointed under the statutory rules of 1879, upto and including the year 1886 was 48 or an overage

of six a year. Not only in the Indian Civil Service but in all the higher services under the Crown in India the proportion of Indians was insignificant. In answer to a question put by Mr. Macneil, on 19th February 1892, as to the relative proportion of the Europeans, the Eurasians, and the Indians in the Covenanted and Uncovenanted Services in India on 31st March 1886 Mr. Curzon gave the figures which showed that there were at the time 3573 Europeans (including Eurasians) and 492 Indians —the proportion of 7 to 1—drawing salaries Rs. 5,000 and upwards *per annum*. The actual figures, *given by Mr. Curzon, were as follows:—

Annual Salaies.	*Europeans.*	*Eurasians.*	*Indians.*
Rs. 50,000 and upwards. ...	26	...	1
Rs, 40,000 to 50,000 ...	47	...	3
Rs. 30,000 to 40,000 ...	125	...	...
Rs. 20,000 to 30,000 ...	346	3	2
Rs. 10,000 to 20,000 ...	951	12	40
Rs. 5,000 to 10,000 ...	2078	111	446
Rs. 2,500 to 5,000 ...	1334	545	1647
Rs. 1,000 to 2,500 ...	2097	1963	6915

By a resolution of 4th November, 1886, Lord Dufferin's Government appointed a commission to reconsider the question of public services. The commission consisted of a European

* See Hansard, IV Series, Vol. I, p 819.

president, a secretary, and 15 members of which 5 were Indians. The object of its appointment was declared to be to devise a scheme which may reasonably be hoped to possess the necessary elements of finality, and to do full justice to the claims of natives of India to higher and more extensive employment in the public service. The most important question which came up before the Commission was the desirability of holding simultaneous examinations in India and in England for recruitment to the Indian Civil Service. The suggestion was violently opposed not only in the Government circles but also by the main body of Musalman witnesses. The Commission reported :—

"It is argued that in the present circumstances of social life in India, open competition in that country would not justify, to the same extent as similar competition in England, the presumption that the successful candidates would possess in a sufficient degree the qualities essential for high administrative office.....and that an open competition in India for the Covenanted Civil Service would operate with inequality excluding altogether some important classes of the community, while giving undue advantage to others. It is further argued that it could scarcely fail—in view, on the one hand, of the large number of candidates who would offer themselves for the examination and, on the other hand, of the small number who could, under any circumstances, be successful—to create a large disappointed and thereby probably dis-

contented class which would cause embarrassment to the Government."*

"Furthermore, as the Covenanted Civil Service may be said to represent the only permanent English official element in India, the importance of recruiting that service with reference to the maintenance of English principles and methods of Government, cannot, in the opinion of the Commission, be overrated."

The suggestion for holding simultaneous examinations was disapproved, three of the Indian members of the Commission recording their dissent. With regard to the bearing of the statute of 1833 and the Proclamation of 1858, it was stated that the provisions and declarations embodied in these are not affected by the place of examination. The commission recommended that the age-limit of candidates to the Indian Civil Service be raised to twenty-three ; that the "system of statutory Civil Service be abolished; that the term "Covenanced Civil Service" be replaced by the expression "Imperial Civil Service" and this branch should be reduced in strength to "a corps d'elite" by transferring a number of its appointments to a local service to be separately recruited in each province and to be designated "Provincial Service."

The recommendations of the Public Services Commission were carried out in the main. The demand for a simultaneous examination was rejected ; the age limit was raised to twenty-three ; the recruitment under the statute of 170. was

* Report, p. 40.

discontinued; and the Public Services in India were divided into three grades - Imperial, Provincial and Subordinate. To the Provincial Civil Service were thrown open about one hundred of the scheduled appointments, but, as the recruitment of the statutory civil service, under the rules of 1870, was thereupon discontinued, the new rules instead of making a genuine advance really marked a set back. The statutary civilians appointed under the Act of 1870 could hold the highest appointments that were open to members of the Indian Civil Service but under the new system the Provincial Civil Service, which was to be composed mainly of Indians, was an inferior body whose members could not rise to higher posts than those of District and Sessions Judges, or District Magistrates and Collectors.

The agitation for larger appointments of Indians in the administration continued. On 12th January 1892 Mr. MacNeil, in the House of Commons, proposed an amendment to the address to be presented to the Queen in answer to a speech from the Throne. The proposed amendment was as follows:—

"And we humbly regret that Your Majesty's speech from the Throne contains no proposals for redeeming the pledges so frequently given by various Governments that natives of Great Britain and natives of India should be placed on terms of equality in the matter of appointments in the public service and in facilities in competing for such appointments."

The House rejected the amendment. G. N. Curzon, the Under-Secretary of State for India,

who led the opposition to it, maintained that ever since the Queen's Proclamation of 1858 the Government of India had "consistently and conscientiously made efforts"* to carry out the assurances.

(9). The Commons pass a resolution in favour of simultaneous examinations.

The following year the friends of India in Parliament revived the agitation for simultaneous examination. Forcible speeches were delivered in the Commons by Messrs. Paul and Naoroji, and Sir William Wedderburn. General Chesney and Mr. G. Curzon led the opposition. The former surmised that "practically the whole civil service of the country was occupied by the natives of India!" He also thought that the proposal, if accepted, would "flood India with Bengali civil servants." Mr. Curzon maintained that "it was not men of educational aptitudes alone that they wanted in India. They wanted persons of high moral character.....and *experience* had shown that this ruling type of man was more likely to be obtained by having examinations conducted in England than in India." Mr. George Russel, the Under-Secretary of State for India, observed: "it is held by those best qualified to form an opinion that the fierce, turbulent races, though they submit contentedly to our rule, would resent, and very strongly resent, any attempt on the part of the Bengali natives to exercise ad-

*Hansard, 4 Series, Vol. 1, page 402.

ministrative control over them." Inspite of the official opposition Mr. Herbert Paul's motion was carried and the Commons resolved, "that *all* competitive examinations heretofore held in England alone for appointments to the civil services in India be held simultaneously both in India and England, such examinations in both countries being identical in their nature, and all who compete being finally classified in one list according to merit."

(10). The Resolution remained a dead letter.

The Resolution was never translated into practice. The Government of the day—a Liberal Government—had opposed it. The India Council was up in arms against it. Barely three days after the passing of the Resolution Lord Churchill informed the House of Commons, "that the Representatives of the India Office, after consultation with the Secretary of State, are opposed to the change proposed in the Resolution, which was submitted to a very thin House and carried by a very small majority." It was, at last, determined by Mr. Gladstone that the Resolution be sent to the Government of India for their opinion. The Commons' Resolution alarmed the House of Lords. Viscount Cross observed that the Government should refuse to treat the resolution as the deliberate opinion of the House of Commons. The Marquis of Salisbury said: "I earnestly hope that the Council of India in a matter of such importance will be true to the trust which Parliament has reposed in them, and that they would

decline to revolutionise the Government of India without being convinced in their own minds that the steps they are taking are correct. For myself I cannot imagine any project more fatal to our Oriental Empire than that which received the sanction of the House of Commons on Friday night in a small House."* The Earl of Northbrook blamed the whips of the Government for not taking any ordinary pains "to secure the attendance of members to vote against the Resolution." The Duke of Argyll "could conceive nothing more fatal than the system suggested for India." Lord Kimberley, himself opposed to the Resolution, in his despatch to the Government of India, asking in what mode and subject to what conditions and limitations the Resolution could be carried into effect, stated that "it was indispensable that an adequate number of the members of the Civil Service shall always be Europeans, and that no scheme would be admissible which does not fulfil that essential condition." The Government of India and the Local Govrenments emphatically pronounced against the Resolution which was eventually consigned by the Secretary of State to the waste paper basket.

(11). The higher services, in the main, continued in the European hands.

In the year 1887 the proportion of Indian officers, employed under the British Government in India, drawing a monthly salary of Rs. 200

*Hansard, 4 Series, Vol. XIII, page 875.

and over was 34 per cent; those drawing Rs. 500 and upwards 12 per cent; and those drawing Rs. 800 and over only 4 per cent. In the course of the next 25 years an advance was made from 34 to 42, from 12 to 19, and from 4 to 10 per cent in the three groups respectively. On the 1st April 1913* out of 4,984 posts carrying salaries of Rs. 500 a month and upwards 942, or 19 per cent were filled by Indians, as against 4,042, or 81 per cent in the hands of Europeans and Anglo-Indians, as shown in the following statement:—

Department.	Europeans and Anglo-Indians	Indians.	Percentage of Indians.
1. Agriculture	... 50	...	...
2. Civil Veterinary	... 32	...	...
3. Factory and boiler inspection	... 13	...	...
4. Mines	... 5	...	...
5. Mint & assay	... 7	...	...
6. Pilots (Bengal)	... 46	...	...
7. Northern India Salt Revenue	... 7	...	...
8. Survey (Madras)	... 7	...	...
9. Survey of India	... 75	1	1

* See Report by Royal Commission on Public Services in India, dated 1916, page 24.

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* See Report by Royal Commission on Public Services in India, dated 1916, page 24.

Department	Europeans and Anglo-Indians.	Indians.	Percentage of Indians.
10. Military Finance	... 63	2	3
11. Indian Civil Service	...1,215	59	5
12. Police	... 507	28	5
13. Railway	... 299	19	6
14. Customs	... 34	3	8
15. Medical	... 375	36	9
16. Telegraph	79	9	10
Post Office	... 41	5	11
17. Salt and Excise	... 45	5	10
18. Forest	... 213	26	11
19. Geological Survey	... 15	2	12
20. Public Works	... 493	85	15
21. Education	... 223	45	17
22. Land Records (Burma)	... 13	3	19
23. Indian Finance	... 113	45	28
24. Registration	... 1	3	75
25. Provincial Civil Service (Executive)	... 67	332	83
„ (Judicial)	... 4	234	98
Total	4,042*	942	19

* Certain high offices such as memberships of Executive Councils and High Court Judgeships other than those reserved for the Indian Civil Service, are not included in the list.

(13). A Royal Commission on Public Services appointed in 1912.

On September 5, 1912, when Lord Harding was the Viceroy and Governor-General of India, a Royal Commission was issued to examine and report upon the following matters in connection with the Indian Civil Service. and other civil services, Imperial and Provincial :—

(1) The methods of recruitment and the systems of training and probation;

(2) The conditions of service, salary, leave and pension;

(3) Such limitations as still exist in the employment of non-Europeans and the working of the existing system of division of services into Imperial and Provincial;

and generally to consider the requirements of the Public Service, and to recommend such changes as may seem expedient. The Commission consisted of eleven members, including the Chairman Lord Islington, of which three were Indians. Mr. Mahadev Bhaskar Chaubal, a member of the Executive Council of the Governor of Bombay, Mr. Abdur Rahim, a Judge of the Madras High Court, and Mr. Gopal Krishna Gokhale. The report was completed early in 1915 but owing to the war on which all energies were then concentrated it was not published till January 1917. In the meanwhile the Indian expectations had risen to such an height that the proposed changes were generally denounced by the public opinion as wholly inadequate. The Commission proposed that some services should be entirely recruited in

India and that the Indian element in others should be substantially increased but their assumption that British responsibility for India required a *prepondering proportion of British officers in the Indian Civil Service and the Police* * created a considerable heartburning and racial feeling in the country. No action was taken on the Report during the war and on its termination the question of public services and the association of Indians in the task of administration was considered afresh as a part of the reforms inaugurated.

(13). Commissioned ranks in the army remained closed to the Indians.

We have, hitherto, confined curselves only to the Civil Services. The question of admission of Indians to the commissioned ranks in army stood in 1918 where it had been at the commencement of the British rule. Not only the people generally, barring a few warlike races—Sikh, Rajput, Gurkha, Pathan, and others—were not allowed enlistment in the army but even with reference to these classes no one could aspire to receive an officer's commission, whatever his birth or bravery, education or efficiency.

* See the Report, page 27.

(H). THE NATIVE STATES.

(1). The Native States in India in 1918.

The area enclosed within the boundaries of India was, in 1918, 1,773,168 square miles, with a population of 315,132,537, but of this total a very large part was not under British Administration. Native States lay scattered all over the country comprising an area of 675,267 square miles, a population of seventy millions, and embracing the widest variety of country and jurisdiction. Of the total number of 675 states 175 were under the control of the Government of India and the remaining under control of the Provincial Governments. Of the former four principal states of Hydrabad, Mysore, Baroda, and Kashmir were in direct relation with the Viceroy while the remaining were grouped under the direction of Agents to the Governor-General.

Hyderabad, the premier state in India comprised an area of over eighty-two thousand square miles and a population of more than thirteen millions. The ruling dynasty was founded in the chaos that followed the death of Aurangzeb by Asaf Jah, the Subedar of Deccan. An important event in the history of the state occurred in 1902 when the assigned districts of Berar were leased in perpetuity to the British Government.

The State of Mysore had an area of twenty-nine thousand square miles and a population of

nearly six millions. Mysore had become associated with its ruling dynasty at the end of the fourteenth century. For 50 years from 1831 the State remained under management of the British Government. In 1881 it was restored to the old dynasty under conditions and stipulations laid down in the Instrument of Transfer which was replaced in 1913 by a formal treaty.

The State of Baroda was situated partly in Gujrat and partly in Kathiawar. It had an area of nearly eight thousand square miles and population of two millions. The first treaty with the British Government was negotiated in 1805. In 1875 the Maharaja was deposed for "notorious misconduct, and "gross misgovernment."

The Kashmir State had an area of eighty-four thousand square miles and a population over three millions.

The Agencies to the Government of India under which states were grouped were three, *viz.*, Baluchistan Agency, Rajputana Agency and Central India Agency. The first included the States of Kalat, Khoran, and Las Bela. The second controlled 18 Native States and 2 Chiefships. The total number of states under the Central India Agency amounted to 153.

More than half the total number of the various units counted as Native States were under the control of the Government of Bombay. In 1911 the number of these states was 360. A great number of these were petty principalities; the Peninsula of Kathiawar alone containing nearly two hundred separate states, the bulk of which were founded by Marhatta chiefs in the

general scramble for power in the middle of the eighteenth century.

Of the states under the Government of Bengal, Cooch Behar had an area of 1,307 square miles, a population of nearly half a million, and a revenue of about thirty lakhs. The State of Hill Tippera had an area of 4,086 square miles and a population of about three hundred thousands.

Under the Government of Behar and Orissa were the Chota Nagpur States of Kharsawan and Seraikela, and the Orissa Feudatory States, 24 in number. The total area was 28,648 square miles, a population of 3,942,972, and revenue of 70 lakhs.

Three states were included under the Government of the United Provinces, *viz.*, Rampur, Tehri and Benares. The last of these was created only in April 1911.

The only state of importance under the Chief Commissioner of Assam was Manipur which had an area of 8,456 square miles and a population of 346,222. There were besides 25 chiefships with a total area of about 3,900 square miles and a population of 126,000.

There were in 1911 thirty-four states under the Government of the Punjab, varying considerably in size and importance, with an area of 36,532 square miles, population of 4,212,994 and a total revenue of about £1,000,000. Of these 23 were small hill states lying among the Punjab Himalayas and held by some of the most ancient Rajput families in India; five were Mohamedan

principalities of Bahawalpur, Maler Kotla, Patodi, Loharu, and Diyana, and the remaining were the Sikh states of Patiala, Jind, Nabha, Kapurthala, Faridkot, and Kalsia. The first treaty with Bahawalpur was negotiated by the British Government in 1833 which secured independence of the Nawab within his own territories and opened up the traffic on the Indus and Sutlej. Among the hill states Chamba was the oldest. Founded probably in the sixth century by a Rajput, it first came under the British influence in 1846.

The Central Provinces included fifteen feudatory states subordinate to the administration varying greatly in size and importance. Sakti was the smallest with an area of 138 square miles, and Bastar the largest with an area of 13,062 square miles.

The Government of Burma had the control of four Shan states and 48 petty states.

The Madras Presidency included five Native States covering an area of 10,087 square miles and a population of about five millions. Of these the states of Travancore and Cochin represented ancient Hindu dynasties. The remaining three were the States of Padukottai, Banganapalle and Sandur.

(2). Most of the states came into being in the 18th Century.

In regard to their historical antiquity the more important and large majority of these states were not older than the British Government

itself. The State of Hyderabad, the chief surviving relic of Mohamedan supremacy in India, and the three states of Gwalior, Indore, and Baroda, the principal remnants of the Marhatta power, all came into existence about the middle of the eighteenth century. Kashmir was given by Lord Hardinge to Gulab Singh in 1846, after the first Sikh War. Mysore was restored by Lord Wellesley to the old Hindu dynasty after the capture of Seringapatam by the English in 1799. The Hindu state of Travancore was also rescued from Tipoo Sultan by the British. The principal Native States of Punjab were founded by the Sikh Chiefs in the eighteenth century and but for British protection would have been swept away by Runjeet Singh. In some parts of India, however, ancient political institutions and dynasties still survived. The principal states of this class were to be found in Rajputana, Bundhelkhand, and in the Bombay Presidency.

(3). Form of Government generally despotic.

The government in these states was generally despotic except where limitations were imposed in consequence of the responsibilities to the British Government. In a few states, however, as in Rajputana, the chief was only the hereditary head of the clan, all supposed to be descended from a common ancestor, and his actual power over them, under ordinary circumstances, was greatly limited. In the latter part of the nineteenth century representative institutions were established in some of the larger and more important states.

The administration of Hyderabad, the largest and the most populous of states, was carried on, subject to the orders of the Nizam, by a minister, with four assistant ministers, who together formed a Council to which questions of importance were referred. A Legislative Council was established in 1893 which consisted in 1910 of 21 members, including 8 non-officials.

The administration of Mysore was carried on in the name and subject to the sanction of the Maharaja by the Diwan or Prime Minister, assisted by two Councillors. In 1881 a Representative Assembly was established consisting of elected representatives of the leading ryots, merchants, and local bodies, and meeting for a few days once a year at Mysore. The Diwan delivered his annual statement of the condition of the finances and of measures in contemplation, and suggestions by the members were considered. In 1911 when the twenty-eighth session was held, 265 members were returned, and 496 subjects of general and local interest were discussed. In 1907 a Legislative Council consisting of the Diwan and two Councillors, with not less than ten nor more than fifteen nominated additional members was brought into being. Two of the members were to be appointed on the recommendation made by the members of the Representative Assembly. Under the ordinance which consitituted this council, all regulations except those appertaining to certain specified matters or passed as temporary emergent measures, were to be considered and passed by the council before

being promulgated as laws by orders of the Maharaja.

In Travancore a Legislative Council, including a propcrtion of non-officials, was brought into being in 1888. In 1904 there was also instituted a popular Assembly which included a large proportion of elected members to assist in ascertaining public opinion on administrative questions. It met for a few days once a year.

A Representative Assembly of 30 members was constituted in Padukkottai in 1902 and since 1907, 18 of the members had been elected. The Assembly met for two or three days once a year. An account of administration was laid before it, and members were allowed to ask questions and make suggestions.

In 1909 a special Legislative Council was created in Cooch Behar by adding to the State Council five members nominated to represent different interests.

A State Council was formed in Bhopal in 1909 to advise on such matters as might be laid before it.

In Baroda a Legislative Council of 17 members was constituted in 1908; eight of the members were officials, six were appointed on the recommendation of the district local boards, and three were nominated by Government to represent special interests. Since 1902 marked progress was made in the direction of Local Self-Government. In 1905 provision was made for the constitution of panchayats in all villages, half the members being elected by the cultivators, and entrusted with the supervision of village roads and wells,

and with other duties. Rural boards, partly elective, were established in each taluka and district. A number of more important towns were provided with municipalities with large independent powers. Keen competition for election to local bodies was reported. As a result of the measures taken for the more complete separation of judicial and executive functions, the executive officers had been since 1904 almost entirely relieved of magisterial duties.

(4) The degree of control exercised by the British Government.

Supremacy of the British Government existed over all the Native States recognised in the case of the more important ones by formal treaties and in regard to others as one of the obvious conditions of their existence. The principles of international law had no bearing upon their relations which were governed partly by compacts and treaties, and partly by usages and precedents. The paramountcy of the British Crown was never declared so emphatically as in 1877 when Queen Victoria assumed the title of Empress of India. The degree of control exercised by the Indian chiefs varied in different states but whether a state was great or small there were certain rights which the British Government always asserted. These were as follows :—

(1) *Exclusive control over foreign relations.*

A native state had no external relations except with the British Government. It had no power to declare war, to enter into political communi-

cation, alliance, or confederacy with any other Native State or Foreign Power. Joining an insurrection against the British Raj was tentamount to breach of allegiance punishable with death and confiscation. Nawabs of Jhajjar and Balbgarh were condemned and executed by the British Government on the charge of joining the Indian mutineers in 1857 and their states were confiscated.

(2) *Limited military establishments.*

No state could maintain more troops or military establishments than were required for the purpose of internal administration, the discharge of imperial obligations, or for the support of reasonable dignity of the chief.

(3) *General responsibility for the internal peace and satisfactory administration of the state.*

There was no state in which the British Government could not interfere to stop misgovernment or to punish the ruler for an atrocious crime by a tribunal specially constituted for the purpose.

In 1874 the Gaikwar of Baroda was accused of personally instigating an attempt to poison the British Resident at his court. A commission was appointed for his trial consisting of the Chief Justice of Bengal as the president, two of the rulers of native states and some English members. The Indian chiefs found that the charge was not proved but the English members pronounced that the Maharaja was guilty. The Gaikwar was finally deposed and a member of another branch of the House was selected by the British Government as his successor. " As

the judgment was not unanimous the Gaikwar escaped the extreme penalty that he deserved, and which, if he had been formally convicted, he would probably have suffered."*

In 1889 the Maharaja of Kashmir, on the charge of maladministration, was deprived of all authority and although subsequently he was again recognised as head of the state his powers were considerably circumscribed.

In the state of Bhopal in 1884 the Govern- of India removed the husband of the reigning princess from power, and appointed an English minister to carry on the administration.

In 1895 the ruler of Bhartpur was deprived of his powers of administration and five years later, having shot and killed one of his personal assistants who had offended him, he was placed permanently in confinement ; all his rights were declared forfeit; and his infant son was selected as his successor.

In 1901 the Government of India having reason to believe that the Chief of the Panna State had caused the death of his uncle by poisoning ordered his suspension from power and appointed a commission to ascertain the facts. The guilt of the chief was proved, and as a consequence he was deposed and put in permanent confinement. The Government of India reserved to itself the right of selecting the successor.

In 1830 the administration of Mysore fell into a miserable condition whereupon the Governor-

*India, Its Administration and Progress, by Sir John Strachey, p. 472.

General, Lord William Bentinck, ordered the deposition of the Maharaja and transfer of the entire administration into the hands of British officers. This suspension of the authority of the ruling dynasty continued for fifty years, till 1879. In that year a re-transfer of powers was resolved upon by the Government of India subject to certain conditions, the principal of which were the following :—

(*a*) The chief should have a fixed civil list and the rest of the revenues are to be available for public purposes only.

(*b*) There must be permanent security for the observance of usages and laws, and the latter should be alterable only by suitable legislative machinery.

(*c*) Laws should be administered by courts regularly constituted and enjoying independence of action.

(*d*) Revenue laws must be fixed and defined, and no fresh taxation imposed except in accordance with law.

Subject to the principles laid down the administration was made over to the Maharaja in 1881. The system marked a departure in the policy of Imperial Government towards the Native States. As the Government of Lord Lytton observed :—

" The Supreme Government has been obliged of late years to interpose frequently in the affairs of Native States. The incapacity or grave misconduct of a ruler has produced complications which have demanded immediate and stringent remedies, or the interval of a long minority has

made it necessary to superintend more closely a state's management..... *The policy now framed proceeds upon the broad principle that in order to guard against chronic misrule in a Native State, and to obviate the necessity for frequent and arbitrary interposition by the supreme Government to remedy the consequences of such rule, it is expedient to avail ourselves of every opportunity of placing some reasonable limitation upon the personal power of the ruler, or of the minister to whom the administration may be entrusted.* The limitations thus imposed must be brought on public record, in order to place them beyond question or controversy, and in certain cases the general power of supervision to be exercised by the Supreme Government may need to be stregthened and extended. These principles may form the groundwork of settled policy which will guide the Government of India in the general discharge of its responsibilities towards feudatory states. A new and valuable precedent will have been established, and this, with the experience which will have been gained in Mysore, may enable us in future to deal systematically with similar questions of reorganisation or reform."

Following the precedent of Mysore wherever fitting opportunities arose, as during the long minority of a ruler, efforts were made to reorganise and reform the administration of the state and when the time came for entrusting the young chief with power this was done under suitable conditions which he was bound to observe and which only the paramount power could alter.

(4). *The Native States were required to render subordinate military co-operation in the task of resisting foreign aggression and maintaining internal order.*

A voluntary movement towards co-operation in the task of Imperial defence that led to the formation of the force of Imperial Service Troops was initiated in 1887 by an offer made by the Nizam of Hyderabad whose example was followed by a number of leading states. These troops belonged to the Native States and were recruited from among their subjects but were placed under regular inspection by British officers and made available for Imperial Service. In 1912 the total force consisted of over 22,000 men including 10,000 infantry and 7,500 cavalry. Gwaliar contributed nearly 4,000 men; Kashmir over 3,500; Patiala, Hyderabad, and Alwar contributed over 1,000 each. In 1901 was founded an Imperial Cadet Corps, with the object of providing military training for the scions of ruling and noble families. The corps consisted of about 20 young men, and the course of instruction lasted between two to three years.

(5) *The British Government assumed extra-territorial jurisdiction over British subjects resident in Native States.*

Section 22 of the Indian Councils Act 1861, empowered the Indian Legislature, subject to the provisions of the Act, to make laws and regulations for all *servants of the Government of India* within the dominions of princes and states in alliance with the British Goverment. Sec. 1 of the Government of India Act, 1865, extended

this power by enabling the council to make laws for *all British subjects* within the dominions of princes and states in India. The Governor-General in Council also exercised, in executive capacity, extra-territorial powers of legislation and jurisdiction similar to those exercised by the Crown in foreign countries under the Foreign Jurisdiction Acts. These powers were placed on a wider and firmer basis by an Order in Council issued in 1902 which superseded the Indian Act of 1879 on the subject. The rules made under this system provided, for different Native States or districts within them, civil and criminal courts of various grades, and declared the laws which they were to administer. *European* British subjects were immune in all cases from the jurisdiction of the Native states' courts. They could be tried either by the British courts established in the state itself, or had to be sent for trial before a competent court in British India. The Government of India did not exercise similar exclusive jurisdiction over the *Indian* British subjects in the Native States, but it could assert it in such cases where it thought the assertion necessary. Under special circumstances, as for example during minority of the ruler, the Government of India would interfere with or control the jurisdiction of Native State Courts in cases affecting the state subjects but it allowed such cases to be dealt with by the state courts in accordance with state laws. The Native States, having no recognition in international law, their courts had no jurisdiction over the European foreigners in their territories. These were,

doubtless, subject to the jurisdiction of British Courts. There were certain areas within the boundaries of Native States in which full control had been ceded, by arrangement, to the Government of India, and in these jurisdiction was exercised by the British Courts and officers over all classes of persons as if the territory were part of British India. To this class belonged the Assigned Districts of Berar, railway lands within the territories of the states, the residencies and other places in the occupation of political officers, and cantonments in the occupation of British troops.

Lord Dalhousie claimed for the British Government the right of acquiring by lapse the territory of a Native State where natural heirs should fail. Adoption was not to be permitted, " excepting in those cases in which some strong political reason may render it expedient to depart from this general rule." The Governor-General recorded his " strong and deliberate opinion that, in the exercise of a wise and sound policy, the British Government is bound not to put aside or to neglect such rightful opportunities of acquiring territory or revenue as may from time to time present themselves." The docrine of lapse was applied by Lord Dalhousie in many cases ; the principal being the State of Nagpur with an area of eighty thousand square miles and several millions of population. The Raja had died without an heir and the state was declared to have lapsed to the British Government. After the mutiny of 1857 the doctrine of lapse was abandoned and a

sanad was issued by Lord Canning, the Governor-General, to each one of the principal Hindu chiefs, assuring the recognition of the right of adoption in accordance with Hindu law or custom. In default of regular adoption the British Government reserved the right of selecting the successor.

CHAPTER III.

THE MONTAGUE CHELMSFORD REFORMS.

(1). Failure of the Minto-Morley Councils to satisfy popular aspirations.

The Minto-Morley Councils inspite of the enthusiasm which they originally evoked failed to satisfy the aspirations of the people within the short space of ten years from their inception. The new councils were in no sense representative of the people. The franchise was of a restricted nature and the system of election indirect. The largest constituency representing sectional interests which returned a member to the Indian Legislative Council by direct election was composed of 650 voters while in the nine general constituencies representing non-official members of the Provincial Legislatures the average number of voters was twenty-two and in one the number was nine only. For the Provincial Councils the constituencies were larger but even here in no case the electorate exceeded a few hundred persons. Except in the case of some special class constituencies there was no real connection between the primary voter and the man who sat in the council. Elections to the Provincial Legislative Councils were indirect and to the Indian Legislature doubly indirect.

The Minto-Morley Councils continued the official block which gave an unreal and farcical character to their proceedings. The official members were not expected to ask questions or move resolutions and when a division took place they nearly always voted by order in support of the Government. The system was in effect frankly irritating and as the official members were generally European it often gave a racial complexion to the debates. The popular representatives and the official members were arrayed in opposing camps. The elected members being in a minority the decision was often known beforehand with the result that debates lacked enthusiasm except when feelings were aroused.

The reforms did not recognise the principle of responsibility or popular control. They embodied no new policy and were based on the fundamental principle that the executive government should retain the authority to pronounce the final decision on all questions. This left the councils with no function but criticism and the very limited opportunities which they afforded were insufficient to satisfy the growing national consciousness of educated Indians.

Some of the antecedent conditions of the success of the reformed councils were lacking. "There was no general advance in local bodies ; no real setting free of the provincial finance ; and inspite of some progress no widespread admission of Indians in greater numbers into the public service. Because the relaxation of parliamentary control had not been contemplated the Government of India could not relax their con-

trol over Local Governments. The sphere in which the councils could effect the Government's action, both in respect of finance and administration was therefore closely circumscribed. Again and again a Local Government could only meet a resolution by saying that the matter was really out of its hands."*

(2). The Royal Commission on Decentralisation.

The underlying idea of the Morley-Minto changes was to " really and effectively associate the people of India in the work not only of occasional legislation, but of actual every day administration." With this end in view a Royal Commission on Decentralisation was appointed in Lord Minto's time which presented its report in 1909 recommending a series of measures for the purpose of relaxation of control by higher authorities and the simplification of administrative methods. As a result of the Commission's proposals, between the years 1910 and 1917 the control of the Government of India over the Provincial Governments was appreciably relaxed in a multitude of details and something was done to free local bodies from official interference.

(3). The Coronation Durbar despatch, 25th August, 1911.

The despatch, from the Government of India to the Secretary of State, while suggesting the

* Report on Constitutional Reforms, p. 65.

removal of the capital of the Supreme Government from Calcutta to Delhi fore-shadowed the goal of provincial autonomy and thereby led to a lively discussion of constitutional policy. It stated :—

"The maintenance of British rule in India depends on the ultimate supremacy of the Governor-General in Council, and the Indian Councils Act 1909 itself bears testimony to the impossibility of allowing matters of vital concern to be decided by a majority of non-official votes in the Imperial Legislative Council Nevertheless it is certain that, in the course of time, the just demands of Indians for a larger share in the government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the supreme authority of the Governor-General in Council. The only possible solution of the difficulty would appear to be gradually to give the provinces a larger measure of self-government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in cases of misgovernment, but ordinarily restricting their functions to matters of Imperial concern."

(4). Opinion in England opposed to further changes.

In India there existed, at this time, a powerful movement in favour of reforms but responsible opinion in England was that there should be

no further tinkering with the constitution. In July 1914 the India Council Bill, introduced by Lord Crewe, providing for a limited application of the elective principle to the Council of the Secretary of State for India, was thrown out by the House of Lords. The following year the Lords also rejected a proposal to set up Council Government in the United Provinces.

No further constitutional progress appeared to be possible on the old lines and the consequence was a deadlock. On the one hand the old structure of the Legislative Councils did not admit of further development except by the introduction of elected majorities, a step that would have deprived the executive government of the means of securing necessary legislation, and on the other the ideal of a self-governing India was regarded by the British public as unthinkable and had been on a number of occasions repudiated by British statesmen in Parliament.

(5). Effect of the Great War on Indian aspirations.

The gigantic war which broke out in Europe in 1914 stimulated the political aspirations of India in a number of ways. It gave her a new sense of self esteem. Having stood manfully with the British Empire in the hour of her sorest trial she claimed, as a right, from England a higher status in the Councils of the Empire. Secondly the war itself came to be regarded as a struggle for the freedom of smaller nations, and it was argued that Britain could not withhold from

India that right to liberty and self-determination for which she was herself fighting in Europe. Thirdly the magnificient response made by India to the king's call to arms led to a tremendous increase in the sympathetic interest of the Parliament in Indian affairs—an interest that was sustained throughout the war.

(6). England's appreciation of India's services.

On September 9, 1914, Mr. Charles Roberts, the Under-Secretary of State for India, announced in Parliament a long message from the Viceroy of the profound loyalty and enthusiasm of entire India in the war. As a first instalment of her war contribution a formidable force of 70,000 was shortly to fall into line with the English and the French in France to oppose the world ambition of Germany. India's response to the King's call to arms was a most thrilling event in the history of world, and the message she sent through the Viceroy "fell on the ears like a romance from the East, with all its variety, movement, and colour." Lord Curzon described it as a "landmark in the history of British connection with India." "The Indian empire," wrote the *Times*, "has overwhelmed the British nation by the completeness and unanimity of its enthusiastic aid."* "Have the message circulated throughout the empire," said Mr. Bonar Law, leader of the opposition. "Send a copy to the Kaisar," said William Thorne. When moving for a resolution in the House of Commons that expenses of the Indian Expeditionary Force be

* September 10, 1914.

charged on the revenues of India the Prime Minister, Mr. Asquith, observed: "I do not think that in all the moving exhibitions of national and imperial patrotism which the war has evoked there is any which has more touched, and rightly touched, the feelings of this House and the country than the message sent by the Viceroy of India announcing the magnificient response which the princes and people of that country have made to our need."

On September 10, 1914, the King Emperor issued a special message to the princes and people of India, appreciative of their desire to be the "Foremost in the Conflict" of nations. The message concluded as follows :—

"Among the many incidents that have marked the unanimous uprising of the populations of My Empire in defence of its unity and integrity, nothing has moved me more than the passionate devotion to My Throne expressed both by My Indian subjects, and by the feudatary Princes and the Ruling Chiefs of India, and their prodigal offers of their lives and their resources in the cause of the Realm. Their one-voice demand to be foremost in the conflict has touched my heart, and has inspired to the highest issues the love and devotion which, as I well know, have ever linked My Indian subjects and Myself. I recall to mind India's gracious message to the British nation of good-will and fellowship which greeted My return in February 1912, after the solemn ceremony of My Coronation Durbar at Delhi, and I find in this hour of trial a full harvest and a noble fulfilment of the assurance given by you

that the destinies of Great Britain and India are indissolubly linked "

(7). India's calm sacrifice.

Every effort was made to help the empire with men, money, and material, and India was in Lord Harding's phrase bled "absolutely white." For a few weeks there were not more than 15,000 British soldiers in a country whose population was 320 millions. All political agitation was suspended throughout the land.

(8). Movement for constitutional reform, and the Announcement of August 20th, 1917.

As a consequence of the splendid and universal rally throughout the King's dominions the question of readjustment of constitutional relations of the component parts of the empire came into the forefront of public discussions. India, profoundly stirred by the war, magnificiently generous in men and treasure, and rightly proud of the bearing of her sons in this struggle of nations, was naturally consumed with speculations as to the effect of her loyalty and devotion upon her internal government and her relation to the imperial system as a whole. In England was launched a movement for Imperial federation but as the British Government had yet made no announcement as to its future policy towards India it was feared in this country lest the con-

templated adjustment should give the self-governing dominions a share in the control of Indian affairs. While the Imperial statesmen were dwelling on the problem of reconstruction of the Commonwealth, Indian public opinion was centred on the question of reorganising the administration within India itself. The movement for self-government acquired a strength such as it had never done before. In one sense the Indian agitation for Home Rule was but a part of the world movement in favour of democracy and governments regulated by force of popular opinion. It was the direct outcome of the pronouncements of the Allied statesmen that they were fighting a struggle of democracy, self-determination and equal rights. In June 1916 Mrs. Besant founded a Home Rule League in Madras and a corresponding movement was set on foot by Mr. B. G. Tilak in the Presidency of Bombay. In September 1916 nineteen members of Imperial Legislative Council submitted to the Viceroy their proposals with regard to post-war reforms known as the Memorandum of the Nineteen which was subsequently with certain amendments and amplifications accepted by the Indian National Congress and the All-India Muslim League in their joint session at Lucknow. By an energetic and widespread propaganda in the country Mrs. Besant and Mr. Tilak succeeded in securing unanimity of nationalist opinion in favour of the Congress-League scheme as the minimum of India's demand of constitutional reforms. This vigorous propaganda at a time when the fate of empire still hung in the balance was regarded

by the authorities as an injudicious step. Accordingly on June 16, 1917 Mrs. Annie Besant and her two political co-workers were interned at Ootacamund. This action on the part of Government instead of repressing the movement for Home Rule placed the question of Self-Government in the forefront of the agitation. The difficulties of administration in India began to increase rapidly and Lord Chelmsford's Government felt that without a declaration of policy it was impossible to relieve the political tension or to act effectively on a directed course. Eventually on August 20, 1917, Mr. E. S. Montague, the Secretary of State for India, announced in the House of Commons the future policy of His Majesty's Government in India in the following words :—

" The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at Home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to

India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of Local Governments, and to receive with him the suggestions of representative bodies and others.

"I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom the new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

"Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course to Parliament."

(9). Report on Indian Constitutional reforms and its leading formulæ.

This declaration was a momentous event in the constitutional history of India. It marked the end of one epoch and beginning of another. Hitherto she had been governed by a system of absolute government but the announcement of August 20th pledged the British Government in clear and unambiguous terms to establish by successive stages a responsible Government in British India. "The announcement was the result of prolonged correspondence with the Government of India, of close and repeated

examination at home, and of an amount of labour which must have been rarely expended upon a public announcement."* The declaration was followed by the publication on July 8th, 1918, of the Report on Indian Constitutional Reforms signed by the Viceroy and the Secretary of State for India. The Report laid down four formulæ on which the reform proposals were based :—

1. "There should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control." 2. "The provinces are the domain in which the earlier steps towards the progressive realisation of responsible Government should be taken. Some measure of reponsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative, and financial, of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities." 3. "The Government of India must remain wholly responsible to Parliament, and, saving such responsibility, its authority in essential matters must remain indisputable, pending experience of the effect of the changes now to be introduced in the provinces. In the meantime the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased." 4. "In

*Speech by Lord Curzon in Parliament on 24th October 1918.

proportion as the foregoing changes take effect the control of Parliament and the Secretary of State over the Government of India and Provincial Governments must be relaxed."

(10). Changes contemplated in the Provincial Government.

The report proposed to establish in the major provinces the system of 'dyarchy' or dual government under which the provincial administration was to be divided into two parts, *viz*, the "reserved subjects" which were to be administered by the Governor and his Executive Council, and the "transferred subjects" which were to be made over to ministers chosen by the Governor from the elected members of the legislative Council and holding office for its life. The Executive Council was to consist of two members of which one was to be an Indian. The Legislative Councils were to be enlarged and given substantial elected majorities chosen by direct election on as broad a franchise as possible. Where a measure dealing with a reserved subject was not passed by the Legislative Council the Governor might certify it as essential and refer it to a Grand Committee of the Council on which the Governor was to nominate a majority and on emerging from this Committee the Bill would pass automatically. The All-India and Provincial budgets were to be separated and the system of "divided heads" of revenue abolished. Provincial Governments were to be given limited powers of borrowing and taxation. The budget was to be framed by the

executive government as a whole. The supply for the reserved subjects would have priority, and if the remaining revenue proved insufficient for the transferred subjects the question of additional taxation was to be determined by the Governor and the ministers. If the Legislative Council modified an allotment for reserved subjects the Governor was given the power to insist on the allotment as originally provided, but except in so far as the Governor exercised this power the budget would be altered in accordance with resolutions carried in Council.

(11). Proposals in regard to Government of India.

The Report did not recommend introduction of dyarchy in the Government of India. It was proposed that there should be two *Indian* members instead of one on the Executive Council of the Governor-General. The Legislature was to consist of a Legislative Assembly of 100 members of which two-thirds were to be elected members, and a Council of State of 50 members of which 29 were to be nominated, including 25 officials. The Council of State was to be not only a revising authority upon all Indian legislation but also the supreme legislative authority on all crucial questions. A bill certified by the Governor-General as essential could be passed by the Council of State without reference to the Assembly. The budget was to be discussed in the Legislative Assembly but resolutions thereon were to be advisary and not binding. The Report suggested

the creation of a Privy Council for India to be advisory body for the Governor-General whenever he chose to consult it.

(12). Relaxation of India Office control.

In proportion as authority was transferred in India to the non-official agency it was proposed to relax the control of the India Office over Government of India, and of both of these over the provincial administrations. The Joint Report observed : -

"It now remains for us to examine the effect of our proposals upon the position of the Secretary of State for India in Council and the control which Parliament exercises through him over all the Governments in India. We have already explained how the Act of 1858, which brought the East India Company to an end, set up the Secretary of State with the Council of India to assist him, as the Minister of State responsible for Indian affairs. In the language of the existing law the Secretary of State has power to "superintend, direct and control all acts, operations and concerns which relate to the government or revenue of India and all grants of salaries, gratuities and allowances and all other payments and charges, out of or on the revenue of India". Again, section 21 of the Government of India Act, 1915, reads as follows :—"The expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council ; and no grant or appropriation of any part of those revenues,

or any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India".

It has been, of course, impossible in practice that the affairs of a vast and remote Asiatic dependency should be administered directly from Whitehall ; and, as we have seen, large powers and responsibilities have always been left by the Secretary of State to the Government of India and again by the Government of India to local Governments. At the same time, the Secretary of State's responsibility to Parliament has set very practical limits to the extent of the delegation which he can be expected to sanction. Now that His Majesty's Government have declared their policy of developing responsible institutions in India we are satisfied that Parliament must be asked to assent to set certain bounds to its own responsibility for the internal administration of that country. It must, we think, be laid down broadly that, in respect of all matters in which responsibility is entrusted to representative bodies in India, Parliament must be prepared to forego the exercise of its own power of control, and that this process must continue *pari passu* with the development of responsible government in the provinces and eventually in the Government of India. The process should, we think, begin with the conclusions arrived at on the report of the committee which will consider the question of transferred subjects. Having taken

their report and the views of the Government of India upon it into consideration the Secretary of State would, we imagine, ask Parliament's assent to his declaring by statutary orders which he would be empowered to make under the Act that such and such subjects in the various provinces have been transferred; and when Parliament has assented to such orders the Secretary of State would cease to control the administration of the subjects which they covered. The discussion of such matters by Parliament in future would be governed by the fact of their transfer. We appreciate the difficulties of the situation; but it must be recognised that it will be impossible for Parliament to retain control of matters which it has deliberately delegated to representative bodies in India. At the same time, it will be necessary to ensure that the Secretary of State is in a position to furnish Parliament with any information upon Indian affairs that it desires; and nothing in our proposals should be taken as intended to impair the liability of the Government of India and the Provincial Governments to furnish such information to the India Office at any time.

So far we have had in mind only the transferred subjects. But even as regards reserved subjects, while there cannot be any abandonment by Parliament of ultimate powers of control, there should, as we have indicated already, be such delegation of financial and administrative authority as will leave the Government of India free, and enable them to leave the provincial Governments free, to work with the expedition

that is desirable. On the purely financial side this delegation will involve an examination of the various codes and other regulations and orders, which we have already described as limiting too straitly the power of the authorities in India. This matter is already being examined in India, and the Government of India will make proposals to the Secretary of State in Council. On the purely administrative side there are as we have seen no general orders, like those embodied in the financial codes, prescribing the matters for which the Secretary of State's sanction is required. But in an earlier chapter we gave an illustrative list of the subjects regarded as falling within that category ; and generally speaking, it is well understood that all important new departures require his previous approval. The drawing of the line between the important and unimportant can only be left to the common sense of the authorities in India and at Home. But we are agreed that a wider discretion ought henceforth to be left to the Governor-General in Council ; and that certain matters which are now referred Home for sanction might in future be referred merely for the information of the Secretary of State in Council. The exact definition of these particular matters must also be pursued at greater leisure and the Government of India will take this question in hand. It will follow in such cases in future that when the policy of the executive Government in India is challenged Parliament must be asked to accept the explanation that in accordance with deliberate policy the Government of India have been given discretion in respect of

the topic in question and that for this reason the Secretary of State is not prepared to interfere with what has been settled in India. It is not part of our plan to make the official Governments in India less amenable to the control of Parliament than hitherto. It must be for Parliament itself to determine the limits which it will set to the exercise of its own powers. On the other hand intervention by Parliament may involve intervention by the Government of India in matters which otherwise would be recognised as of provincial concern. It will be distracting both to the Government of India and the Provincial Governments if the operation of this principle of discretionary delegation is left either to the idiosyncrasies of Secretaries of State, or to the disposition of party forces in Parliament. We hope therefore that Parliament will assent to facilitate the working of our reforms by a provision authorizing the Secretary of State, by rules to be laid before Parliament, to divest himself of control of the Government of India in some specified matters even although these continue to be the concern of the official Governments, and to empower the Government of India to do likewise in relation to Provincial Governments. On large matters of policy in reserved subjects there can of course, be no question of such delegation."

(13). The Public Services.

On the question of larger association of Indians in the administration the Joint Report made the following recommendations :—

(1) All racial bars that still exist in regulations for appointment to the public services should be abolished

(2) In addition to recruitment in England, where such exists, a system of appointment to all the public services should be established in India. Percentages of recruitment in India, with definite rate of increase, should be fixed for all these services. The proportion in the Indian Civil Service should be 33 per cent. of the superior posts, increasing annually by 1½ per cent., until the position is reviewed by the Commission.

(3) Rates of pay should be reconsidered with reference to the rise in the cost of living and the need for maintaining the standard of recruitment.

(4) A rate of pay based on recruitment in India should be fixed for all public services, but a suitable allowance should be granted to persons recruited in Europe, or on account of qualifications obtained in Europe.

(14). Provisions to secure greater Parliamentary interest.

The salary of the Secretary of State for India was to be put on the British estimates and to ensure a steady and enlightened interest of Parliament in Indian affairs a permanent select committee of the House of Commons was to be appointed

(15). Local Self-Government.

It was contemplated that there should be, as far as possible, complete popular control in local bodies

and the largest possible independence for them of outside control. In view, however, of the policy of provincial autonomy the lines of further advance were left to be determined by the Local Governments.

(16). Establishment of a Council of Princes.

The problems presented by the Native States were not left out of consideration. The princes were assured in fullest and freest manner that no constitutional changes which might take place will impair the rights, dignities and privileges secured to them by treaties or established practice. As a general principle, it was suggested, that all important states should be placed in direct political relations with the Government of India. A permanent Council of Princes was to be established to discuss questions which affected the states generally, or which were of concern either to the empire as a whole, or to British India and States in common. The Council was to meet once a year or oftener, if need be, under the chairmanship of the Viceroy.

(17). Appointment of Committees.

The Montague-Chelmsford Report did not do more than enunciate certain principles on questions relating to functions, franchise, and the relations between the Secretary of State in Council, the Government of India, and the rovincial Governments.

Three committees were constituted for this purpose. In October 1918 the constitution and terms of reference of the Franchise and Functions Committees were publicly announced. Lord Southborough was appointed to preside over both committees, which were to meet in joint sessions when necessary. Their work lasted from November 1918 till March 1919. A third committee presided over by Lord Crewe held its sittings in London at a later date.

(18). Recommendations of the Franchise Committee.

The Franchise Committee suggested to base the voting qualifications on possession of property and residence within the constituency, except in case of retired and pensioned officers of the Indian army who were all to be enfranchised. Election to the Provincial Legislative Councils was to be direct but in the case of the Legislative Assembly and the Council of State system of indirect election was recommended. Communal representation was to be retained in case of the Musalmans, and extended to the Sikhs in the Punjab, and the Europeans, the Indian Christians, and the Anglo-Indians in certain other provinces. A problem of some difficulty before the Committe was whether a candidate should be permitted to contest a constituency in which he has no place of residence. The Committee reported as follows :—

"The present regulations provide that in all Mohamedan, Local Board, Municipal and

Landholders' constituencies, the candidate must have a place of residence within the constituency. The evidence presented to us on this point was by no means unanimous. Associations and individuals representing what may be termed the more progressive element in Indian politics were definite in their view that there is no justification for restricting the choice of the electors in this respect, and that insistence on such a regulation might, by depriving the new Councils of the services of men of experience and capacity, impair the success of the reforms now being inaugurated. The point was also emphasised that a residential qualification is easy of evasion in the absence of an undesirably restrictive definition. Some of the Local Governments, namely, those of the United Provinces, Behar and Orissa, and Assam did not press for the insertion of this qualification. On the other hand the Local Governments of Bengal, Bombay, Madras, and the Punjab held that it "would be detrimental to the interests of a large proportion of the new electorate to admit as candidates persons who were not resident in the areas they sought to represent. This view received support from some non-official witnesses, particularly in the Central Provinces, and very wide support in the Punjab from individual witnesses and associations representing rural interests. It was pointed out to us that one object of constituting territorial electorates is to encourage the candidature of persons with knowledge of local interests and actually representative of such interests, and that the chance of securing such

candidates among the rural population, hitherto unversed in politics, would be impaired by the competition of candidates from outside. Much of the educative effect of the franchise would thus be lost and the representative character of the Councils impaired."

The Committee found no difficulty in maintaining the restriction as regards special constituencies, such as those provided for landholders but with regard to the general communal constituencies, though on principle the majority were opposed to such a restriction anywhere, it was resolved, on a consideration of the evidence, to impose the restriction in case of the Presidency of Bombay, the Punjab, and the Central Provinces.

(19). Report of the Functions Committee.

The Functions Committee submitted two lists showing a distribution of subjects into All-India and Provincial. The All-India subjects included naval, military and ærial matters, foreign relations and relations with Indian States, railways with certain exceptions, communications of military importance, posts and telegraphs, currency and coinage, sources of Imperial revenue, law and civil rights, criminal law, ecclesiastical administration and All-India services. The most important items in the provincial list were local self-government, medical administration, education, sanitation, public works, *i. e.* provincial buildings, land revenue administration, agriculture, forests, administration of

justice, police, prisons, newspapers and press, provincial borrowing, and development of industries. The Committee recommended a large list of subjects to be transferred to the control of ministers, includlng local self-government, medical administration, public health and sanitation, education with some minor reservations, public works, agriculture and development of industries.

(20). Recommendations of the Crewe's Committee.

The Committee presided over by Lord Crewe and appointed to investigate and report regarding the relations between the Home and the Indian Governments, and between the Secretary of State and his Council made the following suggestions :—

(1) "that whenever legislation has the support of majority of the non-official members of the Legislative Assembly, assent should be refused only in cases in which the Secretary of State feels that his responsibility to Parliament for the peace, order and good government of India, or paramount consideration of Imperial policy, require him to secure reconsideration of the matter at issue by the Legislative Assembly;

(2) "that where for any reason reference to the Secretary of State is considered necessary, a joint decision of the Government of India and a majority of the non-official members of the Assembly, reached by discussion of a resolution, should be given the same degree of authority as similar decisions on legislative proposals;

(3) "that 'the basis of delegation' should be that without prejudice to the further relaxation of control by the Secretary of State, the principle of previous consultation between the Secretary of State and the Government of India should be substituted in all cases where the previous sanction of the Secretary of State in Council has hitherto been required, but the Secretary of State should from time to time revise the list of subjects on which he requries such previous consultations, and inform the Government of India accordingly."

It was suggested that the Council of India be abolished and the Secretary of State should be assisted by an advisory board to whom he might refer such matters as he thought fit. The board was to consist of not more than twelve members, one-third being persons domiciled in India, selected from the panel of names submitted by the non-official members of the Indian Legislature. The Committee also recommended the appointment of a High Commissioner for India corresponding to the High Commissioners of self-governing dominions, who should exercise agency functions on behalf of the Government of India in London. Finally it proposed that all charges of the India Office excepting those termed 'agency' charges should be placed on the British estimate.

(21). Modifications of the reform proposals suggested by the Government of India.

The views of the Government of India on the proposals made in the Joint Report and the two

reports of the Southborough Committees were communicated to the India Office in certain despatches which aroused a good deal of criticism in this country. In their despatch of March 5th 1919, the Government of India suggested the following modifications:—

1. There should be no Governor for Assam, and non-I.C.S. Governors should be appointed for Madras, Bombay, and Bengal only.

2. Governors of Provinces other than the three presidencies are not to have the right of direct communications with the Secretary of State.

3. There should be not one but two official European members of Executive Councils in the three presidencies.

4. Ministers must from the outset be amenable to the legislature and removable by the adverse vote.

5. The number of Ministers and their pay is to be fixed by the Governor after consultation with the prospective Minister.

6. Either half of the executive should have its own resources of revenue or 'separate purse.'

7. Budget resolutions are not to be binding either on the Governor in Council or Ministers. Budget is not to be voted or passed by the legislature

8. Governor is to remain President of the Legislative Council and the Vice-president is to be a nominated official.

9. There is to be no collective responsibility of Ministers.

10. The Governor may refuse to issue orders desired by a Minister or require an order to be issued which differs from the Minister's view.

11. If there is a deadlock between the Governor and the legislature and no members can be found to act as Ministers, inspite of a dissolution and fresh elections, the Governor will assume control of the departments concerned and finally move the Secretary of State to transfer the portfolios to the Governor in Council.

12. Joint deliberation of the whole Government is not to be the rule. The Governor is to have unfettered discretion in the matter.

13. There are to be only two Indian members in the Government of India.

14. Election of Legislative Assembly is to be direct.

15. The Select Committee of Parliament should be drawn from both Houses.

In respect of the recommendations of the Franchise Committee the Government of India suggested certain changes in the voting qualifications and size of electorates ; did not approve of the proposed University constituencies ; expressed doubts as to the wisdom of distribution of representation between rural and urban constituencies ; suggested direct election for the Council of State ; and accepted as a temporary measure only the proposal for the election of the members of the Legislative Assembly by the non-official members of the Provincial legislatures. In regard to the report of the Functions Committee the Government of India advised against

the transfer to Ministers of university and secondary education and suggested that industries should remain a provincial and reserved subject with concurrent powers to the Government of India.

(22). Proposed modifications resented in India.

Publication of the Government of India despatches together with the minutes of dissent appended by Sir Sankaran Nair led to angry protests and a widespread agitation in the country. It was widely held by both moderates and nationalists that the recommendations made by Lord Chelmford's Government had the effect of whittling down the original scheme of reforms. In the meanwhile events had taken place which strengthened the nationalist demand to self-determination and immediate Home Rule.

(23). The Government of India Bill as originally drafted and recommendations thereon of the joint Select Committee.

To give effect to the proposed constitutional changes a Bill was introduced in the House of Commons on May 29, 1919, by the Secretary of State for India. It was referred for consideration to a joint Select Committee of both Houses which after examining nearly seventy witnesses suggested a number of modifications.

The preamble of the Bill was enlarged so as to include all parts of the Announcement. The lists of central, provincial, and transferred

subjects included in the Functions Committee's Report were somewhat altered after consultation with the India Office. The Joint Committee did not endorse the suggestion that certain sources should be allocated to reserved and certain others to transferred subjects but recommended that the Governor should allocate to each a definite portion of revenue, and similarly a definite portion, though not necessarily the same fraction, of the balances. In no province there were to be less than two ministers and these were to act in concert together. Status of Ministers was to be equal to that of members of Executive Council except that their salaries should be fixed by the Legislative Council The Executive Council especially in the smaller provinces, was to consist of not more than two members but where in case of a Council both the members were of service qualifications, neither being by birth an Indian, it should also include two non-official Indian members. In all matters of importance a habit was to be carefully fostered of joint deliberations between the two halves of Government under the chairmanship of the Governor. Where after hearing all the arguments the Ministers should decide not to adopt the Governor's view the latter was ordinarily to allow the Ministers to have their way fixing the responsibility upon them. The Governor was not to preside over the Legislative Council. The President for the first four years was to be appointed by the Governor but thereafter he should be elected by the Legislative Council. The Vice-President was to be elected by the Legislative Council from the very

start. The plan of Grand Committees was rejected. The Council of State, instead of being an organ of Government legislation, was to constitute a true second chamber with a non-official majority. The method of indirect election for the Legislative Assembly, suggested in the Report of the Franchise Committee, was rejected in favour of the views expressed by the Government of India in their despatch dealing with the subject. The limitation on the number of members of the Governor-General's executive council was removed and it was recommended that not less than three members of the Council should be Indians. In dealing with the proposals made by Lord Crewe's Committee, the Joint Committee while strongly emphasising the necessity of increasing the Indian element in the Council of India rejected the plan of its total abolition and the substitution for it of an advisory Committee. They also accepted the suggested transfer of the charges of the India Office to the British estimates and the appointment of a High Commissioner for India. As regards the relations of the Secretary State with the Government of India and Provincial Governments the Committee laid down as follows:

"The Committee have given most careful consideration to the relations of the Secretary of State with the Government of India, and through it with the Provincial Governments. In the relations of the Secretary of State with the Governor-General in Council the Committee are not of opinion that any statutary change can be made, so long as the Governor-General remains responsible to Parliament, but in practice the conven-

tions which now govern these relations may wisely be modified to meet fresh circumstances caused by the creation of a Legislative Assembly with a large elected majority. In the exercise of his responsibility to Parliament, which he cannot delegate to anyone else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature of India are in agreement.

This examination of the general proposition leads inevitably to the consideration of one special case of non-intervention, Nothing is more likely to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall in the interests of the trade of Great Britain.

That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiations between India and the rest of the Empire, but negotiation without power to legislate is likely to remain ineffective. A satisfactory solution of the question can only be guaranteed by the grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. It cannot be guaranteed by statute without limiting the ultimate power of Parliament to control the administration of India, and without limiting the power of veto which rests

in the Crown; and neither of these limitations finds a place in any of the statutes in the British Empire.

It can only therefore be assured by an acknowledgment of a convention. * * * In the opinion of the Committee, therefore, the Secretary of State should, as far as possible, avoid interference on this subject when the Government of India and its Legislature are in agreement, and they think that this intervention when it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire to which His Majesty's Government is a party.

"The relations of the Secretary of State and of the Government of India with Provincial Governments should, in the Committee's judgment, be regulated by similar principles, so far as the reserved subjects are concerned. It follows, therefore, that in purely Provincial matters, which are reserved, where the Provincial Government and Legislature are in agreement, their view should ordinarily be allowed to prevail, though it is necessary to bear in mind the fact that some reserved subjects do cover matters in which the Central Government is closely concerned. Over transferred subjects, on the other hand, the control of the Governor-General in Council, and thus of the Secretary of State should be restricted in future within the narrowest possible limits, which will be defined by rules under sub-clause 3 of clause 1 of the Bill."

(24). The preamble to the Government of India Act.

The modifications proposed by the Joint Select Committee were incorporated in the Bill which was finally passed into law in December 1919. The preamble to the Act laid down four important principles defining the constitutional ideal and the methods of its attainment. These were as follows :—

(1) "that it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire;

(2) "that progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken ;

(3) "that the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples.

(4) "that the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

(25). The Local Governments.

British India was previously divided into fifteen provinces of which three were Governorships in Council, four Lieutenant-Governorships, and eight Chief Commissionerships. The Act raised to the status of Governorships in Council five of the provinces formerly under Lieutenant-Governors and Chief Commissioners, thereby raising the total number of "Governor's provinces" to eight. These five new Governorships were the United Provinces, the Punjab, the Central Provinces, Behar and Orissa, and Assam. The provisions of Section 46 of the Government of India Act 1915 which required that the Governors of the three presidencies shall be appointed by His Majesty by warrant under the Royal Sign Manual were extended to the new Governors' provinces with the additional proviso that in the latter case appointments shall be made after consultation with the Governor-General.

(26). Dyarchy in the "Governors' provinces."

There was introduced in all the Governors' provinces a system of dyarchy * under which

* The scheme of dyarchy was attacked on the following grounds :—

1. It is without any precedent in its favour. 2. It is likely to give rise to friction 3. It divides the Government against itself. 4. It will promote racial discord between the European and Indian members of the Government if the former oppose policy of the latter. 5. It has all the elements that make for a division and prevent co-operation and associ-

the executive consisted of two parts, one comprising the Governor and his Executive Council and the other consisting of the Governor acting with the Ministers. Provincial subjects were to be classified into reserved and transferred. The Governor in Council was to control the reserved subjects; the Governor acting with the Ministers was to take charge of the transferred subjects. The transfer of a subject once made could not be revoked or suspended except with sanction of the Secretary of State in Council.

(27). Ministers.

Ministers were to be appointed by the Governor and hold office during the latter's pleasure. The Act did not impose any statutary limit on their numbers. The Report on Constitutional Reforms proposed that every Governor should have *one or more* Ministers but the Joint Committee of Parliament finally recommended that there should be *at least two* Ministers in every Governor's province. A member of the Governor's Executive Council or other official could not be a Minister and in no case was a Minister to hold office for a longer period than

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ation. 6. That inspite of the large powers transferred to the Ministers responsibility of any mistakes will, in the eyes of the masses, always rest on the British Government.

The scheme was defended on the ground that no alternative scheme had been suggested which could be put forward as consistent with the Announcement of August 20th and which could steer clear of the dilemma of either not introducing responsibility at all or of granting full responsibility.

six months unless he was or became an elected member of the local legislature. A Minister was responsible not to the legislature but to the Governor and indirectly to his constituency. There had been a great deal of controversy as to the status and pay of Ministers. The Montague-Chelmsford Report made no recommendation in this respect. The Government of India in their despatch of 5th March, 1919, suggested that pay in each case might be fixed by the Governor in consultation with prospective Minister. The Joint Committee of Parliament eventually recommended that Ministers should have equality of status and pay with members of Executive Council and a provision was, therefore, inserted in the Act that a Minister would be entitled to the same salary as was payable to a member of the Executive Council in the province unless a smaller salary was provided by vote of the Legislative Council. It was recommended by the Joint Committee that "the Ministers selected by the Governor to advise him on the transferred subjects *should be elected members of the Legislative Council, enjoying its confidence and capable of leading it*" They were to act in concert together. In relation to the transferred subjects the Governor was to be guided by the advice of his Ministers unless he saw sufficient cause to dissent from their opinion. If the Governor refused to accept advice of a Minister the latter might resign, if a man of independent spirit, or if he so chose might continue in office risking unpopularity with the Council. The Governor had the ordinary

constitutional right of dismissing a Minister whose policy he believed to be seriously at fault or out of accord with the views of the Legislative Council. In the last resort the Governor could dissolve the Legislative Council and choose new Ministers after a fresh election, but if this course were adopted the Committee hoped that the Governor would find himself able to accept such views as his new Ministers might press upon him regarding the issue which forced the dissolution. Rules were to be made for the temporary administration of a transferred subject where, in cases of emergency, owing to a vacancy, there was no Minister in charge of the subject.

(28). The Executive Council.

The provisions of Sections forty-six to fifty-one of the Act of 1915 relating to constitution of Executive Councils in the three Presidencies of Bengal, Madras and Bombay were extended to all the Governors' provinces with certain amendments. Section forty-seven of the Government of India Act, 1915, required that two of the members of Executive Council must be persons who had been at least for ten years in the service of the Crown in India. The Act of 1919 provided that this qualification would be necessary in case of one member only. While retaining the statutary maximum of four the Joint Committee expressed their opinion that the normal strength of the Executive Council, especially in the smaller provinces,

need not exceed two members. In any event, by convention, an Executive Council was to continue to include one Indian member, and if a second European member were added, a second Indian member was also to be appointed.

(29). Appointment of Council Secretaries.

The Governor was authorised *at his discretion* to appoint, from amongst the non-official members of the local legislature, Council Secretaries who were to hold office during his pleasure, and discharge such duties in assisting members of the Executive Council and Ministers as he might assign to them. They were to receive such salary as was provided by vote of the Legislative Council.

(30). Working of the two halves of Government.

A question which attracted considerable attention was how the two halves of Government were to work. The Report on Indian Constitutional Reforms suggested that while as a general rule the executive Government should deliberate as a whole the Governor might discuss a particular question only with that part of the Government which was responsible for the subject. The Government of India in their despatch of 5th March, 1919, stated that joint deliberation was not to be the rule and the Governor should have unfettered discretion in the matter. The Joint

Select Committee on the Government of India Bill finally stated in their Report as follows :—

"The Committee desire at this moment to give a picture of the manner in which they think that, under this Bill, the government of a province should be worked. There will be many matters of administrative business, as in all countries, which can be disposed of departmentally. But there will remain a large category of business, of the character which would naturally be the subject of cabinet consultation. In regard to this category the committee conceive that the habit should be carefully fostered of deliberation between the members of the Executive Council and the Ministers, sitting under the chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subject ; but the Committee attach the highest importance to the principle that, when once opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for decision lies. Therefore, in the opinion of the Committee, after such consultation, and when it is clear that the decision lies within the jurisdiction of one or other half of the Government, that decision in respect of a reserved subject should be recorded separately by the Executive Council, and in respect of a transferred subject by the Ministers, and all acts and proceedings of the Government should state in definite terms on whom the responsibility for the decision rests. It will not always, however, be clear, otherwise than in a purely departmental and technical

fashion, with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of informal arbitrator between the two parts of his administration; and it will equally be his duty to see that a decision arrived at on one side of his Government is followed by such consequential action, on the other side as may be necessary to make the policy effective and homogeneous.

"The position of the Governor will thus be one of great responsibility and difficulty, and also of great opportunity and honour. He may have to hold the balance between divergent policies and different ideals, and to prevent discord and friction. It will also be for him to help with sympathy and courage the popular side of his Government in their new responsibilities. He should never hesitate to point out to Ministers what he thinks is the right course or to warn them if he thinks they are taking to wrong course. But if after hearing all the arguments, Ministers should decide not to adopt his advice, then, in the opinion of the Committee, the Governor should ordinarily allow the Ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India, as in all other countries, mistakes will be made by Ministers acting with the approval of a majority of the Legislative Council, but there is no way of learning except through experience and by the realisation of responsibility.

"In the debates of the Legislative Council members of the executive Council should act together and Ministers should act together, but members of the Executive Council and Ministers should not oppose each other by speech or vote; members of the Executive Council should not be required to support either by speech or vote proposals of the Executive Council of which they do not approve; they should be free to speak and vote for each other's proposals when they are in agreement with them. All other official members of the Legislative Council should be free to speak and vote as they choose."

(31). Instrument of instructions for the Governors.

The Instrument of Instructions issued by His Majesty laid down the lines and the manner in which the Governors were to act in the exercise of their powers and duties. On the one hand business of the government of the province was to be so regulated as to keep the responsibility for the reserved and the transferred matters "clear and distinct," and on the other the Governor was to encourage the habit of joint deliberation between himself, the Councillors, and the Ministers in order that experience of the official advisers might be at the disposal of Ministers and the knowledge of ministers as to the wishes of the people at the disposal of Councillors. The Governor was to assist Ministers by all the means in his power in the administration of the transferred subjects, and advise them in regard to

their relations with the Legislative Council. In considering a Minister's advice and deciding whether or not there was sufficient cause in any case to dissent from his opinion, he was enjoined to have due regard to his relations with the Legislative Council and to wishes of the people of the province as expressed by their representatives therein. In addition to the general responsibilities whether created by statute or otherwise the Instrument specially required him :—

(1) to see that all measures necessary to preserve tranquillity and to prevent religious or social conflict were duly taken, and all orders issued by the Secretary of State or the Governor-General in Council were complied with;

(2) to provide for the advancement and social welfare of small and backward communities which cannot yet fully rely for their protection upon joint political action;

(3) to safeguard all members of the Indian services in the legitimate exercise of their functions and the enjoyment of all recognised rights and privileges; and

(4) to prevent the establishment of a trade monopoly or any unfair discrimination in matters affecting commercial or industrial interests.

(32). Provincial Legislature, its composition and duration.

The Legislative Council in a Governor's province was to consist of members of the Executive Council, members elected, and members nominated. The Government of India Act, 1915,

which previously regulated the composition did not fix the proportion of elected members. The statute only required that of the total number of members at least one-half in the case of presidencies and one-third in the case of other provinces, should be non-officials though in practice all the Provincial Councils had non-official majorities since the Indian Councils Act, 1909. The Act of 1919 by enlarging the Legislative Councils and providing that at least seventy per cent shall be elected members and not more than twenty per cent officials substantially changed the official Legislative Council into a people's chamber. The total number of members in each case was to be in accordance with the table set out in the First Schedule* to the Act but rules could provide for an increase in the number of members of any Council subject to the maintenance of the aforesaid statutary proportions† The normal duration of the Council was to be three years from its first meeting but in special circumstances it could be sooner dissolved by the Governor or its statutary period extended upto

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* The Schedule fixed the number of members of Legislative Councils as follows:—

Madras	118
Bombay	111
Bengal	125
United Provinces	118
Punjab	83
Behar and Orissa	98
Central Provinces	70
Assam	53

† By the rules framed the first Punjab Council under the Reforms consisted of 93 members, 71 elected and 22 nominated or officials.

four years. On dissolution of the Council the Governor was to appoint a date not more than six months or, with the sanction of the Secretary of State, not more than nine months from the time of dissolution for the next session of the Council. A meeting of the Council might be adjourned by the person presiding but an order to prorogue the Council could be made only by the Governor.

(33). President and Deputy President of the Council.

Provision was made for the appointment of a President and a Deputy President of the Council. Hitherto the Governor himself presided but under the Act of 1919 he ceased to be the President though his right of addressing the Council and for that purpose requiring the attendance of its members was recognised. The President for a period of four years from the first meeting of the new Council was to be appointed by the Governor but thereafter the Council was to elect its own President. The Deputy President was to be elected by the new Council from the start. The Joint Select Committee attributed greatest importance to the question of presidency. It was observed that, "whenever possible it would be a great advantage if some one could be found for this purpose who had parliamentary experience..... It will.....conduce very greatly to the successful working of the new Councils if they are imbued from the commencement with the spirit and conventions of parliamentary procedure as developed in the Imperial Parliament. Even

when elected by the Council the appointments were to be made with the approval of the Governor for the obvious reason that in the last resort it was he who was responsible for the administration. An elected President and a Deputy President were to cease to hold office on ceasing to be members of the Council, and could be removed from office by a vote of the Council with the concurrence of the Governor. They were to receive such salaries as were determined in the case of an appointed President by the Governor, and in the case of an elected President or Deputy President, by an Act of the local Legislature.

(84). Legislative Powers of the Council.

Section 10 of the Act defined the legislative powers of the new Councils. One important object of this revision was to limit the number of cases in which previous sanction of the Governor-General was required, and at the same time to make the statutary list of such cases complete, so as to avoid continuance of the practice whereby bills not included in the list were formerly submitted for previous sanction under executive order. The Act provided that a Provincial Ligislature might not, *without the previous sanction of the Governor-General*, make or take into consideration any law imposing a new tax, unless the same was a tax scheduled by rules made under the Act, or affecting the public debt of India or His Majesty's forces, or the relations of the Government with foreign princes or States, or any power expressly reserved to the Governor-General in Council, or

regulating any central subject, or altering the provisions of any law which could not be repealed or altered by the local legislature without previous sanction. Absence of previous sanction, however, did not invalidate a law which received the assent of the Governor-General. This rendered possible a distribution of legislative power between the Indian Legislature and the Provincial Legislature without subjecting the validity of Provincial Acts to challenge in the courts on the ground that such Acts involve an invasion of the sphere of the Indian Legislature *

(35). Governor's Powers in respect of a bill passed by the Legislative Council.

All questions in the Council were to be determined by a majority of votes of the members present other than the person presiding who was to exercise a casting vote in the case of an equality of votes. Where a bill was passed by the Council the Governor might assent to or withhold his assent from it, or return it to the Council for reconsideration together with such amendments which he might recommend, or reserve it for the consideration of the Governor-General

(36). Governor's power to secure essential legislation.

The Joint Report had suggested the plan of Grand Committees for the purpose of obtaining

* See the memo. on the Government of India Bill 1919

necessary legislation in relation to reserved subjects for which the Governor could not obtain a majority if he relied on the ordinary procedure. Sub-clause (3) of clause 9 of the Government of India Bill, accordingly, provided for the constitution of these committees on which the Governor was to appoint a majority of the members, with power in cases referred to them, to pass or reject laws without the assent of the Council; and sub-clauses (4) and (5) provided for the certifying power of the Governor by which the machinery of the Grand Committee could be brought into operation. The Joint Select Committee on the Bill, however, decided against it. "They have done so", it was stated, "because in their opinion the Grand Committee did not give the Governor the power of securing legislation in a crisis in respect of those matters for which he is held responsible, and because in respect of ordinary legislation about reserved subjects it perpetuated the system of securing legislation by what is known as the "official bloc" which has been the cause of great friction and heart-burning. The responsibility for legislation on reserved subjects is with the Governor in Council, and, when the "official bloc" has been put into operation, it has been put into operation by him, and is merely an indirect way of asserting his responsibility. The Committee think it much better that there should be no attempt to conceal the fact that the responsibility is with the Governor in Council, and they recommend a process by which the Governor should be empowered to pass an Act in respect of any reserved subject,

if he considers that the Act is necessary for the proper fulfilment of his responsibility to Parliament."

This extraordinary process was embodied in section 13 of the Act which provided that where a Governor's Legislative Council had refused leave to introduce or had failed to pass in a form recommended by the Governor, any bill relating to a reserved subject the governor might certify that the passage of the bill was essential for the discharge of his responsibility for the subject, and thereupon the bill, notwithstanding that the Council had not consented thereto, was deemed to have passed, and on the signature of the Governor became an Act. It was recommended by the Joint Committee that a Governor was not to resort to this extraordinary procedure, "until he has given every opportunity for the matter to be thoroughly discussed in the Legislative Council, and as a sensible man he should, of course, endeavour to carry the Legislative Council with him in the matter by the strength of his case." Any such Act passed by the Governor on his sole responsibility was to be reserved by the Governor-General for the signification of His Majesty's pleasure and copies thereof had also to be laid before either of the two Houses of Parliament.

The Joint Committee suggested that the Standing Committee of Parliament on Indian Affairs should be specially consulted before giving or refusing assent to Acts of this character. Provision, however, was made for the avoidance of delay in case of a grave emergency by giving the

Governor-General power himself to assent to the Act subject to subsequent disallowance, if desired, by His Majesty in Council.

(37). Power to prevent undesirable legislation.

A special power was also given to the Governor for preventing legislative proposals which were likely to imperil public safety or maintenance of order. Clause 4 of section 11 of the Act provided that where any bill had been introduced or was proposed to be introduced, or any amendment to a bill was moved or proposed to be moved, the Governor might certify that the bill or any clause of it or the amendment affected the safety or tranquillity of his province or of another province, and might direct that no further proceedings should be taken by the Council in relation to such bill, clause, or amendment, and effect was to be given to any such direction.

(38). Council's powers in respect of the budget.

The provincial budget was annually to be submitted to the vote of the Legislative Council, subject to the exemption from this process of certain charges of a special or recurring character, namely, contributions payable by the Local Government to the Governor-General in Council, interest and sinking fund charges on loans, expenditure of which the amount was prescribed by any law, salaries and pensions of persons appointed by or with the approval of His Majesty

or by the Secretary of State in Council, and salaries of the judges of the High Court of the Province and of the Advocate-General. Where the Council reduced a provision for a reserved subject which the Local Government considered essential to the proper administration of the subject concerned, the Governor was given the power of restoration. The Committee wished it to be perfectly clear that this power was real and that its exercise should not be regarded as unusual and arbitrary. "Unless the Governor", the Report stated, "has the right to secure supplies for those services for which he remains responsible to Parliament, that responsibility cannot justly be fastened upon him." But except so far as the Governor exercised this power the budget was to be altered in accordance with the resolutions carried in Council. The Governor was also empowered in cases of emergency to authorise such expenditure as might, in his opinion, be necessary for the safety or tranquillity of the province or for the carrying on of any department. No proposal for the appropriation of any revenues or moneys for any purpose was to be made except on the recommendation of the Governor, communicated to the Council. This was in accordance with the principle of British parliamentary practice which debars private members from moving amendments which would have the effect of increasing the amount of any proposed appropriation.

(39). Distribution of revenues between the two halves of Government.

It was contemplated that the provincial estimates comprising the expenditure required, both for reserved and transferred subjects, will be presented as a whole, but that the Governor in Council will be responsible for the estimates so far as they relate to the reserved subjects and the Governor and Ministers so far as they relate to transferred subjects. The Joint Select Committee suggested, that "whenever the necessity for new taxation arises, as arise it must, the questions involved should be thrashed out by both parts of the Government in consultation together, and it is especially important that in this matter both parts of the Government should, if possible, be in agreement when the proposals of the Government are laid before the Legislature." Provision was to be made by rules under the Act for the allocation of revenues to Local Governments and for the distribution of such revenues between the two parts of the Provincial Governments. Much attention was given by the Joint Committee to the difficult question of the principle on which the provincial revenues and balances were to be distributed. They were confident that the problem could readily be solved by the simple process of common sense and reasonable give and take, but rules governing the allocation should be framed so as to make the existence of such friction impossible. The Committee did not endorse the suggestion that certain sources of revenue should be allocated to

reserved, and certain sources to transferred subjects, but they recommended that the Governor should allocate a definite proportion of the revenue to reserved and transferred subjects, and similarly a proportion, though not necessarily the same fraction, of the balances.

(40). The Indian Legislature.

The Indian Legislature was to consist of two chambers, the Council of State and the Legislative Assembly. The Montague-Chelmsford Report had suggested that the latter should be not only a revising authority upon all Indian legislation but also supreme legislative authority on all crucial questions. Government measures were to be carried through the Council of State without reference to the Legislative Assembly in cases where the latter body could not be got to assent to laws which the Governor-General considered essential for the discharge of his reponsibility. This was embodied in the bill as originally drafted but as the Joint Select Committee did not accept the device a provision was made that a bill was not to be deemed to have passed until agreed to by both the chambers and the Governor-General.

The Council of State consisted of sixty members, of whom not more than the twenty were to be officials. In this way the statute guaranteed a non-official majority but the rules made under the Act went further and established a small elected majority. This was a substantial improvement over the original scheme of reforms

which suggested that half the number of members should be officials and there should be a nominated majority.

The Legislative Assembly consisted of one hundred and forty members of which one hundred were to be elected and of the remaining forty not more than twenty-six officials. The Governor-General was not a member of either chamber but his right to address a chamber and for that purpose require the attendance of its members was recognised. No person could be a member of both the chambers and if elected to both he had to vacate his seat in one. Even a member of the Governor-General's Executive Council could be appointed member of one chamber only though he was given the right of attending and addressing both the chambers. Officials were not qualified for election and if a non-official member accepted office in the service of the Crown his seat in the legislature became vacant.

The Governor-General was empowered to appoint from among the members of the Council of State its President and other persons to preside in such circumstances as he might direct. The President of the Legislative Assembly for the first four years was to be appointed by the Governor-General but thereafter he was to be elected by the Assembly from its members with approval of the Governor-General. Special importance was attached by the Joint Select Committee to the presidency of the Assembly. The Report stated : "he should be qualified by experience in the House of Commons and a knowledge

of Parliamentary procedure, precedents, and conventions. He should be the guide and adviser of presidents of the Provincial Councils and he should be chosen with a view to the influence which it is hoped he would have on the whole history of parliamentary procedure in India." Subject to the approval of the Governor-General the Assembly was to elect its Deputy President to preside at its meeting in the absence of the President. A President and Deputy President were to receive such salaries as might be determined in the case of an appointed President by the Governor-General and in the case of an elected President or Deputy President by an Act of the Legislature.

The normal duration of the Council of State was five years and of the Legislative Assembly three years from its first meeting but in special circumstances the Governor-General might dissolve a chamber earlier or extend its duration as he thought fit.

Section 25 of the Act provided that budget shall annually be laid in the form of a statement before both the chambers and submitted to the vote of the Legislative Assembly in the form of demands for grants. Certain charges of a special and recurring character were not to be open to discussion or vote. *viz.*, interest and sinking fund charges on loans, expenditure of which the amount was prescribed by any law, salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council, salaries of Chief Commissioners and Judicial Commissioners, and expenditure classified by the order of the Governor-General in Council

as ecclesiastical, political, and defence. No proposal for the appropriation of any revenues was to be made except on recommendation of the Governor-General. A power was reserved to treat as sanctioned any expenditure, refused by the Assembly, which the Governor-General considered as essential for the discharge of his responsibilities. The Joint Select Committee wished it to "be understood from the beginning that this power of the Governor-General in Council is real, and is meant to be used if and when necessary." The Governor-General was further empowered, in cases of emergency, to authorise such expenditure as might, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

(41). The Governor-General's powers to secure essential and prevent undesirable legislation.

The Joint Committee, for the same reasons which prompted them to oppose the Grand Committee procedure in provinces, rejected the proposal in the Bill which would have enabled the Governor-General to refer to the Council of State, and obtain by virtue of official majority in that body, any legislation which the Assembly refused to accept but which he regarded as essential to the discharge of his duties. In place of this concealed responsibility the Act, on the recommendation of the Committee, provided that where either chamber fails to pass a Bill the Governor-General might certify the same as essential for the interests of British India and thereupon the Bill

on signature by the Governer-General became an Act in the form recommended by the Governor-General. In order that Parliament might be fully apprised of the position and of the considerations which in a given case led to this exceptional procedure, an Act passed in this manner was required to be laid before both Houses of Parliament, and was not to have effect until it had received His Majesty's assent. In a state of emergency, however, the Governor-General was empowered to direct that the Act shall come into operation forthwith, subject to disallowance by His Majesty in Council. The Governor-General was also authorised to prevent either chamber from passing, discussing, or even introducing a Bill, clause, or amendment of it which in his opinion affected the safety or tranquillity of any part of British India. The provisions of section 67 of the Government of India Act, 1915, which required that measures relating to public debt or revenues of India, religious uses of British subjects, army, navy and foreign relations shall not be introduced in the legislature without the previous sanction of the Governor-General were repeated and extended to measures regulating any provincial subject, repealing or amending any Act of a local legislature or an Act or ordinance made by the Governor-General.

(42). Composition of the Governor-General's Executive Council and power to appoint Council Secretaries.

The Act also made some important changes in the composition of the Governor-General's

Executive Council. Under the Government of India Act, 1915, it had two classes of members, ordinary and extraordinary. The ordinary members were six, of which at least three were required to be persons who at the time of their appointment had been in service of the Crown in India for ten years, and one must be a barrister. The extraordinary members were the Commander-in-Chief, and the Governor if the Council happened to hold its meeting in the province under a Governor. The Act of 1919 removed the statutary limit on the number of members and provided that the three members with service qualifications may be public servants or *ex-public servants*; the lawyer member may be a barrister or *pleader of the High Court*; and Governor shall not be an extraordinary member of the Council. The Joint Committee recommended that not less than three members of the Council should be Indians and that as time goes on the members drawn from ranks of the public servants will more likely be of Indian rather than of European extraction. The Governor-General was also authorised to appoint, at his discretion, from among the members of the Legislative Assembly, Council Secretaries who were to hold office during his pleasure, and discharge such duties in assisting the members of his Executive Council as he might assign them. The Council Secretaries were to be paid such salary as was provided by the Indian legislature.

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(43). Political charges of the India Office placed on the British budget.

It had long been complained in this country that the British Parliament had ceased to exercise more than a nominal control over the Government of India and one of the expedients suggested to remedy this defect was to transfer the salary of the Secretary of State for India to the British budget so that the Parliament might have the opportunity of discussing the Indian questions when voting his pay. Section 30 of the Act, consequently, provided :—

"The salary of the Secretary of State, the salaries of his Under-Secretaries and any other expenses of his department may, notwithstanding anything in the principal Act (of 1915), instead of being paid out of the revenues of India, be paid out of moneys provided by Parliament, and *the salary of the Secretary of State shall be so paid.*"

The Joint Committee suggested that all charges of the India Office, not being "agency" charges, should be paid out of moneys to be provided by Parliament.

(44). The Council of India.

The Congress-League proposal for the abolition of the Council of India was rejected. The reason given by the Committee in their Report was as follows :—

"They think that, at any rate for some time to come, it will be absolutely necessary that the

Secretary of State should be advised by persons of Indian experience and they are convinced that, if no such Council existed, the Secretary of State would have to form an informal one if not a formal one. Therefore, they think it much better to continue a body which has all the advantages behind it of tradition and authority."

The constitution of the Council was modified in several particulars. The maximum and minimum number of councillors was fixed at twelve and eight instead of fourteen and ten respectively. Instead of nine, half the number of members were required to have served or resided in India for ten years previous to their appointment. To ensure a continuous flow of fresh experience from India and to relieve Indian members from the necessity of spending too long a period in England the term of office was reduced from seven to five years. The Council was to hold meeting at least once a month. The old procedure with regard to correspondence between the Secretary of State and India, embodied in sections eleven, twelve, thirteen, and fourteen of the Government of India Act, 1915, was repealed and such communications were directed, in future, to be carried on in the manner prescribed by order of the Secretary of State in Council.

(45). Appointment of a High Commissioner for India.

Hitherto the Secretary of State in Council had conducted all the business transacted in the United Kingdom in relation to Indian Government

The Act provided for the appointment of a High Commissioner for India who was to perform functions of agency, as distinguished from political functions analogous to those performed in the offices of the High Commissioners of the Dominions. In matters committed to his charge he was to take instructions directly from the Government of India. His appointment, powers, and duties were to be determined by His Majesty by Order in Council. The constitutional importance of the appointment lay in its indication that India was becoming in an increasing degree self-dependent.

(46). The Civil Services.

Part IV of the Act related to the Civil Services in India. It was provided that no person in the Civil Service could be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council was given the power to reinstate any person in that service who had been dismissed. The Joint Committee observed in their report as follows :—

" In the provinces, officers serving a reserved deparment will be controlled by the Governor in Council, and in transferred department by the Governor acting with Ministers, but in both cases alike the personal concurrence of the Governor should be regarded as essential in the case of all orders of any importance prejudicially affecting the position or prospects of officers appointed by the Secretary of State."

The Secretary of State was empowered to make rules with the concurrence of majority of votes at a meeting of the Council of India, for appointment to the Indian Civil Service of persons domiciled in India notwithstanding that they did not satisfy the examination test prescribed by Section 97 of the Government of India Act, 1915. There was also to be established in India a Public Service Commission which was to discharge in regard to recruitment and control of the Public Services such functions as might be assigned to it by the Secretary of State in Council.

(47). Appointment of a Statutary Commission.

The constitution established by the Act was meant only for a transitional stage. "Our idea is" the Montague-Chelmsford Report stated, "that as the popular element of the Government acquires experience, and learns to discharge its duties efficiently further powers should be entrusted to it. The process in fact will be one of adding to the transferred subjects and of taking from the reserved ones, until such time as with the entire disappearance of the reserved subjects the need for an official element in the Government, or of procedure by the Grand Committees, vanishes, and thus the goal of complete responsibility is attained in the provinces."

In order to assure and regulate this process of constitutional development the Act provided for the appointment of a statutary Commission, at the expiration of ten years from the passing of

the Act which was to inquire into the working of the system of government, the growth of education, the development of representative institutions and to report to what extent it was desirable to extend or modify the principle of responsible government in British India or to establish bicameral system in the provinces. The Joint Select Committee suggested in this connection as follows : –

"The Committee are of opinion that the Statutary Commission should not be appointed until the expiration of ten years, and that no changes of substance in the constitution whether in the franchise or in the lists of reserved and transferred subjects or otherwise, should be made in the interval. The Commission will be fully empowered to examine the working of the constitutions in all their details in the provinces, and to advise whether the time has come for full responsible government in each province, or in the alternative whether and to what extent the powers of self-government already granted should be extended or modified or restricted. It should be clearly understood, also, that the Commission should be empowered to examine into the working of the Government of India and to advise in respect of the Government of India no less than in respect of the Provincial Governments."

(48). Rules under the Act.

As in the case of earlier legislation of Parliament relating to the Government of India the Act

of 1919 simply outlined the main features of constitutional changes leaving the detailed arrangements to be worked out in the form of rules. It was the only plan which could secure elasticity and make possible the introduction of changes in light of experience of local conditions and requirements without resort to the slow and difficult process of further parliamentary legislation. The reports of the Southborough Committees on Franchise and Functions together with the two despatches received from the Government of India upon them were laid before the Joint Select Committee who in some important particulars made their own suggestions.

Rules under the Act constituted, as the Joint Committee rightly observed, " a subsidiary legislation of sufficient moment." With regard to some of these matters the Act made special provisions as to the authority by which the rules were to be made. In cases where no special provision existed rules could be framed in either of the two ways—(*a*) by the ordinary process of laying the rules on the table of Parliament for a certain number of days, and (*b*) by the more formal procedure by positive resolution of Parliament The Committee observed :—

" It must be for the Secretary of State to decide which of the many rules that will fall to be drafted by the Government of India can be sufficiently dealt with by the ordinary process of laying on the table of Parliament for a certain number of days. In deciding this point, however, he may naturally have recourse to the advice of the Standing Committee, should it happen to

be in session, and obtain their assistance in determining which rules deserved to be made the subject of the more formal procedure by positive resolution."

Under the first of these two methods rules were to be made by the Governor-General in Council, with the sanction of the Secretary of State in Council and laid before both Houses of Parliament as soon as may be *after they were made*. If either House of Parliament presented an Address to His Majesty against any such rule, within 30 days after it had been laid before it, such rule might be annulled by His Majesty in Council but without prejudice to the validity of anything previously done thereunder. Under the second method rules were to be laid in draft before both Houses of Parliament, and *were not to be made* unless both the Houses by resolution approved the draft without modifications or with such modifications to which both Houses agreed.

CHAPTER IV.

THE REFORMED CONSTITUTION OF BRITISH INDIA.*

THE GOVERNMENT OF INDIA ACT.

British India has a written statutary constitution embodied in the Government of India Act. The Act containing the reform proposals was called the Government of India Act, 1919. The principal Act of 1915 as amended by the Acts of 1915 and 1919 was described the Government of India Act. The preamble to the Act of 1919 defines the goal of British policy in India and lays down the principles for its realisation.†

THE HOME GOVERNMENT.

The "Home Government" means the highest authorities in England exercising control over the Central and Local Governments in British India. These superior authorities are the Parliament, the Crown, the Secretary of State, and the Council of India.

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*Based on the Government of India Act, the rules made thereunder and the report of Joint Select Committee on the Government of India Bill, 1919.

† See (24), Chapter III.

(1). The Parliament.

Parliamentary control over Indian affairs is of three kinds—legislative, financial, and administrative.

(*i*). *Legislative Control* :—

(*a*) The Parliament being sovereign law-making body for the whole of the British Empire, not only it may make new laws for this country but may also repeal or alter any laws made by any authority in British India.

(*b*) The powers of Indian and Provincial Legislatures are derived from and limited by Parliamentary statutes.

(*c*) The constitution of British India is determined by Parliamentary legislation and any material change in it would involve Parliamentary sanction.

(*ii*) *Financial Control* :—

(*a*) Section 22 of the Act provides that except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other urgent and sudden necessity, the revenues of India shall not, *without the consent of both Houses of Parliament*, be applicable to defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces.

(*b*) Section 26 (1) provides that the Secretary of State in Council shall in the month of May every year, lay before both Houses of Parliament the accounts relating to India and a

statement exhibiting the moral and material progress and condition of India.

(*c*) Section 27 (7) requires the auditor of Indian Accounts in the United Kingdom to lay all his reports before both Houses of Parliament with the accounts of the year to which the reports relate.

(*d*) By section 17 (1) any order of His Majesty in Council making an addition to the establishment of the Secretary of State in Council or to the salaries of the persons on that establishment has to be laid before both Houses of Parliament.

(*iii*). *Administrative Control* :—

This is exercised by means of motions for papers, resolutions, criticisms, questions etc. The Secretary of State is responsible to Parliament for all matters relating to the administration of India. In addition to these general powers the Parliament has reserved to itself the following statutary powers :-

(*a*) The reasons for re-appointing any member of the Council of India for a second term of five years have to be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament.

(*b*) Upon an address of both Houses of Parliament any member of the Council of India may be removed by His Majesty from his office.

(*c*) Parliament provides the money out of the British revenues for the salary of the Secretary of State and other expenses of his department.

(*d*) All orders for commencing hostilities by His Majesty's forces in India are required to be communicated to both Houses of Parliament.

(*e*) Every Act passed by the certifying power of the Governor-General or a Governor shall be laid before both Houses of Parliament.

(*f*) A draft of any notification creating an executive council in a province under a Lieutenant-Governor must be laid before both the Houses and if an address is presented to His Majesty by either House against the draft no further proceedings shall be taken thereon.

(*g*) Any resolution issued by the Governor-General in Council defining and limiting the qualifications of persons outside the Indian Civil Service who may be appointed to posts reserved to that Service, shall not have force until it has been laid for thirty days before both the Houses

(*h*) In selecting the persons to act on the Statutary Commission the Secretary of State has to obtain concurrence of Parliament.

(*i*) Under some sections of the Act the rules framed are required to be laid before both Houses of Parliament as soon as may be after they are made, and under some other sections rules are not finally made until both Houses of Parliament have first approved by resolution the draft rules.

(2). The Crown.

Under the Royal Titles Act 1876 Queen Victoria by proclamation added to her style and titles the words "Indie Imperatrix" or Empress

of India and thenceforth "Emperor of India" formed part of the title of her successors. All the territories for the time being vested in His Majesty in India are governed by and in the name of the King, Emperor of India, and the revenues of India are received for and in the name of His Majesty. The Government of India Act expressly vests in the Crown the following statutary powers over Indian Administration :—

(*a*) His Majesty, by warrant under the Royal Sign Manual, appoints the Governor-General and the members of his Executive Council, the Governors of the three Presidencies, the Governors of the five provinces after consultation with the Governor-General, members of the Governors' Executive Councils, and the Advocates-General of the three Presidencies. By warrant under the Royal Sign Manual counter-signed by the Chancellor of the Exchequer he appoints an Auditor of Indian Accounts in the United Kingdom and grants pensions and gratuities to any member on the establishment of the Secretary of State in Council. By warrant countersigned by the Secretary of State His Majesty grants pensions to Bishops out of the revenues of India.

(*b*) His Majesty may, by Letters Patent establish a High Court of Judicature in any territory in British India. The Crown also appoints the Chief Justices and other Judges of High Courts who hold office during His Majesty's pleasure.

(*c*) Sanction of the Crown is necessary for the constitution of a new Governor's province or a new province under a Lieutenant-Governor, or transferring a district from one province to

another, or for constituting a new local legislature.

(*d*) The King's approval is necessary to the appointment of Lieutenant-Governor and members of his Executive Council.

(*e*) His Majesty's assent is required before an Act passed by the certifying power of the Governor-General or of a Governor can have effect.

(*f*) Every member of the Indian Civil Service holds office during His Majesty's pleasure.

(3). The Secretary of State.

Being the constitutional adviser of His Majesty in all matters relating to India the authority vested in the Crown is exercised in England by the Secretary of State. Though there are now in England five "principal Secretaries of State" all in theory occupy the same office and each, save for a few statutary restrictions, is legally competent to exercise the functions of any or all of them. Thus during the absence from England of Mr. E. S. Montague in winter 1918 despatches to India requiring signatures of the Secretary of State were signed by Mr. Long, another Secretary of State. The Secretary of State for India is a member of Parliament, of the Cabinet, and of the Privy Council. As a member of the Cabinet he is responsible to and represents the authority of Parliament He is assisted by two Under-Secretaries, one permanent, who is a member of the Civil Service, and the other parliamentary, who changes with the ministry. His

position differs from that of the colonial Secretary in two respects.

(1) He has a Council to advise and correct him.

(2) Unlike the Colonial Secretary he is not merely the constitutional adviser of the Crown but is also vested by statute with the powers of superintendence, direction, and control over all operations and concerns which relate to the Government of India or its revenues.

Ever since 1858 the costs of India Office had been paid out of the revenues of India. The Government of India Act now makes it compulsory on Parliament to provide for the salary of the Secretary of State out of British revenues ; and in the case of other expenses of his Department it is optional on Parliament to pay them out of Indian or British revenues. The Joint Select Committee on the Government of India Bill recommended that "*all* charges of the India Office, not being agency charges, should be paid out of moneys to be provided by Parliament."

The following are the powers and duties with which the Secretary of State is vested by the Government of India Act :—

1. Subject to the provisions of the Act and the rules made thereunder he superintends, directs, and controls all acts, operations, and concerns which relate to the government or revenue of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of and on the revenues of India.

2. In respect of the Council of India he is the President with power to vote ; may appoint

any member to be the Vice-President and any-time remove the person so appointed; fills up vacancies in the Council; may for special reasons reappoint any member whose term of office has expired; prescribes the quorum; directs the time for meetings of the Council; approves in writing all acts done at a meeting of the Council held in his absence; and may constitute committees for the more convenient transaction of business.

3. He may, if he thinks fit, by order revoke or suspend, for such period as he may direct, the appointment of a Council for any or all of the Governors' provinces.

4. Subject to the provisions of the Act the Governor-General in Council must pay due obedience to all such orders as he may receive from the Secretary of State.

5. His approval is necessary for taking any part of British India under the immediate authority and management of the Governor-General in Council.

6. His sanction is necessary if the period between the dissolution of either House of the Indian Legislature or a Governor's Legislative Council and its next session is prolonged beyond six months.

7. Subject to the rules prescribed by the Secretary of State in Council, the Secretary of State may make appointments to the Indian Civil Service of persons domiciled in India.

(4). The Council of India.

(*a*). *Its composition.*—As created by the Government of India Act, 1858, the Council origi-

nally consisted of fifteen members of whom eight were appointed by the Crown and seven elected by the Directors of the East India Company. The Council now consists of such number of members not less than eight and not more than twelve as the Secretary of State may determine, provided that the Council as constituted at the time of the passing of the Government of India Act shall not be affected by this provision but no fresh appointment or reappointment thereto shall be made in excess of the prescribed maximum. At least one-half of the members must be persons who have served or resided in India for at least ten years, and have not last left India more than five years before the date of their appointment. The right of filling vacancies rests with the Secretary of State. The term of office is five years provided that the Secretary of State may, for special reasons of public advantage, reappoint for a further term of five years any member of the Council whose term has expired, but in such a case the reasons for reappointment are required to be set forth in a minute and laid before both Houses of Parliament. A member may resign office or be removed by His Majesty on an address of both Houses of Parliament. Each member is paid an annual salary of twelve hundred pounds with additional subsistence allowance of six hundred pounds where the member was at the time of his appointment domiciled in India. To prevent them from taking an active share in party politics it is provided that members of the Council of India cannot sit or vote in Parliament.

Till 1908 there was no Indian member on the Council. In that year two Indians were appointed. In 1917 the number was raised to three. The Joint Select Committee which reported on the Government of India Bill, 1919, advised further increase of the Indian element.

(*b*). *Duties and powers of the Council.* – Subject to the directions of the Secretary of State and to the provisions of the Act the Council of India conducts the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India.

There are large powers which are required to be exercised by the Secretary of State *in* Council. These may be summarised as follows :—

1. The Secretary of State *in* Council may appoint any member of the Council to be Vice-President thereof.

2. The Secretary of State *in* Council may make rules prescribing the procedure for the sending of orders and communications to India; regulating and restricting the exercise of the powers of superintendence, direction, and control, vested in the Secretary of State and the Secretary of State in Council ; enabling the Secretary of State to make appointments to the Indian Civil Service of persons domiciled in India; prescribing restrictions for the admission to the Indian Civil Service of a British subject who or whose father or mother was not born within His Majesty's dominions ; for admission to the Civil Service ; and regulating the classification of the Civil

Service in India, the methods of their recruitment and the condition of service.

3. The Secretary of State *in* Council annually lays before Parliament the accounts relating to India and the statement exhibiting the moral and material progress and condition of India.

4. The Secretary of State *in* Council may sue and be sued as a body corporate.

5, The Secretary of State *in* Council may by order suspend all or any of the powers which the Governor-General may during absence from his Executive Council exercise under Section 43 (1) (2) and (3).

6. Rules authorising the revocation or suspension of the transfer of any subject can only be made with the sanction of the Secretary of State *in* Council.

7. The Secretary of State *in* Council determines the number of members, not exceeding four, of the Governor's Executive Council.

8. Approval of Secretary of State *in* Council is necessary for the creation of a Council in any Province under a Lieutenant-Governor.

9. The Secretary of State *in* Council may by resolution apply Section 71 of the Act to any part of British India enabling laws to be made by the Governor-General in Council in the form of regulations, and may withdraw the application of that section from any part to which it has been applied.

10. Previous approval of the Secretary of State *in* Council is necessary for the Indian Legislature to make a law, (*a*) empowering any

Court other than a High Court to sentence to death, and (*b*) abolishing a High Court.

11. Rules made by the Governor-General in Council for the membership of the local legislatures require the approval of the Secretary of State *in* Council.

(*c*). *Method of transacting business.*—(*i*) *Meetings of the Council.*—All powers required to be exercised by the Secretary of State in Conncil are exercised at meetings of the Council. The quorum is fixed by general directions of the Secretary of State. The Council may act notwithstanding any vacancy in their number. The Secretary of State, or, in his absence the Vice-president, if present, or, in the absence of both of them, one of the members of the Council, chosen by the members present at the meeting, presides. The Vice-president is appointed and removed by the Secretary of State. Meetings of the Council are convened and held as and when the Secretary of State directs, but one such meeting at least must be held in every month.

In the case of a difference of opinion on any question at a meeting of the Council, at which the Secretary of State is present, the determination of the Secretary of State is final. If the act is done at a meeting of the council in the absence of the secretary of state it requires his approval in writing. In either case the Secretary of State may require that his opinion and the reasons for it be entered in the minutes of the proceedings, and any member of the Council present at the meeting may also require that his opinion, and

any reasons for it that he has stated at the meeting, be entered in the like manner.

There are certain matters, however, in respect of which the Secretary of State is *bound to act with the majority of his Council.* These are—

1. Grant or appropriation of any part of the revenues, or of any other property coming into the possession of the Secretary of State in council by virtue of the Act of 1858 or the Government of India Act.

2. Selling or mortgaging any real or personal estate for the time being vested in His Majesty for the purposes of the Government of India.

3. Making any contract for the purposes of the Government of India Act.

4. An order affecting salaries of members of the Governor-General's Executive Council.

5. Making rules as to the absence on leave or special duty of persons in the service of the Crown in India.

6. Making rules for distributing between the several authorities in India the power of making appointments to and promotions in offices under the Crown.

7. Sanctioning any rules prescribed by the Governor-General in Council regulating appointments to offices in the Indian Civil Service of persons domiciled in British India.

8. Making provisional appointments in the Civil Service of persons not being members of that service.

(*ii*) *Committees of Council*—The Secretary of State may constitute committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively.

(*iii*). *Orders and Communications.*—The procedure for sending of orders and communications to India and in general for correspondence between the Secretary of State and the Governor-General in Council or any Local Government is such as may be prescribed by order of the Secretary of State in Council.

(5). Establishment of the Secretary of State in Council.

The original members of the establishment were taken over from the East India House and the Board of Control. Their number and salaries are now fixed by Order of His Majesty in Council. Appointments to and promotions in the establishment are made by the Secretary of State in Council. No addition may be made to the establishment or to the salaries of persons on it except by Order of His Majesty in Council.

(6). Relaxation of control of the Secretary of State over the Government of India.

To give effect to the purposes of the Government of India Act, 1919, namely, the gradual development of self-governing institutions and progressive realisation of responsible government in British India as an integral part of the Empire

Sec. 19-A provides for the making of rules regulating and restricting the exercise of powers of superintendence, direction, and control vested in the Secretary of State and the Secretary of State in Council. The procedure prescribed is as follows:—

(*a*) When the rules relate to transferred subjects they are made by the Secretary of State in Council. As soon as may be, after they are made, they are required to be laid before both Houses of Parliament and if an address is presented to His Majesty by either House praying that the rules or any of them may be annulled His Majesty in Council may annul the same but without prejudice to the validity of anything already done thereunder.

(*b*) Where the rules relate to non-transferred subjects they are required to be laid in draft before both the Houses of Parliament and Secretary of State in Council then makes the rules in the form in which they have been approved.

By the rules made under this authority the powers of superintendence, etc., vesting in the Secretary of State and the Secretary of State in Council are, in relation to transferred subjects, exercised only for the following purposes :—

(*a*) to safeguard the administration of central subjects ;

(*b*) to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at an agreement ;

(*c*) to safeguard Imperial interests.

(*d*) to determine the position of the Government of India in respect of questions

arising between India and other parts of the British Empire;

(e) to safeguard the due exercise and performance of any powers and duties possessed by or imposed on the Secretary of State or the Secretary of State in Council in connection with or for the purposes of Sections 29 (A), 30 (A), part VII-A, or any rules made by or with the sanction of the Secretary of State in Council.

No statutary rules exist for relaxation of control over the administration of reserved subjects. The Joint Select Committee on the Government of India Bill observed: "No statutary divestment of control, except over the transferred field, is either necessary or desirable. It is open to the Secretary of State to entrust large powers, administrative and financial, to the Governor-General in Council and the Provincial Governors in Council, and he will no doubt be largely influenced in deciding whether or not to require reference to himself in any given case, or whether to interpose his orders when reference has been made, by the attitude of provincial public opinion as expressed by the Legislative Council. But these matters cannot be regulated by statutary rules, and any authority which the Secretary of State may decide to pass on to the official Governments in India will be a mere delegation of his own authority and responsibility, for the exercise of which in relation to central and reserved subjects he must remain accountable to Parliament."

(7). Securities for proper expenditure of revenues.

1. By section 20 (1) of the Act the revenues of India can be applied for the purposes of the Government of India alone.

2. The expenditure both in British India and elsewhere is subject to the control of the Secretary of State in Council and no grant or appropriation of any part of those revenues, can be made without the concurrence of a majority votes at a meeting of the Council of India.

3. Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India cannot, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty's forces.

4. The Secretary of State in Council is required annually to lay before both Houses of Parliament :—

(*a*) an account, for the financial year preceeding that last completed, of the annual produce of the revenues of India, and of all the annual receipts and disbursements at home and abroad ;

(*b*) the latest estimate of the same for the financial year last completed ;

(*c*) accounts of all stocks, loans, debts and liabilities chargeable on the revenues of India, at home and abroad, at the commencement and close of the financial year preceding that last completed, the loans, debts, and liabilities raised

or incurred within that year, the amounts paid off or discharged during that year, the rates of interest borne by those loans, debts and liabilities respectively, and the annual amount of that interest;

(*d*) a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof;

(*e*) a statement prepared from detailed reports from each province in such form as best exhibits the moral and material progress and condition of India.

5. His Majesty may by warrant under His Royal Sign Manual countersigned by the Chancellor of the Exchequer appoint an Auditor of the Accounts of the Secretary of State in Council to examine and audit the accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property applicable for purposes of the Government of India. The Auditor submits his reports to the Secretary of the State in Council and also lays them before both Houses of Parliament.

(8). Powers of the Secretary of State in Council in dealing with property.

The Secretary of State may, with the concurrence of a majority of votes at a meeting of the Council of India :—

(*a*) sell and dispose of any real or personal estate for the time being vested in His Majesty for the purposes of the Government of India;

(*b*) raise money on any such estate by way of mortgage or otherwise ;

(*c*) purchase and acquire any property; and

(*d*) make the proper assurances for any of those purposes.

An assurance relating to real estate made by the Secretary of State in Council may be made under the hands and seals of two members of the Council of India.

(9). Contracts of the Secretary of State.

Subject to the provisions of the Government of India Act regarding the appointment of a High Commissioner for India the Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council, enter into a contract. Where a contract so made is required by law to be under seal it may be made, varied or discharged under the hands and seals of two members of the Council of India. The benefit and liability of every contract passes to the Secretary of State in Council.

The powers vested in the Secretary of State in Council in respect of property and contracts may be exercised in British India on his behalf by the Governor-General in Council and any Local Government subject to such provisions or restrictions as the Secretary of State in Council may prescribe. A Local Government may on behalf and in the name of the Secretary of State in Council raise money on the security of revenues allocated to it under the Act and make proper assurances for that purpose.

(10). Rights and liabilities of the Secretary of State in Council.

The Secretary of State in Council may sue and be sued as a body corporate. Neither the the Secretary of State nor any member of the Council is personally liable in respect of any assurance or contract made by or on behalf of the Secretary of State in Council, or any other liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity, nor in respect of any contract, covenant or engagement of the East India Company; nor is any person executing any assurance or contract on behalf of the Secretary of State in Council personally liable in respect thereof. All such liabilities, and all costs and damages are borne by the revenues of India.

(11). High Commissioner for India.

Section 29-A empowers His Majesty to appoint by Order in Council a High Commissioner for India in the United Kingdom. This provision was made to carry out a recommendation of Lord Crewe's Committee which was as follows :—

"We are satisfied that the time has come for demarcation between the agency work of the India Office and its political and administrative functions, and that the step would commend itself to all classes of opinion in India as marking a stage towards full Dominion status. Accordingly we recommend that preliminary action should be taken with a view to the transfer of all agency work to

a High Commissioner for India or similar Indian Governmental representative in London. We suggest that, in the first instance, communications should be entered into with the Government of India with the object of transferring to the direct control of that Government the Stores Department and also the Accountant-General's Department (subject to any necessary reservations, including the retention of work connected with the higher finance), and that the Government of India should at the same time be invited to make suggestions for the transfer to their control of any other agency business, such as that transacted by the Indian Students Department."

His Majesty may, in making appointment, provide by Order in Council for (*a*) the pay, pensions, powers, duties, and conditions of employment of the High Commissioner and of his assistants; (*b*) delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of State in Council in relation to making of contracts, and (*c*) the conditions under which he shall act on behalf of the Governor-General in Council or any Local Government.

To give effect to these provisions an Order in Council was issued on 13th August 1922. Under this Order the Governor-General in Council is authorised from time to time to appoint with the approval of the Secretary of State in Council some person to be the High Commissioner for India in the United Kingdom. He holds office in the first instance for five years but is eligible for the reappointment. His salary is three thousand

pounds a year payable out of the revenues of India. In the exercise of his powers and performance of his duties the High Commissioner is subject to the direction and control of the Governor-General in Council. He acts as the agent of the Governor-General in Council in the United Kingdom, and on behalf of Local Governments in India for such purposes and in such cases as the Governor-General in Council prescribes. He also conducts any business relating to Government of India hitherto conducted under the direction of the Secretary of State in Council which may be assigned to him by that authority. So far as may be necessary the High Commissioner has the power to make, vary, and discharge contracts on behalf of the Secretary of State in Council. He is required to lay before the Auditor of the Accounts of the Secretary of State in Council, accounts of the receipts, expenditure and disposal in the United Kingdom of all money, stores, and property. As soon as may be he is to transmit to the Governor-General in Council a copy of any report made by the Auditor on such accounts.

THE GOVERNMENT OF INDIA.

(1). Its relation with the Home Government.

Subject to the provisions of the Government of India Act and rules made thereunder the superintendence, direction, and control of the Civil and Military Government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may

receive from the Secretary of State. The original interpretation put upon this provision was that the Government of India should have the right of initiative and the Secretary of State the right of veto. In 1870 the Duke of Argyll claimed for the Home Government the power of initiative as well as the power of veto and described the Government of India as only its executive officers. The same attitude was taken up by Lord Salisbury in 1874 as the Secretary of State for India. An interesting controversy ensued between Lord Salisbury and Lord Northbrook, the Viceroy. Lord Salisbury's idea was to conduct the Government of India to a very large extent by private correspondence between the Secretary of State and the Viceroy. Lord Northbrook's general view was the very opposite of this. He recognised the subordinate position of the Viceroy but maintained that Parliament had conferred by statute certain definite powers on the Governor-General and the Governor-General in Council which distinguished them from a mere subordinate official agency. He held in the second place that for a Secretary of State without Indian experience to overrule those who possess such experience would be an autocratic and extremely unwise proceeding. In short Lord Salisbury maintained the *doctrine of agency* while Lord Northbrook expressed his adherence to the *man on the spot* theory. Lord Morley, more recently, described the Government of India as an "agent of the Secretary of State." He held that the 'man on the spot theory' would lead to the result of placing the Government of

India in a position of total irresponsibility to the governed. To the 'doctrine of agency' two objections may be urged. In the first place it ignores that at least so far as the Governor-General is the Viceroy or the direct and personal representative of the King-Emperor, he cannot be properly described as an 'agent' of the Secretary of State. In the second place the doctrine ignores the fact that the control in India is vested not in the Governor-General as such but in the Governor-General in Council. In any case, now, with the constitutional reforms initiated in 1919 it is reasonably certain that future Governments of India will more and more identify themselves with Indian opinion which implies a lessening of the Whitehall control.

(2). The Governor-General.

The head of the Government of India is the Governor-General. He is appointed by His Majesty by Warrant under the Royal Sign Manual. In 1858 he was designated Viceroy, though his official name in Acts of Parliament continued to be the Governor-General of India. As Viceroy he is personal representative of the King Emperor and exercises some of the prerogatives belonging to the Crown, *e.g.* the granting of pardon, the right to make peace and war, entering into treaties with the Asiatic Powers, etc. He usually holds office for a term of five years, and gets a maximum annual salary of Rs. 2,56,000. The powers vested by the Government of India Act in the Governor-General as

distinguished from the Governor-General in Council may be summarised as follows :—

(*a*) *In relation to his Executive Council.* He appoints its Vice-president ; make rules and orders for the transaction of business ; may overrule the Council when he considers proper to do so ; may alone exercise all or any of the powers of the Governor-General in Council if authorised by the Governor-General in Council to do so ; and may during absence of the Council issue any orders to any Local Government and to any officer.

(*b*) *In respect of the Constitution of Indian Legislature.* He is one of the three constituent parts of the Legislature ; appoints the President of the Council of State and other persons to preside in such circumstances as he may direct ; appoints President of the Legislative Assembly for the first four years and his approval is necessary for the future elected Presidents ; may remove the appointed President from his post. His approval is necessary for the elected Deputy President of the Legislative Assembly ; his concurrence is required for removing the elected President and Deputy President from office by a vote of the Assembly ; determines the salary of the appointed President ; may address the Council of State and the Legislative Assembly and for that purpose call a meeting of either of them ; may dissolve either Chamber before expiry of the term or may extend the term of either Chamber when he thinks fit to do so ; appoints such times and places for holding the sessions of either Chamber as he thinks fit ; may prorogue

the session of either Chamber and may appoint from among the members of the Legislative Assembly Council Secretaries who hold office during his pleasure.

(c) *In respect of legislation.* His assent is necessary before a bill passed by the two Chambers of the Indian Legislature becomes an Act; his previous sanction is required for introducing certain classes of measures at a meeting of either Chamber; he may certify and direct that no further proceedings shall be taken in a Chamber in relation to a bill, clause, or amendment of it which he considers to be undesirable; where a Chamber refuses to pass a bill he may certify the same as essential and thereupon the bill becomes an Act on his signature; he may refer any matter for decision to a joint sitting of both Chambers; and he may return a bill for reconsideration by either Chamber. In cases of emergency he may make and promulgate ordinances for the period of not more than six months from their promulgation.

(d). In respect of Indian Budget. No proposal for the appropriation of any revenue or moneys for any purpose can be made except on the recommendation of the Governor-General. Where a question arises whether a proposed appropriation of revenue or moneys does or does not relate to the heads of expenditure which under Sec. 67-A (3) are not to be open to discussion by either Chamber, the decision of the Governor-General is final. Notwithstanding anything in Sec. 67-A the Governor-General has the power in cases of emergency to authorise such expenditure

as may, in his opinion, be necessary for the safety or tranquillity of British India or any parts thereof.

(*e*) *In relation to Provincial Governments.* He is consulted by His Majesty before appointing the five Provincial Governors; appoints Lieutenant-Governors and members of their Executive Councils with the approval of His Majesty; and may appoint a Deputy Governor to administer part of a Governor's province.

(*f*) *In respect of legislation by provincial Councils.* His previous sanction is necessary where a local Legislature makes or takes into consideration any law relating to subjects specified in Sec. 80-A (3). He may veto an Act passed by the local Legislature, or reserve the same for consideration of His Majesty's pleasure thereon.

(*g*) *Immunities from local jurisdiction.* Under Sec. 110 of the Act the Governor-General is not—

(*a*) subject to the original jurisdiction of any High Court by reason of anything counselled, ordered, or done by him in his public capacity only;

(*b*) liable to be arrested or imprisoned in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction;

(*c*) subject to the original criminal jurisdiction of any High Court in respect of any offence not being treason or felony.

(3). The Viceroy's Executive Council.

Members of the Council are appointed by His Majesty by Warrant under the Royal Sign Manual.

Their number is such as His Majesty thinks fit to appoint. At least three of them must be persons who have been for ten years in the service of the Crown in India, and one must be a Barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, or a pleader of the High Court of not less than ten years' standing. If any member of the Council (other than the Commander-in-chief for the time being of His Majesty's forces in India) is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties. If the Commander-in-Chief is appointed member his rank and precedence in the Council is next after the Governor-General. The Governor-General appoints a member of the Executive Council to be Vice-president thereof. There is no statutary guarantee for the presence of Indian element on the Council. The first occasion when an Indian member was appointed was in March 1909. Following the recommendation of the Joint Select Committee, with the inauguration of the reforms, the number of Indian members was raised to three.

(*b*). *Mode of transacting business.* The Governor-General may make rules and orders for the more convenient transaction of business. This power has facilitated the departmental division of work. Members of the Council hold charge of the Departments of Home Affairs, Revenue, Agriculture and Public Works, Education, Finance, Law, Railways, Commerce and Industry. Foreign Department is under the direct control of the Viceroy

(24). The preamble to the Government of India Act.

The modifications proposed by the Joint Select Committee were incorporated in the Bill which was finally passed into law in December 1919. The preamble to the Act laid down four important principles defining the constitutional ideal and the methods of its attainment. These were as follows :—

(1) "that it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire;

(2) "that progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken ;

(3) "that the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples.

(4) "that the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

(25). The Local Governments.

British India was previously divided into fifteen provinces of which three were Governorships in Council, four Lieutenant-Governorships, and eight Chief Commissionerships. The Act raised to the status of Governorships in Council five of the provinces formerly under Lieutenant-Governors and Chief Commissioners, thereby raising the total number of "Governor's provinces" to eight. These five new Governorships were the United Provinces, the Punjab, the Central Provinces, Behar and Orissa, and Assam. The provisions of Section 46 of the Government of India Act 1915 which required that the Governors of the three presidencies shall be appointed by His Majesty by warrant under the Royal Sign Manual were extended to the new Governors' provinces with the additional proviso that in the latter case appointments shall be made after consultation with the Governor-General.

(26). Dyarchy in the "Governors' provinces."

There was introduced in all the Governors' provinces a system of dyarchy * under which

* The scheme of dyarchy was attacked on the following grounds :—

1. It is without any precedent in its favour. 2. It is likely to give rise to friction 3. It divides the Government against itself. 4. It will promote racial discord between the European and Indian members of the Government if the former oppose policy of the latter. 5. It has all the elements that make for a division and prevent co-operation and associ-

the executive consisted of two parts, one comprising the Governor and his Executive Council and the other consisting of the Governor acting with the Ministers. Provincial subjects were to be classified into reserved and transferred. The Governor in Council was to control the reserved subjects; the Governor acting with the Ministers was to take charge of the transferred subjects. The transfer of a subject once made could not be revoked or suspended except with sanction of the Secretary of State in Council.

(27). Ministers.

Ministers were to be appointed by the Governor and hold office during the latter's pleasure. The Act did not impose any statutary limit on their numbers. The Report on Constitutional Reforms proposed that every Governor should have *one or more* Ministers but the Joint Committee of Parliament finally recommended that there should be *at least two* Ministers in every Governor's province. A member of the Governor's Executive Council or other official could not be a Minister and in no case was a Minister to hold office for a longer period than

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ation. 6. That inspite of the large powers transferred to the Ministers responsibility of any mistakes will, in the eyes of the masses, always rest on the British Government.

The scheme was defended on the ground that no alternative scheme had been suggested which could be put forward as consistent with the Announcement of August 20th and which could steer clear of the dilemma of either not introducing responsibility at all or of granting full responsibility.

six months unless he was or became an elected member of the local legislature. A Minister was responsible not to the legislature but to the Governor and indirectly to his constituency. There had been a great deal of controversy as to the status and pay of Ministers. The Montague-Chelmsford Report made no recommendation in this respect. The Government of India in their despatch of 5th March, 1919, suggested that pay in each case might be fixed by the Governor in consultation with prospective Minister. The Joint Committee of Parliament eventually recommended that Ministers should have equality of status and pay with members of Executive Council and a provision was, therefore, inserted in the Act that a Minister would be entitled to the same salary as was payable to a member of the Executive Council in the province unless a smaller salary was provided by vote of the Legislative Council. It was recommended by the Joint Committee that "the Ministers selected by the Governor to advise him on the transferred subjects *should be elected members of the Legislative Council, enjoying its confidence and capable of leading it*" They were to act in concert together. In relation to the transferred subjects the Governor was to be guided by the advice of his Ministers unless he saw sufficient cause to dissent from their opinion. If the Governor refused to accept advice of a Minister the latter might resign, if a man of independent spirit, or if he so chose might continue in office risking unpopularity with the Council. The Governor had the ordinary

constitutional right of dismissing a Minister whose policy he believed to be seriously at fault or out of accord with the views of the Legislative Council. In the last resort the Governor could dissolve the Legislative Council and choose new Ministers after a fresh election, but if this course were adopted the Committee hoped that the Governor would find himself able to accept such views as his new Ministers might press upon him regarding the issue which forced the dissolution. Rules were to be made for the temporary administration of a transferred subject where, in cases of emergency, owing to a vacancy, there was no Minister in charge of the subject.

(28). The Executive Council.

The provisions of Sections forty-six to fifty-one of the Act of 1915 relating to constitution of Executive Councils in the three Presidencies of Bengal, Madras and Bombay were extended to all the Governors' provinces with certain amendments. Section forty-seven of the Government of India Act, 1915, required that two of the members of Executive Council must be persons who had been at least for ten years in the service of the Crown in India. The Act of 1919 provided that this qualification would be necessary in case of one member only. While retaining the statutary maximum of four the Joint Committee expressed their opinion that the normal strength of the Executive Council, especially in the smaller provinces,

need not exceed two members. In any event, by convention, an Executive Council was to continue to include one Indian member, and if a second European member were added, a second Indian member was also to be appointed.

(29). Appointment of Council Secretaries.

The Governor was authorised *at his discretion* to appoint, from amongst the non-official members of the local legislature, Council Secretaries who were to hold office during his pleasure, and discharge such duties in assisting members of the Executive Council and Ministers as he might assign to them. They were to receive such salary as was provided by vote of the Legislative Council.

(30). Working of the two halves of Government.

A question which attracted considerable attention was how the two halves of Government were to work. The Report on Indian Constitutional Reforms suggested that while as a general rule the executive Government should deliberate as a whole the Governor might discuss a particular question only with that part of the Government which was responsible for the subject. The Government of India in their despatch of 5th March, 1919, stated that joint deliberation was not to be the rule and the Governor should have unfettered discretion in the matter. The Joint

Select Committee on the Government of India Bill finally stated in their Report as follows :—

"The Committee desire at this moment to give a picture of the manner in which they think that, under this Bill, the government of a province should be worked. There will be many matters of administrative business, as in all countries, which can be disposed of departmentally. But there will remain a large category of business, of the character which would naturally be the subject of cabinet consultation. In regard to this category the committee conceive that the habit should be carefully fostered of deliberation between the members of the Executive Council and the Ministers, sitting under the chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subject ; but the Committee attach the highest importance to the principle that, when once opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for decision lies. Therefore, in the opinion of the Committee, after such consultation, and when it is clear that the decision lies within the jurisdiction of one or other half of the Government, that decision in respect of a reserved subject should be recorded separately by the Executive Council, and in respect of a transferred subject by the Ministers, and all acts and proceedings of the Government should state in definite terms on whom the responsibility for the decision rests. It will not always, however, be clear, otherwise than in a purely departmental and technical

fashion, with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of informal arbitrator between the two parts of his administration; and it will equally be his duty to see that a decision arrived at on one side of his Government is followed by such consequential action, on the other side as may be necessary to make the policy effective and homogeneous.

"The position of the Governor will thus be one of great responsibility and difficulty, and also of great opportunity and honour. He may have to hold the balance between divergent policies and different ideals, and to prevent discord and friction. It will also be for him to help with sympathy and courage the popular side of his Government in their new responsibilities. He should never hesitate to point out to Ministers what he thinks is the right course or to warn them if he thinks they are taking to wrong course. But if after hearing all the arguments, Ministers should decide not to adopt his advice, then, in the opinion of the Committee, the Governor should ordinarily allow the Ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India, as in all other countries, mistakes will be made by Ministers acting with the approval of a majority of the Legislative Council, but there is no way of learning except through experience and by the realisation of responsibility.

"In the debates of the Legislative Council members of the executive Council should act together and Ministers should act together, but members of the Executive Council and Ministers should not oppose each other by speech or vote; members of the Executive Council should not be required to support either by speech or vote proposals of the Executive Council of which they do not approve; they should be free to speak and vote for each other's proposals when they are in agreement with them. All other official members of the Legislative Council should be free to speak and vote as they choose."

(31). Instrument of instructions for the Governors.

The Instrument of Instructions issued by His Majesty laid down the lines and the manner in which the Governors were to act in the exercise of their powers and duties. On the one hand business of the government of the province was to be so regulated as to keep the responsibility for the reserved and the transferred matters "clear and distinct," and on the other the Governor was to encourage the habit of joint deliberation between himself, the Councillors, and the Ministers in order that experience of the official advisers might be at the disposal of Ministers and the knowledge of ministers as to the wishes of the people at the disposal of Councillors. The Governor was to assist Ministers by all the means in his power in the administration of the transferred subjects, and advise them in regard to

their relations with the Legislative Council. In considering a Minister's advice and deciding whether or not there was sufficient cause in any case to dissent from his opinion, he was enjoined to have due regard to his relations with the Legislative Council and to wishes of the people of the province as expressed by their representatives therein. In addition to the general responsibilities whether created by statute or otherwise the Instrument specially required him :—

(1) to see that all measures necessary to preserve tranquillity and to prevent religious or social conflict were duly taken, and all orders issued by the Secretary of State or the Governor-General in Council were complied with;

(2) to provide for the advancement and social welfare of small and backward communities which cannot yet fully rely for their protection upon joint political action;

(3) to safeguard all members of the Indian services in the legitimate exercise of their functions and the enjoyment of all recognised rights and privileges; and

(4) to prevent the establishment of a trade monopoly or any unfair discrimination in matters affecting commercial or industrial interests.

(32). Provincial Legislature, its composition and duration.

The Legislative Council in a Governor's province was to consist of members of the Executive Council, members elected, and members nominated. The Government of India Act, 1915,

which previously regulated the composition did not fix the proportion of elected members. The statute only required that of the total number of members at least one-half in the case of presidencies and one-third in the case of other provinces, should be non-officials though in practice all the Provincial Councils had non-official majorities since the Indian Councils Act, 1909. The Act of 1919 by enlarging the Legislative Councils and providing that at least seventy per cent shall be elected members and not more than twenty per cent officials substantially changed the official Legislative Council into a people's chamber. The total number of members in each case was to be in accordance with the table set out in the First Schedule* to the Act but rules could provide for an increase in the number of members of any Council subject to the maintenance of the aforesaid statutary proportions† The normal duration of the Council was to be three years from its first meeting but in special circumstances it could be sooner dissolved by the Governor or its statutary period extended upto

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* The Schedule fixed the number of members of Legislative Councils as follows:—

Madras	118
Bombay	111
Bengal	125
United Provinces	118
Punjab	83
Behar and Orissa	98
Central Provinces	70
Assam	53

† By the rules framed the first Punjab Council under the Reforms consisted of 93 members, 71 elected and 22 nominated or officials.

four years. On dissolution of the Council the Governor was to appoint a date not more than six months or, with the sanction of the Secretary of State, not more than nine months from the time of dissolution for the next session of the Council. A meeting of the Council might be adjourned by the person presiding but an order to prorogue the Council could be made only by the Governor.

(33). President and Deputy President of the Council.

Provision was made for the appointment of a President and a Deputy President of the Council. Hitherto the Governor himself presided but under the Act of 1919 he ceased to be the President though his right of addressing the Council and for that purpose requiring the attendance of its members was recognised. The President for a period of four years from the first meeting of the new Council was to be appointed by the Governor but thereafter the Council was to elect its own President. The Deputy President was to be elected by the new Council from the start. The Joint Select Committee attributed greatest importance to the question of presidency. It was observed that, "whenever possible it would be a great advantage if some one could be found for this purpose who had parliamentary experience..... It will.....conduce very greatly to the successful working of the new Councils if they are imbued from the commencement with the spirit and conventions of parliamentary procedure as developed in the Imperial Parliament. Even

when elected by the Council the appointments were to be made with the approval of the Governor for the obvious reason that in the last resort it was he who was responsible for the administration. An elected President and a Deputy President were to cease to hold office on ceasing to be members of the Council, and could be removed from office by a vote of the Council with the concurrence of the Governor. They were to receive such salaries as were determined in the case of an appointed President by the Governor, and in the case of an elected President or Deputy President, by an Act of the local Legislature.

(84). Legislative Powers of the Council.

Section 10 of the Act defined the legislative powers of the new Councils. One important object of this revision was to limit the number of cases in which previous sanction of the Governor-General was required, and at the same time to make the statutary list of such cases complete, so as to avoid continuance of the practice whereby bills not included in the list were formerly submitted for previous sanction under executive order. The Act provided that a Provincial Ligislature might not, *without the previous sanction of the Governor-General*, make or take into consideration any law imposing a new tax, unless the same was a tax scheduled by rules made under the Act, or affecting the public debt of India or His Majesty's forces, or the relations of the Government with foreign princes or States, or any power expressly reserved to the Governor-General in Council, or

regulating any central subject, or altering the provisions of any law which could not be repealed or altered by the local legislature without previous sanction. Absence of previous sanction, however, did not invalidate a law which received the assent of the Governor-General. This rendered possible a distribution of legislative power between the Indian Legislature and the Provincial Legislature without subjecting the validity of Provincial Acts to challenge in the courts on the ground that such Acts involve an invasion of the sphere of the Indian Legislature *

(35). Governor's Powers in respect of a bill passed by the Legislative Council.

All questions in the Council were to be determined by a majority of votes of the members present other than the person presiding who was to exercise a casting vote in the case of an equality of votes. Where a bill was passed by the Council the Governor might assent to or withhold his assent from it, or return it to the Council for reconsideration together with such amendments which he might recommend, or reserve it for the consideration of the Governor-General

(36). Governor's power to secure essential legislation.

The Joint Report had suggested the plan of Grand Committees for the purpose of obtaining

* See the memo. on the Government of India Bill 1919

necessary legislation in relation to reserved subjects for which the Governor could not obtain a majority if he relied on the ordinary procedure. Sub-clause (3) of clause 9 of the Government of India Bill, accordingly, provided for the constitution of these committees on which the Governor was to appoint a majority of the members, with power in cases referred to them, to pass or reject laws without the assent of the Council; and sub-clauses (4) and (5) provided for the certifying power of the Governor by which the machinery of the Grand Committee could be brought into operation. The Joint Select Committee on the Bill, however, decided against it. "They have done so", it was stated, "because in their opinion the Grand Committee did not give the Governor the power of securing legislation in a crisis in respect of those matters for which he is held responsible, and because in respect of ordinary legislation about reserved subjects it perpetuated the system of securing legislation by what is known as the "official bloc" which has been the cause of great friction and heart-burning. The responsibility for legislation on reserved subjects is with the Governor in Council, and, when the "official bloc" has been put into operation, it has been put into operation by him, and is merely an indirect way of asserting his responsibility. The Committee think it much better that there should be no attempt to conceal the fact that the responsibility is with the Governor in Council, and they recommend a process by which the Governor should be empowered to pass an Act in respect of any reserved subject,

if he considers that the Act is necessary for the proper fulfilment of his responsibility to Parliament."

This extraordinary process was embodied in section 13 of the Act which provided that where a Governor's Legislative Council had refused leave to introduce or had failed to pass in a form recommended by the Governor, any bill relating to a reserved subject the governor might certify that the passage of the bill was essential for the discharge of his responsibility for the subject, and thereupon the bill, notwithstanding that the Council had not consented thereto, was deemed to have passed, and on the signature of the Governor became an Act. It was recommended by the Joint Committee that a Governor was not to resort to this extraordinary procedure, "until he has given every opportunity for the matter to be thoroughly discussed in the Legislative Council, and as a sensible man he should, of course, endeavour to carry the Legislative Council with him in the matter by the strength of his case." Any such Act passed by the Governor on his sole responsibility was to be reserved by the Governor-General for the signification of His Majesty's pleasure and copies thereof had also to be laid before either of the two Houses of Parliament.

The Joint Committee suggested that the Standing Committee of Parliament on Indian Affairs should be specially consulted before giving or refusing assent to Acts of this character. Provision, however, was made for the avoidance of delay in case of a grave emergency by giving the

Governor-General power himself to assent to the Act subject to subsequent disallowance, if desired, by His Majesty in Council.

(37). Power to prevent undesirable legislation.

A special power was also given to the Governor for preventing legislative proposals which were likely to imperil public safety or maintenance of order. Clause 4 of section 11 of the Act provided that where any bill had been introduced or was proposed to be introduced, or any amendment to a bill was moved or proposed to be moved, the Governor might certify that the bill or any clause of it or the amendment affected the safety or tranquillity of his province or of another province, and might direct that no further proceedings should be taken by the Council in relation to such bill, clause, or amendment, and effect was to be given to any such direction.

(38). Council's powers in respect of the budget.

The provincial budget was annually to be submitted to the vote of the Legislative Council, subject to the exemption from this process of certain charges of a special or recurring character, namely, contributions payable by the Local Government to the Governor-General in Council, interest and sinking fund charges on loans, expenditure of which the amount was prescribed by any law, salaries and pensions of persons appointed by or with the approval of His Majesty

or by the Secretary of State in Council, and salaries of the judges of the High Court of the Province and of the Advocate-General. Where the Council reduced a provision for a reserved subject which the Local Government considered essential to the proper administration of the subject concerned, the Governor was given the power of restoration. The Committee wished it to be perfectly clear that this power was real and that its exercise should not be regarded as unusual and arbitrary. "Unless the Governor", the Report stated, "has the right to secure supplies for those services for which he remains responsible to Parliament, that responsibility cannot justly be fastened upon him." But except so far as the Governor exercised this power the budget was to be altered in accordance with the resolutions carried in Council. The Governor was also empowered in cases of emergency to authorise such expenditure as might, in his opinion, be necessary for the safety or tranquillity of the province or for the carrying on of any department. No proposal for the appropriation of any revenues or moneys for any purpose was to be made except on the recommendation of the Governor, communicated to the Council. This was in accordance with the principle of British parliamentary practice which debars private members from moving amendments which would have the effect of increasing the amount of any proposed appropriation.

(39). Distribution of revenues between the two halves of Government.

It was contemplated that the provincial estimates comprising the expenditure required, both for reserved and transferred subjects, will be presented as a whole, but that the Governor in Council will be responsible for the estimates so far as they relate to the reserved subjects and the Governor and Ministers so far as they relate to transferred subjects. The Joint Select Committee suggested, that "whenever the necessity for new taxation arises, as arise it must, the questions involved should be thrashed out by both parts of the Government in consultation together, and it is especially important that in this matter both parts of the Government should, if possible, be in agreement when the proposals of the Government are laid before the Legislature." Provision was to be made by rules under the Act for the allocation of revenues to Local Governments and for the distribution of such revenues between the two parts of the Provincial Governments. Much attention was given by the Joint Committee to the difficult question of the principle on which the provincial revenues and balances were to be distributed. They were confident that the problem could readily be solved by the simple process of common sense and reasonable give and take, but rules governing the allocation should be framed so as to make the existence of such friction impossible. The Committee did not endorse the suggestion that certain sources of revenue should be allocated to

reserved, and certain sources to transferred subjects, but they recommended that the Governor should allocate a definite proportion of the revenue to reserved and transferred subjects, and similarly a proportion, though not necessarily the same fraction, of the balances.

(40). The Indian Legislature.

The Indian Legislature was to consist of two chambers, the Council of State and the Legislative Assembly. The Montague-Chelmsford Report had suggested that the latter should be not only a revising authority upon all Indian legislation but also supreme legislative authority on all crucial questions. Government measures were to be carried through the Council of State without reference to the Legislative Assembly in cases where the latter body could not be got to assent to laws which the Governor-General considered essential for the discharge of his reponsibility. This was embodied in the bill as originally drafted but as the Joint Select Committee did not accept the device a provision was made that a bill was not to be deemed to have passed until agreed to by both the chambers and the Governor-General.

The Council of State consisted of sixty members, of whom not more than the twenty were to be officials. In this way the statute guaranteed a non-official majority but the rules made under the Act went further and established a small elected majority. This was a substantial improvement over the original scheme of reforms

which suggested that half the number of members should be officials and there should be a nominated majority.

The Legislative Assembly consisted of one hundred and forty members of which one hundred were to be elected and of the remaining forty not more than twenty-six officials. The Governor-General was not a member of either chamber but his right to address a chamber and for that purpose require the attendance of its members was recognised. No person could be a member of both the chambers and if elected to both he had to vacate his seat in one. Even a member of the Governor-General's Executive Council could be appointed member of one chamber only though he was given the right of attending and addressing both the chambers. Officials were not qualified for election and if a non-official member accepted office in the service of the Crown his seat in the legislature became vacant.

The Governor-General was empowered to appoint from among the members of the Council of State its President and other persons to preside in such circumstances as he might direct. The President of the Legislative Assembly for the first four years was to be appointed by the Governor-General but thereafter he was to be elected by the Assembly from its members with approval of the Governor-General. Special importance was attached by the Joint Select Committee to the presidency of the Assembly. The Report stated : "he should be qualified by experience in the House of Commons and a knowledge

of Parliamentary procedure, precedents, and conventions. He should be the guide and adviser of presidents of the Provincial Councils and he should be chosen with a view to the influence which it is hoped he would have on the whole history of parliamentary procedure in India." Subject to the approval of the Governor-General the Assembly was to elect its Deputy President to preside at its meeting in the absence of the President. A President and Deputy President were to receive such salaries as might be determined in the case of an appointed President by the Governor-General and in the case of an elected President or Deputy President by an Act of the Legislature.

The normal duration of the Council of State was five years and of the Legislative Assembly three years from its first meeting but in special circumstances the Governor-General might dissolve a chamber earlier or extend its duration as he thought fit.

Section 25 of the Act provided that budget shall annually be laid in the form of a statement before both the chambers and submitted to the vote of the Legislative Assembly in the form of demands for grants. Certain charges of a special and recurring character were not to be open to discussion or vote. *viz.*, interest and sinking fund charges on loans, expenditure of which the amount was prescribed by any law, salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council, salaries of Chief Commissioners and Judicial Commissioners, and expenditure classified by the order of the Governor-General in Council

as ecclesiastical, political, and defence. No proposal for the appropriation of any revenues was to be made except on recommendation of the Governor-General. A power was reserved to treat as sanctioned any expenditure, refused by the Assembly, which the Governor-General considered as essential for the discharge of his responsibilities. The Joint Select Committee wished it to "be understood from the beginning that this power of the Governor-General in Council is real, and is meant to be used if and when necessary." The Governor-General was further empowered, in cases of emergency, to authorise such expenditure as might, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

(41). The Governor-General's powers to secure essential and prevent undesirable legislation.

The Joint Committee, for the same reasons which prompted them to oppose the Grand Committee procedure in provinces, rejected the proposal in the Bill which would have enabled the Governor-General to refer to the Council of State, and obtain by virtue of official majority in that body, any legislation which the Assembly refused to accept but which he regarded as essential to the discharge of his duties. In place of this concealed responsibility the Act, on the recommendation of the Committee, provided that where either chamber fails to pass a Bill the Governor-General might certify the same as essential for the interests of British India and thereupon the Bill

on signature by the Governer-General became an Act in the form recommended by the Governor-General. In order that Parliament might be fully apprised of the position and of the considerations which in a given case led to this exceptional procedure, an Act passed in this manner was required to be laid before both Houses of Parliament, and was not to have effect until it had received His Majesty's assent. In a state of emergency, however, the Governor-General was empowered to direct that the Act shall come into operation forthwith, subject to disallowance by His Majesty in Council. The Governor-General was also authorised to prevent either chamber from passing, discussing, or even introducing a Bill, clause, or amendment of it which in his opinion affected the safety or tranquillity of any part of British India. The provisions of section 67 of the Government of India Act, 1915, which required that measures relating to public debt or revenues of India, religious uses of British subjects, army, navy and foreign relations shall not be introduced in the legislature without the previous sanction of the Governor-General were repeated and extended to measures regulating any provincial subject, repealing or amending any Act of a local legislature or an Act or ordinance made by the Governor-General.

(42). Composition of the Governor-General's Executive Council and power to appoint Council Secretaries.

The Act also made some important changes in the composition of the Governor-General's

Executive Council. Under the Government of India Act, 1915, it had two classes of members, ordinary and extraordinary. The ordinary members were six, of which at least three were required to be persons who at the time of their appointment had been in service of the Crown in India for ten years, and one must be a barrister. The extraordinary members were the Commander-in-Chief, and the Governor if the Council happened to hold its meeting in the province under a Governor. The Act of 1919 removed the statutary limit on the number of members and provided that the three members with service qualifications may be public servants or *ex-public servants*; the lawyer member may be a barrister or *pleader of the High Court*; and Governor shall not be an extraordinary member of the Council. The Joint Committee recommended that not less than three members of the Council should be Indians and that as time goes on the members drawn from ranks of the public servants will more likely be of Indian rather than of European extraction. The Governor-General was also authorised to appoint, at his discretion, from among the members of the Legislative Assembly, Council Secretaries who were to hold office during his pleasure, and discharge such duties in assisting the members of his Executive Council as he might assign them. The Council Secretaries were to be paid such salary as was provided by the Indian legislature.

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(43). Political charges of the India Office placed on the British budget.

It had long been complained in this country that the British Parliament had ceased to exercise more than a nominal control over the Government of India and one of the expedients suggested to remedy this defect was to transfer the salary of the Secretary of State for India to the British budget so that the Parliament might have the opportunity of discussing the Indian questions when voting his pay. Section 30 of the Act, consequently, provided :—

"The salary of the Secretary of State, the salaries of his Under-Secretaries and any other expenses of his department may, notwithstanding anything in the principal Act (of 1915), instead of being paid out of the revenues of India, be paid out of moneys provided by Parliament, and *the salary of the Secretary of State shall be so paid.*"

The Joint Committee suggested that all charges of the India Office, not being "agency" charges, should be paid out of moneys to be provided by Parliament.

(44). The Council of India.

The Congress-League proposal for the abolition of the Council of India was rejected. The reason given by the Committee in their Report was as follows :—

"They think that, at any rate for some time to come, it will be absolutely necessary that the

Secretary of State should be advised by persons of Indian experience and they are convinced that, if no such Council existed, the Secretary of State would have to form an informal one if not a formal one. Therefore, they think it much better to continue a body which has all the advantages behind it of tradition and authority."

The constitution of the Council was modified in several particulars. The maximum and minimum number of councillors was fixed at twelve and eight instead of fourteen and ten respectively. Instead of nine, half the number of members were required to have served or resided in India for ten years previous to their appointment. To ensure a continuous flow of fresh experience from India and to relieve Indian members from the necessity of spending too long a period in England the term of office was reduced from seven to five years. The Council was to hold meeting at least once a month. The old procedure with regard to correspondence between the Secretary of State and India, embodied in sections eleven, twelve, thirteen, and fourteen of the Government of India Act, 1915, was repealed and such communications were directed, in future, to be carried on in the manner prescribed by order of the Secretary of State in Council.

(45). Appointment of a High Commissioner for India.

Hitherto the Secretary of State in Council had conducted all the business transacted in the United Kingdom in relation to Indian Government

The Act provided for the appointment of a High Commissioner for India who was to perform functions of agency, as distinguished from political functions analogous to those performed in the offices of the High Commissioners of the Dominions. In matters committed to his charge he was to take instructions directly from the Government of India. His appointment, powers, and duties were to be determined by His Majesty by Order in Council. The constitutional importance of the appointment lay in its indication that India was becoming in an increasing degree self-dependent.

(46). The Civil Services.

Part IV of the Act related to the Civil Services in India. It was provided that no person in the Civil Service could be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council was given the power to reinstate any person in that service who had been dismissed. The Joint Committee observed in their report as follows :—

" In the provinces, officers serving a reserved deparment will be controlled by the Governor in Council, and in transferred department by the Governor acting with Ministers, but in both cases alike the personal concurrence of the Governor should be regarded as essential in the case of all orders of any importance prejudicially affecting the position or prospects of officers appointed by the Secretary of State."

The Secretary of State was empowered to make rules with the concurrence of majority of votes at a meeting of the Council of India, for appointment to the Indian Civil Service of persons domiciled in India notwithstanding that they did not satisfy the examination test prescribed by Section 97 of the Government of India Act, 1915. There was also to be established in India a Public Service Commission which was to discharge in regard to recruitment and control of the Public Services such functions as might be assigned to it by the Secretary of State in Council.

(47). Appointment of a Statutary Commission.

The constitution established by the Act was meant only for a transitional stage. "Our idea is" the Montague-Chelmsford Report stated, "that as the popular element of the Government acquires experience, and learns to discharge its duties efficiently further powers should be entrusted to it. The process in fact will be one of adding to the transferred subjects and of taking from the reserved ones, until such time as with the entire disappearance of the reserved subjects the need for an official element in the Government, or of procedure by the Grand Committees, vanishes, and thus the goal of complete responsibility is attained in the provinces."

In order to assure and regulate this process of constitutional development the Act provided for the appointment of a statutary Commission, at the expiration of ten years from the passing of

the Act which was to inquire into the working of the system of government, the growth of education, the development of representative institutions and to report to what extent it was desirable to extend or modify the principle of responsible government in British India or to establish bicameral system in the provinces. The Joint Select Committee suggested in this connection as follows : –

"The Committee are of opinion that the Statutary Commission should not be appointed until the expiration of ten years, and that no changes of substance in the constitution whether in the franchise or in the lists of reserved and transferred subjects or otherwise, should be made in the interval. The Commission will be fully empowered to examine the working of the constitutions in all their details in the provinces, and to advise whether the time has come for full responsible government in each province, or in the alternative whether and to what extent the powers of self-government already granted should be extended or modified or restricted. It should be clearly understood, also, that the Commission should be empowered to examine into the working of the Government of India and to advise in respect of the Government of India no less than in respect of the Provincial Governments."

(48). Rules under the Act.

As in the case of earlier legislation of Parliament relating to the Government of India the Act

of 1919 simply outlined the main features of constitutional changes leaving the detailed arrangements to be worked out in the form of rules. It was the only plan which could secure elasticity and make possible the introduction of changes in light of experience of local conditions and requirements without resort to the slow and difficult process of further parliamentary legislation. The reports of the Southborough Committees on Franchise and Functions together with the two despatches received from the Government of India upon them were laid before the Joint Select Committee who in some important particulars made their own suggestions.

Rules under the Act constituted, as the Joint Committee rightly observed, " a subsidiary legislation of sufficient moment." With regard to some of these matters the Act made special provisions as to the authority by which the rules were to be made. In cases where no special provision existed rules could be framed in either of the two ways—(*a*) by the ordinary process of laying the rules on the table of Parliament for a certain number of days, and (*b*) by the more formal procedure by positive resolution of Parliament The Committee observed :—

" It must be for the Secretary of State to decide which of the many rules that will fall to be drafted by the Government of India can be sufficiently dealt with by the ordinary process of laying on the table of Parliament for a certain number of days. In deciding this point, however, he may naturally have recourse to the advice of the Standing Committee, should it happen to

be in session, and obtain their assistance in determining which rules deserved to be made the subject of the more formal procedure by positive resolution."

Under the first of these two methods rules were to be made by the Governor-General in Council, with the sanction of the Secretary of State in Council and laid before both Houses of Parliament as soon as may be *after they were made*. If either House of Parliament presented an Address to His Majesty against any such rule, within 30 days after it had been laid before it, such rule might be annulled by His Majesty in Council but without prejudice to the validity of anything previously done thereunder. Under the second method rules were to be laid in draft before both Houses of Parliament, and *were not to be made* unless both the Houses by resolution approved the draft without modifications or with such modifications to which both Houses agreed.

CHAPTER IV.

THE REFORMED CONSTITUTION OF BRITISH INDIA.*

THE GOVERNMENT OF INDIA ACT.

British India has a written statutary constitution embodied in the Government of India Act. The Act containing the reform proposals was called the Government of India Act, 1919. The principal Act of 1915 as amended by the Acts of 1915 and 1919 was described the Government of India Act. The preamble to the Act of 1919 defines the goal of British policy in India and lays down the principles for its realisation.†

THE HOME GOVERNMENT.

The "Home Government" means the highest authorities in England exercising control over the Central and Local Governments in British India. These superior authorities are the Parliament, the Crown, the Secretary of State, and the Council of India.

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*Based on the Government of India Act, the rules made thereunder and the report of Joint Select Committee on the Government of India Bill, 1919.

† See (24), Chapter III.

(1). The Parliament.

Parliamentary control over Indian affairs is of three kinds—legislative, financial, and administrative.

(*i*). *Legislative Control* :—

(*a*) The Parliament being sovereign law-making body for the whole of the British Empire, not only it may make new laws for this country but may also repeal or alter any laws made by any authority in British India.

(*b*) The powers of Indian and Provincial Legislatures are derived from and limited by Parliamentary statutes.

(*c*) The constitution of British India is determined by Parliamentary legislation and any material change in it would involve Parliamentary sanction.

(*ii*) *Financial Control* :—

(*a*) Section 22 of the Act provides that except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other urgent and sudden necessity, the revenues of India shall not, *without the consent of both Houses of Parliament*, be applicable to defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces.

(*b*) Section 26 (1) provides that the Secretary of State in Council shall in the month of May every year, lay before both Houses of Parliament the accounts relating to India and a

statement exhibiting the moral and material progress and condition of India.

(*c*) Section 27 (7) requires the auditor of Indian Accounts in the United Kingdom to lay all his reports before both Houses of Parliament with the accounts of the year to which the reports relate.

(*d*) By section 17 (1) any order of His Majesty in Council making an addition to the establishment of the Secretary of State in Council or to the salaries of the persons on that establishment has to be laid before both Houses of Parliament.

(*iii*). *Administrative Control* :—

This is exercised by means of motions for papers, resolutions, criticisms, questions etc. The Secretary of State is responsible to Parliament for all matters relating to the administration of India. In addition to these general powers the Parliament has reserved to itself the following statutary powers :-

(*a*) The reasons for re-appointing any member of the Council of India for a second term of five years have to be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament.

(*b*) Upon an address of both Houses of Parliament any member of the Council of India may be removed by His Majesty from his office.

(*c*) Parliament provides the money out of the British revenues for the salary of the Secretary of State and other expenses of his department.

(*d*) All orders for commencing hostilities by His Majesty's forces in India are required to be communicated to both Houses of Parliament.

(*e*) Every Act passed by the certifying power of the Governor-General or a Governor shall be laid before both Houses of Parliament.

(*f*) A draft of any notification creating an executive council in a province under a Lieutenant-Governor must be laid before both the Houses and if an address is presented to His Majesty by either House against the draft no further proceedings shall be taken thereon.

(*g*) Any resolution issued by the Governor-General in Council defining and limiting the qualifications of persons outside the Indian Civil Service who may be appointed to posts reserved to that Service, shall not have force until it has been laid for thirty days before both the Houses

(*h*) In selecting the persons to act on the Statutary Commission the Secretary of State has to obtain concurrence of Parliament.

(*i*) Under some sections of the Act the rules framed are required to be laid before both Houses of Parliament as soon as may be after they are made, and under some other sections rules are not finally made until both Houses of Parliament have first approved by resolution the draft rules.

(2). The Crown.

Under the Royal Titles Act 1876 Queen Victoria by proclamation added to her style and titles the words "Indie Imperatrix" or Empress

of India and thenceforth "Emperor of India" formed part of the title of her successors. All the territories for the time being vested in His Majesty in India are governed by and in the name of the King, Emperor of India, and the revenues of India are received for and in the name of His Majesty. The Government of India Act expressly vests in the Crown the following statutary powers over Indian Administration :—

(*a*) His Majesty, by warrant under the Royal Sign Manual, appoints the Governor-General and the members of his Executive Council, the Governors of the three Presidencies, the Governors of the five provinces after consultation with the Governor-General, members of the Governors' Executive Councils, and the Advocates-General of the three Presidencies. By warrant under the Royal Sign Manual counter-signed by the Chancellor of the Exchequer he appoints an Auditor of Indian Accounts in the United Kingdom and grants pensions and gratuities to any member on the establishment of the Secretary of State in Council. By warrant countersigned by the Secretary of State His Majesty grants pensions to Bishops out of the revenues of India.

(*b*) His Majesty may, by Letters Patent establish a High Court of Judicature in any territory in British India. The Crown also appoints the Chief Justices and other Judges of High Courts who hold office during His Majesty's pleasure.

(*c*) Sanction of the Crown is necessary for the constitution of a new Governor's province or a new province under a Lieutenant-Governor, or transferring a district from one province to

another, or for constituting a new local legislature.

(*d*) The King's approval is necessary to the appointment of Lieutenant-Governor and members of his Executive Council.

(*e*) His Majesty's assent is required before an Act passed by the certifying power of the Governor-General or of a Governor can have effect.

(*f*) Every member of the Indian Civil Service holds office during His Majesty's pleasure.

(3). The Secretary of State.

Being the constitutional adviser of His Majesty in all matters relating to India the authority vested in the Crown is exercised in England by the Secretary of State. Though there are now in England five "principal Secretaries of State" all in theory occupy the same office and each, save for a few statutary restrictions, is legally competent to exercise the functions of any or all of them. Thus during the absence from England of Mr. E. S. Montague in winter 1918 despatches to India requiring signatures of the Secretary of State were signed by Mr. Long, another Secretary of State. The Secretary of State for India is a member of Parliament, of the Cabinet, and of the Privy Council. As a member of the Cabinet he is responsible to and represents the authority of Parliament He is assisted by two Under-Secretaries, one permanent, who is a member of the Civil Service, and the other parliamentary, who changes with the ministry. His

position differs from that of the colonial Secretary in two respects.

(1) He has a Council to advise and correct him.

(2) Unlike the Colonial Secretary he is not merely the constitutional adviser of the Crown but is also vested by statute with the powers of superintendence, direction, and control over all operations and concerns which relate to the Government of India or its revenues.

Ever since 1858 the costs of India Office had been paid out of the revenues of India. The Government of India Act now makes it compulsory on Parliament to provide for the salary of the Secretary of State out of British revenues ; and in the case of other expenses of his Department it is optional on Parliament to pay them out of Indian or British revenues. The Joint Select Committee on the Government of India Bill recommended that "*all* charges of the India Office, not being agency charges, should be paid out of moneys to be provided by Parliament."

The following are the powers and duties with which the Secretary of State is vested by the Government of India Act :—

1. Subject to the provisions of the Act and the rules made thereunder he superintends, directs, and controls all acts, operations, and concerns which relate to the government or revenue of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of and on the revenues of India.

2. In respect of the Council of India he is the President with power to vote ; may appoint

any member to be the Vice-President and any-time remove the person so appointed; fills up vacancies in the Council; may for special reasons reappoint any member whose term of office has expired; prescribes the quorum; directs the time for meetings of the Council; approves in writing all acts done at a meeting of the Council held in his absence; and may constitute committees for the more convenient transaction of business.

3. He may, if he thinks fit, by order revoke or suspend, for such period as he may direct, the appointment of a Council for any or all of the Governors' provinces.

4. Subject to the provisions of the Act the Governor-General in Council must pay due obedience to all such orders as he may receive from the Secretary of State.

5. His approval is necessary for taking any part of British India under the immediate authority and management of the Governor-General in Council.

6. His sanction is necessary if the period between the dissolution of either House of the Indian Legislature or a Governor's Legislative Council and its next session is prolonged beyond six months.

7. Subject to the rules prescribed by the Secretary of State in Council, the Secretary of State may make appointments to the Indian Civil Service of persons domiciled in India.

(4). The Council of India.

(*a*). *Its composition.*—As created by the Government of India Act, 1858, the Council origi-

nally consisted of fifteen members of whom eight were appointed by the Crown and seven elected by the Directors of the East India Company. The Council now consists of such number of members not less than eight and not more than twelve as the Secretary of State may determine, provided that the Council as constituted at the time of the passing of the Government of India Act shall not be affected by this provision but no fresh appointment or reappointment thereto shall be made in excess of the prescribed maximum. At least one-half of the members must be persons who have served or resided in India for at least ten years, and have not last left India more than five years before the date of their appointment. The right of filling vacancies rests with the Secretary of State. The term of office is five years provided that the Secretary of State may, for special reasons of public advantage, reappoint for a further term of five years any member of the Council whose term has expired, but in such a case the reasons for reappointment are required to be set forth in a minute and laid before both Houses of Parliament. A member may resign office or be removed by His Majesty on an address of both Houses of Parliament. Each member is paid an annual salary of twelve hundred pounds with additional subsistence allowance of six hundred pounds where the member was at the time of his appointment domiciled in India. To prevent them from taking an active share in party politics it is provided that members of the Council of India cannot sit or vote in Parliament.

Till 1908 there was no Indian member on the Council. In that year two Indians were appointed. In 1917 the number was raised to three. The Joint Select Committee which reported on the Government of India Bill, 1919, advised further increase of the Indian element.

(*b*). *Duties and powers of the Council.* – Subject to the directions of the Secretary of State and to the provisions of the Act the Council of India conducts the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India.

There are large powers which are required to be exercised by the Secretary of State *in* Council. These may be summarised as follows :—

1. The Secretary of State *in* Council may appoint any member of the Council to be Vice-President thereof.

2. The Secretary of State *in* Council may make rules prescribing the procedure for the sending of orders and communications to India; regulating and restricting the exercise of the powers of superintendence, direction, and control, vested in the Secretary of State and the Secretary of State in Council ; enabling the Secretary of State to make appointments to the Indian Civil Service of persons domiciled in India; prescribing restrictions for the admission to the Indian Civil Service of a British subject who or whose father or mother was not born within His Majesty's dominions ; for admission to the Civil Service ; and regulating the classification of the Civil

Service in India, the methods of their recruitment and the condition of service.

3. The Secretary of State *in* Council annually lays before Parliament the accounts relating to India and the statement exhibiting the moral and material progress and condition of India.

4. The Secretary of State *in* Council may sue and be sued as a body corporate.

5, The Secretary of State *in* Council may by order suspend all or any of the powers which the Governor-General may during absence from his Executive Council exercise under Section 43 (1) (2) and (3).

6. Rules authorising the revocation or suspension of the transfer of any subject can only be made with the sanction of the Secretary of State *in* Council.

7. The Secretary of State *in* Council determines the number of members, not exceeding four, of the Governor's Executive Council.

8. Approval of Secretary of State *in* Council is necessary for the creation of a Council in any Province under a Lieutenant-Governor.

9. The Secretary of State *in* Council may by resolution apply Section 71 of the Act to any part of British India enabling laws to be made by the Governor-General in Council in the form of regulations, and may withdraw the application of that section from any part to which it has been applied.

10. Previous approval of the Secretary of State *in* Council is necessary for the Indian Legislature to make a law, (*a*) empowering any

Court other than a High Court to sentence to death, and (*b*) abolishing a High Court.

11. Rules made by the Governor-General in Council for the membership of the local legislatures require the approval of the Secretary of State *in* Council.

(*c*). *Method of transacting business.*—(*i*) *Meetings of the Council.*—All powers required to be exercised by the Secretary of State in Conncil are exercised at meetings of the Council. The quorum is fixed by general directions of the Secretary of State. The Council may act notwithstanding any vacancy in their number. The Secretary of State, or, in his absence the Vice-president, if present, or, in the absence of both of them, one of the members of the Council, chosen by the members present at the meeting, presides. The Vice-president is appointed and removed by the Secretary of State. Meetings of the Council are convened and held as and when the Secretary of State directs, but one such meeting at least must be held in every month.

In the case of a difference of opinion on any question at a meeting of the Council, at which the Secretary of State is present, the determination of the Secretary of State is final. If the act is done at a meeting of the council in the absence of the secretary of state it requires his approval in writing. In either case the Secretary of State may require that his opinion and the reasons for it be entered in the minutes of the proceedings, and any member of the Council present at the meeting may also require that his opinion, and

any reasons for it that he has stated at the meeting, be entered in the like manner.

There are certain matters, however, in respect of which the Secretary of State is *bound to act with the majority of his Council.* These are—

1. Grant or appropriation of any part of the revenues, or of any other property coming into the possession of the Secretary of State in council by virtue of the Act of 1858 or the Government of India Act.

2. Selling or mortgaging any real or personal estate for the time being vested in His Majesty for the purposes of the Government of India.

3. Making any contract for the purposes of the Government of India Act.

4. An order affecting salaries of members of the Governor-General's Executive Council.

5. Making rules as to the absence on leave or special duty of persons in the service of the Crown in India.

6. Making rules for distributing between the several authorities in India the power of making appointments to and promotions in offices under the Crown.

7. Sanctioning any rules prescribed by the Governor-General in Council regulating appointments to offices in the Indian Civil Service of persons domiciled in British India.

8. Making provisional appointments in the Civil Service of persons not being members of that service.

(*ii*) *Committees of Council*—The Secretary of State may constitute committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively.

(*iii*). *Orders and Communications.*—The procedure for sending of orders and communications to India and in general for correspondence between the Secretary of State and the Governor-General in Council or any Local Government is such as may be prescribed by order of the Secretary of State in Council.

(5). Establishment of the Secretary of State in Council.

The original members of the establishment were taken over from the East India House and the Board of Control. Their number and salaries are now fixed by Order of His Majesty in Council. Appointments to and promotions in the establishment are made by the Secretary of State in Council. No addition may be made to the establishment or to the salaries of persons on it except by Order of His Majesty in Council.

(6). Relaxation of control of the Secretary of State over the Government of India.

To give effect to the purposes of the Government of India Act, 1919, namely, the gradual development of self-governing institutions and progressive realisation of responsible government in British India as an integral part of the Empire

Sec. 19-A provides for the making of rules regulating and restricting the exercise of powers of superintendence, direction, and control vested in the Secretary of State and the Secretary of State in Council. The procedure prescribed is as follows:—

(*a*) When the rules relate to transferred subjects they are made by the Secretary of State in Council. As soon as may be, after they are made, they are required to be laid before both Houses of Parliament and if an address is presented to His Majesty by either House praying that the rules or any of them may be annulled His Majesty in Council may annul the same but without prejudice to the validity of anything already done thereunder.

(*b*) Where the rules relate to non-transferred subjects they are required to be laid in draft before both the Houses of Parliament and Secretary of State in Council then makes the rules in the form in which they have been approved.

By the rules made under this authority the powers of superintendence, etc., vesting in the Secretary of State and the Secretary of State in Council are, in relation to transferred subjects, exercised only for the following purposes :—

(*a*) to safeguard the administration of central subjects ;

(*b*) to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at an agreement ;

(*c*) to safeguard Imperial interests.

(*d*) to determine the position of the Government of India in respect of questions

arising between India and other parts of the British Empire;

(e) to safeguard the due exercise and performance of any powers and duties possessed by or imposed on the Secretary of State or the Secretary of State in Council in connection with or for the purposes of Sections 29 (A), 30 (A), part VII-A, or any rules made by or with the sanction of the Secretary of State in Council.

No statutary rules exist for relaxation of control over the administration of reserved subjects. The Joint Select Committee on the Government of India Bill observed: "No statutary divestment of control, except over the transferred field, is either necessary or desirable. It is open to the Secretary of State to entrust large powers, administrative and financial, to the Governor-General in Council and the Provincial Governors in Council, and he will no doubt be largely influenced in deciding whether or not to require reference to himself in any given case, or whether to interpose his orders when reference has been made, by the attitude of provincial public opinion as expressed by the Legislative Council. But these matters cannot be regulated by statutary rules, and any authority which the Secretary of State may decide to pass on to the official Governments in India will be a mere delegation of his own authority and responsibility, for the exercise of which in relation to central and reserved subjects he must remain accountable to Parliament."

(7). Securities for proper expenditure of revenues.

1. By section 20 (1) of the Act the revenues of India can be applied for the purposes of the Government of India alone.

2. The expenditure both in British India and elsewhere is subject to the control of the Secretary of State in Council and no grant or appropriation of any part of those revenues, can be made without the concurrence of a majority votes at a meeting of the Council of India.

3. Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India cannot, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty's forces.

4. The Secretary of State in Council is required annually to lay before both Houses of Parliament :—

(*a*) an account, for the financial year preceeding that last completed, of the annual produce of the revenues of India, and of all the annual receipts and disbursements at home and abroad ;

(*b*) the latest estimate of the same for the financial year last completed ;

(*c*) accounts of all stocks, loans, debts and liabilities chargeable on the revenues of India, at home and abroad, at the commencement and close of the financial year preceding that last completed, the loans, debts, and liabilities raised

or incurred within that year, the amounts paid off or discharged during that year, the rates of interest borne by those loans, debts and liabilities respectively, and the annual amount of that interest;

(*d*) a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof;

(*e*) a statement prepared from detailed reports from each province in such form as best exhibits the moral and material progress and condition of India.

5. His Majesty may by warrant under His Royal Sign Manual countersigned by the Chancellor of the Exchequer appoint an Auditor of the Accounts of the Secretary of State in Council to examine and audit the accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property applicable for purposes of the Government of India. The Auditor submits his reports to the Secretary of the State in Council and also lays them before both Houses of Parliament.

(8). Powers of the Secretary of State in Council in dealing with property.

The Secretary of State may, with the concurrence of a majority of votes at a meeting of the Council of India :—

(*a*) sell and dispose of any real or personal estate for the time being vested in His Majesty for the purposes of the Government of India;

(*b*) raise money on any such estate by way of mortgage or otherwise ;

(*c*) purchase and acquire any property; and

(*d*) make the proper assurances for any of those purposes.

An assurance relating to real estate made by the Secretary of State in Council may be made under the hands and seals of two members of the Council of India.

(9). Contracts of the Secretary of State.

Subject to the provisions of the Government of India Act regarding the appointment of a High Commissioner for India the Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council, enter into a contract. Where a contract so made is required by law to be under seal it may be made, varied or discharged under the hands and seals of two members of the Council of India. The benefit and liability of every contract passes to the Secretary of State in Council.

The powers vested in the Secretary of State in Council in respect of property and contracts may be exercised in British India on his behalf by the Governor-General in Council and any Local Government subject to such provisions or restrictions as the Secretary of State in Council may prescribe. A Local Government may on behalf and in the name of the Secretary of State in Council raise money on the security of revenues allocated to it under the Act and make proper assurances for that purpose.

(10). Rights and liabilities of the Secretary of State in Council.

The Secretary of State in Council may sue and be sued as a body corporate. Neither the the Secretary of State nor any member of the Council is personally liable in respect of any assurance or contract made by or on behalf of the Secretary of State in Council, or any other liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity, nor in respect of any contract, covenant or engagement of the East India Company; nor is any person executing any assurance or contract on behalf of the Secretary of State in Council personally liable in respect thereof. All such liabilities, and all costs and damages are borne by the revenues of India.

(11). High Commissioner for India.

Section 29-A empowers His Majesty to appoint by Order in Council a High Commissioner for India in the United Kingdom. This provision was made to carry out a recommendation of Lord Crewe's Committee which was as follows :—

"We are satisfied that the time has come for demarcation between the agency work of the India Office and its political and administrative functions, and that the step would commend itself to all classes of opinion in India as marking a stage towards full Dominion status. Accordingly we recommend that preliminary action should be taken with a view to the transfer of all agency work to

a High Commissioner for India or similar Indian Governmental representative in London. We suggest that, in the first instance, communications should be entered into with the Government of India with the object of transferring to the direct control of that Government the Stores Department and also the Accountant-General's Department (subject to any necessary reservations, including the retention of work connected with the higher finance), and that the Government of India should at the same time be invited to make suggestions for the transfer to their control of any other agency business, such as that transacted by the Indian Students Department."

His Majesty may, in making appointment, provide by Order in Council for (*a*) the pay, pensions, powers, duties, and conditions of employment of the High Commissioner and of his assistants; (*b*) delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of State in Council in relation to making of contracts, and (*c*) the conditions under which he shall act on behalf of the Governor-General in Council or any Local Government.

To give effect to these provisions an Order in Council was issued on 13th August 1922. Under this Order the Governor-General in Council is authorised from time to time to appoint with the approval of the Secretary of State in Council some person to be the High Commissioner for India in the United Kingdom. He holds office in the first instance for five years but is eligible for the reappointment. His salary is three thousand

pounds a year payable out of the revenues of India. In the exercise of his powers and performance of his duties the High Commissioner is subject to the direction and control of the Governor-General in Council. He acts as the agent of the Governor-General in Council in the United Kingdom, and on behalf of Local Governments in India for such purposes and in such cases as the Governor-General in Council prescribes. He also conducts any business relating to Government of India hitherto conducted under the direction of the Secretary of State in Council which may be assigned to him by that authority. So far as may be necessary the High Commissioner has the power to make, vary, and discharge contracts on behalf of the Secretary of State in Council. He is required to lay before the Auditor of the Accounts of the Secretary of State in Council, accounts of the receipts, expenditure and disposal in the United Kingdom of all money, stores, and property. As soon as may be he is to transmit to the Governor-General in Council a copy of any report made by the Auditor on such accounts.

THE GOVERNMENT OF INDIA.

(1). Its relation with the Home Government.

Subject to the provisions of the Government of India Act and rules made thereunder the superintendence, direction, and control of the Civil and Military Government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may

receive from the Secretary of State. The original interpretation put upon this provision was that the Government of India should have the right of initiative and the Secretary of State the right of veto. In 1870 the Duke of Argyll claimed for the Home Government the power of initiative as well as the power of veto and described the Government of India as only its executive officers. The same attitude was taken up by Lord Salisbury in 1874 as the Secretary of State for India. An interesting controversy ensued between Lord Salisbury and Lord Northbrook, the Viceroy. Lord Salisbury's idea was to conduct the Government of India to a very large extent by private correspondence between the Secretary of State and the Viceroy. Lord Northbrook's general view was the very opposite of this. He recognised the subordinate position of the Viceroy but maintained that Parliament had conferred by statute certain definite powers on the Governor-General and the Governor-General in Council which distinguished them from a mere subordinate official agency. He held in the second place that for a Secretary of State without Indian experience to overrule those who possess such experience would be an autocratic and extremely unwise proceeding. In short Lord Salisbury maintained the *doctrine of agency* while Lord Northbrook expressed his adherence to the *man on the spot* theory. Lord Morley, more recently, described the Government of India as an "agent of the Secretary of State." He held that the 'man on the spot theory' would lead to the result of placing the Government of

India in a position of total irresponsibility to the governed. To the 'doctrine of agency' two objections may be urged. In the first place it ignores that at least so far as the Governor-General is the Viceroy or the direct and personal representative of the King-Emperor, he cannot be properly described as an 'agent' of the Secretary of State. In the second place the doctrine ignores the fact that the control in India is vested not in the Governor-General as such but in the Governor-General in Council. In any case, now, with the constitutional reforms initiated in 1919 it is reasonably certain that future Governments of India will more and more identify themselves with Indian opinion which implies a lessening of the Whitehall control.

(2). The Governor-General.

The head of the Government of India is the Governor-General. He is appointed by His Majesty by Warrant under the Royal Sign Manual. In 1858 he was designated Viceroy, though his official name in Acts of Parliament continued to be the Governor-General of India. As Viceroy he is personal representative of the King Emperor and exercises some of the prerogatives belonging to the Crown, *e.g.* the granting of pardon, the right to make peace and war, entering into treaties with the Asiatic Powers, etc. He usually holds office for a term of five years, and gets a maximum annual salary of Rs. 2,56,000. The powers vested by the Government of India Act in the Governor-General as

distinguished from the Governor-General in Council may be summarised as follows :—

(*a*) *In relation to his Executive Council.* He appoints its Vice-president ; make rules and orders for the transaction of business ; may overrule the Council when he considers proper to do so ; may alone exercise all or any of the powers of the Governor-General in Council if authorised by the Governor-General in Council to do so ; and may during absence of the Council issue any orders to any Local Government and to any officer.

(*b*) *In respect of the Constitution of Indian Legislature.* He is one of the three constituent parts of the Legislature ; appoints the President of the Council of State and other persons to preside in such circumstances as he may direct ; appoints President of the Legislative Assembly for the first four years and his approval is necessary for the future elected Presidents ; may remove the appointed President from his post. His approval is necessary for the elected Deputy President of the Legislative Assembly ; his concurrence is required for removing the elected President and Deputy President from office by a vote of the Assembly ; determines the salary of the appointed President ; may address the Council of State and the Legislative Assembly and for that purpose call a meeting of either of them ; may dissolve either Chamber before expiry of the term or may extend the term of either Chamber when he thinks fit to do so ; appoints such times and places for holding the sessions of either Chamber as he thinks fit ; may prorogue

the session of either Chamber and may appoint from among the members of the Legislative Assembly Council Secretaries who hold office during his pleasure.

(c) *In respect of legislation.* His assent is necessary before a bill passed by the two Chambers of the Indian Legislature becomes an Act; his previous sanction is required for introducing certain classes of measures at a meeting of either Chamber; he may certify and direct that no further proceedings shall be taken in a Chamber in relation to a bill, clause, or amendment of it which he considers to be undesirable; where a Chamber refuses to pass a bill he may certify the same as essential and thereupon the bill becomes an Act on his signature; he may refer any matter for decision to a joint sitting of both Chambers; and he may return a bill for reconsideration by either Chamber. In cases of emergency he may make and promulgate ordinances for the period of not more than six months from their promulgation.

(d). In respect of Indian Budget. No proposal for the appropriation of any revenue or moneys for any purpose can be made except on the recommendation of the Governor-General. Where a question arises whether a proposed appropriation of revenue or moneys does or does not relate to the heads of expenditure which under Sec. 67-A (3) are not to be open to discussion by either Chamber, the decision of the Governor-General is final. Notwithstanding anything in Sec. 67-A the Governor-General has the power in cases of emergency to authorise such expenditure

as may, in his opinion, be necessary for the safety or tranquillity of British India or any parts thereof.

(*e*) *In relation to Provincial Governments.* He is consulted by His Majesty before appointing the five Provincial Governors; appoints Lieutenant-Governors and members of their Executive Councils with the approval of His Majesty; and may appoint a Deputy Governor to administer part of a Governor's province.

(*f*) *In respect of legislation by provincial Councils.* His previous sanction is necessary where a local Legislature makes or takes into consideration any law relating to subjects specified in Sec. 80-A (3). He may veto an Act passed by the local Legislature, or reserve the same for consideration of His Majesty's pleasure thereon.

(*g*) *Immunities from local jurisdiction.* Under Sec. 110 of the Act the Governor-General is not—

(*a*) subject to the original jurisdiction of any High Court by reason of anything counselled, ordered, or done by him in his public capacity only;

(*b*) liable to be arrested or imprisoned in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction;

(*c*) subject to the original criminal jurisdiction of any High Court in respect of any offence not being treason or felony.

(3). The Viceroy's Executive Council.

Members of the Council are appointed by His Majesty by Warrant under the Royal Sign Manual.

Their number is such as His Majesty thinks fit to appoint. At least three of them must be persons who have been for ten years in the service of the Crown in India, and one must be a Barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, or a pleader of the High Court of not less than ten years' standing. If any member of the Council (other than the Commander-in-chief for the time being of His Majesty's forces in India) is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties. If the Commander-in-Chief is appointed member his rank and precedence in the Council is next after the Governor-General. The Governor-General appoints a member of the Executive Council to be Vice-president thereof. There is no statutary guarantee for the presence of Indian element on the Council. The first occasion when an Indian member was appointed was in March 1909. Following the recommendation of the Joint Select Committee, with the inauguration of the reforms, the number of Indian members was raised to three.

(*b*). *Mode of transacting business.* The Governor-General may make rules and orders for the more convenient transaction of business. This power has facilitated the departmental division of work. Members of the Council hold charge of the Departments of Home Affairs, Revenue, Agriculture and Public Works, Education, Finance, Law, Railways, Commerce and Industry. Foreign Department is under the direct control of the Viceroy

himself, and military affairs are dealt with by the Commander-in-Chief who is his own war minister. Under the rules for the disposal of business all ordinary departmental matters are settled by the member in charge of the department concerned acting under the implied authority of the Governor-General in Council, but all questions of special importance, cases where two departments differ in opinion, or matters in which it is proposed to overrule the views of a Local Government must be referred to the Governor-General and orders are passed either by him or by the whole Council. The members of the Council meet from time to time to discuss questions which the Viceroy desires to put before them, or which a member who has been overruled by the Viceroy has asked to be referred in Council.

The Council holds its meetings at such places in India as the Governor-General in Council appoints. The quorum consists of the Governor-General or other person presiding and one member of the Council, other than the Commander-in-Chief. Where a difference of opinion arises on any question brought before the Council as a rule the decision of the majority of those present is binding and if they are equally divided the person presiding has a second or casting voice. For "the safety, tranquillity or interest of British India" the Governor-General may in any case override the Council and act on his own authority and responsibility. Where this extraordinary power is employed by the Governor-General any two members of the dissentient majority may require that the fact of their dissent together with

copies of any minutes which the members of the Council have recorded on the subject, be reported to the Secretary of State.

Whenever the Governor-General in Council declares it to be expedient that the Governor-General should visit any part of India unaccompanied by his Executive Council, the Governor-General in Council may by order authorise the Governor-General alone to exercise in his discretion all or any of the powers which might be exercised by the Governor-General in Council. In addition to this the Governor-General during absence from his Executive Council may, if he thinks it necessary, issue on his own authority and responsibility, any order, which might have been issued by the Governor-General in Council, to any Local Government, or to any officers or servants of the Crown acting under authority of such Local Government without previously communicating the order to the Local Government concerned.

(4). Viceroy's Executive Council and British Cabinet compared.

1. The British Cabinet is responsible to Parliament but the Governor-General's Executive Council is not responsible to the Indian Legislature.

2. The British Cabinet is appointed and is removeable by the Crown but the Executive Council is neither appointed by the Viceroy nor removeable by him.

3. The Cabinet is unknown to law whereas the Executive Council of the Viceroy is created and invested with definite powers by Acts of Parliament.

4. Proceedings of the Viceroy's Council are recorded which is not the case with proceedings of the Cabinet.

5. In the English Cabinet any act of a Minister is *legally* attributable to him alone, whereas in the case of members of the Executive Council all acts are in law the acts of the Governor-General in Council.

6. As there is no party Government in India the tie which binds the members of the Cabinet to each other is wanting in the case of the Executive Council. Not only the Council may be antagonistic to the Viceroy but the members of the Council itself may have divergent political views.

Two main points of resemblance are the existence of Government by department and the secrecy attaching to the meetings and proceedings of both the bodies.

(5). Power of the Governor-General in Council to make war and treaties.

Unlike the Government of any of the self-governing Colonies in the British Empire the Governor-General in Council in India is empowered by statute under certain circumstances to make war or peace or enter into political treaties even without the previous approval of the superior authorities in England.

Section 44 of the Act provides that where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government in India or against any prince or state dependent thereon, or against any prince or States whose territories His Majesty is bound by any subsisting treaty to defend or guarantee, the Governor-General in Council may, without express order of the Secretary of State in Council, either declare war or commence hostilities or enter into any treaty for making war against the attacking power or enter into any treaty for guaranteeing the possession of a prince or State in return for assistance against the assailing power.

When the Governor-General in Council commences any hostilities or makes any treaty he is required forthwith to communicate the same, with the reasons therefor, to the Secretary of State. Except under the circumstances mentioned above the Governor-General in Council is not to make war or treaty without the express order of the Secretary of State in Council.

(6). Appointment of Council Secretaries.

Section 43 (A) provides that the Governor-General may at his discretion appoint from among the members of Legislative Assembly, Council Secretaries who shall hold office during his pleasure and discharge such duties in assisting the members of his Executive Council as he may

assign to them. They are to get such salary as may be provided by the Indian Legislature. A Council Secretary shall cease to hold office if he ceases for more than six months to be a member of the Legislative Assembly.

This section was inserted on the recommendation of the Joint Select Committee. The Government of India in their first despatch on the Montague-Chelmsford Report had stated that the appointment of Council Secretaries in the Government of India was "neither necessary nor desirable." They felt, "it would be inadvisable to complicate the working of the Government of India in the difficult times before us by an arrangement which cannot be justified on strong grounds, and which might be misconstrued as an attempt to introduce by a side issue the ministerial system into the Government of India."

PROVINCIAL GOVERNMENTS.

(1). Division of Functions.

For purposes of distinguishing the functions of the Central and Provincial Goverenments the Act authorises the making of rules classifying the subjects as central and provincial. By the rules framed the more important departments which are placed under the direct administration and control of the Governor-General in Council are :—

Defence of India, and all matters connected with His Majesty's naval, military, and air

forces in India or with any other force raised in India, other than military and armed police wholly maintained by local Government; naval and military works and cantonments; external relations; political charges; posts, telegraphs, and telephones; sources of all-India revenue; currency and coinage; civil law; commerce; trading companies: cultivation, manufacture and export of opium; geological survey; mineral development; botanical survey; inventions and designs; copyright; emigration and immigration; control of arms and ammuniations; ecclesiastical administration; archæology; census and statistics; all-India services; the Public Service Commission; survey of India; and criminal law including criminal procedure.

Of the subjects which are provincial, *i.e.* in respect of which the Government of India only exercises supervising authority, the more important are: —

Local self-government; medical administration; public health and sanitation; vital statistics; pilgrimages within British India; education subject to certain exceptions; public works under certain heads; irrigation canals; land revenue administration; famine relief; agriculture; civil veterinary department; fisheries; co-operative societies; forests; land acquisition; excise; administration of justice; registration of deeds and documents; development of industries; adulteration of food-stuffs and other articles; weights and measures; inland waterways; police including railway

police ; control of newspapers ; criminal tribes ; prisons and reformatories ; libraries and museums ; government presses ; sources of provincial revenue ; and provincial borrowing.

The demarcation of powers is not so distinct as it would seem. The list of provincial subjects is definite and strictly defined but that of the central subjects is not exhaustive. It is provided that all matters not included among the former must be treated as central. Any matter, though falling within a central subject, may be declared by the Governor-General in Council to be of a mere local or private nature within the province. Powers may also be conferred by or under any law upon a Local Government in respect of matters pertaining to a central subject. There are some subjects of provincial administration which are made by rules subject to *legislation* by the Indian Legislature. Where doubt arises as to whether a particular matter does or does not relate to a provincial subject, the decision of the Governor-General in Council is final. The Governor-General in Council may employ the agency of the Provincial Governments in the administration of Central subjects in so far as such agency may be found convenient.

(2). Relation of Local Governments to the Governor-General in Council.

Every Local Government is subject to superintendence, direction, and control of the Governor-General in Council in all matters relating to the

administration of its province and is required by the Act—

(1) to obey the orders of the Governor-General in Council; and

(2) to keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him or as to which he requires information.

In regard to the provincial subjects which are transferred to the charge of Ministers the powers of superintendence, etc., are exercised only for purposes specified in the rules made under the Act, namely,

(*a*) to safeguard the administration of central subjects;

(*b*) to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at an agreement; and

(*c*) to safeguard the due exercise and performance of any powers and duties possessed by, or imposed on, the Governor-General in Council under, or in connection with, or for the purposes of sections 29 (A) and 30 (1A), and part VII-A of the Act or of any rules made by, or with the sanction of, the Secretary of State inCouncil.

In relation to reserved subjects the Act makes no express provision limiting the powers of control apart from Section 19 (A), which authorises the Secretary of State in Council by rules to regulate and restrict the control vested in the Government of India "in such manner as may appear necessary or expedient in order to give effect to the purposes of this Act."

(3). Forms of Local Government.

There are three types of Local Government in British India—Governorships, Lieutenant-Governorships, and Chief Commissionerships. Governorship exists in each of the three Presidencies of Bengal, Bombay and Madras and in the provinces known as the United Provinces, the Punjab, Behar and Orissa, the Central Provinces, and Assam. The Act of 1919 did not raise Burma to the status of Governorship, but in 1921 in exercise of the powers conferred by Sub-Section (1) of Section 52 (*a*) of the Government of India Act Burma also was constituted a Governor's province. The North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, and the Andaman and Nicobar Islands are each administered by a Chief Commissioner. Section 59 of the Act provides that the Governor-General in Council may, with the approval of the Secretary of State, and by notification, take any part of British India under its immediate authority and management and thereupon give all necessary orders and directions respecting the administration of that part, by placing it under a Chief Commissioner or *by otherwise providing for its administration.*

(4). Governors' Provinces.

(*a*) *Position and status of Governors.* Although the Governors wield almost identical powers in their respective provinces they differ,

due largely to historical circumstances, in position and status.

1. Governors of the three Presidencies are appointed direct by His Majesty by Warrant under the Royal Sign Mannual; Governors of the remaining five provinces are appointed after consultation with the Governor-General.

2. The Presidency Governors enjoy the traditional privilege of corresponding direct with the Secretary of State, the other Governors have no such privilege.

3. If a vacancy occurs in the office of the Governor-General the senior among the Presidency Governors is entitled to hold the office.

4. The three Presidency Governors and the Governor of the United Provinces receive an annual salary of Rs. 128,000 each ; Governors of the Punjab, and Behar and Orissa one lac each ;* Governors of Central Provinces and Assam Rs. 72,000 and 66,000 respectively.

5. Though there is nothing in law which prevents a civil servant from being appointed to a Presidency Governorship, in practice such Governors are invariably recruited from the ranks of public men in English life. In the case of remaining five provinces the object of the proviso "after consultation with the Governor-General" is to give the Governor-General an opportunity of recommending for appointment fit persons from India.

*The Maximum annual salary of the Governor of Burma also has been fixed at Rs. one lac.

(b). System of dyarchy. In each of the Governors' provinces there exists the system of dyarchy or the division of subjects into 'reserved' and 'transferred.' The executive consists of two parts, one comprising the Governor and his Executive Council, the other comprising the Governor acting with Ministers. The Governor acting with his Ministers is in charge of transferred subjects; the Governor in Council is in charge of reserved subjects.

The Secretary of State may, if he thinks fit, by order, revoke or suspend, for such period as he may direct, the appointment of a Council for any or all of the Governors' provinces and whilst any such order is in force the Governor of the province to which the order refers shall have all the powers of the Governor in Council.

By rules made under the Act the following subjects are transferred to the control of Ministers :—

1. Local self-government, exclusive of matters arising under the Cantonments Act, 1910 ; subject to legislation by the Indian Legislature as regards (*a*) the powers of such authorities to borrow otherwise than from a Provincial Government, and (*b*) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.

2. Medical administration, including hospitals, dispensaries and asylums, and provision for medical education.

3. Public health and sanitation and vita statistics; subject to legislation by the Indian

Legislature in respect to infections and contagious diseases.

4. Pilgrimages within British India.

5. Education excluding European and Anglo-Indian education, the Benares Hindu University, and Chiefs' Colleges. (For a period of five years from the date of commencement of these rules, the Calcutta University and the control and organisation of secondary education in the Presidency of Bengal shall be subject to legislation by the Indian Legislature.)

6. Public works included under the following heads :—

(*a*) Provincial buildings.

(*b*) Roads, bridges, ferries, and other means of communication.

(*c*) Tramways within municipal areas.

(*d*) Light and feeder railways and extra-municipal tramways in so far as subject to provincial legislation.

7. Agriculture.

8. Civil Veterinary Department.

9. Fisheries.

10. Co-operative societies.

11. Forests (in Bombay only).

12. Excise.

13. Registration of deeds and documents (subject to Indian legislation).

14. Registration of births, deaths, and marriages (subject to Indian legislation for such classes as the Indian Legislature may determine).

15. Religious and charitable endowments.

16. Development of industries, including industrial research and technical education.

17. Stores and stationary required for transferred departments (subject in the case of imported stores and stationary, to such rules as may be prescribed by the Secretary of State in Council).

18. Adulteration of food-stuffs and other articles (subject to legislation by the Indian legislature as regards import and export trade).

19. Weights and measures (subject to Indian legislation as regards standards).

20. Libraries (other than the Imperial Library), museums (except the Indian Museum, the Imperial War Museum, and the Victoria Memorial, Calcutta) and zoological gardens.

There are three important rules governing the transfer of subjects in the provinces. (*a*) Where doubt arises as to whether a particular matter relates to a reserved or to a transferred subject the question is decided by the Governor and his decision is final. (*b*). The Governor-General in Council may, by notification in the *Gazette of India*, with the previous sanction of the Secretary of State in Council, revoke or suspend for such period as he may consider necessary the transfer of any subject in any province. (*c*) When a matter appears to the Governor to affect substantially the administration both of a reserved and a transferred subject, and there is disagreement between the member of the Executive Council and the Minister concerned as to the action to be taken it is the duty of the Governor to direct in which department the decision as to such action shall be taken, provided that, in so far as the circumstances admit, important matters on which there is such a difference of opinion shall, before giving

of such direction, be considered by the Governor, the Executive Council, and the Ministers together.

The authority vested in the Local Government over officers of the public services employed in the province is exercised in the case of officers serving in a department dealing with reserved subjects by the Governor in Council, and in the case of officers serving in a department dealing with transferred subjects by the Governor acting with the Minister in charge of the department, provided that—

(*a*) no order affecting emoluments or pensions, no order of formal censure, and no order on a memorial shall be passed to the disadvantage of an officer of an all-India or provincial service without the personal concurrence of the Governor; and

(*b*) no order for the posting of an officer of an all-India service shall be passed without the personal concurrence of the Governor.

If an officer performs duties in both the departments the Governor is to decide in which department he shall be deemed to be serving.

(*c*). *Executive Council.* Members of a Governor's Executive Council are appointed by His Majesty by Warrant under the Royal Sign Manual. Their number is such, not exceeding four, as the Secretary of State in Council directs. One, at least, of them must be a person who at the time of his appointment has been for twelve years in the service of the crown in India. Provision may be made by rules under

the Act for the qualifications of the remaining members of the Council.

The Joint Select Committee on the Bill recommended that the normal strength of a Council, especially in the smaller provinces, need not exceed two members.

Though no statutary provision is made for the appointment of Indians it is contemplated that an Executive Council will have one Indian and one European member, and if a second European member is appointed there will also be appointed a second Indian member. The Joint Select Committee observed that if in any case the Council includes two members with service qualifications, neither of whom is by birth an Indian, then it should also include two non-official Indian members.

Every Governor appoints a member of his Executive Council to be the Vice-President thereof. He may also make rules and orders for the transaction of business in the Council. If a difference of opinion arises on any question brought before a meeting of the Council, decision of the majority of those present is binding, and if they are equally divided the Governor or other person presiding has a second or casting vote. It is, however, provided that whenever any measure proposed essentially affects, in the judgment of the Governor, the safety, tranquillity or interests of his province, he may override his Council and act on his own authority and responsibility. In every such case the Governor and the members of the Council present at the meeting shall mutually exchange their

written communications stating the grounds of their respective opinions, and the order of the Governor shall be signed by the Governor and those members.

(*d*). *Ministers.* They are appointed by the Governor to administer transferred subjects and hold office during his pleasure. A Minister must not be a member of the Executive Council or other official and unless he is or becomes an elected member of the local legislature he cannot hold office for a longer period than six months. He is paid the same salary as is payable to a member of the Executive Council in the province unless a smaller salary is provided by vote of the local Legislative Council. In relation to transferred subjects the Governor is required to be guided by the advice of his Ministers unless he sees sufficient cause to dissent from their opinion in which case he may require action to be taken otherwise than in accordance with that advice.* In regard to the status of Ministers and their relations with the Governor the Joint Select Committee, observed as follows :—

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* This power of a Governor has been justified on the following grounds—

1. It is consistent with the English constitutional practice.

2. It is necessary to safeguard the interests of minorities.

3. It is necessary in the absence of ministerial responsibility to the legislature.

4. It is certain that the Governor will not cross sword unless he has justice on his side and public opinion supports him.

5. Circumstances under which this vetoing power may be exercised are limited and are mentioned in the instrument of instructions furnished to the Governor at the time of his appointment.

The Committee are of opinion that the Ministers selected by the Governor to advise him on the transferred subjects should be elected members of the Legislative Council, enjoying its confidence and capable of leading it. A Minister will have the option of resigning if his advice is not accepted by the Governor; and the Governor will have the ordinary constitutional right of dismissing a minister whose policy he believes to be seriously at fault or out of accord with the views of the Legislative Council. In the last resort the Governor can always dissolve his Legislative Council and choose new Ministers after a fresh election but if this course is adopted the Committee hope that the Governor will find himself able to accept such views as his new Ministers may press upon him regarding the issue which forced the dissolution. The Committee are of opinion that in no province will there be need for less than two Ministers, while in some provinces more will be required. In these circumstances they think *that it should be recognised from the commencement that Ministers may be expected to act in concert together.* They probably would do so; and in the opinion of the Committee it is better that they should, and therefore that the fact should be recognised on the face of the Bill. They advise that *the status of Ministers should be similar to that of the members of the Executive Council,* but that their salaries should be fixed by the Legislative Council. Later on in this Report it will be suggested that Indian members of the Council of India in London should be paid

a higher scale of remuneration than those members of the Council domiciled in the United Kingdom. The same principle might suggest to the Legislative Council that it was reasonable for the Ministers of the Provincial Government domiciled in India to be paid on a lower scale of remuneration than the European members.

As the Ministers hold office during the Governor's pleasure their responsibility is directly to him. There are, however, two provisions in the Act which make the Ministers indirectly responsible to the Legislature, namely,

1. their salaries are subject to Council vote, and

2. the Council votes the supply for transferred subjects.

The Act authorises the making of rules for the temporary administration of a transferred subject where, in cases of emergency, owing to a vacancy, there is no Minister in charge of the subject. The rules made under this authority provide that the Governor—

(1). shall, if another Minister is available and willing to take charge of the subject, appoint such Minister to administer the subject temporarily; or

(2). may, if the vacancy cannot be provided for in the aforesaid manner himself temporarily administer the subject and while so doing exercise in relation to the subject all such powers as he could exercise if he were the minister in charge thereof.

Where the latter course is adopted the Governor is required to certify its necessity

and forward a copy of such certificate for the information of the Governor-General in Council.

(*e*). *Relation between Governor's Executive Council and Ministers.* The Governor is empowered by the Act to make rules and orders regulating the relations between his Executive Council and the Ministers. The Joint Select Committee in their report made important observations in respect of it. The Committee suggested that in all important matters which are fit "subject of cabinet consultations, the habit should be fostered of joint deliberation between the members of the Executive Council and the Ministers, sitting under the Chairmanship of the Governor", but once the opinions have been freely exchanged the final decision must rest with that part of the Government which is responsible for the subject. The Committee further observed: "In the debates of the Legislative Council members of the Executive Council should act together and Ministers should act together, but members of the Executive Council and Ministers should not oppose each other by speech or vote; members of Executive Council should not be required to support either by speech or vote proposals of Ministers of which they do not approve, nor should Ministers be required to support by speech or vote proposals of the Executive Council of which they do not approve."

(*f*). *Council Secretaries.*—A Governor is empowered to appoint at his discretion Council Secretaries from among the non-official members of

the local legislature. They hold office during the Governor's pleasure and discharge such duties in assisting members of the Executive Council and Ministers, as he may assign to them. Their salaries are fixed by vote of the Legislative Council. A Council Secretary ceases to hold office if he ceases for more than six months to be a member of the legislative Council. There is no statutary limit to their number. The Montague-Chelmsford Report suggested that their position should be somewhat similar to that of Parliamentary under-secretaries in England.

(5). Lieutenant-Governorships.

(*a*). *Appointment of a Lieutenant-Governor and of members of his Executive Council.* A Lieutenant-Governor is appointed by the Governor-General with the approval of His Majesty. He must have been, at the time of his appointment, at least for ten years in the service of the Crown in India. The Governor-General in Council may, with the approval of the Secretary of State in Council, by notification, create an Executive Council in any province under a Lieutenant-Governor and by such notification provide for the number of councillors (not exceeding four), their qualifications, and the procedure to be adopted in the case of difference of opinion. It is required, however, that before such notification is published, a draft thereof shall be laid before either House of Parliament for at least sixty days during the session and if in the meanwhile an address is presented to His Majesty against the

draft or any part of it no further proceedings shall be taken thereon. Members of a Lieutenant-Governor's Executive Council are appointed by the Governor-General with the approval of His Majesty.

(b). Business of Lieutenant-Governor in Council. The Lieutenant-Governor appoints a member of the Council to be the Vice-president to preside at meetings of the Council in his absence and with consent of the Governor-General in Council may make rules and orders for more convenient transaction of business in the Council.

(6). Governorship and Lieutenant-Governorship distinguished.

The main points of distinction are—

(1) Lieutenant-Governor is styled 'His Honour'; Governor is described 'His Excellency.'

(2) Lieutenant-Governor is appointed by the Governor-General from among the persons in service of the Crown in India; Governor is appointed by His Majesty and the choice is not thus limited.

(3) Lieutenant-Governor may or may not have an Executive Council.

(4) Lieutenant-Governor has no right to communicate directly with the Secretary of State, a privilege which exists in the case of Presidency Governors.

(5) Lieutenant-Governor is subject to more detailed interference from the Central Government.

(6) Members of a Governor's Executive Council are appointed by His Majesty by Warrant under the Royal Sign Manual and their number is determined by the Secretary of State; members of a Lieutenant-Governor's Council are appointed by the Governor-General with the approval of His Majesty and their number is determined by the Governor-General with the approval of the Secretary of State in Council.

(7). Chief Commissionerships.

The provinces placed under Chief Commissioners are technically "under the immediate authority and management of the Governor-General in Council", who appoints Chief Commissioners and delegates to them such powers as are necessary for the purposes of administration.

(8). Constitution of new provinces.

(*a*) With previous approval of the Secretary of State and by notification the *Governor-General in Council may take under his immediate authority and management* any part of British India, and thereupon give all necessary orders and directions respecting the administration of that part by placing it under a Chief Commissioner or otherwise.

(*b*). With the sanction of His Majesty previously signified by the Secretary of State in Council the Governor-General in Council may by notification *constitute a new province under a Lieutenant-Governor.*

(*c*). The Governor-General in Council may *declare any territory in British India to be a "backward tract"* and, with the sanction of His Majesty previously signified by the Secretary of State in Council, may direct that the Government of India Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification.

(*d*). The Governor-General in Council may, after obtaining an expression of opinion from the local Government and the local Legislature affected by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, *constitute a new Governor's province or place part of a Governor's province under the administration of a Deputy Governor* to be appointed by the Governor-General, and may in any such case apply, with such modifications as appear necessary or desirable, all or any of the provisions of the Act relating to Governors' Provinces, or provinces under Lieutenant-Governor or Chief Commissioner, to any such new province or part of a province.

(9). Alteration of provincial boundaries.

The Governor-General in Council may, by notification, declare, appoint or alter the boundaries of any of the provinces of British India and distribute the territories in such manner as may seem expedient subject to two qualifications :—

(1) An entire district may not be transferred from one province to another without the previous

sanction of the Crown, signified by the Secretary of State in Council.

(2) Any notification made by the Governor-General in Council in exercise of this power may be disallowed by the Secretary of State in Council.

THE INDIAN LEGISLATURE.

(1). Legislative agencies in British India.

These are six in number—

(*a*) Acts of Parliament. They apply to British India when so intended expressly or by implication.

(*b*) Acts of the Indian Legislature.

(*c*) Acts of the Provincial Legislative Councils.

(*d*) Regulations of the Governor-General in Council.

(*e*) Ordinances of the Governor-General.

(*f*) Acts of the Governor-General and Governors made by the process of certified legislation.

(2). Constitution of the Indian Legislature.

It consists of the Governor-General and two* chambers, known as the Council of State and the Legislative Assembly.

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*Advantages of bicameral system—

(*a*) Prevents precipitancy and compels second deliberation.

(*b*) Prevents the evil effect produced on the mind of the Assembly by the consciousness of having only itself to consult.

(a) The Council of State. The maximum number of members is sixty, nominated or elected in accordance with rules made under the Act. Not more than twenty of these can be officials. Under the rules framed the Council now consists of thirty-three elected members, and twenty-seven nominated of whom one is a person nominated as the result of an election held in Berar.

The Governor-General has the power to appoint, from among the members, a President and other persons to preside in such circumstances as he may direct.

(b) The Legislative Assembly. It consists of elected and nominated members. Section 63 (*b*) fixes the total number of members at 140 of whom 100 are required to be elected and 40 nominated and of the latter not more than twenty-six may be officials. By rules made under the Act the number of members may be increased and the proportion which the classes of members bear to one another

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(*c*) Two Houses act as a check on one another.

(*d*) The system is sought as a restraint on democracy.

Disadvantages of bicameral system—

(*a*) A second House may at times prove a material obstacle to improvement.

(*b*) Delays legislation.

(*c*) Gives minority a vetoing power over legislation approved by the majority.

(*d*) It is productive of irritation

In making proposal for the creation of Council of State the Montague-Chelmsford Report did not intend to establish a true bicameral system. A second chamber was proposed for two reasons :—

(*a*) Principally to enable the executive to secure its essential legislation and its supplies by means of an "official bloc."

(*b*) To provide a body of elder statesmen or chamber of true sanatorial character.

varied, so, however, that at least five-sevenths of the members shall be elected and at least one-third of the remaining non-officials.

The Legislative Assembly, as constituted by the rules, consists of 144 members of whom 103 are elected, 26 nominated officials, and the remaining nominated non-officials.

The President of Assembly for four years from its first meeting is appointed by the Governor-General but thereafter he is required to be a member of the Assembly elected by it and approved by the Governor-General. With the approval of the Governor-General the Assembly elects its Deputy President who presides at its meetings in the absence of the President. Either of them may resign office by writing addressed to the Governor-General. A President appointed by the Governor-General may be removed from office by his order but an elected President or Deputy President can be removed only by a vote of the Assembly with the concurrence of Governor-General. The latter cease to hold office also on ceasing to be members of the Assembly. The salary of the appointed President is fixed by the Governor-General, and of the elected President or Deputy President by an Act of the Legislature.

(c) *The Governor-General.* He is not himself a member but he is given the power of addressing either Chamber and may for that purpose require the attendance of its members.

(3). Duration and Sessions of the Chambers.

Normal duration of the Council of State is five years and of the Legislative Assembly three

years, but the Governor-General may sooner dissolve either Chamber or extend the period if in special circumstances he so thinks fit. After the dissolution of a Chamber the Governor-General must hold its next session not more than six months or with the sanction of the Secretary of state not more than nine months from the date of the dissolution. Sitting of a Chamber may also be terminated by prorogation or adjournment. Prorogation terminates a session and is effected by order of the Governor-General. Adjournment simply postpones the transaction of business for a specified time and is effected by order of the person presiding.

(4). Meetings of the Chambers.

Either Chamber may exercise the powers notwithstanding any vacancy and all questions are determined by a majority of votes of members present other than the member presiding who has and exercises a casting vote in the case of an equality of votes.

(5). Membership of both Chambers.

A person cannot be a member of both the Chambers. If he is elected to both he must select the Chamber in which he proposes to take his seat. If an elected member of either Chamber becomes a member of the other Chamber, his seat in such first mentioned Chamber becomes vacant. Though a member of the Governor-General's Council has the right of attendin

and addressing both the Chambers he can be nominated as member of one Chamber only.

(6). Member's term of office, constituencies, franchise, etc.

Section 64 of the Government of India Act provides that the following things shall be determined by rules made under the Act : —

(*i*) the term of office of nominated members and the manner of filling casual vacancies ;

(*ii*) the conditions under which and the manner in which persons may be nominated as members ;

(*iii*) franchise, constituencies and the method of election ;

(*iv*) qualifications of candidates ; and

(*v*) the final decision of doubts or disputes as to the validity of an election

(*a*). *Term of office and filling of vacancies.* By the rules made under this power nominated non-official members hold office for the duration of the Chamber to which they are appointed, and nominated official members hold office for the duration of the Chamber, or for such shorter period as the Governor-General may at the time of nomination, determine.

Where a vacancy occurs in the office of an elected member the Governor-General by notification calls upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by such notification. If a vacancy occurs in the

case of a nominated member the Governor-General nominates to the vacancy a persen having the requisite qualifications.

(*b*). *Constituencies.* Of the thirty-three constituencies for the Council of State 29 are communal divided into 16 non-Mohammedan, 9 Mohammedan, 1 Sikh, and 3 Mohammedan and non-Mohammadan by rotation; 2 seats are assigned to European commerce, one in Bengal and the other in Burma; and two seats are general, one in the Central Provinces and the other in Burma. Madras has 5 seats, Bombay 6, Bengal 6, United Provinces 5, Punjab 2, Behar and Orissa 3, Central Provinces, 1 and Burma 2. East Punjab (Mohammedan), West Punjab (Mohammedan), and Behar and Orissa (non-Mohammedan) get two members by rotation. Assam (Mohammedan) and Assam (non-Mohammedan) get one member by rotation.

The constituencies for the Legislative Assembly are of two kinds, general and special. General constituencies are 47 non-Mohammedan, 28 Mohammedan, 2 Sikh, and 1 non-European in the province of Burma. Special constituencies are 9 European commerce, 2 Indian commerce, and 6 landholders. In addition to these the Province of Delhi is a general constituency with one seat, and the Presidency of Bombay has four groups of constituencies and Bengal one entitled to representation by rotation. Madras and Bombay get 16 seats each, Bengal 17, United Provinces 16, Punjab 12, Behar and Orissa 12, Central Provinces 5, Assam 4, Burma 2, and Delhi 1.

(c). *Disqualifications for membership.* A person is not eligible for election or nomination as member if such person—

(a) is not a British subject ; or

(b) is a female; or

(c) is already a member of any legislative body constituted under the Act ; or

(4) having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court ; or

(5) has been adjudged by a competent court to be of unsound mind ; or

(6) is under 25 years of age ; or

(7) is an undischarged insolvent ; or

(8) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused without any misconduct on his part.

In addition to these a person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting is not, unless the offence has been pardoned, eligible for election or nomination for five years from the date of the expiration of the sentence.

Under the Act an official is not qualified for election and if a non-official member accepts office in the service of the Crown in India his seat becomes vacant.

(d) *Registration on electoral roll and qualifications of electors.* A person to be entitled to have his name registered on the electoral roll of a constituency should possess the qualifications

prescribed for an elector of that constituency and must not be subject to any of the following disqualifications : —

(1) having been adjudged by a competent court to be of unsound mind ; or

(2) being under 21 years of age ; or.

(3) being not a British subject, provided that if the Ruler or subject of a state in India is not disqualified for registration on the electoral roll of a constituency of the Legislative Council of a province, he shall not by reason of not being a British subject be disqualified for registration on the electoral roll of any constinuency of the Indian Legislature ;

(4) being a female, provided that if a resolution is passed by the Legislative Assembly recommending the rmoval of the sex disqualification the Governor-General in Council shall make regulations providing that women or a class of women, as the case may be, shall not be disqualified for registration by reason only of their sex, if they are not so disqualified for registration as electors for the Legislative Council of their Province.

No person is entitled to have his name registered on the electoral roll of more than one general constituency.

The franchise qualifications vary with the provinces and the character of constituencies. In the Punjab* the qualifications of an elector are as follows : —

I. *Legislative Assembly.* (*i*) *General Constituencies.* A person is qualified as an elector for

* See the 'Gazette of India' Extraordinary, July 29, 1920.

a general constituency (non-Mohammadan, Mohammadan and Sikh) if he resides in the constituency and—

(*a*) has owned for the twelve months preceding the date of the publication of the electoral roll immoveable property, not being land assessed to land revenue but including any building created on such land, of the value of not less than Rs. 15,000 or of an annual rental value of not less than Rs. 336 provided that a person shall be deemed to have owned such property for any period during which it was owned by any person through whom he derives title by inheritance; or

(*b*) is the owner of land assessed to land revenue of not less than Rs. 100 per annum; or

(*c*) is an assignee of land revenue amounting to not less than Rs. 100 per annum; or

(*d*) is a tenant or lessee, under the terms of a lease for a period of not less than three years, of Crown land for which rent of not less than Rs. 100 per annum is payable: provided that, when the amount payable is assesed from harvest to harvest, the annual rent payable by such person shall be deemed to be the annual average amount payable by him in the three years preceding the date of publication of the electoral roll; or

(*e*) was during the financial year preceding the date of publication of the electoral roll assessed to income-tax on an income of not less than Rs. 5,000.

Provided that—

(*i*) no person shall be qualified as an elector for a Muhammadan constituency who is not a Muhammadan or for a Sikh constituency who is not a Sikh, and

(*ii*) no Muhammadan or Sikh shall be qualified as an elector for a non-Muhammadan constituency.

If any question arises as to whether a person is or is not a Sikh he shall be deemed respectively to be or not to be a Sikh according as he makes or refuses to make in such form and manner as the Local Government may by regulation prescribe a declaration that he is a Sikh.

(2) *Special constituency* (*landholders'*). A person is qualified as an elector for the Landholders' Constituency who resides in the Punjab and who is—

(*a*) the owner of land assessed to land revenue of not less than Rs. 1,000 per annum ; or

(*b*) an assignee of land revenue amounting to not less than Rs. 1,000 per annum.

II. *Council of State.* A person is qualified as an elector for a general constituency if he resides in the constituency and—

(*a*) is the owner or Crown tenant of land assessed to land revenue of not less than Rs. 750 per annum ; or

(*b*) is an assignee of land revenue amounting to not less than Rs. 750 per annum ; or

(*c*) was in the financial year preceding the date of publication of the electoral roll assessed

to income-tax on an income of not less than Rs. 15,000 ; or

(d) is or has been a non-official member of either Chamber of the Indian Legislature or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Punjab Legislative Council ; or

(e) is a provincial Punjab Darbari ; or

(f) is or has been the non-official president or vice-president of any municipal committee established under the Punjab Municipal Act, 1911, which has a population of 20,000 or over or which is situate at the headquarters' station of a district or is or has been the non-official chairman or vice-chairman of a district board established under the Punjab District Boards Act, 1883 ; or

(g) is or has been a member of the Senate, or a Fellow or an Honorary Fellow, of any university constituted by law in British India ; or

(h) is the non-official President or Vice-President of any central Co-operative Bank or union which is a registered society within the meaning of Section 2 of the Co-operative Societies Act, 1912 ; or

(1) is recognised by the Government as the holder of the title of Shams-ul-Ulma or of the title of Mahamahopadhyaya ;

Provided that--

(2) no person shall be qualified as an elector for a Muhammadan constituency who is not a Muhammadan or for the Sikh constituency who is not a Sikh, and

(3) no Muhammadan or Sikh shall be qualified as an elector for the non-Muhammadan constituency.

(*e*) *Election disputes.* An election may be called in question by a petition presented to the Governor-General by any candidate or elector within fourteen days from the date on which the result of the election has been published. At the time of presentation of the petition, the petitioner must deposit with it a sum of rupees one thousand or his petition shall be dismissed. The Governor-General will appoint for the trial of the petition three persons who are or have been or are eligible to be appointed judges of a High Court within the meaning of Section 101 (3) of the Government of India Act. No election petition may be withdrawn without the leave of the Commissioners. At the conclusion of the inquiry the Commissioners shall draw up their report in writing and forward the same to the Governor-General who shall issue orders in accordance with the report. If on any matter there is a difference of opinion among the Commissioners, the opinion of the majority prevails.

(7) Powers and Functions of the Legislature.

The functions of the Indian Legislature are fourfold-legislative, financial, deliberative, and interrogatory.

I. Legislative Functions.

(*a*) *Extent of Legislative powers.* In regard to its legislative powers there are three noteworthy points:—

(1). The Indian legislature is a non-sovereign law-making body. Its sphere of legislative activity is strictly defined by the Government of India Act and if it makes laws inconsistent with the limitations imposed upon its authority, the courts have the power to pronounce such laws invalid.

(2) There is no demarcation made *by statute* between the Indian and provincial spheres of legislation. Though it is expected that the Indian Legislature will refrain from legislating about purely provincial subjects legally there is no bar to its legislating on such subjects.

(3) The Indian Legislature has territorial as well as extra-territorial powers of legislation.

The Indian Legislature has power to make laws for (*a*) all persons, courts, places and things within British India; (*b*) all subjects of His Majesty and servants of the Crown in Native states; (*c*) native Indian subjects of His Majesty wherever found; (*d*) Government officers, soldiers, etc. of His Majesty's Indian Forces wherever they are serving; (*e*) persons belonging to the Royal Indian Marine Service; and (*f*) repealing or altering any laws applying to persons for whom the Indian Legislature has power to make laws. These wide powers of

legislation are subject to the following limitations :—

(1). *Unless expressly authorised by Act of Parliament* the Indian Legislature has not the power to make a law affecting an Act of Parliament passed after 1860 and applying to British India, or any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom.

(2). *The Indian Legislature cannot make a law affecting* (*a*) the authority of Parliament, or (*b*) any part of unwritten laws or constitution of the United Kingdom whereon may depend the allegiance of a person to the Crown, or (*c*) affecting the dominion of Crown over any part of British India.

(3). *Without the previous approval of the Secretary of State in Council* it cannot make a law (*a*) empowering any court, other than a High Court, to sentence to death a European British subject or (*b*) abolishing a High Court.

(4). *Without the previous sanction of the Governor-General* no measurse can be introduced affecting (*a*) public debt or revenues, (*b*) religion and usages of British subjects in India, (*c*) naval, military or air forces, (*d*) foreign relations, (*e*) a purely provincial subject, (*f*) Act of a local legislature, or (*g*) Act or ordinance made by the Governor-General.

(b). Settlement of deadlocks between the two chambers. Where a bill passed by one Chamber is not within six months passed by the other Chamber the Governor-General may in his discre-

tion refer the matter for decision to a joint sitting of both chambers.

(c). Governor-General's powers in respect of legislation. (1) He has power *to stop proceedings* in respect of any bill, clause, or amendment of it which in his opinion affects the safety or tranquillity of British India.

(2). He has the power *to secure legislation* which he considers as essential. Where either Chamber refuses leave to introduce a bill, or fails to pass it in a form recommended by the Governor-General, the Governor-General may certify the same as essential and thereafter on the signature of the Governor-General it becomes an Act. Such an Act is called Governor-General's Act and is of no effect until it has received His Majesty's assent. In a case of emergency, however, the Governor-General is empowered to direct that any such Act shall come into operation forthwith without waiting for His Majesty's assent.

3. When a bill passed by the two Chambers is presented to the Governor-General for his assent he may do one of the following things :—

(i) assent to the bill ; whereupon it becomes law subject to disallowance by His Majesty in Council ; or

(ii) veto the bill ; or

(iii) return the bill for reconsideration by either Chamber ; or

(iv) reserve the bill for the signification of His Majesty's pleasure thereon, and such a bill cannot become an Act until His Majesty in Council has signified his assent.

(d). Business and proceedings in the Legislature. Provision is made by rules under the Act for (*a*) regulating the course of business, (*b*) preservation of order in the Chambers, (*c*) the persons to preside at the meetings of the Legislative Assembly in the absence of the President and the Deputy President, (*d*) the number of members required to constitute quorum, *(e)* regulating the asking of questions on, and the discussion of, any subject specified in the rules. Standing orders may be made by the Governor-General in Council providing for the conduct of business and procedure to be followed in either Chamber so far as these matters are not provided for by rules made under the Act. The standing orders may with the consent of the Governor-General be altered by the Chamber to which they relate.

(e). Privilege of freedom of speech. A member of the Legislature is not liable to any judicial proceedings by reason of *(a)* his speech or vote in either Chamber, or *(b)* anything contained in any *official report* of the proceedings of either Chamber.*

*It would appear that a private report of the proceedings is not protected by the Act. The law relating to publication of debates under the English Constitution may be summarised thus. Each House of Parliament has a right to privacy of debates and therefore can prohibit publication of its debates. Within the walls of the House a member may say what he pleases and is protected by the privilege of freedom of speech. At common law a person who circulates any defamatory words, though spoken in the course of parliamentary debate, is liable and it is no defence that the statements have been published by order of the House. This was the law laid down in the case of Stockdale v. Hansard, 1839. A statute passed in consequence of this decision enacted that if such a statement is published by authority of either House, it would not give a cause of action for libel. This applied also to extract

II. Financial functions.

The Indian budget or the estimated annual expenditure and revenue of the Governor-General in Council is each year laid in the form of a statement before both Chambers and is *submitted to the vote of Legislative Assembly* in the form of demands for grants. It finally takes the form in which it is voted by the Legislative Assembly subject to the following limitations :—

1. No proposal for the *appropriation* of any revenues or moneys for any purpose can be made except on the recommendation of the Governor-General.

2. Proposals relating to certain heads of expenditure cannot be submitted to vote, nor are they open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs. These heads are *(a)* interest and sinking fund charges on loans, *(b)* expenditure of which the amount is prescribed by or under any law, (*c*) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council, (*d*) salaries of Chief Commissioners and Judicial Commissioners,

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from any reports printed, published *bona fide* and without malice. In 1868 a further question arose in the case of Wason *v.* Walter. The editor of a newspaper with no hostile or malicious intent published a fair report of the proceedings in Parliament which contained matter defamatory of an individual. The publication in question was not authorised by Parliament. It was held that when such publications are honestly and faithfully carried on those responsible for the publication will not be liable though character of individuals may incidently be injuriously affected.

and (*e*) expenditure classified by order of the Governor-General in Council as ecclesiastical, political, and defence.

If a question arises whether any proposed appropriation does or does not relate to the above heads, the decision of the Governor-General on the question is final.

3. Power is reserved to the Governor-General in Council to treat as sanctioned any demand which he considers essential to the discharge of his responsibilities notwithstanding the withholding of assent or reduction of the amount therein referred to, by the Legislative Assembly.

4. The Governor-General has also the power in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India.

III and IV. Deliberative and Interrogatory functions.

The Act authorises the making of rules for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

(8). Executive Legislation.

(*a*) *Regulations.* The Governor-General in Council is empowered to legislate in a summary manner for any part of British India in respect of which power of summary legislation is conferred by the Secretary of State by resolution in Council. Where such power is conferred the

Local Government concerned may propose to the Governor-General in Council the draft of any regulation, together with the reasons for proposing it. If the Governor-General in Council approves of the draft, it is officially published and thereupon it gets the force of law subject to disallowance by His Majesty in Council.

(*b*). *Ordinances.* In cases of emergency the Governor-General may make and promulgate ordinances for any part of British India. An ordinance remains in force not longer than six months from its promulgation. As in the case of an Act of the legislature it is subject to disallowance by His Majesty in Council. It may be controlled or superseded by an Act of the Indian Legislature. The power of making ordinances is subject to the like restrictions as the power of the Indian Legislature to make laws.

PROVINCIAL LEGISLATIVE COUNCILS.

(1). Legislative Council in a Governor's province.

(*a*) *Composition.* Every Governor's province has a Legislative Council which consists of members of the Executive Council, and members nominated or elected as provided by rules made under the Act. In addition to these the Governor may for purposes of any bill nominate, in the case of Assam one person, and in the case of other provinces not more than two persons having special knowledge or experience of the subject-matter of the bill. The Governor is not

himself a member but he has the right of addressing the Council and for that purpose requiring attendance of its members. Of the members of the Council at least seventy per cent are required to be elected and not more than twenty per cent officials.* The first schedule to the Act sets forth the number of members of the several Councils. The highest is for Bengal, *viz.*, 125; the lowest for Assam, *viz.*, 53. Subject to the maintenance of statutary proportions in respect of elected and official members, rules may provide for increase in the number of members of any Council.†

(*b*). *Term of office, constituencies, franchise, and qualifications of candidates.* Provisions are made by rules under the Act as to the term of office of nominated members, manner of filling casual vacancies, qualifications of electors, the constitution of constituencies, the method of election, qualifications of candidates, and decision of doubts or disputes as to the validity of elections.

Under the rules framed a nominated non-official member holds office for the duration of the Council to which he is nominated and official members hold office for the duration of the Council or such shorter period as the Governor, at the time of nomination, determines.

*For the province of Burma 60 per cent has been substituted for 70 per cent.

In the reformed Councils constituted under the Act the average percentage of elected members for all the provinces is 77·8. Bengal and the United Provinces have the highest percentage of elected members, *viz.*, 81·2, while Assam has the lowest, *viz.*, 73·5.

†In all the provinces except Bombay, the Central Provinces and Assam the number of members exceeds that provided or by the First Schedule to the Act.

To be entitled to a vote in the constituency the person must not be subject to any of the prescribed disqualifications and should possess the qualifications required for a voter in the constituency concerned. Persons who are not British subjects, or are females, or of unsound mind, or under twenty-one years of age are not entitled to franchise. The Local Government may by order remove the first of these disqualifications in the case of a ruler or subject of a Native State in India. Sex disqualification may also be removed by the Government on a resolution to that effect passed by the Local Legislative Council.

Constituencies are of two kinds, general and special. General Constituencies are Non-mohamadan, Mohamadan, Sikh, Indian Christian, and European or Anglo-Indian. Special Constituencies are landholders, university, planters, commerce and industries, and planting or mining. No person can have his name registered on the electoral roll of more than one general constituency. The qualifications for electors vary with the provinces both in case of general and special constituencies. To take an illustration the franchise qualifications in the Punjab are as follows :—

(*A*). *GENERAL CONSTITUENCIES.*

A person is qualified as an elector who—

(1) belongs to the community (non-Mohamadan, Mohamadan, or sikh) which the particular constituency represents ;

2 resides in the constituency; (A person may be presumed to reside in a constituency if he owns a family dwelling-house, or a share in a family dwelling-house, in the constituency, and that house is not during the twelve months preceding the date of the publication of the electoral roll been let on rent either in whole or in part); and

(3) (*i*) *if the constituency is urban has any one of the following qualifications :—*

(*a*) has owned for the twelve months preceding the date of publication of the electoral roll immoveable property, not being land assessed to land revenue but including any building erected on such land, of the value of not less than Rs. 4,000 or of an annual rental value of not less than Rs. 96 : provided that a person shall be deemed to have owned such property for any period during which it was owned by any person through whom he derives title by inheritance ; or

(*b*) has for the twelve months aforesaid occupied as a tenant in the constituency immoveable property, not being land assessed to land revenue but including any building erected on such land, of an annual rental value of not less than Rs. 96 ; or

(*c*) was during the twelve months aforesaid assessed in respect of any direct municipal or cantonment tax to an amount of not less than Rs. 50 ; or

(*d*) was during the financial year preceding the date of publication of the electoral roll assessed to income-tax ; or

(*e*) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces; or

(*f*) has any of the qualifications hereinafter prescribed for an elector of a rural constituency; or

(*ii*) *if the constituency is rural has any one of the following qualifications*:—

(*a*) is a zaildar, inamdar, sufedposh or lambardar in the constituency; or

(*b*) is the owner of land assessed to land revenue of not less than Rs. 25 per annum; or

(*c*) is an assignee of land revenue amounting to not less than Rs. 50 per annum; or

(*d*) is a tenant or lessee, under the terms of a lease for a period of not less than three years, of Crown land for which rent of not less than Rs. 25 per annum is payable: provided that, when the amount payable is assessed from harvest to harvest, the annual rent payable by such person shall be deemed to be the annual average amount payable by him in the three years preceding the date aforesaid; or

(*e*) is a tenant with a right of occupancy as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land assessed to land revenue of not less than Rs. 25 per annum; or

(*f*) was during the financial year preceding the date of publication of the electoral roll assessed to income-tax; or

(*g*) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces; or

(*h*) has any of the qualificatiens prescribed for an elector of an urban constituency.

(*B*). *SPECIAL CONSTITUENCIES.*

1. Landholders' Constituencies.

A person is qualified as an elector for a landholders' constituency (other than the Baloch Tumandars' Constituency) who resides in the Punjab and who is—

(*a*) the owner of land assessed to land revenue of not less than Rs. 500 per annum ; or

(*b*) an assignee of land revenue amounting to not less than Rs. 500 per annum.

No person is qualified as an elector for the Mohamedan Landholders' Constituency who is not a Mohamadan or for the Sikh Landholders' Constituency who is not a Sikh, and no Mohamadan or Sikh is qualified as an elector for the Punjab Landholders' (General) Constituency.

A person is qualified as an elector for the Baloch Tumandars' Constituency who is a Tumandar recognised by the Government or a person performing the duties of a Tumandar with the sanction of the Government.

2. The University Constituency.

A person is qualified as an elector for the Punjab University Constituency who resides in the Punjab, and is a Fellow or Honorary Fellow of the Punjab University or a graduate of the University of not less than seven years' standing.

3. *The Industry Constituency.*

A person is qualified as an elector for the Industry Constituency who:—

(*a*) is the owner of a factory which is situated in the Punjab, and is subject to the provisions of the Indian Factories Act, 1911, and in which work has been carried on during the twelve months preceding the date of the publication of the electoral roll, or

(*b*) is the partner in a firm owning such a factory and has been nominated by the firm for the purpose of voting in its behalf, or

(*c*) is a member of a company having a place of business in the Punjab and having a paid up capital of not less than Rs. 25,000 and has been nominated by the company for the purpose of voting on its behalf.

4. *The Commerce Constituency.*

A person is qualified as an elector for the constituency who—

(*i*) works for gain in the Punjab, and

(*ii*) is a member of the Punjab Chamber of Commerce or of the Punjab Trades' Association.

A person to be eligible for election as a member of the Council to represent a general constituency, in the Punjab, must be an elector in that or any other constituency in the province, resident* in the constituency for which he desires

* An important question before the Franchise Committee was should a candidate be permitted to contest a constituency in which

to be elected, and member of the particular community which the constituency represents. For the purposes of this rule a person may be presumed to reside in a constituency if he owns a residential house or a share in a residential house in the constituency and that house has not during 12 months preceding the date of the publication of the electoral roll been let on rent either in whole or in part. An official is not qualified for election and if a non-official member of the Council accepts office in the service of the Crown in India his seat on the the Council becomes vacant. An exception is made in case of a person who is appointed Minister.

(c). Sessions and duration. The normal duration of the Council is three years, but the Governor may dissolve it sooner or in special circumstances

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he has no place of residence. It was urged that the restriction is open to the following objections :—

1. It may have the effect of keeping out men of experience and capacity.

2. The view is based on an imaginary assumption of antagonism between the urban and rural interests.

3. It is an unjustifiable interference with the freedom of electors in regard to the choice of candidates.

4. It is based on a wrong assumption that the people do not know their own interests and can be made to realise their duty only by stringent rules and regulations imposed from outside.

It was pointed out on the contrary that one object of constituting territorial electorates being to encourage the candidature of persons with knowledge of local interests the chance of securing such candidates among the rural population would be impaired by the competition of candidates from outside.

The Joint Select Committee on the Bill recommended that the residence qualification may be maintained for special constituencies such as those provided for landholders and with regard to general and communal constituencies the restriction should be imposed only in Bombay, Punjab and Central Provinces.

extend it for a period not exceeding one year. On dissolution the Governor is to appoint a date not more than six months or, with the sanction of the Secretary of State, not more than nine months from the date of dissolution for the next session of the Council. The time and place for holding the session are appointed by the Governor. A meeting of the Council may be adjourned by the person presiding but prorogation may be effected only by the Governor.

(*d*). *President and Deputy President.* President, until the expiration of a period of four years from the first meeting of the Council as constituted under the Act, is a person appointed by the Governor but thereafter he is required to be a member of the Council elected by it and approved by the Governor. The appointed President receives such salary as may be determined by the Governor and may be removed from office by his order An elected President receives such salary as may be determined by an Act of the local Legislature and he may be removed from office by a vote of the Council with the concurrence of the Governor.

The Deputy President presides at meetings of the Council in the absence of the President, and is a member of the Council elected by it and approved by the Governor. He draws such salary as may be determined by Act of the local Legislature and may be removed from office by a vote of the Council with the concurrence of the Governor.

(*e*). *Business and procedure.* The Act empowers the making of rules in respect of the following matters:—

1. The course of business in the Council.

2. The persons to preside in the absence of President and Deputy-President.

3. The preservation of order at meetings.

4. Number of members required to constitute a quorum.

5. Prohibiting or regulating the asking of questions on and the discussion of any subject specified in the rules.

The Governor in Council may make standing orders providing for the conduct of business and the procedure to be followed in the Council, in so far as these matters are not provided for by rules made under the Act. The standing orders may, subject to the assent of the Governor, be altered by the local Legislature.

Subject to the rules and standing orders affecting the Council there is freedom of speech in the Legislative Council.

All questions at Council meeting are determined by a majority of votes of the members present other than the person presiding who has and exercises a casting vote in the case of an equality of votes.

(*f*). *Legislative powers.* A Provincial Legislative Council may make laws for the peace and good government of the territories for the time being constituting the province, and in doing so may repeal or alter as to it any law made by any authority in British India other than that local legislature subject to the following restrictions :—

1. There are certain matters about which it may not make or take into consideration any law

without the previous sanction of the Governor-General. These are:—

(*a*) imposing or authorising the imposition of any new tax unless it is a tax scheduled as exempted from this provision by rules made under the Act; or

(*b*) affecting the public debt of India or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the purposes of the Government of India provided that the imposition or alteration of a tax scheduled shall not be deemed to affect any such tax or duty; or

(*c*) affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces; or

(*d*) affecting the relations of the government with foreign princes or states; or

(*e*) regulating any central subject; or

(*f*) regulating any provincial subject which has been declared by rules under the Act to be subject to legislation by the Indian Legislature; or

(*g*) affecting any power expressly reserved to the Governor-General in Council by any law in force; or

(*h*) altering or repealing any law passed before the commencement of the Government of India Act, 1919, which is declared by rules under that Act to be a law which cannot be repealed or altered by the local Legislature without previous sanction; or

(*i*) altering or repealing an Act of the Indian Legislature made after the commencement of the Government of India Act, 1919, which by the provisions of such first mentioned Act may not be repealed or altered by the local Legislature without previous sanction.

Though previous sanction of the Governor-General is required before taking into consideration a law relating to any of these matters, nevertheless, it is provided that an Act made by a local Legislature and subsequently assented to by the Governor-General does not become invalid by reason only that the previous sanction of the Governor-General was not taken.

2. It has not the power to make law affecting any Act of Parliament.

3. There are certain matters about which it may not legislate without previous sanction of the Local Government, *viz.*, measures affecting the public revenues of the province, or imposing any charge on those revenues.

(*g*). *Assent to Bills.* Where a Bill has been passed by the Legislative Council the Governor may :—

(*a*) assent to it ; or

(*b*) withhold his assent ; or

(*c*) return the bill to the Council for reconsideration with suggested amendments ; or

(*d*) reserve it for consideration of the Governor-General.

When assent is given to the Act under clause (*a*) it requires further assent of the Governor-General to give it validity. An Act assented to

by the Governor-General may be disallowed by His Majesty in Council.

By the Reservation of Bills Rules made under the Act bills of the following description *must* be reserved for the consideration of the Governor-General :—

(*a*) affecting the religion or religious rites of any class of British subjects in British India ; or

(*b*) regulating the constitution or function of any University ; or

(*c*) having the effect of including within a transferred subject matters which have hitherto been classified as reserved subjects ; or

(*d*) providing for the construction or management of a light or feeder railway or tramway other than a tramway within municipal limits ; or

(*e*) affecting the land revenue of a province, if the proposed measure in the opinion of the Governor would seriously affect the public revenues.

The bills of the following description *may* be reserved for the consideration of the Governor-General :—

(*a*) affecting any matter wherewith the Governor is specially charged under his Instrument of Instructions ; or

(*b*) affecting any central subject ; or

(*c*) affecting the interests of another province.

(*h*) *Power to prevent undesirable bills.* Where a Bill has been introduced or is proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, the Governor may certify that the Bill or any clause of it or the

amendment affects the safety or tranquillity of his province or of any other province, and he may direct that no further proceedings shall be taken by the Council in relation to such Bill, clause, or amendment.

(*i*) *Power to secure essential legislation.* Where Legislative Council has refused leave to introduce, or has failed to pass in a form recommended by the Governor, any *bill relating to a reserved subject* the Governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject and thereupon the Bill, notwithstanding that the Council have not consented thereto, is deemed to have passed and on signature by the Governor becomes an Act in the form of the Bill as originally introduced or proposed to be introduced in the Council or (as the case may be) in the form recommended to the Council by the Governor. Every such Act is expressed to be made by the Governor. To prevent arbitrary exercise of this power the Act provides two constitutional safe-guards :

1. A bill so passed does not receive force and effect as an Act until it has received the assent of His Majesty in Council. It is however provided that where in the opinion of Governor-General a state of emergency exists which justifies such action, he may, instead of reserving such Act for the signification of His Majesty's pleasure, signify his assent thereto subject to disallowance by His Majesty in Council.

2. An Act made under this power is required to be laid as soon as practicable before either House of Parliament and shall not be presented

for His Majesty's assent until copies thereof have been laid before either House for not less than eight days on which that House has sat.

(2). Provincial Finance and Budget.

Sec. 45 A of the Act empowers the making of rules for the allocation of revenues or other moneys to Local Governments; fixing the contributions payable by Local Governments to the Governor-General in Council; making such contributions a first charge on allocated revenues or moneys; and constituting a finance department in any province, and regulating the functions of that department.

(*a*) *Allocation of revenues.* By rules made under this authority the following sources of revenue, are in the case of Governors' Provinces allocated to the Local Government as sources of provincial revenue, namely:—

(*a*) balances standing at the credit of the province at the time when the Act came into force;

(*b*) receipts accruing in respect of provincial subjects;

(*c*) a share (to be determined in the manner provided by rules) in the growth of revenue derived from income-tax collected in the province so far as that growth is attributable to an increase in the amount of income assessed;

(*d*) recoveries of loans and advances given by the Local Government and of interest paid on such loans;

(*e*) payments made to the Local Government by the Governor-General in Council or by other Local Governments, either for services rendered or otherwise;

(*f*) the proceeds of taxes which may be lawfully imposed for provincial purposes ;

(*g*) the proceeds of any loans which may be lawfully raised for provincial purposes ; and

(*h*) any other sources which the Governor-General in Council may by order declare to be sources of provincial revenue.

The revenues of Berar are allocated to the Local Government of the Central Provinces subject to two conditions, namely :—

(1) the Local Government of the Central Provinces is responsible for the due administration of Berar ; and

(2) if in the opinion of the Governor-General in Council provision has not been made for expenditure necessary for the safety and tranquillity of Berar, the allocation may be terminated by order of the Governor-General in Council, or diminished by such amount as the Governor-General in Council may by order in writing direct.

(*b*). *Expenditure of revenues and proposals for taxation and borrowing.* All moneys derived from sources of provincial revenue are paid into the public account of which the Governor-General in Council is custodian, and credited to the Government of the province. The Governor-General in Council has the power, with the previous sanction of the Secretary of State in Council, to prescribe the procedure to be followed in the payment of moneys into, and in the withdrawals, transfer and disbursement of moneys from, the public account, and for the custody of moneys standing in the account. At any time when he considers this course to be essential in the

financial interests of India as a whole, the Governor-General in Council has the power to require any Local Government to which revenues have been allocated so to regulate its programme of expenditure as not to reduce the balance at its credit in the public account on a specified date or dates below a stated figure, and has also the power to take the necessary steps by the restriction of issues of moneys to secure this end. Subject to this power, the Local Governments are at liberty to draw on their balances, provided that the notice of the amount which they propose to draw during the ensuing financial year is given to the Governor-General in Council before such date in each year as the Governor-General in Council may by order fix.

The contributions and assignments fixed under the rules as payable to the Government of India and interest on loans and advances made by the Governor-General in Council are the first charge on the annual allocated revenues of the Local Government. The expenditure on transferred subjects is within the exclusive control of the Local Legislature subject to no higher sanction save such as is reserved to the Governor in relation to the budget under Section 72 (D) of the Act. The Secretary of State in Council retains control over such expenditure which is likely to affect the prospects or rights of the all-India services which he recruits or relating to the purchase of stores in the United Kingdom. No statutary rules are prescribed limiting the control exercised by the Secretary of State in Council over expenditure on reserved subjects and such delegation as exists is

effected by orders of the Secretary of State in Council.

Each Local Government is required to establish and maintain out of provincial revenues a famine insurance fund as prescribed by the rules. A provision for this purpose is annually to be made in the budget.

All proposals for raising taxation or for the borrowing of money on the revenues of a province are considered by the Governor with his Executive Council and Ministers sitting together, but the decision thereafter is left to that part of the Government with which the proposal originates. The framing of proposals for expenditure in regard to transferred and reserved subjects is in the first instance a matter for agreement between the two halves of Government. If at the time of the preparation of the budget the Governor is satisfied that there is no hope of agreement within a reasonable time as to the apportionment of funds between reserved and transferred departments, he may, by order in writing, himself apportion the revenues and balances either in accordance with his own discretion, or in accordance with the report of an authority appointed by the Governor-General in this behalf on the application of the Governor. The Governor may at any time, if his Executive Council and Ministers so desire, revoke an order of allocation or make such other allocation as has been agreed upon by them. In default of agreement or order of allocation the budget is prepared on the basis of the aggregate grants respectively provided for the reserved and transferred subjects in the budget of the year about to expire.

(c). *Finance Department.* Each Governor's province has a Finance Department which is controlled by a member of the Excutive Council. Immediately subordinate to the member is a Financial Secretary with whom may be associated, if the Ministers so desire, a Joint Secretary appointed by the Governor after consultation with the Ministers. The Joint Secretary is specially charged with the duty of examining and dealing with financial questions arising in relation to transferred subjects and with proposals for taxation or borrowing put forward by any Minister. The Finance Department performs the following functions, mamely :—

(*a*) it is in charge of the account relating to loans granted by Local Government, and advises on the financial aspect of all transactions relating to such loans ;

(*b*) it is responsible for the safety and proper employment of the famine insurance fund ,

(*c*) it examines and reports on all proposals for the increase or reduction of taxation ;

(*d*) it examines and reports on all proposals for borrowing by the Local Government, and takes all steps necessary for the purpose of raising such loans as have been duly authorised ;

(*e*) it is responsible for seeing that proper financial rules are framed for the guidance of other departments and that suitable accounts are maintained by other departments and establishments subordinate to them ;

(*f*) it prepares an estimate of the suitable receipts and disbursements of the province in

each year, and is responsible during the year for watching the Local Government's balances;

(*g*) in connection with the budget and supplementary estimates —

(1) it prepares the statement of estimated revenue and expenditure which is to be laid before the Legislative Council in each year and any supplementary estimates or demands for excess grants which may be submitted to the vote of the Council;

(2) for the purpose of such preparation it obtains from the departments concerned material on which to base its estimates;

(3) it examines and advises on all schemes of new expenditure for which it is proposed to make provision in the estimates;

(4) it lays the audit and appropriation reports before the Committee on public accounts, and brings to the notice of the Committee all expenditure which has not been duly authorised and any financial irregularities;

(5) it advises departments responsible for the collection of revenue regarding the progress of collection and the methods of collection employed.

After grants have been voted by the Legislative Council the Finance Department has the power to sanction any reappropriation within a grant from one major, minor or subordinate head to another. A similar power to sanction a reappropriation is also possessed by the member or Minister in charge of the department.

(*d*). *Power to raise loans.* Local Governments have the power to raise loans on the secu-

rity of their allocated revenues, and rules made under the Act provide for the conditions under which this power is exercisable. Loans may be raised for any one of the following purposes: —

(*a*) to meet capital expenditure on the construction or acquisition (including the acquisition of land, maintenance during construction and equipment) of any work or permanent asset of a material character in connection with a project of lasting public utility, provided that—

(*i*) the proposed expenditure is so large that it cannot reasonably be met from current revenues; and

(*ii*) if the project appears to the Governor-General in Council unlikely to yield a return of not less than such percentage as he may from time time by order prescribe, arrangements are made for the amortisation of the debt;

(*b*) to meet any classes of expenditure on irrigation which have under rules in force before the passing of the Act been met from loans funds;

(*c*) for the giving of relief and the establishment and maintenance of relief works in times of famine or scarcity;

(*d*) for the financing of the Provincial Loan Account; and

(*e*) for the repayment or consolidation of loans raised in accordance with these rules or the repayment of advances made by the Government of India.

No loan can be raised by a Local Government without the sanction, in the case of loans to be raised in India, of the Governor-General in

Council, or, in the case of loans to be raised outside India, of the Secretary of State in Council, and in sanctioning the raising of a loan the Governor-General in Council or the Secretary of State in Council, as the case may be, may specify the amount of the issue and any or all of the conditions under which the loan is to be raised. Every application for the sanction of the Secretary of State is transmitted through the Governor-General in Council.

(*e*) *Scheduled taxes.* Section 80 (A) of the Act provides that a local legislature may not without the previous sanction of the Governor-General, make or take into consideration any law imposing or authorising the imposition of any tax unless the tax is a tax scheduled as exempted from this provision by rules made under the Act. The scheduled taxes rules which have been made under this power give two lists of exempted taxes and it is further provided that the Governor-General in Council may at any time, by order, make any addition to the taxes enumerated therein. The scheduled taxes which may be imposed for the purposes of Local Government are :—

1. a tax on land put to uses other than agricultural.
2. a tax on succession or on acquisition by survivorship in a joint family.
3. a tax on any form of betting or gambling permitted by law.
4. a tax on advertisements.
5. a tax on amusements.
6. a tax on any specified luxury.

7. a registration fee.

8 a stamp-duty other than duties of which the amount is fixed by Indian legislation.

The scheduled taxes which may be imposed for purposes of local authorities are :—

1. a toll.
2. a tax on land or land values.
3. a tax on buildings.
4. a tax on vehicles or boats.
5. a tax on animals.
6. a tax on menials and domestic servants.
7. an octroi.
8. a terminal tax on goods.
9. a tax on trades, professions and callings.
10. a tax on private markets.
11. a tax imposed in return for services rendered, such as—

(*a*) a water rate,
(*b*) a lighting rate,
(*c*) a scavenging, sanitary or sewage rate,
(*d*) a drainage tax, and
(*e*) fees for the use of markets and other public conveniences.

(*f*) *The budget.* The estimated annual expenditure and revenue of the province is laid in the form of a statement before the Council in each year, and the proposals of the Local Government for the appropriation of provincial revenues and other moneys are submitted to the vote of the Council in the form of demands for grants. The Council may assent or refuse its assent to a demand, or may reduce the amount either by a reduction of the whole grant or by the omission or reduction of any of the

items of expenditure of which the grant is composed. The financial control exercised by the Council is subject to four limitations :—

(*a*) the Local Government has power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, *if the demand relates to a reserved subject*, and the Governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject ;

(*b*) the Governor has power *in cases of emergency* to authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of *any* department ;

(*c*) no *proposal for the appropriation* of any such revenues or other moneys for any purpose shall be made except on the recommendation of the Governor, communicated to the Council ;

(*d*) proposals relating to the following heads of expenditure *are not required to be submitted to the Council* :—

(*i*) contributions payable by the local Government to the Governor-General in Council ;

(*ii*) interest and sinking fund charges on loans ;

(*iii*) expenditure of which the amount is prescribed by or under any law ;

(*iv*) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ; and

(*v*) salaries of Judges of the High Court of the province and of the Advocate-General.

Where a question arises whether any proposed appropriation of moneys does or does not relate to the above heads of expenditure, the decision of the Governor is final.

(3) Legislative Councils in Lieutenant-Governors' and Chief Commissioners' Provinces.

(3). Legislative Councils in Lieutenant-Governors' and Chief Commissioners' Provinces.

(*a*) *Their composition.* The Legislative Council consists of—

(*a*) members elected or nominated as provided by rules made under the Act; and

(*b*) members of the Executive Council (in a Lieutenant-Governor's Province) where such Council exists.

The statute prescribes two limitations in respect of composition.

1. *In the case of a Lieutenant-Governor's Province* the *maximum* number of members nominated or elected shall be one hundred.

2. *At least* one-third of the persons nominated or elected to the Legislative Council must be non-officials.

The Act does not guarantee an elected or even non-official majority and no minimum number of members is prescribed.

The Governor-General in Council with the approval of the Secretary of State is empowered to make rules on the following matters:—

1. The conditions under which and the manner in which persons resident in India may be nominated or elected.

2. The qualifications for being a members of the Council.

3. The qualifications for being nominated or elected a member.

4. The number of members.

5. The number of members to form a quorum.

6. The term of office of members.

7. The manner of filling casual vacancies.

8. For the final decision of doubts or disputes as to the validity of an election.

All rules made under this power are required to be laid before both Houses of Parliament, as soon as may be after they are made, and are not subject to repeal or alteration by the Indian or the local Legislature.

(*b*) *Mode of transacting business.* A Lieutenant-Governor or Chief Commissioner, as the case may be, appoints such times and places for holding the sessions of his Legislative Council as he thinks fit, and he also has the power to prorogue the Council. Adjurnment may be made by the person presiding.

The Lieutenant-Governor or the Chief Commissioner is himself the President of the Council. Every Lieutenant-Governor who has no Executive Council, and every Chief Commissioner shall appoint a member of the Legislative Council to be the Vice-President thereof.

Subject to the rules affecting the Council the members enjoy freedom of speech, and no person is liable to any proceedings in a Court of

law by reason of his speech or vote in the Council, or by reason of anything contained in any official report of the proceedings of the Council.

(c) *Functions and powers of the Council.* By statute the functions of the Council are limited strictly to legislation and no motion can be entertained other than a motion for leave to introduce a measure for the purpose of enactment. It is, however, provided that the Local Government may, with the sanction of the Governor-General in Council, make rules authorising the *discussion* of the annual Financial Statement of the Local Government and of any matter of general public interest. and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Such rules are required to be laid before both Houses of Parliament as soon as may be after they are made, and are not subject to repeal or alteration by the Indian or Local Legislature.

Rules for the conduct of legislative business in the Council are made by the Local Government concerned with the sanction of the Governor-General in Council. The rules so made may be altered by the local legislature with the assent of the Lieutenant-Governor or Chief Commissioner but any such alteration may be disallowed by the Governor-General in Council.

(4). Power to constitute new Councils.

When a new Lieutenant-Governorship is created the Governor-General in Council may,

by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council constitute a local legislature for that province.

The Governor-General in Council may similarly constitute a Legislative Council for a Chief Commissioner's province subject to such modifications and adaptations as he may consider necessary.

(5). Validity of Indian Laws.

A law made by any authority in British India is not to be deemed invalid solely on account of any one or more of the following reasons :—

(*a*) that it affects the prerogative of the Crown ; or

(*b*) that the requisite proportion of non-official members was not complete at the date of its introduction into the Council or its enactment ; or

(*c*) that in the case of an Act of a local legislature it confers on Magistrates being Justices of the Peace, the same jurisdiction over European British subjects as that Legislature could lawfully confer on Magistrates in the exercise of authority over other British subjects in the like cases ; or

(*d*) that in the case of an Act of the Indian Legislature it affects a provincial subject ; or

(*e*) that in the case of an Act of any local legislature it affects a central subject ; or

(*f*) that in the case of a Governor's Act it does not relate to a reserved subject.

THE HIGH COURTS.

(1). Their Constitution.

There are seven chartered High Courts established at Calcutta, Bombay, Madras, Allahabad, Patna, Lahore and Rangoon respectively. The High Courts at the three presidency towns were established by Letters Patent under the Indian High Courts Act, 1861. Power was also given by that Act to establish a fourth High Court with like powers and constitution which was exercised in 1866 when a High Court was established at Allahabad by Letters Patent. The Indian High Courts Act 1911 gave power to His Majesty to establish new High Courts in British India and in exercise of this power High Courts were established at Patna and Lahore. Section 113 of the Government of India Act now provides that His Majesty may, if he sees fit, by Letters Patent, establish a High Court of Judicature in any territory in British India whether or not included within the limits of the local jurisdiction of another High Court and may make consequential changes altering the jurisdiction. By virtue of this power Letters Patent establishing a High Court at Rangoon were issued on the 11th November 1921.

Though the Indian Legislature has no power to create a High Court it may under Section 65 of the Act, with previous sanction of the Secretary of State in Council, abolish any of the High Courts.

Each High Court consists of a Chief Justice and as many other Judges as His Majesty may think fit to appoint, and so long as the number of Judges of a High Court does not exceed twenty, which is the statutary maximum, the Governor-General in Council may appoint persons to act as *additional* Judges for such period not exceeding two years, as may be required. Every Judge holds office during His Majesty's pleasure. When a vacancy occurs in the office of Chief Justice or other Judge the Acting Judge is appointed by the Governor-General in Council in the case of the High Court at Calcutta and by the Local Government concerned in other cases.

A Judge of a High Court must be—

(*a*) a Barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or

(*b*) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or, exercised the powers of a District judge; or

(*c*) a person having held judicial office, not inferior to that of a Subordinate Judge or a judge of a Small Cause Court, for a period of not less than five years; or

(*d*) a person having been a pleader of a High Court for period of not less than ten years.

The Act provides that not less than one-third of the Judges of High Court including the Chief Justice but excluding the additional Judges must be barristers or advocates, and not less than one-third of the total number of judges must be members of the Indian Civil Service. The person

appointed to act for the Chief Justice need not be a barrister—a qualification necessary in the case of a permanent Chief Justice—but must be one of the other Judges of the same High Court.

The following facts, it would appear, detract from the judicial independence of High Courts in British India :—

1. The Judges hold office during *His Majesty's pleasure.* It is not even tenure during good behaviour. It follows that a Judge of an Indian High Court may be removed from office without any reason assigned. In England judicial independence of the Judges is secured by the fact that they are not removeable except on address presented by the two Houses of Parliament.

2. The *Additional* Judges are appointed not by His Majesty but by the Government of India and they enjoy no permanence of tenure, being appointed for such period not exceeding two years as may be required.

3. There is no limit put on the number of Additional Judges so long as the total number of Judges does not exceed the maximum of twenty.

4. Even the ordinary Judges of an Indian High Court appointed by His Majesty when recruited from India are in the nature of things recommended for appointment by the Indian Executive which is not responsible to the legislature. In England Judges are apppinted by His Majesty on the advice of Cabinet which consists of popular leaders and is responsible to Parliament.

5. Where a vacancy occurs in the office of a Judge the Acting Judge is appointed not by His Majesty but by the Government of India in the case of the High Court at Calcutta, and by the Local Government concerned in other cases.

6. The statute guarantees that not less than one-third of the total number of Judges must be members of the Indian Civil Service.

7. The lawyer element on the High Court is guaranteed only to the extent of one-third of the ordinary Judges including the Chief Justice but excluding the Additional Judges.

8. Though the permanent Chief Justice must be a barrister, that qualification is not necessary in the case of an Acting Chief Justice.

(2). Jurisdiction and Powers.

(1) The several High Courts established in British India have such original, appellate, and admiralty jurisdictions, and such powers and authority over or in relation to the administration of justice as are vested in them by Letters Patent.

The Letters Patent may be amended from time to time by His Majesty by further Letters Patent.

(2) The High Courts have not and may not exercise any *original jurisdiction in matters concerning the revenue* or concerning any act ordered or done in the collection thereof according to law or usage of the country.

(3) A High Court has superintendence over all Courts for the time being subject to its appel-

late jurisdiction and in the exercise of its power of superintendence may do any of the following things—

(*a*) call for returns;

(*b*) direct the transfer of any suit or appeal from one Court to another Court of equal or superior jurisdiction;

(*c*) make rules and prescribe forms regulating the practice and proceedings of Courts;

(*d*) prescribe forms in which books, entries, and accounts shall be kept by the officers of any such Courts, and

(*e*) settle tables of fees to be allowed to clerks and officers of courts.

(4) Certain high officers are in some matters exempt from the *jurisdiction of the High Courts on the original side*. These are the Governor-General, Governors, Lieutenant-Governors, Chief Commissioners, members of Executive Council and Ministers. The matters in respect of which the exemption exists are—

(*a*) anything counselled, ordered, or done by any of them *in his public capacity only*;

(*b*) liability to be arrested or imprisoned in any suit or proceeding in a High Court; and

(*c*) in respect of any offence not being treason or felony.

The exemption from liability to arrest and imprisonment also extends to the Chief Justices and other Judges of the several High Courts.

For all such matters these persons remain subject to the jurisdiction of inferior courts where such jurisdiction exists under law, and also of the High Court on the appellate side.

(5) In any proceeding, civil or criminal, in any High Court acting in the exercise of its *original* jurisdiction the order in writing of the Governor-General in Council for any act is a full justification of the act *except so far as the order extends to a European British subject.* But such an order is no defence where the person concerned is proceeded against before a competent Court in England.

MISCELLANEOUS.

(1). Ecclesiastical Establishment.

The Bishops of Calcutta, Madras and Bombay exercise within their respective dioceses such episcopal functions, and such ecclesiastical jurisdiction for the superintendence and good government of the Ministers of the Church of England therein, as His Majesty may, by Letters Patent, direct.

The Bishop of Calcutta is the Metropolitan Bishop in India, subject to the general superintendence and revision of the Archbishop of Canterbury.

Each of the Bishops of Madras and Bombay is subject to the Bishop of Calcutta as such Metropolitan, and must at the time of his appointment to his bishopric, or at the time of his consecration as Bishop, take an oath of obedience to the Bishop of Calcutta, in such manner as His Majesty, by Letters Patent, may be pleased to direct.

His Majesty may, by Letters Patent, vary the limits of the dioceses of Calcutta, Madras and Bombay.

The Bishops and Archdeacons of Calcutta, Madras and Bombay are appointed by His Majesty by Letters Patent, and they may be paid out of the revenues of India such salaries and allowances as may be fixed by the Secretary of State in Council. Expenses of the visitations of Bishops are also paid out of the revenues of India.

Two members of the establishment of Chaplains maintained in each of the Presidencies of Bengal, Madras and Bombay must always be Ministers of the Church of Scotland, and are entitled to have, out of the revenues of India, such salary as is from time to time allotted to the military chaplains in the several presidencies.

The Ministers so appointed Chaplains must be ordained and inducted by the Presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the Presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

(2). Offences, procedure, and penalties under the Act.

A person holding office under the Crown in India is guilty of a misdemeanour if (*a*) he

oppresses any British subject within his jurisdiction or in the exercise of his authority; or (*b*) except in case of necessity wilfully disobeys or neglects to execute any orders or instructions of the Secretary of State ; or (*c*) commits any wilful breach of trust or duty of his office ; or (*d*) being one of the officers mentioned in Section 124 (4) of the Act is concerned in or has dealings or transactions by way of trade or business in any part of India otherwise than in a manner permitted by the Act ; or (*e*) if he demands, accepts or receives, in the discharge of his office, any gift, gratuity or reward except in accordance with such rules as may be made by the Secretary of State.

A European British subject is guilty of a misdemeanour if without the previous consent in writing of the Secretary of State in Council or of the Governor-General in Council or of a Local Government he lends any money or is concerned in lending money to any prince or chief in India.

A person is guilty of misdemeanour who carries on illicit correspondence, dangerous to the peace or safety of any part of British India, with any prince, chief or other person having authority in India or any correspondence contrary to the rules and orders of the Government.

Where a person holding office under the Crown in India commits (*a*) any offence under the Act or (*b*) any offence against any person within his jurisdiction or subject to his authority, the offence may without prejudice to any other jurisdiction, be tried and determined by the High Court in England.

As person found guilty of an offence under the Act is liable to such fine and imprisonment as the Court thinks fit. The Court may also adjudge such person to be incapable of serving the Crown in India and if he is convicted in British India by a High Court, the Court may order that he be sent to Great Britain.

(3). Procedure for the making of rules.

Where any matter is required to be prescribed or regulated by rules under the Act and no special provision is made as to the authority by whom the rules are to be made, the rules are made by the Governor-General in Council, with the sanction of the Secretary of State in Council and are not subject to repeal or alteration by the Indian or a Local Legislature. Any rules so framed must be laid before both Houses of Parliament as soon as may be after they are made, and if an address is presented to His Majesty by either House within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the same but without prejudice to the validity of anything previously done thereunder.

The Secretary of State may direct that any rules made under this power shall be *laid in draft* before both Houses of Parliament and in such case the rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications and

additions to which both Houses agree, and upon such approval being given the rules may be made in the form in which they have been approved.

(4). The Statutory Commission.

The Montague-Chelmsford report observed : "We regard it as essential, if the terms of the Announcement of August 20th are to be made good, that there should, from time to time, come into being some outside authority charged with the duty of re-surveying the political situation in India and of readjusting the machinery to the new requirements."

Section 84 A of the Act provides for the appointment of the first of these Commissions ten years after the passing of the Government of India Act, 1919. Names of the proposed Commissioners shall be submitted, when the time comes, for the approval of His Majesty, by the Secretary of State with the concurrence of Parliament. The Commission shall *inquire* into the following matters :—

1. the working of the system of government ;
2. the growth of education ;
3. the development of representative institutions ;
4. matters connected with 1, 2, and 3 ;
5. any other matter affecting British India and the provinces, which may be referred to the Commission by His Majesty.

The Commission shall *report* on the following matters :—

1. Whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify or restrict the degree of responsible government then existing in British India.

2. Whether the establishment of second chambers of the Local Legislatures is or is not desirable.

3. Any other matter affecting British India and the provinces, which may be referred to the Commission by His Majesty.

In respect of the proposed commission the Joint Select Committee observed :—

"The Committee are of opinion that the *Statutory Commission* should not be appointed until the expiration of ten years, and that no changes of substance in the constitution, whether in the franchise or in the lists of reserved and transferred subjects or otherwise, should be made in the interval. The Commission will be fully empowered to examine the working of the constitutions in all their details in the provinces, and to advise whether the time has come for full responsible government in each province, or in the alternative whether and to what extent the powers of self-government already granted should be extended or modified, or restricted. It should be clearly understood, also, that the Commission should be empowered to examine into the working of the Government of India and to advise in respect of Government of India no less than in respect of the Provincial Governments."

APPENDICES.

APPENDIX I.

Report from the Joint Select Committee of the House of Lords and the House of Commons appointed to consider the Government of India Bill.

ORDERED TO REPORT—

1. That the Committee have met and considered the said Bill and taken the evidence of a large number of witnesses, many of whom had come all the way from India for the purpose. A mass of telegrams and other communications has also been received. The list of witnesses and the telegrams have been printed as an appendix to the evidence. Written representations have not as a rule been printed. The Committee appreciate the advantage they have derived from being placed in full possession of the views of many persons who have given much thought to the political future of the country.

2. The Committee were not charged, as some have seemed to think, with the task of reporting on the state of India, or on the conduct of the administration in India, or even at large on the best form of government for India, but only with the duty of dealing with this Bill, which had been read a second time in the House of Commons, according to the well-known forms of Parliamentary procedure and with the rules and conventions arising out of it.

3. In the declaration made by His Majesty's Government on the 20th August, 1917, there is enunciated the problem for which the Bill endeavours to provide a solution. It is to design the first stage in a measured progress towards responsible government. Any such stage, if it is to be a real advance, must, as the Committee conceive it, involve the creation of an electorate, and the bestowal of some share in the work and responsibilities of Government on those whom the electorate chooses to represent its interests. In the present cicumstances of India, the electorate must at the outset be small and the administrative experience of its representatives must be limited. Before, therefore, the policy of His Majesty's Government can be fulfilled the electorate must grow, and practical experience in the conduct of public affairs must be enlarged. During this period the guardianship of the peace of India cannot be withdrawn from the care of the official agency which Parliament at present charges with the duties of the administration, and the Committee regard it to be an essential feature of the policy of His Majesty's Government that, except in so far as he is released from responsibility by the changes made under this Bill, the Governor-General in Council should remain in undisturbed responsibility to Parliament and fully equipped with the necessary powers to fulfil that responsibility. But from the beginning the people must be given an opportunity, and all political wisdom points to its being a generous opportunity, of learning the actual business of Government and of showing, by their conduct of it, to some future

Parliament that the time has come for further extensions of power.

4. In the opinion of the Committee the plan proposed by the Bill is conceived wholly in this spirit, and interprets the pronouncement of the 20th August 1917, with scrupulous accuracy. It partitions the domain of provincial government into two fields, one of which is made over to ministers chosen from the elected members of the provincial legislature while the other remains under the administration of a Governor-in-Council. This scheme has evoked apprehensions which are not unnatural in view of its novelty. But the Committee, after the most careful consideration of all suggested alternatives, are of opinion that it is the best way of giving effect to the spirit of the declared policy of His Majesty's Government. Its critics forget that the announcement spoke of a substantial step in the direction of the gradual development of self-governing institutions with a view to the progressive realisation of responsible government and not of the partial introduction of responsible government; and it is this distinction which justifies the method by which the Bill imposes responsibility, both on ministers to the legislative council and on the members of the legislative council to their constituents, for the results of that part of the administration which is transferred to their charge.

5. Having weighed the evidence and information before them, the Committee have made a number of changes in the Bill. Those of a more detailed or miscellaneous character are briefly discussed below under the clauses to which they

relate. Those which are directed to the avoidance of the difficulties and dangers which have been pointed out, proceed on a simple and, in the Committee's opinion, an indefeasible theory. That theory the Committee think it desirable to state at once. Ministers who enjoy the confidence of a majority in their legislative council will be given the fullest opportunity of managing that field of government which is entrusted to their care. In their work they will be assisted and guided by the Governor, who will accept their advice and promote their policy whenever possible. If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his executive council—circumstances which will be indicated in the Instrument of Instructions furnished to him on his appointment by His Majesty. On the other hand, in and for that field of government in which Parliament continues to hold him responsible, the provincial Governor-in-Council will remain equipped with the sure and certain power of fulfilling that responsibility. The Committee will indicate in the course of this Report how they visualise the relations between the two parts of the provincial government, but they wish to place in the forefront of the Report their opinion that they see no reason why the relations should not be harmonious and mutually advantageous. They regard it as of the highest importance that the Governor should foster the habit of free consultation between both halves of his government, and indeed that he should insist upon it in all important matters of common

interest. He will thus ensure that ministers will contribute their knowledge of the people's wishes and susceptibilities, and the members of his Executive Council their administrative experience, to the joint wisdom of the government. But while the Committee anticipate much advantage from amicable and, as far as possible, spontaneous association for purposes of deliberation, they would not allow it to confuse the duties or obscure the separate responsibility which will rest on the two parts of the administration. Each side of the government will advise and assist the other; neither will control or impede the other. The responsibility for administrative and legislative action in their own field will be fixed beyond possibility of doubt on ministers and on the majorities of the provincial legislatures which support them; and they will be given adequate power to fulfil their charge. Similarly within that field for which he remains accountable to Parliament, the responsibility for action must be fixed on the Governor-in-Council, and he must possess unfailing means for the discharge of his duties. Finally, behind the provincial authorities stands the Government of India.

6. The change which this Bill will make in the political structure and life of India is very important. It marks a great step in the path of self-government and it is a proof of the confidence reposed by His Majesty's Government in the loyalty, wisdom and capacity of our Indian fellow subjects. At the same time it points to the desirability of keeping Parliament in closer touch with Indian affairs than has recently been

possible. The Committee accordingly propose that a Standing Joint Committee should be appointed by both Houses of Parliament for that purpose. It should have no statutory functions, but a purely advisory and consultative status; and among its tasks is one of high importance, the consideration of amendments to rules made under this Bill. For the plan on which the Bill has been drafted, and in the opinion of the Committee rightly drafted, will necessitate the completion of some of its main provisions by a large number of rules and other documents which will have to be framed before the machinery established by the Bill can come into working order. Many of these rules and documents will be drafted in India for the approval of the Secretary of State. When they come to England, it may be found convenient that the present Committee be re-appointed to advise Parliament in regard to them.

7. The Committee will now proceed to indicate the nature of the changes they have made in the Bill, and also their suggestions for action to be taken under it, either in the framing of rules or by executive process hereafter.

Preamble.

The Preamble of the Bill, as drafted, was based on the announcement of His Majesty's Government in Parliament of the 20th August, 191, and it incorporated that part of the announcement which pointed to the progressive realisation of responsible government in British

India as an integral part of the Empire, and to the expediency of gradually developing self-governing institutions in India, and it referred to the granting to the Provinces of India of a large measure of independence of the Government of India. It did not, however, deal with those parts of the announcement which spoke of the increasing association of Indians in every branch of the administration and declared that the progress of the policy could only be achieved by successive stages, and that Parliament, advised by His Majesty's Government and by the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian people, must be the judge of the time and measure of each advance, and be guided by the co-operation received from those upon whom new opportunities of service are conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

The Committee have enlarged the preamble so as to include all parts of the announcement of the 20th August, 1917. Their reason for doing so is that an attempt has been made to distinguish between the parts of this announcement, and to attach a different value to each part according to opinion. It has been said, for instance, that whereas the first part is a binding pledge, the later part is a mere expression of opinion of no importance. But the Committee think that it is of the utmost importance, from the very inauguration of these constitutional changes, that Parliament should make it quite plain that the responsibility for the successive

stages of the development of self-government in India rests on itself and on itself alone, and that it cannot share this responsibility with, much less delegate it to, the newly-elected legislatures of India.

They also desire to emphasize the wisdom and justice of an increasing association of Indians with every branch of the administration, but they wish to make it perfectly clear that His Majesty's Government must remain free to appoint Europeans to those posts for which they are specially required and qualified.

Part I.

Clause 1.—The Committee wish to take this opportunity of acknowledging the debt they owe to the work of the two Committees on Franchise and Functions presided over by Lord Southborough. If they are not able to accept all the conclusions of these Committees, and if they recommend some additional provisions to those included in those reports, it does not mean that they are not very sensible of the value of the work done, without which, indeed, this constitutional change could not have been effected.

The list of central, provincial and transferred subjects included in the Functions Committee's report have been somewhat altered after consultation with the India Office (*see* Appendix *F to the Minutes of Evidence*); and as so amended they are accepted by this Committee, subject to certain general observations at the end of this Report. It must not, however, be concluded that these

partitions of the functions of government are absolutely clear-cut and mutually exclusive. They must in all cases be read with the reservations in the text of the Functions Committee's report and with due regard to the necessity for special procedure in cases where their orbits overlap.

The Committee have given much attention to the difficult question of the principle on which the provincial revenues and balances should be distributed between the two sides of the provincial governments. They are confident that the problem can readily be solved by the simple process of common sense and reasonable give-and-take, but they are aware that this question might, in certain circumstances, become the cause of much friction in the provincial government, and they are of opinion that the rules governing the allocation of these revenues and balances should be framed so as to make the existence of such friction impossible. They advise that, if the Governor, in the course of preparing either his first or any subsequent budget, finds that there is likely to be a serious or protracted difference of opinion between executive council and his ministers on this subject, he should be empowered at once to make an allocation of revenue and balances between the reserved and transferred subjects, which should continue for at least the whole life of the existing legislative council. The Committee do not endorse the suggestion that certain sources of revenue should be allocated to reserved, and certain sources to transferred subjects, but they recommend that the Governor should allocate a definite proportion of the

revenue, say, by way of illustration, two-thirds to reserved and one-third to transferred subjects, and similarly a proportion, though not necessarily the same fraction, of the balances. If the Governor desires assistance in making the allocation, he should be allowed at his discretion to refer the question to be decided to such authority as the Governor-General shall appoint. Further, the Committee are of opinion that it should be laid down from the first that, until an agreement which both sides of the Government will equally support has been reached, or until an allocation has been made by the Governor, the total provisions of the different expenditure heads in the budget of the province for the preceding financial year shall hold good.

The Committee desire that the relation of the two sides of the Government in this matter, as in all others, should be of such mutual sympathy that each will be able to assist and influence for the common good the work of the other, but not to exercise control over it. The budget should not be capable of being used as a means for enabling minister or a majority of the legislative council to direct the policy of reserved subjects; but on the other hand the executive council should be helpful to ministers in their desire to develop the departments entrusted to their care. On the Governor personally will devolve the task of holding the balance between the legitimate needs of both sets of his advisers.

Clause 2.—This clause has been inserted to regularise the raising of loans by local governments on the special security of their own provincial revenues.

Clause 3.—The question has been raised as to the communications between the Governors of provinces and the Secretary of State. The question as to whether such communications shall in future take place, and as to the procedure to be adopted in them, may well be left to the Secretary of State. In the opinion of the Committee there is no cause at present for disturbing the existing position, except to the extent to which the Secretary of State relaxes his powers of direction and control over local governments. To that extent the Government of India will also withdraw from intervention ; but India is not yet ripe for a true federal system, and the central government cannot be relegated to functions of mere inspection and advice. The Committee trust that there will be an extensive delegation, statutory and otherwise, to provincial governments of some powers and duties now in the hands of the Government of India ; and they trust also that the control of that Government over provincial matters will be exercised with a view to preparing the provinces for the gradual transfer of power to the provincial government and legislature.

Clause 4.—The Committee are of opinion that the ministers selected by the Governor to advise him on the transferred subjects should be elected members of the legislative council, enjoying its confidence and capable of leading it. A

minister will have the option of resigning if his advice is not accepted by the Governor; and the Governor will have the ordinary constitutional right of dismissing a minister whose policy he believes to be either seriously at fault or out of accord with the views of the legislative council. In the last resort the Governor can always dissolve his legislative council and choose new ministers after a fresh election, but if this course is adopted the Committee hope that the Governor will find himself able to accept such views as his new ministers may press upon him regarding the issue which forced the dissolution. The Committee are of opinion that in no province will there be need for less than two ministers, while in some provinces more will be required. In these circumstances they think that it should be recognised from the commencement that ministers may be expected to act in concert together. They probably would do so; and in the opinion of the Committee it is better that they should, and therefore that the fact should be recognised on the face of the Bill. They advise that the status of ministers should be similar to that of the members of the executive council, but that their salaries should be fixed by the legislative council. Later on in this Report it will be suggested that Indian members of the Council of India in London should be paid a higher scale of remuneration than those members of the Council domiciled in the United Kingdom. The same principle might suggest to the legislative council that it was reasonable for the ministers of the provincial government domiciled in India to be

paid on a lower scale of remuneration than the European members.

Provision has been made in this clause for the appointment, at the Governor's discretion, of non-official members of the legislative council to fill a role somewhat similar to that of the Parliamentary Under-Secretary in this country.

Clause 5.—The Committee are of opinion that the normal strength of an executive council, especially in the smaller provinces, need not exceed two members. They have not, however, reduced the existing statutory maximum of four ; but if in any case the council includes two members with service qualifications, neither of whom is by birth an Indian, they think that it should also include two unofficial Indian members.

Clause 6.—The Committee desire at this point to give a picture of the manner in which they think that, under this Bill, the government of a province should be worked. There will be many matters of administrative business, as in all countries, which can be disposed of departmentally. But there will remain a large category of business, of the character which would naturally be the subject of Cabinet consultation. In regard to this category the Committee conceive that the habit should be carefully fostered of joint deliberation between the members of the executive council and the ministers, sitting under the chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subjects; but the Committee attach the highest importance to the principle that, when once opinions have been freely exchanged and the last

word has been said, there ought then to be no doubt whatever as to where the responsibility for the decision lies. Therefore, in the opinion of the Committee, after such consultation, and when it is clear that the decision lies within the jurisdiction of one or other half of the Government, that decision in respect of a reserved subject should be recorded separately by the executive council, and in respect of a transferred subject by the ministers, and all acts and proceedings of the government should state in definite terms on whom the responsibility for the decision rests. It will not always, however, be clear, otherwise than in a purely departmental and technical fashion, with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of informal arbitrator between the two parts of his administration; and it will equally be his duty to see that a decision arrived at on one side of his government is followed by such consequential action on the other side as may be necessary to make the policy effective and homogeneous.

The position of the Governor will thus be one of great responsibility and difficulty, and also of great opportunity and honour. He may have to hold the balance between divergent policies and different ideals, and to prevent discord and friction. It will also be for him to help with sympathy and courage the popular side of his government in their new responsibilities. He should never hesitate to point out to ministers what he thinks is the right course or to warn

them if he thinks they are taking the wrong course. But if, after hearing all the arguments, ministers should decide not to adopt his advice, then, in the opinion of the Committee, the Governor should ordinarily allow ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India, as in all other countries, mistakes will be made by ministers, acting with the approval of a majority of the legislative council, but there is no way of learning except through experience and by the realisation of responsibility.

In the debates of the legislative council members of the executive council should act together and ministers should act together, but members of the executive council and ministers should not oppose each other by speech or vote; members of the executive council should not be required to support either by speech or vote proposals of ministers of which they do not approve, nor should ministers be required to support by speech or vote proposals of the executive council of which they do not approve; they should be free to speak and vote for each other's proposals when they are in agreement with them. All other official members of the legislative council should be free to speak and vote as they choose.

Clause 7.—The Committee have altered the first schedule to the Bill, so as to show only the total strength of the legislative council in each province. They have retained the provision, now in sub-clause (2), that at least 70 per cent

of the members shall be elected, and not more than 20 per cent shall be officials. This general stipulation will govern the distribution of the seats in each province; but in certain respects the detailed arrangements will require further consideration, and proposals should be called for from the Government of India in regard to them. The points in question, as well as some disputable matters on which the Committee wish to endorse the proposals of the Franchise Committee's report, are dealt with in the following recommendations: —

(*a*) The Committee regard the number of seats allotted to the rural population, as distinct from the urban, as disproportionately low and consider that it should receive a larger share of representation. They also think that an attempt should be made to secure better representation of the urban wage-earning class; and they are convinced that an effort should be made to remedy in part at least the present disparity between the size of the electorates in the different provinces. In all those matters no definite instructions need be given. The Government of India should be left a wide discretion in adjusting the figures, subject, however, to the understanding that the adjustment should be effected in all cases rather by enlargement than by diminution of the representation proposed in the Franchise Committee's report.

(*b*) The Committee are of opinion that the representation proposed for the depressed classes is inadequate. Within this definition are comprised, as shown in the report of the Franchise

Committee, a large proportion of the whole population of India. They think that the Government of India should, as it advises, be instructed to give such classes a larger share of representation by nomination, regard being had to the numbers of depressed classes in each province, and after consultation with the Local Governments. This representation should, if necessary, be in addition to, but not in diminution of, the general electorate. Whenever possible, other persons than members of the Civil Services should be selected to represent the depressed classes, but if a member of those services, specially qualified for this purpose, has to be appointed, his nomination should not operate to increase the maximum ratio of official seats.

(*c*). In the Madras Presidency the Committee consider that the non-Brahmins must be provided with separate representation by means of the reservation of seats. The Brahmins and non-Brahmins should be invited to settle the matter by negotiation among themselves; and it would only be, if agreement cannot be reached in that way, that the decision should be referred to an arbitrator appointed for the purpose by the Government of India.

(*d*) The Committee would recommend that similar treatment be accorded to the Mahrattas in the Bombay Presidency.

(*e*) The question whether women should or should not be admitted to the franchise on the same terms as men should be left to the newly elected legislative council of each province to settle by resolution. The Government of India

should be instructed to make rules so that, if a legislative council so voted, women might be put upon the register of voters in that province. The Committee have not felt able to settle this question themselves, as urged by the majority of witnesses who appeared before them. It seems to them to go deep into the social system and susceptibilities of India, and, therefore, to be a question which can only, with any prudence, be settled in accordance with the wishes of Indians themselves as constitutionally expressed.

(*f*) The Committee are of opinion that the franchise as settled by the rules to be made under this Act should not be altered for the first ten years, and that it should at present be outside the power of the Legislative Councils to make any alteration in the franchise. The recommendation, therefore, in respect of woman suffrage, is to be regarded as altogeter exceptional, and as not forming any precedent in respect of proposals for other alterations.

(*g*) The special representation of landholders in the provinces should be reconsidered by the Government of India in consultation with the local governments.

(*h*) The franchise for the University seats should be extended to all graduates of over seven years' standing.

(*i*) The Government of India should be instructed to consult with the Government of Bengal in respect of the representation of Europeans in Bengal. It appears to the Committee that there are good reasons for a readjustment of that representation. The recommendations of the

report of the Franchise Committee in respect of European representation in other provinces may be accepted.

(*j*) The question whether the rulers and subjects of Indian States may be registered as electors or may be elected to the legislative councils should be left to be settled in each case by the local government of the province.

(*k*) The Committee are of opinion that dismissal from the service of the Government in India should not be a disqualification for election, but that a criminal conviction entailing a sentence of more than six months' imprisonment should be a disqualification for five years from the date of the expiration of the sentence.

(*l*) The compromise suggested by the Franchise Committee in respect of the residential qualification of candidates for legislative councils whereby the restriction was to be imposed only in the provinces of Bombay, the Punjab, and the Central Provinces may be accepted.

(*m*) The recommendations of the Franchise Committee in respect of the proportionate representations of Mohammedans, based on the Lucknow compact, may be accepted.

Two further observations must be made on this question of franchise. It seems to the Committee that the principle of proportional representation may be found to be particularly applicable to the circumstances of India, and they recommend that this suggestion be fully explored, so that there may be material for consideration by the Statutory Commission when it sits at the end of ten years. Further it has

been strongly represented to the Committee, and the Committee are themselves firmly convinced that a complete and stringent Corrupt Practices Act should be passed and brought into operation before the first elections for the legislative councils. There is no such Act at present in existence in India, and the Committee are convinced that it will not be less required in India than it is in other countries.

Clause 9.—The Committee have considered carefully the question who is to preside over the legislative councils in the provinces. They are of opinion that the Governor should not preside, and they advise that, for a period of four years, the President should be appointed by the Governor. Wherever possible it would be a great advantage if some one could be found for this purpose who had had parliamentary experience. The legislative council should itself elect a Vice-President, and at the end of four years the nominated President would disappear, and the President and Vice-President would be elected by the councils. The Committee attribute the greatest importance to this question of the Presidency of the legislative council. It will, in their opinion, conduce very greatly to the successful working of the new councils if they are imbued from the commencement with the spirit and conventions of parliamentary procedure as developed in the Imperial Parliament. The Committee will recur to this subject in dealing with the question of the President of the Legislative Assembly of India.

Clause 11.—The Committee think that the provincial budget should be submitted to the vote of the legislative council, subject to the exemption from this process of certain charges of a special or recurring character which have been set out in the Bill. In cases where the council alter the provision for a transferred subject, the Committee consider that the Governor would be justified if so advised by his ministers, in re-submitting the provision to the council for a review of their former decision; but they do not apprehend that any statutory prescription to that effect is required. Where the council have reduced a provision for a reserved subject which the Governor considers essential to the proper administration of the subject concerned, he will have a power of restoration. The Committee wish it to be perfectly clear that this power is real and that its exercise should not be regarded as unusual or arbitrary; unless the Governor has the right to secure supply for those services for which he remains responsible to Parliament, that responsibility cannot justly be fastened upon him.

Whenever the necessity for new taxation arises, as arise it must, the questions involved should be threshed out by both parts of the Government in consultation together, and it is especially important that in this matter both parts of the Government should, if possible, be in agreement when the proposals of the Government are laid before the legislature.

Clause 13.—The Committee have rejected the plan of Grand Committees as drafted originally in the Bill. They have done so because in their

opinion the Grand Committee did not give the Governor the power of securing legislation in a crisis in respect of those matters for which he is held responsible, and because in respect of ordinary legislation about reserved subjects it perpetuated the system of securing legislation by what is known as the "official bloc," which has been the cause of great friction and heartburning. The responsibility for legislation on reserved subjects is with the Governor in Council, and, when the "official bloc" has been put into operation it has been put into operation by him, and is merely an indirect way of assering his responsibility. The Committee think it much better that there should be no attempt to conceal the fact that the responsibility is with the Governor in Council, and they recommend a process by which the Governor should be empowered to pass an Act in respect of any reserved subject, if he considers that the Act is necessary for the proper fulfilment of his responsibility to Parliament. He should not do so until he has given every opportunity for the matter to be thoroughly discussed in the legislative council, and as a sensible man he should, of course, endeavour to carry the legislative council with him in the matter by the strength of his case. But, if he finds that it cannot be so, then he should have the power to proceed on his own responsibility. Acts passed on his sole responsibility should be reserved by the Governor-General for His Majesty's pleasure, and be laid before Parliament. His Majesty will necessarily be advised by the Secretary of State for India, and the responsibility for

the advice to be given to His Majesty can only rest with the Secretary of State. But the Committee suggest that the Standing Committee of Parliament, whose appointment they have advised should be specially consulted about Acts of this character. Provision, however, is made in the Bill for the avoidance of delay in case of a grave emergency by giving the Governor-General power to assent to the Act without reserving it, though this of course would not prevent subsequent disallowance by His Majesty in Council.

Clause 15.—The Committee have two observations to make on the working of this Clause. On the one hand, they do not think that any change in the boundaries of a province should be made without due consideration of the view of the legislative council of the province. On the other hand, they are of opinion that any clear request made by majority of the members of a legislative council representing a distinctive racial or linguistic territorial unit for its constitution under this Clause as a sub-province or a separate province should be taken as a *prima facie* case on the strength of which a commission of inquiry might be appointed by the Secretary of State, and that it should not be a bar to the appointment of such a commission of inquiry that the majority of the legislative council of the province in question is opposed to the request of the minarity representing such a distinctive territorial unit.

Part II.

Clause 18.—As will be explained below, the Committee do not accept the device in the Bill as

drafted, of carrying government measures through the Council of State without reference to the Legislative Assembly, in cases where the latter body cannot be got to assent to a law which the Governor-General considers essential. Under the scheme which the Committee propose to substitute for this procedure there is no necessity to retain the Council of State as an organ for government legislation. It should therefore be reconstituted from the commencement as a true Second Chamber. They recommend that it should consist of sixty members, of whom not more than twenty should be official members. The Franchise Committee advise that the non-official members should be elected by the same group of persons as elect the members of the Legislative Assembly and in the same constituencies. This is a plan which the Committee could, in no circumstances, accept. They hope and believe that a different system of election for the Council of State can be devised by the time the constitution embodied in this Bill comes into operation, and they recommend that the Government of India be enjoined forthwith to make suggestions accordingly, to which effect can be given without delaying the inauguration of the new constitution. If the advice of the Committee that it be re-appointed for the purpose of considering the rules to be framed under this Bill be approved, it should have an oportunity of considering the proposals made for the election of the Council of State.

Clause 19.—For the Legislative Assembly the Committee are equally unwilling to accept, as a permanent arrangement, the method of

indirect election proposed in the report of the Franchise Committee. If by no other course it were possible to avoid delay in bringing the constitution enacted by the Bill into operation, the Committee would acquiesce in that method for a preliminay period of three years. But they are not convinced that delay would be involved in preparaing a better scheme of election, and they endorse the views expressed by the Government of India in paragraph 39 of its despatch dealing with the subject. They accordingly advise that the Government of India be instructed at once to make recommendations to this effect at the earliest possible moment. These recommendations as embodied in draft rules would also be subject to examination by this Committee if re-appointed.

Clause 20.—The Committee think that the President of the Legislative Assembly should for four years be a person appointed by the Governor-General. He should be qualified by experience in the House of Commons and a knowledge of parliamentary procedure, precedents, and conventions. He should be the guide and adviser of the Presidents of the provincial councils, and he should be chosen with a view to the influence which it is hoped he would have on the whole history of parliamentary procedure in India. He should be paid an adequate salary.

Clause 25.—This is a new provision for the submission of the Indian Budget to the vote of the Legislative Assembly, on the understanding that this body is constituted as a chamber reasonably representative in character and

elected directly by suitable constituencies. The Committee consider it necessary (as suggested to them by the consolidated fund charges in the Imperial Parliament) to exempt certain charges of a special or recurring nature, which have been set out in the Bill, *e.g.*, the cost of defence, the debt charges and certain fixed salaries, from the process of being voted. But otherwise they would leave the Assembly free to criticise and vote the estimates of expenditure of the Government of India. It is not, however, within the scheme of the Bill to introduce at the present stage any measure of responsible government into the central administration, and a power must be reserved to the Governor-General in Council of treating as sanctioned any expenditure which the Assembly may have refused to vote if he considers the expenditure to be necessary for the fulfilment of his responsibilities for the good government of the country. It should be understood from the beginning that this power of the Governor-General in Council is real, and that it is meant to be used if and when necessary.

Clause 26.—For reasons which prompted their rejection of the process of certification by a Governor to a grand committee in a province, the Committee are opposed to the proposals in the Bill which would have enabled the Governor-General to refer to the Council of State, and to obtain by virtue of his official majority in that body, any legislation which the lower chamber refuse to accept, but which he regards as essential to the discharge of his duties. The Committee have no hesitation in accepting the view that the

Governor-General in Council should in all circumstances be fully empowered to secure legislation which is required for the discharge of his responsibilities; but they think it is unworthy that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers. They believe that in such a case it would add strength to the Government of India to act before the world on its own responsibility. In order, however, that Parliament may be fully apprised of the position and of the considerations which led to this exceptional procedure, they advise that all Acts passed in this manner should be laid before Parliament, who would naturally consider the opinion of the standing committee already referred to.

Clause 28.—The recommendation of the Committee is that the present limitation on the number of the members of the Governor-General's Executive Council should be removed; that three members of that Council should continue to be public servants or ex-public servants who have had not less than ten years' experience in the service of the Crown in India; that one member of the Council should have definite legal qualifications, but that those qualifications may be gained in India as well as in the United Kingdom; and that not less than three members of the Council should be Indians. In this connection it must be borne in mind that the members of the Council drawn from the ranks of the public servants will as time goes on, be more and more likely to be of Indian rather than of European extraction.

Clause 29.—The Committee have inserted this provision to allow of the selection of members of the legislature who will be able to undertake duties similar to those of the Parliamentary Under-Secretaries in this country. It should be entirely at the discretion of the Governor-General to say to which departments these officers should be attached, and to define the scope of their duties.

Part III.

Clause 30.—The Committee think that all charges of the India Office, not being "agency" charges, should be paid out of moneys to be provided by Parliament.

Clause 31.—The Committee are not in favour of the abolition of the Council of India. They think that, at any rate for some time to come, it will be absolutely necessary that the Secretary of State should be advised by persons of Indian experience, and they are convinced that, if no such Council existed, the Secretary of State would have to form an informal one if not a formal one. Therefore, they think it much better to continue a body which has all the advantages behind it of tradition and authority, although they would not debar the readjustment of its work so as to make it possible to introduce what is known as the portfolio system. They think, also, that its constitution may advantageously be modified by the introduction of more Indians into it and by shortening of the period of the service upon it, in order to ensure a continuous flow of fresh experience from India and to relieve

Indian members from the necessity of spending so long a period as seven years in England.

Clause 33.—The Committee have given most careful consideration to the relations of the Secretary of State with the Government of India, and through it with the provincial governments. In the relations of the Secretary of State with the Governor-General in Council the Committee are not of opinion that any statutory change can be made, so long as the Governor-General remains responsible to Parliament, but in practice the conventions which now govern these relations may wisely be modified to meet fresh circumstances caused by the creation of a Legislative Assembly with a large elected majority. In the exercise of his responsibility to Parliament, which he cannot delegate to any one else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature of India are in agreement.

The examination of the general proposition leads inevitably to the consideration of one special case of non-intervention. Nothing is more likely to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall in the interests of the trade of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiation between India and the rest of the

Empire, but negotiation without power to legislate is likely to remain ineffective. A satisfactory solution of the question can only be guaranteed by the grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. It cannot be guaranteed by statute without limiting the ultimate power of Parliament to control the administration of India, and without limiting the power of veto which rests in the Crown; and neither of these limitations finds a place in any of the statutes in the British Empire. It can only therefore be assured by an acknowledgment of a convention. Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa. In the opinion of the Committee, therefore, the Secretary of State should as far as possible avoid interference on this subject when the Government of India and its Legislature are in agreement, and they think that his intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire to which His Majesty's Government is a party.

The relations of the Secretary of State and of the Government of India with provincial governments should, in the Committee's judgment, be regulated by similar principles, so far as

the reserved subjects are concerned. It follows therefore, that in purely provincial matters, which are reserved, where the provincial government and legislature are in agreement, their view should ordinarily be allowed to prevail, though it is necessary to bear in mind the fact that some reserved subjects do cover matters in which the central government is closely concerned. Over transferred subjects, on the other hand, the control of the Governor-General in Council and thus of the Secretary of State, should be restricted in future within the narrowest possible limits, which will be defined by rules under sub-clause 3 of Clause 1 of the Bill.

Rules under this clause will be subsidiary legislation of sufficient moment to justify their being brought especially to the notice of Parliament. The Secretary of State might conveniently discuss them with the Standing Committee whose creation has been recommended in this Report; and Parliament would no doubt consider the opinion of this body when the rules come, as it is proposed that they should do, for acceptance by positive resolution in both Houses. The same procedure is recommended by the Committee for adoption in the case of rules of special or novel importance under other clauses of the Bill. It must be for the Secretary of State to decide which of the many rules that will fall to be drafted by the Government of India can be sufficiently dealt with by the ordinary process of lying on the table of Parliament for a certain number of days. In deciding this point, however, he may naturally have recourse to the advice of the Standing

Committee, should it happen to be in session, and obtain their assistance in determining which rules deserved to be made the subject of the more formal procedure by positive resolution.

Clause 35.—This clause carries out the recommendation of Lord Crewe's Committee to appoint a High Commissioner for India, to be paid out of Indian revenues, who will perform for India functions of agency, as distinguished from political functions, analogous to those now performed in the offices of the High Commissioners of the Dominions.

Part IV.

Clause 36.—The Committee do not conceal from themselves that the position of the public services in working the new constitutions in the provinces will, in certain circumstances, be difficult. They are of opinion that these services have deserved the admiration and gratitude of the whole Empire. They know that some members of the services regard the wisdom of the proposed changes with grave misgiving, and that some fear that those changes will not tend to the welfare of the Indian masses. They are convinced, however, that the services will accept the changing conditions and the inevitable alteration in their own position, and devote themselves in allloyalty to making a success, so far as in them lies, of the new constitution.

In the provinces, officers serving in a reserved department will be controlled by the Governor in Council, and in a transferred department by the Governor acting with ministers, but

in both cases alike the personal concurrence of the Governor should be regarded as essential in the case of all orders of any importance prejudicially affecting the position or prospects of officers appointed by the Secretary of State.

The Committee think that every precaution should be taken to secure to the public servants the career in life to which they looked forward when they were recruited, and they have introduced fresh provisions into this clause to that end. If friction occurs, a re-adjustment of persons and places may often get over the difficulty; and the Governor must always regard it as one of his most important duties to establish a complete understanding between his ministers and the officers through whom they will have to work. But if there are members of the service whose doubts as to the changes to be made are so deeply rooted that they feel they cannot usefully endeavour to take part in them, then the Committee think it would only be fair to those officers that they should be offered an equivalent career elsewhere, if it is in the power of His Majesty's Government to do so, or, in the last resort, that they should be allowed to retire on such pension as the Secretary of State in Council may consider suitable to their period of service.

Part V.

Clause 41.—The Committee are of opinion that the Statutory Commission should not be appointed until the expiration of ten years, and that no changes of substance in the constitution, whether in the franchise or in the lists of reserved

and transferred subjects or otherwise, should be made in the interval. The Commission will be fully empowered to examine the working of the constitutions in all their details in the provinces, and to advise whether the time has come for full responsible government in each province, or in the alternative whether and to what extent the powers of self-government already granted should be extended, or modified, or restricted. It should be clearly understood, also, that the Commission should be empowered to examine into the working of the Government of India and to advise in respect of the Government of India no less than in respect of the provincial governments.

8. This concludes the Committee's specific recommendations on the Bill. There remain certain other topics which do not conveniently fall within any particular clause. The first of these is the treatment of Burma, and after hearing evidence the Committee have not advised that Burma should be included within the scheme. They do not doubt but that the Burmese have deserved and should receive a constitution analogous to that provided in this Bill for their Indian fellow-subjects. But Burma is only by accident part of the responsibility of the Governor-General of India. The Burmese are as distinct from the Indians in race and language as they are from the British.

9. Doubts have been expressed from several quarters questioning the financial adjustment proposed between the Central and Provincial Governments in India. Without expressing any opinion on this controversy, the Committee accept

and endorse the recommendation of the Government of India that a fully qualified financial commission should be appointed to advise as to the principle on which contributions from the provincial governments to the Central Government should in future be adjusted.

10. The Committee think that it may often greatly assist the political education of India if standing committees of the legislative bodies are attached to certain departments of Government, but they only express this opinion on the understanding that the appointment of such committees, their composition, and the regulations which govern their procedure, shall be matters wholly and exclusively within the discretion of the Governor-General or of the Governor as the case may be.

11. The Committee are impressed by the objections raised by many witnesses to the manner in which certain classes of taxation can be laid upon the people of India by executive action without, in some cases, any statutory limitation of the rates and, in other cases, any adequate prescription by statute of the methods of assessment. They consider that the imposition of new burdens should be gradually brought more within the purview of the Legislature. And in particular, without expressing any judgment on the question whether the land revenue is a rent or tax, they advise that the process of revising the land revenue assessment ought to be brought under closer regulation by statute as soon as possible. At present the statutory basis for charging revenue on the land varies in different

provinces; but in some at least the pitch of assessment is entirely at the discretion of the executive government. No branch of the administration is regulated with greater elaboration or care; but the people who are most affected have no voice in the shaping of the system, and the rules are often obscure and imperfectly understood by those who pay the revenue. The Committee are of opinion that the time has come to embody in the law the main principles by which the land revenue is determined, the methods of valuation, the pitch of assessment, the periods of revision, the graduation of enhancements, and the other chief processes which touch the well-being of the revenue payers. The subject is one which probably would not be transferred to ministers until the electorate included a satisfactory representation of rural interests, those of the tenantry as well as of the landlords; and the system should be established on a clear statutory basis before this change takes place.

12. The Committee have not hitherto touched on the subject of education in India, and it is far too large for them to make any attempt to deal with it adequately. They have accepted the recommendation of the Functions Committee that, subject to certain reservations about Universities, the responsibility for the whole field of education in each province should be transferred to ministers. They attach much importance, however, to the educational advancement of the depressed and backward classes, and they trust that the subject will receive special attention from ministers. They are also impressed by the

advantage of Board such as Sir Michael Sadler has advised in Bengal, for the assistance of ministers in controlling the different grades of education, and they trust that ministers will see their way from the outset to constitute such Boards in every province. The Committee would similarly commend to ministers the advisability of creating local government departments in the provinces.

13. The Committee attach the greatest importance to the formation in each provincial government of a strong department of Finance which will serve both sides of the Government alike.

14. The Committee have been greatly struck by the earnest representations made to them by several witnesses, both of British and Indian birth, to the effect that the Government of India and the provincial governments must become more vocal, and put forth their view of what the good of India requires with more courage and more persistence than they have in the past. It has been represented to them that it will be of the utmost importance in the future that the Government of India and the provincial governments should have means of explaining to the people of India the reasons why things are done, the reasons which underlie decisions, and the arguments against proposals which they consider will be detrimental to the welfare of the country. It was represented to the Committee that at present, to a great extent, the case for the policy of the Government of India and of the provincial governments is unknown to the masses of

Indians, whereas the case against that policy is becoming every day more widely disseminated by means of the vernacular press. They are glad to think that this opinion is also shared by the Secretary of State for India and the Viceroy. It is dealt with in paragraph 326 of their report on Indian Constitutional Reforms.

15. In conclusion the Committee emphatically repudiate the suggestion that the changes in this Bill in the form of the provincial governments of India imply any condemnation of the present system of government in India. The Government of India has accomplished great things for India's good and one of its greatest services has been the introduction into India of a reign of law, to which the Government itself is as much subject as the people it governs. It is no reproach to it that in form it has been everywhere autocratic. So long as Parliament on the one hand did not bestow any form of constitutional self-government on any part of India, and on the other hand held the Government of India rigidly responsible to itself for its every action, it could not be otherwise in the provinces any more than at the central seat of government. But, whatever the form, the spirit of its being everywhere and always has been effort for the welfare of the masses of the people of India.

16. The Committee have directed the Minutes of Proceedings, together with Appendices, to be laid before both Houses of Parliament.

APPENDIX II.

Extracts from the Report of the Press Act Committee.*

In accordance with the instructions contained in the Home Department Resolution No. 534, dated the 21st March 1921, we the members of the Committee appointed by the Government of India to examine the Press and Registration of Books Act, 1867, the Indian Press Act, 1910, and the Newspapers (Incitements to Offences) Act, 1908. have the honour to report for the information of Government and such action as they may think desirable our conclusions on the questions referred to us for examination.

3. Of the Acts referred to us for examination, the Indian Press Act, 1910, is by far the most important and it will therefore be convenient, if, in the first place, we record our conclusions in respect of that Act. This is the more desirable because our recommendations in respect of the other two Acts referred to us must be largely dependent on our findings regarding this measure.

8. We find as already noted, that the Act has not proved effective in preventing the dissemi-

* To give effect to the recommendations of the Committee the Press Law Repeal and Amendment Act was passed by the Indian Legislature which received the assent of the Governor-General on the 29th March 1922.

nation of sedition and that it is doubtful whether it is necessary to retain it for the purpose of preventing incitements to murder and similar violent crime. Further, in view of the cogent criticisms made as to the principles and operation of the Act, we have come to the conclusion that it would be in the interests of the administration that it should be repealed.

9. In our examination of the question of the repeal of the Press Act, we also considered the further question as to which, if any, of its provisions should be retained by incorporation in other laws. Various questions have been placed before us in this connection, some of greater and some of minor importance.

Perhaps the most important of these is the question whether the dissemination of disaffection against Indian Princes through the Press of British India should be penalized in any way. We have been handicapped in our examination of this question by very inadequate representation of the views of the Princes, many of whom were unwilling to allow their opinions to be placed before the Committee. We understood that, before the Press Act became law, it was not found necessaay to protect Indian Princes from such attacks and we note that the Act, so far as the evidence before us shows, has only been used on three occasions for this purpose.

We do not, in the circumstances, think that we should be justified in recommending, on general grounds, any enactment, in the Penal Code or elsewhere for the purpose of affording such protection, in the absence of evidence to

prove the practical necessity for such a provision of the law*.

10. We have also considered the question of vesting Courts of Justice with power to confiscate a Press if the keeper is convicted for the second time of disseminating sedition. Although Section 517 of the Criminal Procedure Code affords some faint authority for the enactment of such a provision in the law, we feel that it would operate inequitably, particularly in the case of large and valuable presses, used not only for the printing of a particular paper, but also for other miscellaneous work. In the case of smaller presses, the forfeiture of the press would probably not be an effective remedy and on a careful consideration of the facts we doubt the necessity for inserting any such provision in the law.

11. There is, indeed, only one provision of the Act which, we think, should be retained, namely the power to seize and confiscate newspapers, books or other documents, which offend against the provisions of Section 124-A of the Penal Code. If this power is retained, the auxiliary power of preventing the importation into British India, of transmission through the post, of such documents, on the lines now provided for in Sections 13, 14 and 15 of the Indian Press Act, is a necessary corollary if the law is to be effective.

12. The confiscation of openly seditious documents in no way, we believe, constitutes an

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On 26th November 1922 the Indian Princes Protection Bill, which was rejected by the Assembly, was passed after being certified by the Viceroy.

interference with the reasonable liberty of the Press and the openly seditious character of some of the documents which are now circulated in India has convinced us of the necessity of retaining this power as a regular provision of the substantive law.

The exact method by which this should be effected is, we think, a matter for the expert advisers of the Government of India to decide. We would, however, also provide for redress in cases in which the owner of a press or any person interested in the production of any such document or in the possession of any particular copy of the document consider himself aggrieved, by allowing such persons to apply to the High Court and challenge the seizure and confiscation of the document. We would also provide that when such an application is made the onus of proving the seditious character of the document should be on the Government. We think that the power conferred by sections 13 to 15 of the Press Act might be conveniently incorporated in the Sea Customs Act and Post Office Act, so that the customs and postal officers should be empowered to seize seditious literature within the meaning of Section 124-A of the Indian Penal Code, subject to review on the part of the Government and to challenge by any person interested in the courts.

We recommend that in this case, and in the case of seditious leaflets seized under the conditions referred to in the earlier portions of this paragraph, the orders of the Government should be liable to be contested in the High Court.

It follows almost of necessity, from what we have said about the Press Act, that we recommend the total repeal of the Newspapers (Incitements to Offences) Act, 1908. We may observe that this Act has not been used for the last 10 years.

13. As to the Press and Registration of Books Act, we recommend that this Act should be retained with the following modifications :—

(1) That no person should be registered as a publisher or printer unless he is a major, as defined by the Indian Majority Act.

(2) That in the case of all newspapers, the name of the responsible Editor should be clearly printed on the front sheet of the paper and that an editor should be subject to the same criminal and civil liability in respect of anything contained in the paper as the publisher and printer.

(3) That the term of imprisonment prescribed in Section 12, 13, 14, 15 should be reduced to six months.

(4) That the provisions of Section 16 of the Press Act should be reproduced in this Act.

We have also considered certain other matters of detail, which are of a technical nature. We think they should be left to the expert department to deal with.

14. We append a summary of our conclusions :—

(1) The Press Act should be repealed.

(2) The Newspapers (Incitements to Offences) Act should be repealed.

(3) The Press and Registration of Books Act, the Sea Customs Act and the Post Office Act

should be amended, where necessary, to meet the conclusions.

(*a*) The name of the Editor should be inscribed on every issue of newspaper and the Editor should be subject to the same liabilities as the Printer and the Publisher as regards criminal and civil responsibility.

(*b* Any person registering under the Press and Registration of Books Act should be major, as defined by the Indian Majority Act.

(*c*) Local Governments should retain the power of confiscating openly seditious leaflets, subject to the owner of the press, or any other person aggrieved, being able to protest before a court and challenge the seizure of such document, in which case the local Government ordering confiscation should be called upon to prove the seditious character of the document.

(*d*) The power conferred by Section 13 to 15 of the Press Act should be retained, Customs and Postal officers being empowered to seize seditious literature within the meaning of Section 124-A, Indian Penal Code, subject to review on the part of the local Government and challenge by any persons interested in the proper courts.

(*e*) Any person challenging the orders of the Government should do so in the local High Court.

(*f*) The term of imprisonment prescribed in Sections 12, 13, 14 and 15 of the Press and Registration of Books Act should be reduced to six months.

(*g*) The provisions of Section 16 of the Act should be reproduced in the Press and Registration of Books Act.

APPENDIX III.

Extracts from the Report of the Committee appointed to examine repressive laws.*

In accordance with the instructions contained in Resolution No. 533-Political, dated March 21st, 1921, we have examined the following Regulations and Acts:—

(1) The Bengal State Offences Regulation, 1804;

(2) Madras Regulation VII of 1898;

(3) Bengal State Prisoners Regulation, 1818;

(4) Madras Regulation II of 1819;

(5) Bombay Regulation XXV of 1827;

(6) The State Prisoners Act, 1850;

(7) The State Offences Act, 1857;

(8) The Forfeiture Act, 1857;

(9) The State Prisoners Act, 1858;

(10) The Indian Criminal Law Amendment Act, 1908;

(11) The Prevention of Seditious Meetings Act, 1911;

(12) The Defence of India (Criminal Law Amendment) Act, 1915;

(13) The Anarchical and Revolutionary Crimes Act, 1919.

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* On February 24, 1922, the Viceroy gave his assent to the Bill for the repeal of all those repressive laws whose extinction was recommended by the Committee.

12. Dealing with the older Acts first, we notice that they relate generally to an unsettled condition of affairs which no longer exists. We regard it as undesirable that they should be used for any purpose not contemplated by their authors. The objections to them are obvious. Some, as for example, Bengal Regulation 10 of 1804, or the Forfeiture Act of 1857, are inconsistent with modern ideas; others are clothed in somewhat archaic language and are applicable only to circumstances which are unlikely to recur. Many arm the Executive with special powers which are not subject to revision by any judicial tribunal. Their presence on the Statute book is regarded as an offence by enlightened public opinion.

13. The retention of these Acts could in any case only be defended if it was proved that they were in present circumstances essential to the maintenance of law and order. As it has not been found necessary to resort in the past to these measures save in case of grave emergency, we advocate their immediate repeal. In the event of a recurrence of any such emergency we think that the Government must rely on the Legislature to arm them with the weapons necessary to cope with the situation.

14. Our recommendation in regard to Regulation III of 1818 and the analogous Regulations in the Bombay and Madras Presidencies is subject, however, to the following reservations. It has been pointed out to us that, for the protection of the frontiers of India and the fulfilment of the responsibilities of the Government of India in

relation to Indian States, there must be some enactment to arm the Excutive with powers to restrict the movements and activities of certain persons who, though not coming within the scope of any criminal law, have to be put under some measure of restraint. Cases in point are exiles from Foreign or protected States who are liable to become the instigators or focus of intrigues against such States: persons disturbing the tranquillity of such States who cannot suitably be tried in the Courts of the States concerned and may not be amenable to the jurisdiction of British Courts: and persons tampering with the inflammable material on our frontiers. We are in fact satisfied of the continued necessity for providing for the original object of this Regulation, in so far as it was expressly declared to be "the due maintenance of the alliances formed by the British Government with Foreign Powers, the preservation of tranquillity in the territories of Native Princess entitled to its protection and the security of the British Dominions from foreign hostility," and in so far as the inflammable frontier is concerned from "internal commotion."

This reservation may also involve the retention in a modified from of the State Prisoners' Acts of 1850 and 1858, but this is a matter for legal experts. We have carefully considered the cases in which the Madras State Prisoners' Regulation of 1819 has been used. The procedure adopted was certainly simpler and more effective, but if the ordinary law is insufficient, we think it is for the Local Government to consider whether

any amendment of the Mappila Outrages Act XX of 1859 is needed.

15. Turning now to the more modern Acts, we notice that the Defence of India (Criminal Law Amendment) Act, 1915, will in the ordinary course of events shortly expire. It is, we understand, at present only used in order to give effect to the Government of India's policy in the matter of colonial emigration. Section 16-B of the Defence of India (consolidated) Rules, 1915, is at present employed to prevent the departure from India of unskilled labour, which does not come within the definition of 'emigration' given in Act XVII of 1908.

A special regulation may, we think, also be needed for the exclusion of persons whose presence may endanger the peace and safety of the North West Frontier Province. We understand that a Bill to meet the case of Indian Emigrants has already been introduced. We recommend that the Defence of India Act be repealed at once, as it was only intended to cope with difficulties arising from the war.

16. The Anarchical and Revolutionary Crimes Act, 1919, has never been used. Its enactment was extremely unpopular; it was to continue in force only for three years from the termination of the war. We consider that the retention of this Act is not necessary or advisable. The power to restrain personal liberty without trial conferred by this Act is not consistent with the policy inaugurated with the recent constitutional changes, and we therefore recommend its immediate repeal.

17. There remain then two Acts, the Indian Criminal Law Amendment Act, 1908, and the Prevention of Seditious Meetings Act, 1911. It is around those two Acts that controversy has centred and regarding which we have been careful to obtain a full expression of opinion. These Acts also differ from those to which we have already referred in that while the Committee was sitting, they were actually being used in the Punjab, Delhi and the United Provinces.

26. Our recommendation follows that made by the Bihar and Orissa Government: "Subject, however, to the reservations temporarily made in favour of the Seditious Meetings Act and Part II of the Criminal Law Amendment Act, which cannot be abandoned, until the present tension created by the non-co-operation movement has been relieved by the action of its leading promoters, His Excellency in Council desires again to emphasise the importance of removing from the Statute Book as far as possible all special laws of this character, so that the Government of India under the reformed constitution may proceed with a clean slate. At the same time, however, His Excellency in Council is conscious that in the future the need for the special powers may again arise."

In view of the grave situation which exists and which may become more serious, we also think that it would be more prudent to defer actual repeal of these Acts until such time as the situation improves. We sincerely hope that it may be possible for the Government to undertake the necessary legislation during the Delhi session.

But it is impossible for us to make any definite recommendation on this point at present. We hope that the repeal of these Acts may be expedited by a healty change in the character of the agitation going on at present. The duration of retention rests in other hands than ours.

27. Animated by these ideas, we recommend the repeal of all the Statutes included in the terms of reference to this Committe, with a reservation as to Bengal Regulation III of 1818 and the corresponding Regulations of the Madras and Bombay Presidencies, but we advise that the repeal of the Prevention of Seditious Meetings Act, 1911, and Part II of the Indian Criminal Law Amendment Act, 1908, should be deferred for the present. Their retention is necessary in view of recent declarations which we cannot but regard with the gravest apprehension.

APPENDIX IV.

Extracts from the Report of the Committee appointed by the Government of India to consider the existing racial distinctions in the Criminal Procedure applicable to Indians and non-Indians.*

In accordance with the instructions contained in the Home Department Resolution No. F.-105-Judiciul, dated the 27th December 1921, we, the members of the Committee appointed by the Government of India to consider the existing racial distinctions in the criminal procedure applicable to Indians and non-Indians, and to report to the Government of India the modifications of the law which we recommend should oe adopted, have the honour to report for the information of Government our conclusions on the questions requiring examination.

The most important provisions requiring examination are those contained in the Criminal Procedure Code, especially Chapter XXXIII and sections 4, 22, 111, 188, 275, 408, 416, and 491 of that Code, together with section 65 (3) of the Government of India Act, section 56 of the Indian Penal Code, the Penal Servitude Act, XXIV of

* On 21st February, 1923, the Legislative Assembly passed the Racial Distinctions Bill on the lines recommended by the Committee with one important Amendment in favour of appeal against whipping.

1855, and the European Vagrancy Act, IX of 1874.

12.—*A.* The principal distinctions between the provisions relating to Indians and those relating to European British subjects are as follows :—

(*i*) By virtue of the provisions of section 443 of the Criminal Procedure Code, European British subjects are not triable by a second or a third class Magistrate and are only triable by a Magistrate of the first class if he is a Justice of the Peace and save in the case of District and Presidency Magistrates, a European British subject.

(*ii*) The jurisdiction of Additional and Assistant Sessions Judges over European British subjects is restricted by section 444 of the code to cases where they are themselves European British subjects and in the case of Assistant Sessions Judges to those who have been Assistant Sessions Judges for at least three years and have been especially empowered in this behalf by the local Government.

(*iii*) The sentences that may be awarded by first class Magistrates, District Magistrates and Courts of Session in the case of European British subjects are limited by sections 446 of the Code to three months' imprisonment and a fine of Rs. 1,000; six months' imprisonment and a fine of Rs. 2,000; and one years' imprisonment and unlimited fine, respectively.

(*iv*) In the case of trials before a High Court, Court of Session or District Magistrate, European British subjects are entitled by sections 450 and

451 of the Code to be tried by jury, of which not less than half shall be Europeans or Americans.

(*v*) Section 456 of the Code gives to European subjects remedies in the nature of *habeas corpus* which are more extensive than those provided for Indians by Chapter XXXVII.

(*vi*) Under the provisions of sections 408 and 416 of the Code European British subjects have more extensive rights of appeal in criminal cases than, Indians, in that they may appeal against sentences in which an appeal would not ordinarily lie; and they also have the option of appealing in the alternative to the High Court or to the Court of Session.

(*vii*) Under Section 111 the provisions of the Code regarding the taking of security for good behaviour in section 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act of 1874; and

(*viii*) The definition of High Court is not so wide in the case of European British subjects as it is in the case of Indians.

34. To put our main proposals, in respect of the modifications of the Criminal Procedure Code, into tubular form, their effect will be:—

For European British subjects.	*For Indians.*
1. An appeal will lie against any sentence of imprisonment passed by a Magistrate. There will also be a right of appeal against any sentence of fine exceeding Rs. 50.	The same,

II. In every case before the High Court and Sessions Court, in which he is tried by a jury, the accused will be entitled to claim a mixed jury, that is a jury consisting of not less than half of the nationality of the accused. subject to—

(*a*) An appeal on facts as well as on law in the case both of conviction and acquittal, when the jury are not unanimous, or when the jury are unanimous but the Judge does not agree with them.

(*b*) A probable increase in the number of Indians in Special Jury List.

(*c*) A provision that the jury shall be not less than five and in all murder cases, if practicable, nine. The same.

III. The accused in the Sessions Court will be entitled to claim to be tried by jury in any class of case which is normally triable with assessors if racial considerations are involved. The same.

This provision is in addition to the right of trial by jury in all cases in the High Court and also in Sessions Courts where such a method of trial is prescribed under Section 269 of the Criminal Procedure Code.

IV. In any class of case in the Sessions Court which is normally triable with assessors and where no racial considerations are involved, he will be tried with assessors, who will not be less than three in number, and who, if the accused so claims, will all be of his own nationality. — The same.

V. In a warrant case in which racial considerations are involved, the accused and the complainant will each be entitled to claim the committal of the case to the Sessions Court for trial by a jury. — The same.

VI. In a summons case where racial considerations are involved and where a sentence of imprisonment can be passed, the accused and the complainant will each be entitled to claim that the case shall be tried by a Bench of two first class Magistrates, one Indian and one European, reference in case of disagreement being to the Sessions Judge. — The same.

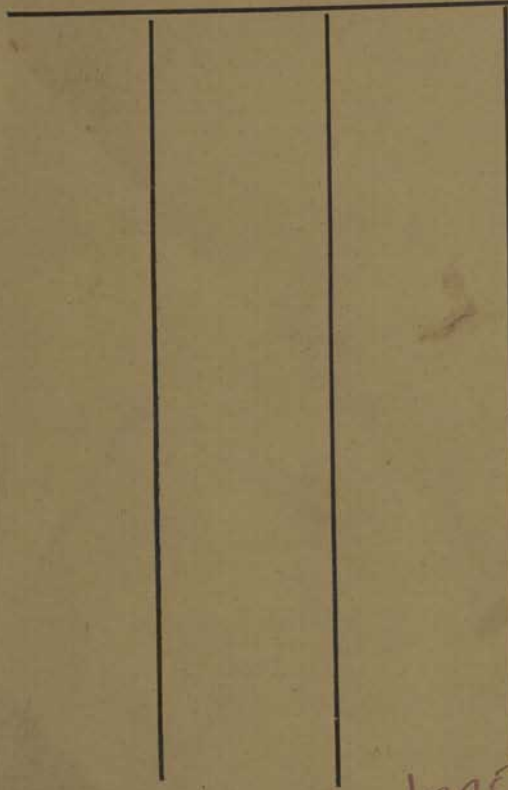
VII. In any other case triable by a Magistrate, if the accused so desires, the trial will be by a first class Magistrate, except in cases punishable with fine of not more than Rs. 50 only. — It is not practicable to extend this to Indians.

VIII. Judges and Magistrates, outside presidency-towns, will have power to pass all sentences which they are authorised by law to pass, except whipping and sentences under Section 34 of the Criminal Procedure Code on which subjects inquiry is proposed.

The existing arrangements continue pending the result of the proposed inquiry.

NOTE.—Clause I, IV, V, VI, VII and VIII apply only outside presidency-towns.

We also propose the repeal of Section 460 which provides for a special procedure in the case of Europeans (not being British subjects) and Americans.



Line Reference Target LRT-BEA-V2