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Convention Memoranda.—I (Reprint)

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NATIONAL CONVENTION

A SCHEME FOR THE SELF-GOVERNMENT OF INDIA

BY DR. H. S. GOUR, M.A., D. LITT., LL.D., M.L.A.

(1) *The Secretary of State for India in Council.*—Under the present Constitution of the Government of India, all power is ultimately centred and vests in the Secretary of State for Council. Section 2, sub-clause 2, of the Government of India Act, provides that, subject to the provisions of this Act or Rules made thereunder, the Secretary of State may superintend, direct and control all acts, operations and concerns which relate to the Government or Revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the Revenues of India. The rules referred to in this section are rules possible under Rule 19A of the Government of India Act. No such rules have been framed. Consequently, the Secretary of State possesses the completest power of superintendence, direction and control over the Government of India, and similarly the Government of India possess the same power of superintendence, direction and control over the Local Governments : (section 33), and since the Governor-General in Council is required to pay due obedience to such orders as he may receive from the Secretary of State, and under section 45 of the Act the Local Governments are called upon to obey the orders of the Governor-General in Council. It is thus clear that the Government of India is subject to the final orders of the Secretary of State in Council, not only upon the broad question of policy but upon all details of the administration, and unless this power is relaxed, there can be no real Swaraj for India.

The Legislative Assembly passed a Resolution on the 18th July, 1923 for further reforms under the existing struc-

ture of the Government of India Act. It was then pointed out that such reforms were not intended to take the place of the substantial reforms for which India was craving. It was conceded, on behalf of the Government, that if the Secretary of State made Rules under Section 19A of the Government of India Act to relax his own powers over the Government of India, the latter would become more autocratic than they are at present, since they would then cease to be even responsible to the Secretary of State and they are not responsible to the Legislative Assembly. In answer to this it was said that the relaxation of control should only be subject to the transfer of that control to the Legislative Assembly. In other words, the power of superintendence, direction and control of the Secretary of State should be directly transferred to the Legislative Assembly and not to the Government of India. This would be perfectly consistent with Section 19A of the Act which provides that the Secretary of State may regulate and restrict the exercise of his own power of superintendence, direction and control in such manner as may appear necessary or expedient in order to give effect to the purpose of the Government of India Act, 1919. Now the purpose of the Government of India Act, 1919, as defined in the Preamble, is 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. Therefore, it follows that the objection raised by the Government in July last, and since repeated, is really no objection at all, since the Secretary of State can and should make Rules transferring his power to the Legislative Assembly. The Joint Parliamentary Committee had suggested that the Secretary of State should not interfere except in exceptional circumstances, when the Government of India and the Legislative Assembly were not in agreement. This suggestion does not go far enough. We do not want the concurrence

of the Government of India with the Legislative Assembly, but the obedience of the Government of India to its behests.

The first question, therefore, that arises is who should be the sovereign body responsible for the Government of India—the Secretary of State or the Government of India or the Legislative Assembly. The Colonial Policy of the British Government is to make the Colonial Parliaments responsible to the people as a sovereign body of the Government of their Colonies. The same policy should be pursued in the case of India. The Legislative Assembly should be made the sovereign body for the Government of the country, and to it all powers of direction, supervision and control in all internal affairs relating to the administration of the country should be transferred. The India Council should be immediately abolished. The Secretary of State for India should possess the same powers as are possessed by the Colonial Secretaries.

2. *The Government of India.*—The Government of India deals with (a) British India and (b) Feudatory States. The Government of India Act provides for Responsible Government for British India. It leaves out the Indian States altogether from its consideration. So far as the Indian States are concerned, the Governor-General should be held responsible for their Government, but the Legislative Assembly should be free to make recommendations relating to their Government to the Governor-General. The British Parliament possesses of course larger powers, but at least the power to recommend should be possessed by the Legislative Assembly. The Governor-General at present possesses powers both statutory as also those derived by treaties, conventions and common law. All the statutory powers of the Governor-General relating to British India should be transferred to the Prime Minister of India. His powers under conventions, treaties and common law, so far as they are superadded to the statutory powers and relate to the

prerogatives of the Crown and its foreign relations, should for the present be held by the Governor-General.

The Governor-General's Council should be abolished. The Governor-General will hold the Foreign and Political Portfolio. He will be the head of the Military. The Commander-in-Chief will be his Military Secretary.

I am aware of no direct statutory authority for the maintenance of the Army in India. This question was the subject of interpellation in the Legislative Assembly, and the Law Members differ on the constitutional position of the Army in India. It is suggested that an annual Army Act be passed as in the case of England. The Legislative Assembly should be free to vote upon the Army, but a clear provision should be made that it is not free to disband or reduce the Army or substantially alter its policy without the concurrence of the Governor-General.

All subjects except Military, Political and Foreign Affairs should be transferred to the Cabinet of Ministers responsible to the Legislative Assembly.

The Legislative Assembly should possess the same power as the Colonial Parliaments. It should be enlarged to at least 400 Members so as to be thoroughly representative of all classes and interests including the minorities.

A Minister for Minorities should be appointed for the next five years to look after the interests of minorities. A special chapter should be added in the Constitution of India for the protection of minorities and the backward classes of India.

But at the same time it should be made perfectly clear that communal representation and protection was only temporary, necessitated by the backward state of the communities concerned, and that the Constitution of India recognised no race, no class, but one—the people of India, and that its ultimate policy is to eliminate from the Statute Book all differential treatment based upon class, caste or color.

All persons permanently domiciled in India, whether Europeans, Anglo-Indians, Jews, Muhammadans, Hindus, Parsis or any community, should possess equal rights and be subject to the same duties.

The question of Bicameral Legislature is not free from doubt, but as at present advised, I am in favor of Bicameral Legislature. The Second Chamber should, however, be more thoroughly representative of the intellect, wealth and stable interests of the country. I would transfer to the Second Chamber a certain percentage of members from the Popular Chamber by election and certain percentage by promotion as in the case of the House of Lords. The present constitution of the Council of State would thus require to be thoroughly overhauled.

I would make the Second Chamber comprise of 100 members of whom 60 shall be elected, 20 shall be nominated by the Popular House, 20 shall represent special interests of whom 10 shall be nominated by the Cabinet.

I would not give the Second Chamber any voice over the Budget or the Money Bills. Upon all other matters it will only possess a suspensary veto.

(3) *Indian Privy Council.*—I have often advocated in the Assembly and once more advocate the creation of an Indian Privy Council. Members of my House are being gradually converted to my view, with the result that I was assured of a strong majority on the last occasion that I balloted for the motion, but it was crowded out. I may be permitted to state my views on this very important subject. It is said that the British Isles and Canada alone possess a Privy Council. The reason is obvious, since the other Colonies have no problems such as can only be decided by a Privy Council. All Swarâjists and CONVENTIONALISTS agree that for the present certain subjects, such as the Army, Political and Foreign Relations, should be excluded from the scheme of Swarâj. Section 67 A of the Government of India Act excludes

certain other matters from the purview of the Indian Legislature. All these questions would remain within the autocratic control of the Governor-General unless he has a Privy Council to assist him. His relations with the Foreign States and with Feudatory States would all require the assistance of the Privy Council. As with the development of the Constitution the Indian Legislature assumes larger and larger powers over these excluded subjects, the power of the Privy Council would diminish, and when the Indian Legislature has obtained complete control over all subjects the Privy Council would then cease to exist except as an ornamental body as it is at the present moment in England. The history of the Privy Council in England would thus repeat itself in India. The Governor-General as the King's representative would take its advice upon matters not directly within the competence of the Legislature. I would, therefore, advocate the creation of an Indian Privy Council composed as follows :

Its total number should not exceed 20 to 25. Of these at least 10 shall be members appointed out of a panel elected by the Legislative Assembly. 10 shall be nominated by the Cabinet and 5 by the Governor-General. The Privy Council will hold its office for life, but they will be removable from their office upon a vote of the Legislative Assembly on the same terms as the English Judges are removable by a vote of the House of Commons.

(4) *Supreme Court for India.* All the major Colonies of England, such as Canada, Australia and South Africa, possess a Supreme Court of their own. The necessity for a Supreme Court for India as the interpreter and upholder of the Constitution for India is obvious. As an impartial tribunal to decide disputes between the Executive and the Legislature, on the one hand, the Supreme Government and the Provinces on the other, and between the Provinces *inter se*, we must have a Supreme

Court. The necessity for the Supreme Court is probably obvious by reason of the fact that there is at present no Court of Criminal Appeal in this country. Such Court has been installed in England and is doing useful work. In cases of murder and the like there is no appeal to an independent tribunal in this country. It is a serious flaw in our Criminal Jurisprudence to which only time and habit have made the people accustomed, but this is a very serious flaw which should be removed as soon as the people are made conscious of it. The Privy Council has again and again pointed out that it is not a Court of Appeal in criminal cases, and it is so, and what is more, the Privy Council is a distant body and cannot be converted into a Court of Criminal Appeal for criminal cases in India. Even in civil cases, its decisions have often given grave room for dissatisfaction. When the British Administration in India was new and the political and legal conscience of the people had not been awakened, the unsophisticated legal mind applauded with acclamation the enunciation of axiomatic legal truths by the Privy Council in the earlier cases, but as law became more complicated and the Indian mind has become more astute and learned in the law, the shallowness of the Privy Council and its faulty and, at times, perfunctory decisions have given rise to grave dissatisfaction in the country. It should be a point of honor with the country that it should have its own Supreme Tribunal. It will cheapen justice, visualise it to the people and train up its legal minds to self-confidence and self-respect. It may be that the first personnel of the Privy Council would not command popular confidence, but Lord Bryce has pointed out that in countries so sparsely populated as Australia and South Africa, the local Supreme Courts have given great satisfaction, and all the Judges of these Courts are drawn from the local Bar. There will be no difficulty about obtaining the suitable personnel for such a Court, and it

should be made an integral part of any scheme of Self-Government for India.

(5) *Provincial Governments.*—The higgledy piggedly grouping of the Provinces at present should be completely changed. All the Provinces should be re-grouped on the basis of their linguistic, ethnological and historical affinity. As such, India would be divided into 5 main Provinces :

(1) Burma;

(2) Bengal;

(3) Hindusthan, absorbing the present Behar, United Provinces, Panjab and the Northern Central Provinces;

(4) Mahārāshtra, absorbing Bombay, Berar and the Southern Central Provinces, and

(5) Madras, absorbing the whole of the Southern Presidency.

Sub-Provinces might be formed such as Andhra, Orissa and Sindh, but they should not be made independent of Provincial Units. All Provinces should be subject to the Legislative Council and Bicameral Legislatures. All Subjects at present held Provincial will be transferred to the Ministers.

I am strongly of opinion that it was a great mistake to transfer Primary, Secondary and University Education to the Ministers. In no country can mass education be safely left to local option. I would make all Education Central Subject for the next 20 years. It should be made free and compulsory as regards both sexes up to the age of 16 and be a first charge on the National Revenue. The religious endowments of this country should be placed in the hands of a Minister for Religious Trusts and a large portion of their revenue should be diverted for the purposes of National Education for which they were originally founded. From such scanty information as I have been able to gather the whole Nation could be educated at very little cost if this scheme is adopted. But whatever may be the cost, National Education must be treated as a National investment, since no country can democratise its Constitution when its proletariat are ignorant, emotional and devoid of judgment.

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Outline Scheme of Swaraj

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NOTE

In some public statements made by me in October and November, 1922, and again in my Presidential Address at the Gayâ Congress, on 26th December, 1922, I drew the attention of the public to the need for stating the fundamental principles and formulating the broad outlines of a Scheme of Self-Government which should form the basis of Indian Swarâj.

Subsequently, the new Party (known as the Congress-Khilafat Swarâj Party) which has been formed within the Congress, in consequence of division of opinion over the question of contesting elections for the official Councils, desired me to outline such a scheme, in conjunction with other friends, who also had been pressing the matter on the attention of the Indian People for some time past, and were co-opted for the Drafting Committee.

The Outline now placed before the public is the result. It was placed before a meeting of leading members of the new Party, at Bombay, on 29th January, 1923. There was no time to discuss it properly. Many of the members present (from almost all the larger Congress Provinces) expressed a general approval; others reserved opinion. But it was unanimously agreed that the Draft should be placed before the Indian People, through the Press, and suggestions and criticisms invited.

It was also unanimously agreed that the Outline represents the Ideal which should be kept in view, as one to be gradually worked up to, and that a certain number of intermediate and progressive steps have to intervene, but which must all definitely, unmistakably, steadily and progressively help to change the present régime so as to realise that ideal at no distant date.

BOMBAY, }
30-1-1923 }

CHITTA RANJAN DAS

Note—It is requested that all suggestions and criticisms may be sent, in envelopes marked on the face with the words, "Swarāj Scheme," to the address of Pandit Motilal Nehru, Ananda Bhawan, Allahabad.

OUTLINE SCHEME OF SWARAJ

CHAPTER I.—ESSENTIAL PRINCIPLES

The principles which guide this Outline are those which have been honored in India from time immemorial, and have been reiterated in the Presidential Address of the Gayâ Congress, in December, 1922, thus :

“ To form a scheme of Government, regard must be had

(1) to the formation of Local Centres more or less on the lines of the ancient Village System of India ;

(2) the growth of larger and larger groups out of the integration of these village Centres ;

(3) the unifying State should be the result of similar growth ;

(4) the village Centres and the larger groups must be practically autonomous ;

(5) the residuary power of control must remain in the Central Government, but the exercise of such power should be exceptional, and for that purpose, proper safeguards should be provided, so that the practical autonomy of the Local Centres may be maintained, and at the same time, the growth of the Central Government into a really unifying State may be possible. The ordinary work of such Central Government should be mainly advisory. ”

Briefly, *a maximum of local autonomy*, carried on mainly with advice and co-ordination from, and only *a minimum of control by higher Centres*, which will have some special functions besides.

To this should be added that *every possible care should be taken to ensure that the people's elected representatives*, who will constitute the Chief Authority for each grade of Centre, local and higher, with power to make laws and rules, *shall be, not self-seekers, but seekers of the public welfare.*

CHAPTER II.—ADMINISTRATIVE DIVISIONS

(a) Local Centres

1. The foundation of the whole administration should be in Local Centres (*grāma*), small but practically autonomous.

2. A Local Centre should ordinarily consist of a number of villages of which the population should total about ten thousand souls.

(b) Town Centres

3. Towns (*nagar*) should form separate entities, and might, as necessary, be sub-divided into wards or quarters of about the same population limits as the rural Local Centres.

(c) District Centres

4. Rural and urban Local Centres should be integrated into larger groups or District Centres (*zila*) with populations of from five to twenty lakhs.

(d) Provinces

5. District Centres should be integrated into Provincial Organisations.

6. Provinces (*soobâ*) should be demarcated on the linguistic basis. Any which are considered too large may be divided into smaller ones.

(e) All-India Organisation

7. The Provincial Organisations should be integrated into and be co-ordinated by an All-India (Bhârata-varsha or Hindustan) Organisation according to population.

8. Subject to these general principles, each Province should draw up its own scheme of administrative divisions to suit Provincial variations.

CHAPTER III.—ADMINISTRATIVE FUNCTIONS

Functions should be as below:

A. (i) Provision for appropriate *Education* of all educable children and youth of both sexes (*Shikshâ* or *Talm*).

(ii) Provision for *Re-creation* (*vinoda* or *dal-batsagi*), e. g., Public Gardens, Parks, Museums, Playing-grounds, Libraries.

Reading-Rooms, Art-Galleries, Popular Lectures, Recitations, Processions, Pageants, Religious Festivals* (Kathâ, Yâtrâ, Kalakshepam, Kirtana, Ram-lilâ, Krishna-lilâ, Maulud, Christmas and Easter Celebrations, etc.), Refining, Elevating and Instructive Dramas, Cinema and Magic Lantern Shows, Games and Sports, etc.

B. Provision for *Protection* (*Rakshâ* or *Hifazât*), by means of

(i) Police and Local Militia and Regular Military Forces;

(ii) Justice and Settlement of Disputes, through Arbitration Courts or Panchâyats in the narrower sense, and Registration of Deeds;

(iii) Appropriate Medical Help and Sanitation.

C. Provision for *Economic and Industrial Welfare* (*Jûikâ* or *Maash*), by promotion of

(i) Agriculture (*Krishi* or *Zira-at*);

(ii) Cattle-breeding (*Go-rakshâ* or *Taraqimaweshi*), i. e., increase and preservation of domestic animals of all kinds, for purposes of milk, wool, plough, transport, etc.;

(iii) Other Productive Industries relating to Mines, Forests, Fisheries, Salt, Sericulture, Arboriculture, etc. (*Akara-karma* or *Madaniyat*, etc.);

(iv) Arts and Crafts and Manufactures of all kinds (*Shilpa* or *Sanaat-hirfat*);

(v) Trade and Commerce (*Vâniyya* or *Tijarat*); and

(vi) By promotion and regulation of the various means which subserve the above, e.g., Railways, Post and Telegraph, Shipping, Roads, Waterways, Canals, Bridges, Ferries, Presses, Public Buildings, Monuments, Rest-Houses, Currency, Measures of Flood and Famine Relief, Rates and Taxes, Tariff and Customs, Surveys of various kinds (Geographical, Geological, Botanical, Meteorological, Statistical,

* As regards "Places of Public Worship, for the various Creeds," see Appendix, Note to Chapter III.

Archæological, etc.), Friendly Relations with other States, etc.

D. The above provisions would be made

(i) by means of laws and rules which would be framed by the different grades of Panchâyats, and would have force within the domains of their respective makers, the enactments of the lower grades of Councils being made with advice from and co-ordination by the higher, when needed;

(ii) by appointment of executive officials (who would be wholly responsible to the Councils appointing them) to carry out the laws and rules; and

(iii) by supervision of their work.

CHAPTER IV.—PANCHAYATS AND ALLOCATION OF FUNCTIONS

A. Local Centres or Communes and Local Panchâyats

(a) For each rural or urban Local Centre or Commune there should be one Local Panchâyat of twenty-one periodically elected members.

(b) This Panchâyat should be in charge of the different functional departments mentioned above, so far as the Commune affords scope for them, and should carry on the work by means of Sub-Committees.

(c) Under *Education*,

(i) they would maintain local schools, giving elementary, cultural and vocational-technical instruction, and

(ii) would provide for suitable Recreation.

(d) Under *Protection*,

(i) they would appoint their own *Chaukidars* (Watchmen) and would form Local Militia out of such chaukidars and other able-bodied men, and would provide for their proper training;

(ii) they would arrange for Arbitration Courts (the members of which would be separately elected) which would deal with simple civil (including what are now known as rent and revenue, *divani* and *mal* or *artha-vivâda*) and criminal (*faujdari* or *pârushya-vivâda*) cases;

(ii) they would also maintain an adequate Hospital (*chikitsâlaya* or *shafa-khânâ*) and Medical Staff which would provide treatment free and be responsible for the proper Sanitation of the Commune.

(e) Under *Economical and Industrial Ministration*, the Local Panchâyat would be responsible to its Electorate primarily, on the one hand, and to the higher Panchâyats, on the other, secondarily

(i) to see that arable lands are properly tilled, and village commons, playing-grounds, pasture-lands, groves, orchards, *etc.*, are properly maintained, and a sufficiency of necessaries, specially corn, cotton and cattle (or other forms of food, clothing, and accessories, in specially circumstanced tracts), for the use of the Commune, is always available within their jurisdiction;

(ii) that Co-operative organisations, in the shape of Stores, Banks, *etc.*, are maintained in the needed numbers;

(iii) that wells, tanks, *tals*, canals, and all means of supply of good water for drinking and other domestic purposes, and for irrigation, and all roads, *etc.*, within their Commune, are properly maintained;

(iv) that production of surplus corn, cotton, cattle, and other necessaries as well as comforts, and of mineral and other products and means of increasing the wealth of the locality is encouraged, cottage-industries promoted, and arrangements made for commercial dealing with this produce in such a manner as to avoid competitive waste.

B *Intermediate Centres or Districts and District Panchâyats*

(a) The District Panchâyat should be constituted by each Local Panchâyat (or a group of Local Panchâyats) periodically choosing one member, who may or may not be one of them; provided that the total number of members should not exceed one hundred; and provided also that at least two-fifths of them should be residents of towns.

(b) They would form Sub-Committees among themselves

on the lines before mentioned.

(c) The District Panchâyat would generally *advise* and *not control* the Local Panchâyat, in respect of all functions. Special provision would be made for such control as may be occasionally or absolutely necessary.

(d) Under *Education*, (i) the District Panchâyat should maintain one or more higher educational institutions (like colleges and high schools) as may be necessary, which will give cultural as well as technical instruction.

(ii) They would also provide *Recreation*, arranging for the more expensive items which may not be within the means of the Local Panchâyats.

(e) Under *Protection*, they would

(i) co-ordinate the Local Police;

(ii) arrange to maintain some special Reserve or District Police;

(iii) organise and co-ordinate the Local Militia, so that they might discharge the functions of a disciplined Army; and

(iv) maintain one or more larger Hospitals and supply medical and sanitary advice to their Communes.

(f) Under *Economic and Industrial Ministration*, the District Panchâyat would

(i) co-ordinate the Local Banks and Stores and other local economic and industrial and commercial enterprises; and

(ii) organise or promote independent such enterprises.

C. Town Centres and Town Panchâyats

(a) Aggregations of dwellings containing ten thousand or more inhabitants should be regarded as towns.

(b) Towns should be organised in the same way, generally, as the rural Local Centres; and the same general principles should be applied to their functioning as to the rural Local Centres, as far as practicable, but regard must be had to the special variations, the economic and other circumstances

(c) For the purposes of the integration of the District Centres and the election of the District Panchâyats, the rural and the urban Local Centres should be counted side by side as component units; and the headquarters or the seat of the District Panchâyats would ordinarily be the largest town of the District.

(d) For the purpose of unifying the administration of each town as a single whole, the Town members of the District Councils, together with such other members as may be specially elected by the Ward-Panchâyats, in the proportion of two per Ward, should form a Town Panchâyat (like the present Municipal Boards), which would be intermediate between the Urban Local (*i. e.*, Ward) Panchâyats and the District Panchâyat, and would discharge as many of the functions of the District Council, towards the whole town, as may be conveniently possible.

D. *Provinces and Provincial Panchâyats*

(a) The Provincial Panchâyats should consist of members elected by the District Panchâyats in the proportion of one for every two lakhs of the population; provided that the total numbers shall not fall below twenty-one, nor exceed one hundred; and provided also that at least half the number should be urban residents. They may or may not be members of the District Panchâyats.

(b) The Provincial Panchâyat would advise the District Panchâyats and co-ordinate them and their work, using residuary powers of control under proper safeguards.

(c) Its special work would be

(i) to maintain advanced Educational Institutions (in the nature of Vidyâ-pithas, Dar-ul-ulums. "Seats of Learning," "Centres of Knowledge," Universities) which would give expert cultural and technical training and promote research;

(ii) to maintain special Police and Military Forces, for the guarding of Frontiers, Sea-boards, *etc.*;

(iii) to make provision for Justice in special cases ;

(ii) to administer Provincial Railways, Water Works, Canals, Roads, etc.

E. *The India Panchâyat*

(a) The All-India Panchâyat should consist of members elected by the Provincial Panchâyats in the proportion of one for every thirty lakhs of population, but Provinces which may have a total population of less than thirty lakhs would send one representative. At least three-fifths of the members should be urban.

(b) The functions of the India Panchâyat would be similar to those of the Provincial Panchâyat, *mutatis mutandis*; a special one would be to deal with neighboring States (including Indian States) and Foreign Countries.

(c) The India Panchâyat should create a Consulting Senate, consisting of eminent men and women of thought and special knowledge, belonging to all parts of India, who would be elected by the India Panchâyat, from time to time, without restriction of members, and who would be asked for advice on any subject, as needed, by the India Panchâyat or the Provincial Panchâyats.

(d) The language of the India Panchâyat should be Hindustani, while the Provinces would use their mother-tongues.

F. *Special Provision for Filling up Vacancies*

Generally, if a member of a lower Council is elected to a higher, his place may be filled up by a new election by the same electorate.

CHAPTER V.—THE QUALIFICATIONS OF THE CHOOSERS AND THE CHOSEN

1. Every individual of either sex, who has resided in India for at least seven years, and is at least twenty-five years of age if a man, and twente-one years if a woman, should be entitled to elect to the Local Panchâyat.

2. The members of the Local Panchâyat should elect to

the District Panchâyat.

3. The members of the District Panchâyat should elect to the Provincial Panchâyat.

4. The members of the Provincial Panchâyat should elect to the India Panchâyat.

5. The members of all four grades of Panchâyats should be permanent residents of the country, preferably of the particular Centre, and should be chosen irrespective of their creed, caste, class, color, race or sex, but subject to adjustment, where unavoidably necessary, for purposes of creedal or communal representation.

6. Such representatives should ordinarily be not less than forty years of age; should have done some good work in any walk of life; should, if rural, be at least literate, and, if urban, should possess higher educational qualifications, and, in the case of rural and urban members of the Provincial and India Councils, should have corresponding higher and superior educational qualifications or equivalent expert experience, should have retired from competitive business or other professional life or bread-winning or money-making, and be able to support themselves on their own savings, or be assured of all necessities and personal requirements by their families or friends; should give practically all their time to National work, and should do so without any cash remuneration. But their travelling and other *ex-officio* expenses, which might be necessary to enable them to discharge their public duties, should be met from State funds, and their status as members of Panchâyat should be regarded as having greater honor attached to it than any salaried office, so that they would receive precedence at public functions.

7. The members of each Panchâyat should possess, between them, experience of all the main departments of the communal life which they have to administer.

8. No one should offer himself, or canvass for himself, as a candidate for election; but, if requested by electors, he

might publicly signify his consent to accept the burden of office, if elected.

CHAPTER VI.—SEPARATION OF FUNCTIONS

1. Throughout the whole administration, Legislative, Judicial and Executive functions shall be kept separate from one another.

CHAPTER VII.—FINANCE

1. The revenues needed to meet necessary expenditure should be raised by the Local Panchâyats by means of taxation, with advice from the upper Panchâyats.

2. State factories might be opened as necessary, with a view to prevent waste, by individual competition, over-production, bad production, *etc.*, to cheapen commodities and to reduce taxation, but not so as to create monopolies and stifle private enterprise.

3. Where practicable, Local and District Councils should make such improvements in the locality as might result in addition to the communal income, *e. g.*, public wells, tanks, canals, roads, groves of timber and fruit trees, *etc.*, and thereby lead to reduction of taxation.

4. Contributions would be made by the Local Panchâyats to make up the revenues of the District Panchâyats; by them to the Provincial and by the Provincial to the India Panchayat.

5. Special taxation might be imposed by the Provincial and India Panchâyats.

CHAPTER VIII.—PROPRIETORSHIP

1. Private Property would be recognised and maintained and the growth of individual wealth, both movable and immovable, would be permitted, but so as not to encroach on or make impossible or impracticable the growth of public possessions as well; and the owner of individual wealth, who spends it on pious works, *i. e.*, works of public utility, as

APPENDIX

NOTE TO CHAPTER I

Fundamental Principles

(a) Excessive centralisation, and the concentration of all power in the hands of a bureaucratic clique, mindful of its own prestige and emoluments, careless of the public weal, walling itself off more and more thickly from touch with public opinion, in fact, arrogant and disdainful towards the public, regarding itself as public-master rather than as public-servant—this is the bane, in consequence of which the public servant waxes and the public wanes, more and more, every day, in India. Genuine decentralisation of administration, substantial distribution of power, and real responsibility of the public servant to the people's trusted representatives—this is the only remedy. Hence the formulation of practical local autonomy as a fundamental principle.

(b) The failure to secure *ethical* fitness, the philanthropic and humanitarian outlook upon life, in the elected legislators—in consequence of which failure, the laws made by them are not wise and just but partial to special class interests, and promote an excessive inequality and therefore widespread discontent and conflicts of all kinds and degrees—this is the disastrous and all-vitiating defect of Western systems of Swarâj, the cause of all their internal ferments and their external wars, of the enslavement of Labor by Capital, of the many by the few, within each State, and of the ruthless exploitation of weaker Nations without. This failure must be strenuously guarded against in our Scheme. Hence the formulation of the second fundamental principle.

NOTE TO CHAPTER II.

Administrative Divisions

This Scheme of administrative divisions is in accord with the time-honored traditions of the country. The agricultural village and the village community were, are, and ought to continue to be, the natural basis of our special type of culture and civilisation, and of all wise administration in a country ninety per cent of the population of which is rural. Most writers and thinkers about India are agreed in this. In the most ancient days, of which accounts are available, the socio-politico-economical divisions were the village, the group of ten villages, the group of ten-tens or a hundred, the group of ten such or a thousand—grāma, janapada, prānta, vishaya, mandala, and so on. In mediæval times and the days of the Mughals, the arrangement was much the same—mauzâ, tappâ, parganâ, zilâ, soobâ, etc. It is the same to-day in the Indian States and in the territories under British occupation. The names of the divisions and sub-divisions differ in the different Provinces. No radical change can be made in this principle of groupings and integration. But for the purpose of the electoral principle, which worked sub-consciously in the old days of the Panchâyat and the Village Community, and has to work consciously and deliberately now, a population basis is suggested for the initial groups, and also for the next intermediate groups, though with greater elasticity. For the third grade, the linguistic basis is the most natural and has been already recognised by the Congress. The fourth and the final grade is governed by many considerations, geographical, political, economical, cultural, etc.; for fixing the outermost boundaries of this whole, no single principle suffices.

The single village cannot well be accepted to-day as the initial unit of administration. The population of the five hundred thousand villages of British-occupied India varies

from a few dozens to a few thousands. Therefore, in the interests of a convenient uniformity, a population basis of approximately ten thousand is suggested. This will give about three to four thousand electors for the local Panchâyat (dealt with in a subsequent Chapter)—not too large a number for such common consciousness and general acquaintance, by reputation or directly, as is needed for electoral purposes. For the whole of India, the proportion of women over twenty-one is, roundly, about sixty-five millions out of one hundred and fifty; and of men over twenty-five, also about sixty-five millions, but out of one hundred and sixty.

The treatment of towns as separate entities is suggested for obvious reasons. The difference between the conditions of the two, towns and country-village, *pura* and *janapada*, *shahar* and *dehât*, has been recognised in all times and climes. The one represents (by no means exclusively, but only by predominant feature) the *intellectual power* (*buddhi, aql*) of the People; the other, their *vital power* (*Prâna, jan*). They are *inter-dependent*. Both are necessary for a full civilised life for the People as a whole. But the modern Western plutocratic and bureaucratic centralising tendency causes the town to grow *excessively* and absorb the vitality of the country inordinately. This excess needs to be checked, and a *just balance between the two* to be restored, in order to prevent disastrous devitalisation of the soul and the body of the vast agricultural population, and the consequent crashing down, before long, of the whole much too top-heavy organism.

This balance will be restored by emphasising the *separate autonomy* of the village groups and the towns—the needed co-ordination and mutual support being secured by the advice, and, where absolutely necessary, the control, of the Provincial Authority. The need of this separateness is recognised even under the British régime by the distinction between Municipal Boards and District Boards, though, of course, in that régime the local *Self-Government* of the Boards is

carried on under the strict *other*-Government of the District officials.

The reason for fixing more elastic population-limits for the District and Town Groups is this. In the Panjab, the population of the existing twenty-nine Districts varies from five lakhs to ten lakhs, and gives an average of about seven lakhs. The twenty-six Districts of Bombay vary between three and twelve lakhs, and give an average of eight. The average for Bengal is sixteen, the largest population, not only in Bengal, but the whole of India, being that of Mymensingh *i. e.*, forty-five lakhs. The average for Madras is also sixteen. Also for Bihar. That for the U. P., ten. Some of the larger Districts, *f. e.*, Mymensingh with forty-five lakhs, Vizagapatam and Gorakhpur with thirty-two each, Dacca and Darbhanga with thirty each, Muzaffarpur and Midnapur with twenty-eight each, are too bulky for convenience of autonomous administration. Even the men of the British régime have been thinking of dividing some of them into two or three Districts each. The capital towns have eleven or twelve lakhs. The lower limit for towns may be regarded as ten thousand. The Census officials of the present régime have defined the town as every continuous collection of houses inhabited by not less than five thousand persons. Ten thousand is suggested in the text, later on, in view of the fact that that figure has been suggested for the rural Local Centre also. In British-occupied India, there are about twelve hundred "towns" or villages, with a population between five and ten thousand, or a total of about eighty lakhs. In view of such facts, elastic limits, of five to twenty lakhs, have been suggested for the District. For purpose of symmetry, the figure might have been fixed at ten lakhs uniformly. It is the actual average for the two hundred and seventy-five Districts of British-occupied India. But the centre of a District has, ordinarily, to be a fair-sized town. And in tracts where towns are few and far between,

large agricultural areas and populations have to be grouped around and with them. Natural boundaries, rivers, forests, ranges of hills, etc., also make for variation of area and population.

NOTE TO CHAPTER III

Functions

Western writers divide the functions of Government into (i) Constituent or Protective, and (ii) Ministrant or Promotive. The former are what may be called negative mainly (a) the prevention of crimes and breaches of peace, and (b) adjustment of wrongs; in other words, preventive and curative, or police-military and judicial. The others are positive and constructive, the active promotion of the welfare of the community.

The *laissez faire* school of socio-political thought, looking at the mischievous consequences of over-interference by the State, *i.e.*, the Bureaucracy, would confine the duties of Government to the former only; and would give to the individuals, regarded as units, who compose the Public or People, full liberty to work out their own destiny in their own ways, in competition with each other, so far as positive welfare or "success in life"—whatever that might mean—is concerned. This is the school of Individualism. Another school, looking at the immense waste of energy and life, which results from unregulated competition, and at the exploitation of the less cunning and less able "many" by the more cunning and strong "few" (so that the evils of Bureaucracy re-appear as the evils of Plutocracy), and also realising that widespread and substantial and lasting "success in life" depends more upon "mutual aid" and co-operation and communal organisation than upon individual enterprise, recommend State-regulation and the free exercise of promotive functions by the State in new ways which will obviate the evils resulting from Bureaucracy. This school of thought is generally known as that of Socialism; but by differences of views as to

the ways, becomes divided into many, known as Collectivism, Communism, Anarchism, State-Socialism, Guild-Socialism, etc.

As usual, the truth is in the golden mean, and error in the extremes. The best course is the middle course. Our Swarāj must maintain a balance between Individualism and Socialism (*Swārtha*, and *parārtha*); must reconcile the two. For both are *necessray* to full civilised life, even as the pronouns I and We. The needed reconciliation will be effected by maximising local elective autonomy and minimising centralisation.

As to the preventive and curative functions, Police, Military and Justice, there is no dispute. Also as regards Medicative and Sanitative, which may be regarded partly as protective and partly as promotive, Sanitation being preventive of disease and promotive of health, and Medication being curative of ills.

But a certain amount of "promotive" work must also be done by the various grades of Centres. The work may be grouped under two main heads, the promotion (*i*) of right Education, the very foundation of all communal welfare, (and therefore placed here before even Protection), and (*ii*) of Economic and Industrial Well-being. Education will include Recreation also, as being indirect education in a popular and elastic and almost more effective form.

It is the duty of the elders of the family (*i*) to protect the younger generation, (*ii*) to amuse and educate them, (*iii*) to settle them in life, to put them in the way of earning a livelihood. The duty, the right, the function of the elders of the villages, of the Districts, of the Provinces, of the country as a great whole, is *none other*. All the functions of Government are either these, or subsidiary to these.

A word may be specially added here on the subject of Recreation. The object of measures under this head would be twofold: (*i*) to provide such *refined entertainment*, for young

and old alike, as will give healthy *relaxation*, as well as healthy *tone*, and also *indirect* yet very useful *education*, to the mind and body of all sections of the public, in leisure hours; and (ii) at the same time to *displace the evil recreations* of drink and drugs and other social vices and harmful indulgences. It should be borne in mind that *some* recreations human beings *will* have; and where healthy ones are not easily available, evil ones *will* be resorted to.

The desirability should be considered here of putting provision for "Places of Public Worship for the Various Creeds" among the duties of the Panchâyat, under the head of Education and Recreation, and putting it even in the forefront. The Worship of the Infinite (a more indubitable fact than the Finite) is Re-creation, creation anew of the soul and the finer elements of the body, nourishment for the inmost heart, in a very real sense. That the Elders of the Commune should have the duty of making this provision duly (and separately only to the extent unavoidably necessary, and with at least one place where members of *all* and *any* creed might join occasionally in a Common Prayer worded so as to be acceptable to all)—this would conduce to the liberalisation of all the creeds concerned and thence to the Religious Peace which is indispensable for India's and the world's progress.

NOTE TO CHAPTER IV

Panchâyats and Allocation of Functions

The placing of the headquarters of the District Panchâyat in the largest town of the District will make the co-ordination of the administration of the town and the country easy. And it is in accordance with natural tendency. The danger that the town may begin to dominate the country is guarded against by the provision that the country members of the District Panchâyat should be in the majority.

The proportion of the two classes of members is made equal in the Provincial Panchâyat, and reversed in the India Pan-

châyat because the upper bodies have to deal more and more with technical and non-agricultural affairs.

The Essential Change

“*Advisory and not mandatory*—excepting in rare cases”—this is the essence of the change needed in the administration. The change is one of *spirit*. The details of the official executive machinery may remain much as they are now; but if the Executive, the Judicial and the Legislative powers are separated, and the legislators (in the broad sense) who compose the Panchâyats of all grades, are elected, and the higher Panchâyats ordinarily *advise* and not *command* the lower Panchâyats, and the executive officials are really responsible to the Panchâyats, then, it is expected the evils of the present régime will be cured. For the autocracy of the Bureaucracy will be replaced by what may be called an aristo-democracy. Aristocracy, because the Panchâyats will be composed of the *best* and most trusted and honored of the people; democracy because the people will *choose* them. The members of the Panchâyats would not exercise any executive powers directly, either in their individual or their corporate capacity, but would only make laws or rules or pass resolutions. These would be carried out by the Executive. And the Executive, or at least the chief officials thereof, would be appointed and, if necessary, dismissed or otherwise punished, by the Panchâyats. In some cases, the executive official may be an elected one. He too would be subject to the supervision of the Panchâyats. The control of the Panchâyat-Legislative would thus be exercised over the Executive by means of this power of appointment, dismissal or advancement. The Judiciary would be mostly elective also, subject to approval by the Panchâyat-Legislative.

This separation of powers would minimise the temptations to, and opportunities of, corruption for all, and would make the Executive (and also the Judiciary) *responsible* to the People, in the persons of their Elect, which responsibility

is the one great desideratum to-day.

It will be remembered that Mr. Gokhalé suggested and endeavored that Advisory Committees should be formed in each District, to advise the District officer in all important matters. Of course, the Bureaucracy declined, on the ground that it would interfere with the individual responsibility of the District office. When they said "responsibility" they, of course, meant irresponsibility: for when was the District officer responsible, and to whom? If he was or is responsible at all, it was and is only to the Bureaucratic Clique. If Mr. Gokhalé could have agreed, as was suggested in some quarters, that the Advisory Committee should be nominated by the District officer himself, then, indeed, there would have been no difficulty in the acceptance of his suggestion. Only then, each District officer would have had a Standing Durbar of so many courtiers, the nawab-ic arrangement would have been completed, and the People would have been worse off than before.

What is needed is that the Advisory Committee should be a Panchâyat made up of the Elders of the People, which will not *interfere* with the pretended and non-existent responsibility of the executive official, but will make it *real* and *enforce* it.

Measures are outlined later on for further safeguarding and ensuring, as far as is humanly possible, the uprightness of the members of the Panchâyats themselves; for such safeguarding is the very heart of the whole scheme.

It should be noted that, though option is given, the presumption is that the majority of the members of the higher Panchâyats will be chosen from among the members of the lower, who will be all directly elected by the People. Constant and sympathetic touch and unity of spirit and of work will thus be maintained throughout, and the People will, for all practical purposes, directly elect to all the Panchâyats, Local, Intermediate and Central, even though, technically,

the election to the latter will be by a process of distillation through electoral colleges. The latter process has some advantages, which too will be secured by this method. The immense worry and trouble and expense of holding huge elections, by millions upon millions of voters, over and over again, for a handful of seats, would be all saved. And in the Local Panchâyats, with their small area and population, and through them, in the upper ones, the elected and the electors will be in constant touch with each other, public opinion will carry its full weight and receive its full due, influencing the members of the Local Panchâyats and, through them, those of the upper ones effectively.

It is very desirable that there should be a certain number of persons who should belong to all grades of Panchâyats. They will serve as the personal linking medium and would bind together all parts of India continuously and effectively, and at the same time keep all the Centres in real touch with each other. And this would be one important measure for guarding against the possibility (which is always present in federations of practically autonomous areas and communities) of their falling apart, under the influence of false provincialisms and insularities and other such causes (which are very liable to be fostered by the linguistic demarcation), and so weakening the whole. Another measure is connected with finance, in the shape of some special All-India taxation; and a third, with the use of a common language by the All-India Panchâyat. Both are mentioned in their proper places.

In this way, the virtuous (and not the vicious) circle of (not to use the harsh word Government, but) administration of the affairs of the People, for the People, by the People's Trusted and Chosen Elders will be wholesomely completed. Human affairs should be administered by those who know human nature in mind and body; a People's affairs should be administered by those who are its Elect and are in constant and sympathetic touch with, and, therefore, know,

the People and their requirements of body and mind.

It will be seen that, under the Scheme, the District Councils will be fairly large in point of numbers. A District of the maximum population of twenty lakhs, will have a Panchâyat of one hundred members; whereas the Provinces which are largest in population (at present) will have no more in their Provincial Panchâyats. As the bulk of the administrative work will be disposed of by the Local and the District Councils, when they are really autonomous, very large numbers for the upper Councils are unnecessary from the stand-point of disposal and distribution of work between and by Sub-Committees. Very large numbers are also otherwise undesirable in deliberative bodies. The personnel may be changed at short intervals, by framing rules in that behalf. It may be observed here that these Sub-Committees, properly framed and used, would correspond to heads of Guilds, and would secure to the communal administration the advantages, on a higher level, of the Village Community as well as the City-Guilds system.

NOTE TO CHAPTER V

Qualifications of Choosers and Chosen

With regard to the ages suggested for Electors, the idea is that only those who are mature in body and mind, and have had some experience of life, and specially of family responsibility, should be entrusted with the duty of choosing those who would rule their affairs. The ages suggested would ordinarily give these requisites in India. It seems that in England the difference is reversed, twenty-one is fixed for men and thirty for women. Perhaps it was thought that at the earlier age, women would be too busy with family cares and work inside the home, to be able to take much interest in the work outside. In India, women are as mature in body and mind at twenty-one as men at twenty-five; and these different ages, if fixed as suggested, would generally enable husband and wife to go to the

poll together.

As regards the qualifications of the elected, it has been said at the outset that the conditions for election should be such as would make it humanly probable that the electors may be seekers of public weal and not self-seekers. The qualifications mentioned in the Outline Scheme are as "the outward symbols of the inward grace". They are such as ordinarily go with the wise and self-denying and philanthropic nature. The reasons for suggesting them may be mentioned in greater detail as below :

(a) Legislators should be permanent residents of the country for which they are to legislate ; but their creed, caste, class, color, race, or sex should not, as such, be regarded either as a qualification or as a disqualification. Without permanent residence in the country, sympathetic understanding is not possible ; while taking account of creed, caste, *etc.*, in the elections, imports into the resulting Legislature the vicious spirit of conflicting interests and party-politics in place of the virtuous spirit of each caring for all. But if, because, at present, there is much creed and caste and class jealousy existent in the country, it should seem necessary that some exceptions should be made, there is provision for communal representation. It is to be trusted, however, that once the scheme begins to work, the whole atmosphere will change so that these jealousies will disappear, and it will be realised by all that civic well-being is independent of creeds and sectarian beliefs, as has been realised in Japan.

(b) At forty, persons have well passed middle age and usually have children of their own and thus experience of the household life. This will make reasonably probable that the legislator possesses intimate knowledge of human nature in its more common and important aspects, knows what responsibility for the well-being of others means, and has sober and mature judgment. But he should have also retired from all competitive bread-winning or money-making, and should be

living on his past earnings or on a pension. So, he would feel financially independent; his outlook upon life, his attitude towards his fellow-beings, would have changed from that of selfish taking to that of unselfish giving, and he would have all the leisure needed for his public duties.

It may be that many persons are not able to retire from their business or profession at forty. But we do not want many. Exceptions will be able to. And we want exceptionally selfless men for this essential and highest kind of public work. Twenty-one persons in ten thousand are not too many to expect. If the country cannot provide even so much self-denial, it may as well give up all attempts at Swarâj. But the country *has* been showing capacity for self-denial, and there is no need to be doubtful. Moreover, if few people are in a position to give up business or profession at forty, many *can*, and *ought to*, at forty-five or fifty, with considerable benefit to the whole moral tone of themselves and their community. And if the Panchâyat members are fifty years or more, there is no harm done, but rather more mature wisdom and experience secured. After all, even under the current management, the deliberative and legislative and guiding assemblies of most Nations and communities are composed of grey-haired persons. A younger and physically more vigorous and active age is wanted in the executive offices, where action is required more than thought. It has to be remembered that the old *have been young*, and *know* what the young know; but the young *have not* been old, and *do not know* what the old know; though it is devoutly to be prayed that they may all become very very old and learn all that the old know, except the pains of old age! It may be that many persons tend to become mentally inactive also, after fifty-five or sixty. But between forty-five and fifty-five is, ordinarily, a very good age for the kind of deliberative and legislative work we have in view here. And there are cases, though rare, in which the mind is thoroughly capable and active, and the

body healthy, right up to seventy or more. But it may be worth while to fix a maximum age-limit also, say, sixty or sixty-five, as the minimum is forty.

Provision may also be made for exceptions. It may be that these high age-limits will sometimes exclude really brilliant younger men. Our conception of the legislator requires not *brilliance* but *wisdom*. Brilliance comes and goes, and plays false and proves tinsel, and makes messes, but wisdom lingers. Wisdom is matured knowledge *plus* philanthropy, patriarchal benevolence. Brilliance may well wait and mature into a softer, steadier, soberer light and do its duty so much the better *after* attaining the forty years. If it is substantial, it will not get extinguished by waiting a few years. Yet, for cases in which the work of the Panchâyat concerned is likely to suffer if any particular person is shut out because of the age-limit, provision may be made for exceptions, as said.

(c) We want another qualification in our Panchâyat member. He should have done outstandingly good work in *some* walk of life—whether literary, scientific, educational, priestly, medical, artistic, *etc.*, or administrative, official, military, *etc.*, or commercial, agricultural, industrial, financial, *etc.*, or as a laborer and manual worker; and he should have done this and at the same time acquired a reputation for uprightness and honest dealing and sympathy for fellow-creatures. An aged agriculturist who has tilled his few acres successfully, has raised up a good family, is respected and trusted in his own and neighboring villages, and can express his views clearly, is a wise village elder, in short, may be a more useful member of a Legislature which has to deal with vast agricultural interests like those of India even though he may be only just able to sign his name, than many brilliant speakers or writers with only a college education that has little touch of reality.

(d) Another desirable condition is that the legislator

should not receive any cash remuneration for his work from the public funds. Such cash payment, while perfectly right and even necessary in other fields of work, taints the peculiar fiduciary status of the *legislator*, who should stand in the position of Trustee and Elder to the people. He should therefore meet all his *personal* expenses himself. But, of course, all his *ex-officio* expenses must be met out of public funds. This would invest the legislator with the venerable dignity which naturally belongs to such an Elder. Trust, honor, reverence—these are the proper, the only, and the natural price of patriarchal benevolence and caring; and they usually *are* paid, where the generous instincts and traditions of the community have not been perverted. Also, the giving and receiving of such honor—a reward greater than power and wealth and amusements, for it can be enjoyed not only in life, but also after the death of the physical body, which the others cannot be—is a great nourishment to the heart of both giver and receiver, and is a continuous inducement to benevolent work on the part of the latter (*when it is not mixed up with and corrupted by power and wealth*), and a powerful check against temptations to corruption. The natural corollary of this is that in all public functions, the unsalaried legislator should have rank and precedence above all salaried office-bearers as well as persons engaged in competitive money-earning professions.

It will be readily seen that the idea underlying this condition is that which has been discussed and emphasised before, the idea of spiritualising politics by changing the whole culture and civilisation of society from its present *mercenary* to a *missionary* basis, even as the work of the elders in a family is done for the youngsters, not for mercenary motives, but out of missionary benevolence. The right instinct is already there; it has only to be revived. Many western countries do not, or until recently did not, give any salary to their legislators. Aldermen are not paid. Nor are Justices of the

Peace. The theory about the *honorarium* of the barrister is the same. But the prevailing mammonism of Western Civilisation has corrupted the whole moral atmosphere of human life and penetrated into and vitiated even the most sacred domestic and fiduciary relations. If this atmosphere cannot be purified by the introduction of the missionary and patriarchal spirit in the Panchâyats, the legislators and the Courts of Arbitration, then there is no hope of true Swarâj.

(e) It goes without saying that, grade after grade, each Panchâyat should have, in its personnel, members possessing between them all the knowledge and experience needed for dealing with all the different kinds of work which the Panchâyat as a whole has to attend to. For making rules for, and dealing with, each main department of work, the Panchâyat will have to form a Sub-Committee out of its own members; and it is obvious that these should have special knowledge of that kind of work.

(f) Another important point is this: There should be no "standing," offering of, or canvassing for, himself by any one, as a candidate for election. The idea of self-display and *seeking* election is wholly incongruous with the spirit of philanthropic public service. Favors are sought, not burdens. The conception here should be, not that the electors confer a favor or honor on the elected, but that they place a heavy burden of public work on him; and it is therefore they who are to be placed under obligation, and should request the electee, instead of being requested by him. *Seeking* election for oneself has an inevitable savor of selfishness of some sort or other about it, which is quite inconsistent with our ideal of the legislator. Of course, there will always be possibilities of abuse. But the point to be considered is whether they will be *less* or *greater* than under the current systems, under which the gross abuses of "electioneering" are so much a by-word as *political and financial "profiteering"* and bureaucratic

"domineering". And it has also to be remembered that the mere *public acceptance and declaration of the principles* and ideas here suggested will change for the better the whole tone and atmosphere of politics.

It may be objected that we may make a rule that there must be no canvassing, etc., but will not persons surreptitiously get others to nominate and canvass for them? The reply is that obviously we do not profess to be able to abolish all evil. Whoever or Whatever made the Universe has not succeeded in doing so. Human beings can obviously not do better. Indeed, some people think and believe that if evil *were* abolished, *good* would disappear automatically also. But what human beings ought to and can do is to try to minimise the evil and maximise the good, in a given time, place and circumstance. We profess only to make suggestions towards this. No doubt, there will be room for underhand doings. But the *other* conditions which we propose must not be overlooked. They will blunt the edge of the temptations to such doings. Thus, legislators will not be entrusted with executive powers, as they are to-day, in the capacity of Ministers or Executive Councillors, *etc.* Judicial powers will also be separated off from the other two. And the reformed public opinion will make a different atmosphere altogether. The general recognition of the non-mercenary principle and of the principle of the division of the rewards of extra honor, and special official powers, and extra wealth, and more amusements, *etc.*, in correspondence with the division of labor and functions and the difference of the main kinds of temperaments and capacities, the condition the legislators should not be engaged in any money-making business, which will naturally keep the public eye alertly and wakefully upon his purity—all this will make the election something to be accepted only from a sense of duty, as a burden for which the only (but great) recompense is honor, rather than to be eagerly sought for as a means of easy, selfish joys.

NOTE TO CHAPTER VI
Separation of Functions

That Judicial functions should be separated off from Executive functions is admitted even by the Bureaucracy in profession, though they are avoiding, might and main, the carrying out of their profession into practice. But it is not equally generally recognised that the Legislative function should also be separated off from the other two. Even more radically dangerous than the combination of Judicial and Executive, is the combination of Legislative and Executive. If the Executive-Judge will always *decide* in favor of himself, or of his class or clique, the Executive-Legislator will *make laws* in favor of himself or of his class or clique—a far more radical danger, mischief at the very root.

In the ancient Indian scheme, the man of thought was the Legislator, and the man of action was the Executor of his law. Such a pioneer of reform in India as Raja Ram Mohan Roy has expressed an opinion that the downfall of India began when the Rajas usurped the power of making laws from the Pandits. The ancient *Smritis* are all composed by Rishis, not by Rajas. The Islamic tradition is similar, too. Therefore no legislator should have direct executive power; but the Legislature should supervise and control the Executive which should be responsible in every way to the Legislature. This is the very essence of Responsible Government and Self-Government as conceived here. Where the chief Executive and the chief Legislative are practically identical, and the members of the former are substantially or heavily salaried as in England, true responsibility ceases, manœuvres and intrigues of party politics become rampant, and legislation cannot be disinterested. In other places the opposite error is observable, viz., that if the Legislative is separated from the Executive, the latter is free of control by the former.

NOTE TO CHAPTER VII

Finance

These provisions will reverse the present order of things, secure financial autonomy, and provide a safeguard against the disastrous extravagance and top-heaviness which are the consequences of excessive centralisation, have plunged Western countries in hopeless indebtedness and bankruptcy, and are ruining India also.

NOTE TO CHAPTER VIII

Proprietorship

Two opposite tendencies are patent in politics and economics, as throughout human and other nature, in all the aspects and manifestations thereof. The current names for them are Individualism and Socialism. Other names for them are egoism and altruism, the separative "I" and the communal "We," mutual struggle or struggle for existence and mutual aid or alliance for existence, competition and co-operation. To endeavor to suppress either, and retain the other only, is a fatal error, due to ignorance of the very elements of human nature, or to blinding arrogance and greed for power and wealth. Bureaucracy and all other "cracies," as also the many current schemes of Collectivism—one of which is being tried in Russia under the name of Bolshevism—are always committing this disastrous error of one-sided and lop-sided excess and exaggeration, and therefore are always committing suicide while causing grievous disturbance and injury to the People. Russian Bolshevism, after a vain endeavor to abolish private property, in the course of which widespread misery of the most awful character has been caused, seems now to have decided to recognise private property, as was inevitable. Safety lies in recognising both these infeasible and unabolishable aspects of human nature, and in trying to reconcile them wisely. The growth of the sense of separate *Individuality*, the growth of egoistic intelligence of the institution of monogamous marriage and the sentiments

connected with it, of the definition of the family life, of the sense of private property, of the customs of inheritance, of incentive to productive efforts of an ever more complicated order—all these are inter-connected, inter-dependent, flourish or decay together. At the same time, by that paradox of antimomial duality or ambivalence which is the very nature of the universe, their flourishing is possible only in the setting of a Society. Society and Individual, "We" and "I," are interdependent yet opposed. The reconciliation must be found in a National Organisation of Society, such as will give due play to the instincts or forces of individualistic competition (*droh-atmakavibhuti*), as well as Socialist co-operation (*sambhuya-samutthana, singh-atmakosambhuti*) Refinement of life is not possible without accumulation of wealth; and that is not possible without some play of individualism (*vyashti-buddhi, bheda-buddhi, swartha, khud-gharazi, khuli*), the sense of private, exclusive, separate possession. But the excess of Individualism leads to class-wars and disruption of communities, and (when the spirit of Individualism puts on the mask and the larger form of Nationalism) to world-ruining wars, like the recent or, indeed, still continuing, European War; and so it-defeats its own ends and commits suicide. To guard against this excess, to set due limits to private accumulations, to ensure even the refinement against degenerating into vulgar loudness, to bring about an equitable distribution of necessaries and comforts—this is the work of the spirit of Socialism (*Samashti-buddhi, abheda-buddhi, parartha, aql-i-jamauti*). The reconciliation is to be found in making the private life simpler and the public possessions richer, by putting "private" individuals in charge of "public" properties of common use and enjoyment (like public parks, museums, zoos, children's and youths' playgrounds, reading-rooms, libraries, roads, tanks, wells, places of worship, rest-houses, dharmashālas, sarais, almshouses, bathing ghāts, hospitals, &c., and inducing them, by

the incentives of public honor (and public censure in the opposite case), to lay out their individually-accumulated wealth on these. In this connection, the principle of the separation of the four main prizes of life should be very carefully borne in mind. The preservation of the integrity of the central authority (in other words, of the purity of the Legislature) and the inducing of all the individuals composing the community to put forth the best work that there is in them—these are the main problems of Government and social organisation. Modern Governments and modern Collectivist schemes and experiments are all failing to find a solution for them. As said before, Lenin, in Russia, after extraordinary efforts to abolish private property, has realised that Capitalism has to be restored (though, no doubt, with limitations). He is reported to have found out that the peasants avoid working more than will produce enough for their necessary wants, and are not interested in supporting the “intellectuals,” etc., who are necessary for the State, unless special inducement is applied. Now the simple old traditional solution in India of these problems is the separation of the four main prizes of life, viz., honor, power, wealth, and amusements, which constitute the main ambitious inducement to strenuous work of correspondingly different kinds. The possibility of combining them, of securing them all, is the one prime cause of all kinds of social and political corruption. Separate them, and you at once minimise the temptations of the central authority, and at the same time provide an adequate (if not excessive) inducement to every worker to put forth his best. Socio-political reform of the affairs of human beings, if it is to be successfully carried out, must not ignore these facts and laws of the Science of Psychology, *i. e.*, of Human Nature.

By taking due account of these laws and facts, it is possible to minimise the disadvantages and pick out the advantages of all the many forms of socio-political organisation—

man has tried the Village Community, the City-Guild system, the City-State, the Country-State, Theocracy or Sacerdotalism, Autocracy and Monarchy and Despotism, Aristocracy and Feudalism and Militarism, Plutocracy and Commercialism, Bureaucracy and Oligarchy of many kinds, and finally Democracy and Collectivism of many shapes and forms each one only a lop-sided and excessive exaggeration of one constituent and necessary element in the corporate life of humanity—and synthesise them all anew in a truly beneficial form of Self-Government or Swarāj.

NOTE.—All Memoranda circulated for information and criticism contain the view of the author at the time of writing. Changed conditions might involve modifications. The considered views of the Committee will not be available until it issues its report.

JUDICIAL REFORMS

The following are extracts from the Presidential Address of the HON. MR. C. P. RAMASWAMI AIYAR, when he was Advocate - General, to

THE ALL-INDIA LAWYERS' CONFERENCE

Allahabad, March 28, 1921

Our profession has, according to my contention, somewhat failed in its duty in not treating itself sufficiently seriously from a corporate point of view.

The so-called man of the world does not sufficiently advert to the fact that, after all, politics and Government are largely questions of legislation and rule-making. He rarely recognises that none is more fitted to take part in that work than one who has been trained to study and criticise the law and its applications and implications.

It must not be forgotten also that none has greater opportunities of judging of human nature as it exists, and of the needs of our society, so vitally and so vividly, as the lawyer. Who, for example, is more alive than he to the handicaps and drawbacks of the present fossilised system of Family Law, and who is more competent to introduce well thought out changes therein? Indeed, it can legitimately be contended that a preparation for the law and a knowledge of it are the best and the most adequate preparation for the discharge of the duties of Citizenship.

We may well deplore with Bentham the absence of harmony between the changing social conditions and an unchanged and unchanging law. This lack of harmony is, in my opinion, largely due to the place which the lawyer is content to occupy in National affairs.

Democracy has been defined as Government by discussion, and such a Government involves, as its indispensable prerequisites, those habits of mind which are best developed by a legal career, namely, a trained intellect and the habit of close debate and reasoned argument. If, in the language of the great Sidney, ours is to be a Government of laws and not of men, if, as the old poet sang, the law should be unto the sword what the handle is to the hatchet, if it should direct the stroke and temper its force, if justice, as Sheridan declared at the trial of Warren Hastings, is to be the exact idea of all that would be perfect in the spirits and aspirings of man, deliberate and sure and abstracted from all party purposes and political ambitions, it is necessary that the supremacy of the law and the just place of the lawyer in the scheme of our polity should be preserved and safeguarded. It is a fact that, throughout the ages, political progress and the realisation of political ideals have been largely influenced by the powerful support of the lawyer. Was it not reported of the Kaiser that he exclaimed that "all the persons who were opposing him in the War were lawyers"—Lloyd George, Asquith and Poincaré? Is it not also true that, despite the outbursts of jealousies which now and then manifest themselves against the lawyer and his place in the scheme of things, he has played a decisive part in the destinies of his country in the most varied spheres of activity? One has only to examine the personnel of the United States Cabinet, and to realise the part played, for instance, by Lord Haldane in the fashioning of the machinery of the late War, and the contributions towards the winning of it by men like Asquith, Lloyd George, Lord Milner, our Viceroy-Designate, the Earl of Reading, and that other great man, the scientist-lawyer who is now no more, Lord Moulton, to perceive what multifarious contributions have been rendered to the history of the world by the man of law; to an Indian audience it is unnecessary to recount the part played in the building up of our political fabric by W. C.

Bonnerji, Manamohan Ghose, Dr. Subramania Iyer, Sir Sankaran Nair, M. G. Ranadé, Badruddin Tyabji, Sir Pheroze Shah Mehta, Pandit Madan Mohan Malaviya and Lord Sinha.

Leaving Statecraft on one side, and confining oneself solely to the sphere of the Administration of Justice, it can hardly be gainsaid that what the Bench is must always have a potent influence on the Bar, and the status of the Bar as a body is the most important factor in what the Bench will be, as time goes on. If the Bench is the fountain of Justice, the Bar is, or should be, the supplier, and it is elementary learning that the fountain cannot rise higher than its source. If this fundamental fact is properly appreciated, the utility of such a Conference as this will receive adequate recognition. All of us, members of the profession, have need to be brought together; the efforts of our separate professional organisations in the capital cities and in the mufasal have to be focussed and given proper direction and aim. There is need for a general quickening and co-ordination of ideals and aspirations. It is indeed strange that, though the lawyers have been instrumental in bringing into existence and fostering the various political, social and other Conferences that have played so great a part in our country's recent history, yet it has taken so long for them to realise that they should set their own house in order and should take counsel together for that purpose. It must not be supposed, moreover, that on this occasion we should expend our energies in dithyrambics regarding our avocation. Great as has been the part played by the lawyer in the moulding of our National organisations, beneficent as have been the effects of the "Vakil Râj," multifarious as have been its activities, the lawyer in India has not yet taken his due share in the field of legal reform, nor have our giants rendered the services that might have been expected of them in the scientific study of the law and in the shaping of legislation to suit the altered needs of our Society. Why, even when the Government of India Act was consolidated, many ana-

chronisms and obsolete provisions, strange survivals of the eighteenth century, were allowed to be perpetuated because of the lack of coherent efforts on the part of our legal associations. The inter-relation of the various grades of our profession and of the members of the Bar in the mufasal and in the capital cities also leaves much to be desired; as also the mutual relations of seniors and juniors in the congested and competitive conditions of to-day. We are therefore not a moment too soon. The new Constitution that has begun to work in various parts of the country is largely tentative and experimental, and the experiment needs for its success nothing so much as wise and sustained legislative endeavor and a well-reasoned programme, amongst other things, of law reform. Legal reform in a country so essentially conservative as ours, and so stratified by sub-divisions, would be well-nigh impossible without the creation of a defined consensus of professional and lay opinion, and a growing perception of the dignity and efficacy of the law and the lawyer. Such a consensus is necessarily also conditioned upon a lofty standard of ethics and professional 'etiquette, which should animate and inspire the members of the profession and should be manifested in their daily conduct. No small part of the glory of England is due to the enunciation in that country of the doctrine of the supremacy of law, depending for its maintenance on the prestige and purity of its Bench and the independence and integrity of its Bar. These latter qualities were fostered by that practical democracy of the profession by the operation of which, though in the earlier stages of its history, the control of the lawyers in England was in the hands of the Judges, they resigned their direct powers over Barristers to the Benchers as early as the thirteenth century, the Judiciary merely reserving to itself a very slight visitatorial jurisdiction.

The advantages of gatherings like the present and the practical results they can achieve have been best demonstrated

in America, where the Central Bar Association consists of representatives from various State Bar Associations. This Association holds annual gatherings extending over three or four days, appoints several Committees nominated in advance, such as Committees for Jurisprudence and Law Reforms, Committees for Civil Procedure and Criminal Procedure, and so forth, which prepare papers, and addresses for the coming annual gathering. It is the function of the President of the gathering to prepare a review of the legislation of the previous year, and to supplement it by suggestions for further political and legislative changes. The institution has worked marvelously well in the United States and in Canada, and furnishes a most valuable object-lesson for us.

In this connection it may be remarked that the forensic systems of the different States of the European Continent were conducting their affairs on the footing that the Bars were not National but local; about the year 1875, however, the various Bars of Germany formed a Federation, and the example was copied by the other States on the Continent, and, later on, there was evolved the idea of an International Federation of Bars. At the Second International Conference held at Liège, in the year 1905, the question was discussed as to whether the profession of the Advocate should be free or under State control, and opinion was practically unanimous as to the freedom to be conferred on the Advocate. Another resolution of the same Conference was to the effect that in each country there should be only one Bar, and that the members of that Bar should be eligible to practise before any Court in that country, and further that an Advocate, duly authorised in one country, should be allowed to practise in any other country, provided he associated himself with an Advocate of such country.

In England, though the Incorporated Law Society, consisting of Attorneys and vested with power to enquire into charges of professional misconduct by Solicitors, was

constituted by Statute (51 and 52 Vic. c. 65), yet it was not until 1883 that the English Bar organised "a Bar Committee, which was the first of its kind, representing the whole body of the Bar, whose function it was "to collect and to express the opinion of the members of the Bar on matters affecting the profession and to take such action thereon as may be expedient". The Committee was elected by the Bar, and this Committee was, in turn, superseded in 1894 by the body which now goes by the name of the General Council of the Bar, consisting of accredited representatives of the profession. The need was not felt acutely earlier in England, because of the age-long existence of the Inns of Court, whose jurisdiction has been nearly supreme as domestic tribunals. The necessity is, of course, much greater in India, where such professional bodies have not been brought into being.

Realising the necessity for such co-ordination of effort, a Lawyers' Conference was inaugurated in 1920, at Madras, the objects of which were:

- (a) To promote *esprit de corps* amongst all sections of the legal profession;
- (b) to regulate professional ethics and etiquette;
- (c) to consider and suggest improvements in the practice and procedure of Courts;
- (d) to consider and suggest measures in the interests of the litigant public;
- (e) to consider legislation and statutory rules on matters on which expert opinion will be of help to the public and the Government;
- (f) to protect and promote the common interests of all sections of the Bar in the Province.

The aim of that Conference was to focus the efforts made by various lawyers' associations in the mufassal centres and the metropolis, and to bring into existence a General Council, which would do the work of the Conference from year's end to year's end. The idea of the Conference originated in a distinguished lawyer of my Presidency, Mr.

S. Srinivasa Aiyangar, and held a very successful session on the 24th and 25th January, 1920. The Conference owed its existence to the circumstance that it was felt, in the language of its conveners, that "the legal profession is not as strong and effective in influence as it might be, and that its position did not bear any adequate relation to its work and capacity, or to the responsibilities which are borne by it".

At this Conference, valuable papers were read on Village Communities, the Dual System of Practitioners, Law Reporting and Legal Education. Committees were appointed to examine proposals to frame a code of professional ethics and etiquette, in regard to recruitment from the Bar to District Judgeships and Subordinate Judgeships, the necessity of prescribing qualifications for lawyers' clerks, the revision of the present scale of Vakils' fees, and the present system of law-reporting. Two resolutions passed at that Conference are of special significance, and relate to topics which will, I am sure, be discussed here at length. The Madras Lawyers' Conference accepted the following resolutions passed by the Vakils practising in the Courts in the City of Madras, and resolved that the question of their application to the mufasal Bar and the circumstances under which such application should be made be referred to the General Council. It was agreed that every practitioner of over ten years' standing will not accept an engagement in any suit or appeal of the value of over Rs. 5,000, without another practitioner of less than ten years' standing appearing in the case. The resolution went on to fix the proportion of the fee in respect of the two practitioners appearing in the case, and laid down that no practitioners should accept an engagement from a client, who had ^{not} already engaged another practitioner, unless the written consent of the latter had been previously obtained. The Conference further appointed a Committee to consider and report on the question whether High Court Vakils should not be enrolled

as Advocates of the High Court.

Our future programme should be so ordered as to correlate the work of Provincial Conferences, like the one just referred to, and Provincial Committees with an All-India organisation. The need for such Institutions was recognised and formulated as early as 1893, in his University Convocation Address, by Sir V. Bashyam Aiyangar, than whom India has not produced a subtler jurist or a keener advocate of professional rights. He pointed out that a Law Institute was essential for each Province, as there was nothing analogous to the Inns of Courts in this country, and there was no ancient corporate reputation to maintain, and no historic regulation to check and regulate conduct. It is obvious that on questions of professional morality little can be achieved excepting by unanimity of sentiment. It is idle to produce abstract and impossible codes of ethical perfection, evolved by doctrinaires, which may not conform to the accepted canons of the Bar and may be far removed from the actualities of practice. There must be somebody to arbitrate when differences of opinion arise; means must therefore be devised for focussing the opinions of practitioners. The need is imperative to have a Society, to which every one will look for information and support in cases of difficulty. Sir Bashyam's proposal was to form an Association, composed of the representatives of all the three branches of the profession. Nothing but such an Association would, according to him, serve to maintain a high standard of professional demeanor. It would bring its influence to bear upon every member. It would enable him to seek for and obtain advice as to the rules of his profession, which should guide him in matters of difficulty. The Association would, moreover, bring to the notice of the Court cases of professional misconduct, and the Court itself would report to it such misconduct for investigation.

It is easy to dogmatise on systematic codes of professional ethics and conduct. But the cases that arise for decision are so

multifarious and the conditions of society are so changing, that the objections that have been urged in various countries as to the inutility of rigid codes are peculiarly applicable to codes of professional conduct. Controversy raged in America about the utility of such codes, but local professional opinion was very emphatic about the need for such formulation. Nevertheless English legal authorities, when consulted about the matter, were almost unanimously of the opinion that such codes, if expressed in very general terms, would serve no useful purpose, and might easily be dangerous if they descended into particulars. Under the English tradition, beyond *Responsa Prudentum* published in the Annual Statements issued by the General Council of the Bar by way of a compendium of answers to specific questions, the rule is to leave such matters to the opinion of the professional Councils for the time being. To meet the many possible conflicts of practice and opinion, it is all the more necessary to elect strong, independent and well-organised bodies which would voice and enforce professional standards.

It will be apparent from what has been stated that the trend of legal thought throughout the world is in favor of bringing the various members of District or Local Bar Associations under one Central Committee, and it is clear that the whole body, instead of being under the supervision of Courts, should be brought under the control of domestic tribunals. This procedure will alone bring about the spirit of solidarity and *esprit de corps*. Such a body will also be competent to supervise legal education, and lay down rules not only for the study of the law at the University, but for subsequent apprenticeship in the Chambers of a practising lawyer, by way of a preliminary training in actual work.

The present Pledership Boards—which consist of one of the Judges of the High Court and a few professional gentlemen, and deal with the report of Judges in the mufasal relating to the conduct of pleaders—would be reorganised so as to

come into the bigger scheme already adumbrated.

The real remedy for the avoidance of touting and other malpractices and for the correction of errors of the profession is to entrust the profession itself with the duty of eradicating these diseases in its own body, and of investing tribunals constituted of members of the Bar with the necessary powers for the purpose. As a part of the Statute already contemplated, provision will have to be made for the formation of Pleaders' Associations in the Districts, investing them with power to make enquiries in regard to the conduct of pleaders, and to investigate complaints which may be initiated by them or referred to them by the Courts. Such Associations will, acting in conjunction with one another and under the stimulus of Provincial and of All-India Committees, serve to exalt the tone of the profession, and also fulfil the objects now undertaken by the Committee of Enquiry of the Incorporated Law Society of England.

Turning now to the Vakil, his origin is not less ancient than that of his congeners in other countries. Our old systems of judicature provided not only for a Chief Justice, who was styled Dhārmādhyaksha or Pradvivaka, and Puisne Judges, but also for Counsel. Counsel, however, as in Rome, were not originally supposed to receive any remuneration, and the first instance in India of a reported case, which occurs in the commentary on the Nārāda Bhāshya, deals with a question very much alive even at this day, the liability of a person for the debts of his deceased father and grandfather. The opposing lawyers were named Sekhara and Durdhara, and the decision of the case turned to a certain extent on an illegal agreement between a lawyer and client to receive and to give 1,000 drammahs on the conclusion of the case in favor of the defendants. Before the first century B. C., lawyers had become a characteristic feature of larger towns, and unrighteous specimens of the type were known as sellers of the law (Dharma Pānika) as opposed to Dharma Rakshas.

The *ad Valorem* system of payment crystallised by our High Court rules obtained and was legalised as early as the eighth century, indeed our XX 5 scale was in force even then, and it was noteworthy that the law prohibited a client from calling another pleader to his help unless he was prepared to fee both fully. In some ways, this is an improvement even on the present system. As in England, the Hindu Advocate was not the agent of the client, whose representative or attorney was styled a Pratinidhi. The lawyer, however, soon fell upon evil days, and he has been but slowly coming to his own.

We have departed very far, indeed, from the stage when, as in Bengal at the close of the eighteenth century, the retaining fee of the Vakil was four annas. That system obtained until 1814, when the Vakālatnāmā was introduced. Fees for legal opinion were fixed at Rs. 24 in Sudder Courts, Rs. 16 in Provincial Courts, and Rs. 8 in Zilla Courts; and it was only in 1844 that private agreements for the payment of fees were recognised and given effect to.

In Madras, the earliest recognition of the existence of the Vakil is the Regulation of 1802. His lot was a hard one in those days. The number of Vakils entitled to practise in each Court was limited. They were required to attend Court every day and were fined for absence, or bad drafting of pleadings. Their fees were meticulously regulated. Rules were made for the examination of Vakils, and there was unfortunately a provision for the re-examination of the Vakil, if the presiding Judge was not satisfied with his proficiency. Even after the High Courts came into existence, one of our earlier Judges delivered himself of an opinion that the Vakil's work involved no professional skill. Jurist and scholar as Justice Holloway was, he was responsible for the dictum that the earnings of a Vakil were not the gains of science.

One of my respected friends, who was in turn the Chief

Judge of the Travancore and Mysore Chief Courts, and had been a leader on the Appellate Side of the Madras High Court in the sixties and seventies of the last century, has told me that when he appeared in a first appeal, the Chief Justice of that time could not restrain a feeling of surprise at his temerity in handling a big case alone and without a Barrister. Dewan Bahadur A. Ramachandra Iyer, the gentleman referred to, and Sir V. Bashyam Aiyangar and other notable men, however, soon produced a reaction, and before Sir Charles Turner retired, he had the grace to admit that Sir Bashyam was the foremost jurist in India. No vindication of a profession is needed which has produced men of the calibre of Sir Sundarlal, Sir Bashyam Aiyangar, Sir Subramania Iyer, Sir Gurudass Bannerji, Sir Ashutosh Mukerji, Sir Rash Behari Ghose, Mr. V. Krishnaswami Iyer, Mr. P. R. Sundara Iyer, Sir Sankara Nair, Sir Sivaswami Iyer, Sir Chimanlal Setalvad and Dr. Tej Bahadur Sapru. Largely through the efforts and example of such men the dignity and the status of the profession have been enhanced, but it was not until recently that it began to be recognised that neither in the matter of legal training and erudition, nor in the maintenance of a rigid standard of professional honor, was this branch of the profession in any way inferior to the others. Slowly, the various restrictions on the eligibility of the appointment of the Vakil to various offices in the State, legal and judicial, have been removed. There are many who can remember the tempest that raged round the appointment of Sir Bashyam Aiyangar as Acting Advocate-General in 1897. Happily, thereafter, no less than seven Vakil's have occupied the same station in Madras. A Vakil has acted as Chief Justice in more than one Presidency. The difficulties which existed in the way of the Vakil occupying the positions of Chief Judge of the Small Cause Court, Administrator-General and Official Assignee have been surmounted; and in spite of the doubt

expressed by Babu Basanta Kumar Bose, in the course of the speech felicitating Sir Ashutosh Mukerji when taking his seat as Acting Chief Justice, as to the eligibility of a Vakil to be the permanent Chief Justice of a Chartered High Court, legal opinion seems to be fairly decisive on the point, especially after the recasting of Section 101 of the Government of India Act. A Vakil is at present the Law Member in the Viceroy's Council, and there is no differentiation of any importance now made by law between a Vakil and a Barrister, excepting in regard to the practice on the Original Side of the High Court, and the minima prescribed in respect of recruitments to the High Court Bench. As to the former, it is still the case that, in Calcutta and in Bombay, the Vakil is not allowed to appear on the Original Side and in Insolvency Proceedings. In Madras, however, the Vakil's position is much more assured in this particular, and he has for a number of years been allowed to practise on the Original Side, both civil and criminal. A further departure has recently been made by the Madras High Court, when it allowed me to be instructed by Solicitors in Insolvency and Original Side matters, subject to the stipulation that I should not act, as distinct from pleading as a Vakil. I take this merely as an earnest of further advance towards the unification of all the branches of the profession.

Restrictions, moreover, exist as to the right of Vakils enrolled in one High Court to practise in another, and Sec. 4 of the Legal Practitioners Act only enables a High Court Vakil to practise in other Courts in India inferior to a High Court.

It will hardly be doubted that there is no longer any justification for laboring or perpetuating distinctions henceforth as between Barristers and Vakils, and the conditions of the country, not only political but legal and legislative, demand that these should be a single and uniform system of recruitment to the Bar, and a speedy readjustment of interests so as to

allow of absorption of all the different classes into one category. There is no reason, moreover, to draw a distinction between practitioners in the mufassal and in the capital cities. A Committee of the Madras Vakils' Association has considered the whole subject, and I believe the following points might be taken as fairly agreed upon, namely, that an independent Indian Bar should be created which should welcome the members of all the branches of the profession who thereby become incorporated into one entity. In order effectively to bring about such a result, it would be indispensable that an Act of the Indian Legislature should create an Incorporated Body with jurisdiction over the whole of India, and possessed of powers of supervision and control over Provincial bodies which will likewise be created by the Act. These bodies would in addition exercise the rights of a Council of Legal Education, and would, moreover, take upon themselves the duty of arranging for an efficient and uniform system of law-reporting. In each Province, there would be domestic tribunals, consisting of some of the Judges and some of the members of the Bar, who would exercise the functions already indicated as appropriate to such tribunals. There would, under this scheme of things, be only one class of pleaders with the name "Advocates," and the existing Vakils and Attorneys and Barristers would become such Advocates, and each member of the Bar would be free to appear for any other member or with him.

Rightly to solve the problem, it would also be essential to abolish the present First Grade Pleadership Examination, the existing First Grade Pleaders either being enrolled as Advocates on a recommendation by the Council of Education, or provision being made for the retention of existing privileges and vested interests for a limited period, as obtained with the order of Sergeants-at-Law. It is only if and when such a unification of the system prevails that, without risk of misunderstandings and internecine discord, it will be possible

to demand with a united voice that recruitment to the Bench should be mainly from the Bar, as in England.

It also naturally follows that recruitment to the Judiciary from the Indian Civil Service must, in view of the altered conditions of the present day, be restricted to cases where there has been an adequate legal education and forensic training, including the reading in a Lawyer's Chambers. The minima prescribed for recruitment to the High Court are altogether obsolete and must be radically revised.

Not wholly unconnected with this subject is the topic of the growing advance of official at the expense of regular legal tribunals—an evil which is present even in England, and was protested against by Lord Justice Vaughan Williams, who strongly spoke against the growing habit, even in the United Kingdom, of submitting to public departments the decision of causes and matters previously considered proper for the control of Courts.

In view of the inevitable complexity of legislation in the future, it is increasingly necessary to preserve jealously the supremacy of judicial over executive tribunals, and such supremacy can only be preserved if the law grows by the light that is in it rather than by the light that is outside it. It was not without cause that President Wilson, in his Address to the American Bar Association, complained of the preponderance of the growth of precedents rather than of principles, in the decision of causes. Even in England, where till recently a very haphazard system of legal training prevailed, a reaction has taken place in favor of a more systematic study of the law, and an approximation to the manner and method in which such studies are conducted in institutions like the Harvard Law School, where the aim is not only to impart a sound legal education but adequately to equip young men for the legal profession. Indeed, in Germany, after the student had passed the first theoretical examination in law, the plan was to let him go gradually through all the Courts under

the guidance of a Judge, and then to send him to a State Attorney to study his line of work. It will not do, nor does it conduce to economy of force or energy, to let our young men drift along aimlessly. The lawyer, of all men, should recognise with Montesquieu that the administration of justice, which concerns itself not only with whatever belongs to life and property but likewise to honor, demands very scrupulous enquiries. We must therefore not be surprised at so many rules and restrictions, "rules that multiply particular cases and seem to make all reasoning itself an art".

Bearing these facts in mind, it is a matter for serious consideration whether the American moot system and the scheme adopted in the United States of the study of cases by the student, should not be adopted as an integral part of our legal training.

The apprenticeship course and the equipment of the lawyer so as to fit him for the actual practice of the profession is, therefore, a matter which we ought earnestly to take in hand. It is not sufficiently recognised anywhere that our career demands, as a *conditio sine qua non*, the aptitude for many arts and sciences, and an inclination and ability to get into the kernel of many enquiries. In truth, as Cicero in his greater defence of Aulus Licinius Archias said, all the arts which concern the civilising and humanising of men are linked with that careful training which ought to be a part of the lawyer's equipment.

In view to considerations such as these, it is essential that any Council of Legal Examination that may be formed should insist on a thorough grounding in general culture as a preliminary to any examination in law, and the opinion of the Vakils' Association in my Province is that a Degree in Arts and Law may be regarded, for the present, as the minimum, as well as the sufficient passport, to the Indian Bar. The remodelling of the law examinations, so as to secure both a general knowledge of the principles and an acquaintance

with Indian jurisprudence, and so as to furnish the student with the knowledge of the constitutional and administrative law that is increasingly demanded from us every day, and with the European and Indian systems of legal investigation and interpretation, will, of course, be functions of a Council of Legal Education.

A more difficult question than any of the foregoing, and one which permits of much argument, is the subject of Advocates taking instructions direct from clients or their agents. As rightly observed in the Memorandum circulated by the Secretary of this Conference, with the exception of the Original Side in Calcutta and in Bombay, Advocates including Barristers deal directly with clients or agents throughout India. It is moreover the irony of our system that the most junior Barrister, dealing directly with his client as he is entitled to do, is given precedence and preaudience over the senior-most leader of the Vakil Bar, who has for years never dealt directly with his clientèle. At the same time, it will be recognised that what is called the dual agency has some undoubted and undeniable advantages. The detachment from the client and from the architectural processes of the case is of indubitable advantage to the Advocate, whilst the preliminary stages of advising, correspondence, preparation and interviews are more thoroughly and systematically performed by a person specially dealing with what may be called Chamber or desk work. Some men are specially endowed so as to do such desk work, which is by no means to be despised. What often passes for splendid advocacy is a flash, which does not necessarily compare favorably with the continuous flame which has preceded it and made it possible. Temperaments, moreover, vary enormously, and the equipment needed for the Advocate in the presentation of cases in Court is by no means the same as that conducing to excellence in giving legal advice or preparing the case for trial.

While the system that has prevailed in England is every

strongly supported, there are not wanting critics who protest against its inflexibility and its exaltation of one function over the other. It is felt by many that in practice and by necessary adjustment, the services of those who discharge the function of a Barrister and a Solicitor respectively would be naturally requisitioned by the lay client when he can afford the arrangement, and it is asserted that the proper solution consists in enacting such rules as will enable the two classes of men to co-operate in litigation, without at the same time making a rigid cast-iron distinction between the classes, or placing them in different or mutually divergent professions. It is argued that if in each case in the taxation of costs, adequate provision were made for payment of two legal practitioners in all but unimportant litigation, and if one of them doing Solicitor's work is paid for work done, and another for appearance in Court, the advantages of the English system would ensue without dividing the profession into sheep and goats. Facilities will also be given for a person to concentrate on Chamber work, after trying his hand at advocacy and *vice versa*. Having regard to these aspects of the matter, the solution that is most favored in my Province seems to be that whilst Advocates should be free to act as well as to plead, yet the advantages of the double system should be secured by a re-casting of the rules so as to secure the appearance of two persons in all important work, the one to be paid with reference to the work turned out in Chambers and by way of instructions, the other for appearance in Court. Anything more rigid or compulsory in character would be regarded as revolutionary, and unsuitable to the proverty of the country, and would delay the unification which is our common aim. This suggestion is however thrown out to be considered tentatively, and solely as a basis for discussion. I, however, quite agree with the opinion of your Association that the practice of the Chartered High Courts, in raising certain Vakils to the rank of Advo-

cates, may lead to invidious distinctions and may be demoralising to the Bar.

In this connection, it may not be out of place to observe that the 5 per cent scale of Vakils' fees which now obtains is at least a hundred years old, and, indeed, is referred to in ancient Indian works. Very recently, the Council of the Law Society in England has sought to obtain an increase in the Solicitors' charges, on account of the changed conditions of life in England, and it is a matter for careful consideration whether one of the immediate duties of this Conference, and of any statutory body that may be created, would not be to bring the scale of fees into closer relation with the quantity and quality of work performed. As a corollary of the propositions enunciated above, one of the subjects to be considered would be the expediency or otherwise of permitting partnerships between persons following the avocations of Barrister and Solicitor respectively. Such partnerships are very common in British Colonies, but opinion is divided as to their utility and benefit. The President of the American Bar Association, speaking in 1907, it may be remembered, attributed the comparative detraction from independence and disinterestedness of certain classes of American lawyers to the system whereby the American lawyers and clients were permitted to agree to any terms of compensation they pleased, including a contingent fee contract for shares. The lawyer, it seems, in America, was even allowed to pay all the expenses and absorb half the proceeds of the litigation.

Another subject that will assuredly come up for discussion is the establishment of an Imperial Court of Appeal in India. There is, no doubt, a growing feeling that the Judicial Committee has not been sufficiently responsive to the growth of legal ideals and the advance of Indian Society. There are other evils which are partly attributable to the Privy Council practice of delivering only one judgment—a practice which does not permit of free judicial discussion of principles by all

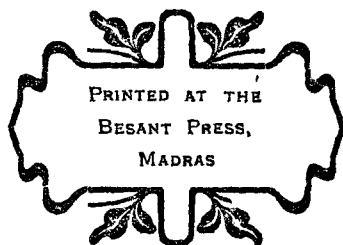
the members of the Court. On the other hand, there is something to be said in favor of the detachment from local surroundings and controversies which is, and should be, a feature of the Judicial Committee.

An alternative has been suggested which seems to combine several merits, namely, that the members of the Committee should come over to India, and hear appeals to the King-in-Council at fixed intervals. The matter, however, requires a great deal of deliberation and discussion before a decision can be arrived at.

As will be seen from the preceding parts of this Address, there are grave problems pushing themselves to the front in the present posture of affairs with which it is our duty to grapple. There is, in addition to the questions already adumbrated, the fancied divergence of interests and outlook between the seniors and juniors, the latter in many Provinces feeling that they do not receive sufficient encouragement, and that enough opportunity is not given to them properly to maintain their unceasing struggle against their environments. There are questions to be faced relative to the institution of Co-operative and other societies for the benefit of legal men in distress, to the measures to be adopted for the giving of legal advice to and appearances on behalf of poor persons, and to the inauguration of an institution analogous to the English Council of Law Reporting, which seems to be an urgent problem in the face of the rapid multiplication of official and non-official Reports, which pour themselves on the lawyer at the rate of one journal for each day. Many distinctions remain to be obliterated amongst the various grades of legal practitioners, and the feeling that is fostered in the country at large has to disappear, that the lawyer is a mere self-serving parasite of society, and that his extinction is a pre-requisite to National Salvation. On the whole, however, there is ample ground for the belief that the profession has a great and irresistible future before it, but to achieve its proper station in our

National Polity it needs organisation and co-ordination; it needs a maintenance of high standards; it needs, in truth, the creation of an *imperium in imperio*.

For now the day is unto them that know,
 And not henceforth do we stumble on the prize;
 And yonder march the Nations, full of eyes.
 Already is doom as spinning, if unstirred,
 In leisure of ancient pathways, we lose touch
 Of the hour, and overmuch
 Recline upon achievement and be slow
 To take the world arriving.



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UNITS OF GOVERNMENT

FRANCHISE AND FUNCTIONS

It is of extreme importance that the future Government of India should be based on broad foundations. It is not enough in the Indian Home Rule Act to define the duties and powers of only the biggest units, but some fairly complete definition should be given of the smaller units of Government. In the present Act, although the powers of Local Self-Government are complete, they have not been fruitful because no definite powers and duties have been given to the units. This has to be done even at the cost of the Act being a little cumbrous.

The First Unit—The Village

The natural unit for India is a village, but as there are some with a very small population, it may be desirable to fix a minimum population qualification, say 500. Hamlets and other isolated groups of houses falling below the required number should be attached to the neighboring village. The Ward of a Municipality may be treated as a village.

Franchise. All adults (aged 18 and above), men and women, except lunatics, criminals and bankrupts, should have the vote.

Membership of the Panchâyat should be restricted to those who can read and write the mother-tongue. They should be elected every year.

The size of the Panchâyat should be seven or more depending on the size of the village.

Functions: They should work by Committees of 3 to 7 and should have complete powers such as follow :

A. *Creative*: (1) Village Education (Primary); (2) Religious celebration and festivals; (3) Irrigation; (4) Roads; (5) Gardens (Fruit, Vegetable, Flower, etc); (6) Health and Sanitation; (7) All Tax collection, a percentage of which, to be determined by the District Board, depending on the village, to be paid to the District Treasury.

B. *Punitive*: (1) Arbitration; (2) Petty cases up to Rs. 50 or so; (3) Theft and Nuisance; (4) Village Police; (5) Detention House.

The Committee of Justice should be entirely separated from the other Committees.

The Second Unit—The Taluq

This unit is not of fundamental importance and has to be determined merely by administration convenience. There is no natural oneness of life or interest, sufficiently marked, to make this a powerful unit. It will act as a middleman between the Village and the District. A Municipality may be treated as a Taluq.

Franchise:

(1) All adults (except lunatics, criminals and bankrupts) who can read and write.

(2) All members of Village Panchâyats.

(3) All adults with certain property qualification.

Membership should be restricted to those who have been educated up to the Lower Secondary stage. They should be elected every year. The size of the Panchâyat to vary from 10 to 20.

Functions:

(1) Execute the decisions of District Panchâyats.

(2) Represent difficulties of villages to the District Panchâyat.

(3) Inspection on behalf of the District Board.

(4) Collection of percentage from villages.

The Third Unit—The District

These form convenient linguistic or geographical units

with sufficiently marked oneness of climate, natural conditions, linguistic peculiarities, cultural traditions, etc., to form into a well-organised and powerful unit. The population will vary from one or two millions, the number of Districts for all India being about 250. The Presidency towns to be treated as Districts.

Franchise :

- (1) All adults (except lunatics, criminals and bankrupts) who have read up to the Lower Secondary stage.
- (2) All members of Taluq Panchâyats.
- (3) All adults with certain property qualifications higher than those of the Taluq.

Membership should be restricted to those who have read up to the High School stage. They should be elected every two years. The size of the Panchâyat to vary from 20 to 50.

Functions :

A. *Creative*: (1) Powers of Initiation in all things except those which deal with powers of higher units; (2) High School and even College or Technical Institutes; (3) Communication by Water and Land, Roads, Railways, Trams, Buses, Canals, etc., except Trunk Roads and Trunk Railways; (4) Supervision of Village and Taluq Panchâyats; (5) Educative work in villages on modern methods in Agriculture, Sanitation, Child Welfare, etc.; (6) Tax-collection, percentage varying in Districts, to be decided by Provincial Government, to be paid to Provincial Headquarters; (7) Powers of levying cess and taking loans.

B. *Punitive*: (1) Gaols and Police; (2) Complete jurisdiction in Civil and Criminal cases; (3) Appeals from villages.

The Fourth Unit—The Province

These again can be formed according to administrative convenience and can be correlative agencies between Districts. The present Provinces need a good deal of reshuffling even from that point of view.

Franchise :

(1) All adults (except lunatics, criminals, and bankrupts) who have read up to the High School stage.

(2) All members of District Boards.

(3) All adults with higher property qualifications.

Membership should be restricted to those who have read up to the High School stage. They should be elected every three years. The size of the council to be about 100.

Functions :

(1) Executive decisions of Central Government.

(2) General supervision of Districts.

(3) Collection of percentage from Districts and payment of a fixed percentage to the Central Government.

(4) University Education, Research, etc.

(5) Loans for Inter-District purposes.

The Fifth Unit—The Country

There should be a very strong Central Government, so that India may be trained to have a united outlook.

Franchise :

(1) All adults (except lunatics, criminals and bankrupts) who have read up to the High School stage.

(2) All members of Provincial Councils.

(3) All adults with higher property qualifications.

Membership should be restricted to those who have read up to the High School stage. They should be elected every five years. The size of the Assembly should be about 200.

Functions :

(1) Civil and Criminal Legislation.

(2) Foreign Affairs and Indian States.

(3) Army, Navy and Air Forces.

(4) Trunk Communications.

(5) Customs and Excise.

(6) Fixation of Income-Tax and Land Revenue.

(7) All residual powers.

YADUNANDAN PRASAD, M. A. (Cantab.),

B. Sc. (Lond. and All.)

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Federal Principles and India's New Constitution

By N. VENKATESWARA RAO, B. A.

When the American Constitution was on the anvil, in 1787, Hamilton said: "The establishment of a Constitution, in time of profound peace, by the voluntary consent of a whole people, is a prodigy, to the completion of which I look forward with trembling anxiety." On a not dissimilar occasion in India's history, one may echo the sentiment of the great American. India's genius will have to express itself in her new Constitution by giving an original shape to all that is best in Western Democracies and adapting them to her National conditions. On Trans-Atlantic soil function, to-day, democratic institutions of a Federal type which would seem to be eminently suited to this country. I propose examining in this article the nature of a Federal State and to suggest how best its fundamental principles might be incorporated in India's new Constitution.

A Federal or Composite State is, in its essence, the result of a compact between numerous political communities whereby they surrender a portion of their individual powers and share in the large Sovereignty resulting therefrom, in equal degree. The speculative jurist is confronted with a puzzle, when the question is categorically put to him: "Where does Sovereignty reside in a Federal State?" It resides neither in the Union State nor in the several States that compose the Union. The answer is usually given that the body which can amend the Constitution is the ultimate Sovereign. In America, for instance, Article V of the Constitution prescrib-

es a cumbersome method for calling into existence a special Convention to alter any fundamental law. In the words of Austin, Sovereignty resides *in the united Governments "as forming one aggregate body,"* for each State is, in its *collective capacity*, Sovereign, and in its *individual capacity*, subject, in certain departments. It is on very rare occasions, however, that the Sovereign functions, and the very tedious process of bringing it into existence generally saves it from actual appearance. The Constitution, however, has allotted definite spheres, wherein the Congress and the States are respectively supreme in the fullest sense. Any trespass into forbidden field vitiates the Constitution, and the Federal Courts will take cognisance of the breach and declare it *ultra vires*. This system works well in practice, though in juristic theory it occupies an anomalous position. Sovereignty is partitioned between the States and the National Government so as to conserve the independence of the former while promoting the unity of the latter. Freedom of civic life, and opportunities for a fuller self-expression are the glory of any progressive Government, and Democracy of the Federal type accomplishes this purpose.

The fathers of the Constitution aimed at creating an American Nationality by developing the individuality of the citizen. They brought him into direct touch with the Federal Government, and thus obviated the chances of any particular State claiming the allegiance of its subjects. In their scheme of Government, they gave to the States the position of independent Commonwealth, and secured them against the aggression of the Federal State by special provisions. Each State Legislature was to have the privilege of sending two Senators to the Federal Upper Chamber, and it could determine the manner in which the State representatives in the Lower Chambers were to be elected. The Senate was intended as a check upon both the President and Lower House, and as it is able to influence appointments and conclusion of

treaties, its powers are very real indeed. The term of a Senator is for six years, but every two years, a third of the Senate makes way for a fresh batch, thus bringing in a steady flow of new talent. This process of gradual infiltration of new members gives a continuity of policy to the administration, and saves it from any sudden and violent change. It is a strange feature of the American Constitution that there is no such thing as Cabinet Responsibility. The President chooses his own advisers and is responsible directly to the public who elect him. The Executive is entirely independent of the Legislature in America, and this is a deliberate departure from the British policy. The President and the Congress have no influence, one on the other, and a strong man at the helm of affairs may defy the Legislative bodies with impunity and go his own way. The Congress may refuse supplies, but as the President is not bound to resign, this method only affects the well-being of the Nation, and serves no good purpose. Impeachment is a weapon which may be resorted to on serious occasions, but not ordinarily. The danger of the President becoming an autocrat is not great, as his term of office is limited to four years, and he may seek re-election only once. Deadlocks are bound to follow under such a system, and a coherent domestic and foreign policy is always an ideal, and never an actuality. The Federal machine in America is most liable to friction, and this explains the absence of any fruitful policy in Foreign Affairs on the part of that country, in the hour of Europe's post-War agony. The beauty of the Federal principle is there obscured by complex and cumbrous detail which clings to institutions and clogs their strength movement. Clad in simpler apparel the Federal ideal would show itself to advantage and contribute to the march of cultural ideas in any Democracy.

The peculiar conditions of India, I believe, furnish facilities for the practical application of Federal principles, when

Dominion Status is conferred upon her. Her large area comprising diverse lingual, racial, and cultural traditions may be parcelled out into small Commonwealths, each autonomous by itself except so far as a reservation of Sovereign powers is made for the Central Government by the Constitution. A Bicameral Legislature is an essential in the Federal Government, but an unnecessary luxury in the Provinces. The franchise that ought to determine the composition of the two Houses is a question of detail that must be settled with an eye to the respective functions of the two bodies. A longer tenure of office to the members of the Upper House is desirable, both from the point of view of efficiency, and as a safeguard against too frequent resort to the electoral machinery. The principle of recruiting a certain proportion of the members periodically by rotation, as in America, has advantages too obvious to be ignored. There should be helpful co-ordination of energies between both the Chambers, and mutual suspicions should be banished. The Federal Cabinet, must be directly responsible to the Legislature unlike its American cousin, and a Privy Council should be established in India to determine the constitutional propriety of any action that may be taken by the Federal State or the Provinces. A live sense of Nationality should be developed in the citizen by bringing him into contact with the Central State. If the Constitution is drafted on these lines by the CONVENTION that is to meet at Allahabad, India will have approximated to the Federal Ideal of Democracy.

It may be asked why I have omitted to mention about any Indian President. The King-Emperor being our Sovereign, his representative, the Viceroy, will be the President of the Indian Federal State. Ordinarily, he will control Foreign, Naval and Military Affairs. Though he is irremovable, his Cabinet being entirely responsible to the Legislature, an indirect pressure may be brought to bear upon him to bend him to public opinion. The Secretary of State for

India would be an anachronism under the scheme that I have sketched, his place being taken entirely by the Viceroy. Doubts have often been expressed as to the position of the Native States in a Self-Governing India. The Governor-General will be in charge of our relations with them for some time, and they may slumber in peace, as they have been doing all along. But will *Indian India* slumber when British India wakes from her age-long sleep into a new dawn of Democracy? No. The fragrance of the Federal flower is far-reaching, and it will smite the senses of the progressive Chiefs of the Native States with a witchery all its own, and bring them into the ambit of the National Legislature. They are a race with glorious traditions, the chivalrous Princes of Hindusthan, and they are peculiarly alive to the influence of cultural currents. I dream of an India whose Federal Senate will comprise Princes as representing their States, and make the Native States part and parcel of British India. *Indian India* will be *Indian* in a very real sense if she realises her kinship with British India. The day is not far off when my dream will grow into reality.



Details on Subjects Dealt With in a Constitution

BY B. SHIVA RAO, M. A.

(Organising Secretary to the National Conference)

Federal or Unitary: Federalism, according to Prof. Dicey, "is a natural Constitution for a body of States which desire union, and do not desire unity". In its most perfect form, the Executive, the Legislative and the Judicial powers find expression in both the Central and the Local Governments, but Federations are often based on less systematic lines.

Dicey thus sums up the chief characteristics of Federal Government: (a) The idea at the bottom of Federalism is that each of the separate States should have approximately equal political rights and should thereby be able to maintain the limited independence meant to be secured by the terms of the Federal Union; (b) Federalism, when successful, has generally been a stage towards Unitary Government; (c) A Federal Constitution is, as compared with a Unitary Constitution, a weak form of Government; a truly Federal Government is based on the division of powers, and means the constant effort of statesmanship to balance one State of the Confederacy against another; (d) Federalism would mean the predominance of legalism, or a general willingness to yield to the authority of the Law Courts. If the power to decide whether the terms of the Federal compact have been observed be placed in the hands of the Executive, the law may be made subservient to the will of any political party which is for the moment supreme; if it be placed in the hands of the Judges, it may be very difficult to ensure general respect for any decision which contradicts the interests and the principles of a dominant party; (e) Federalism creates divided allegiance between loyalty to a State

and loyalty to the Federated Union. This, according to Dicey, is its most serious and its most inevitable weakness, and he refers to "the agonised perplexity of the noblest among soldiers" when called upon to exercise their choice between these two aspects of loyalty in Switzerland and the U. S. A.

Division of Powers in Federal States: There are 4 points to be examined: (a) In whom are the definite powers vested, in the National Government or the States? (b) Can the enactments of the Federal Legislature be nullified or treated as void by any tribunal or any authority? (c) To what extent can the Federal Government control the legislation of the States? (d) What is the nature of the body having authority to amend the Constitution?

In the U. S. A.:—(a) The powers of the Constitution of the U. S. A. are strictly definite or defined. Those left to the States are indefinite or undefined. Consequently, the National Government can claim no power not conferred upon the U. S. A., either directly or impliedly, by the Constitution. (b) Federal legislation is as much subject to the Constitution as the legislation of the States. An enactment whether of Congress or of a State Legislature, which is opposed to the Constitution, is void, and will be treated as such by the Courts. (c) The Federal Government has no power to annul or disallow State legislation. The State Constitutions do not owe their existence to the Federal Government. Nor do they require its sanctions, but they are required to maintain a Republican form of Government. (d) Changes in the Constitution require for their enactment the sanction of three-fourths of the States, and constitutionally, no State can be deprived of its equal suffrage in the Senate without its consent.

In the Swiss Constitution: (a) The authority of the Federal Government is definite, that of the Cantons indefinite. (b) Federal legislation must be treated as valid by

the Courts. But it must, on demand of either 30,000 citizens or of 8 Cantons, be referred to a popular vote for approval or rejection. The Federal Court can treat as invalid Cantonal laws which violate the Constitution. (c) Federal authorities have no power of disallowing or annulling a Cantonal law, but the Cantonal Constitutions (and amendments thereto) require the Guarantee of the Confederacy without which they cannot come into force. (d) The Federal Constitution can be revised only by a combined majority of the Swiss people and of the Swiss Cantons. No amendment of the Constitution can be effected which is not approved of by a majority of the Cantons.

In Canada: (a) The authority of the Dominion or Federal Government is indefinite or undefined, that of the States or Provinces is definite or defined, and defined, indeed, in very narrow limits. While the Dominion Parliament can legislate on all matters not exclusively assigned to the Provincial Legislatures, the latter can legislate only on certain matters exclusively assigned to them. (b) Legislation of the Dominion Parliament is as much subject to the Constitution as that of the Provinces. Any Act, passed either by the Dominion Parliament or by a Provincial Legislature, which is inconsistent with the Constitution, is void and will be treated as void by the Courts. (c) The Dominion Government has authority to disallow the Act passed by a Provincial Legislature; thus disallowance may be exercised even in respect of Provincial Acts which are constitutional. (d) The Constitution of the Dominion depends on an Imperial Statute and can, except as provided by it, be changed only by an Act of the Imperial Parliament. The Parliament of the Dominion cannot, as such, change any part of the Canadian Constitution; but it may, to a limited extent, by its action when combined with that of a Provincial Legislature, modify the Constitution for the purpose of producing uniformity of laws in the Provinces of the Dominion. A Provincial Legislature can amend the Constitution of the

Province subject to disallowance by the Dominion Government.

In the Commonwealth of Australia : (a) The authority of the Federal Government is definite, that of each of the States vested in the Parliament thereof, is indefinite. (b) Federal legislation is as much subject to the Constitution as the legislation of the State Parliaments. (c) The Federal Government has no power to annul or disallow either directly or indirectly the legislation of a State Parliament. (d) Amendment of the Commonwealth Constitution may be effected by a Bill passed by the Commonwealth Parliament, or, under some circumstances, by one only of the Houses of the Commonwealth Parliament and approved of by a majority of the voting electors of the Commonwealth and also by a majority of the States thereof, but, (i) many provisions of the Constitution may, under the Constitution, be changed by an ordinary Act of the Commonwealth Parliament ; (ii) the Commonwealth Constitution, being an Act of the Imperial Parliament, may be altered or abolished by an Act of the Imperial Parliament.

In the South African Union : The Constitution is not, in any real sense, Federal. The Act does not restrict in any substantial manner the Parliament's power to alter the provisions of the Constitution: exception is made as regards provisions fixing a definite period of time, the number of members of the Legislative Assembly prior to the expiry of ten years, or until the total has reached 150 (whichever occurs later), or relative to the qualifications of electors to the House of Assembly, or as to the use of languages. A Bill containing these alterations shall be valid only when passed at a joint sitting of the Houses, and at the Third Reading by not less than two-thirds of the total number of both Houses. (Keith, on *The South African Union*, *Journal of Comparative Legislation*.)

Of the Dominions, New Zealand, South Africa and Newfoundland possess Unitarian Constitutions, one Parliament in

each possessing full authority over the whole territory, though in the South African Union, the Provinces possess Legislatures with wider authority than is accorded normally to local authorities. Canada and Australia, on the other hand, possess Federal Constitutions, under which Legislative and Executive authority is shared between the Central and Local Legislatures on definite principles which neither can vary.

Throughout the Dominions, in the Australian States and the Canadian Provinces, the system of Cabinet Government, as perfected in the United Kingdom, prevails. The belief is held in the Dominions that in the immediate Responsibility of Ministers to Parliament lies the best Security for democratic administration

The King: The place of the King in the United Kingdom politics is taken by a representative, known in Canada, Australia, South Africa and New Zealand as Governor-General, in Newfoundland and the Australian States, as Governor, and in the Canadian Provinces, as Lieutenant-Governor. The Lieutenant-Governors are appointed by the Governor-General of Canada on the advice of his Ministers. The Governors-General and the Governors by His Majesty on the advice of the Imperial Government, but it is ascertained before the appointment is made that the nominee will be acceptable to the Government concerned. The Governor (including in this term the Governor-General) is endowed with the whole of the prerogative of the Crown including that of mercy, and, by a Privy Council decision in 1916, the right, also, to grant charters of incorporation. The prerogatives withheld are the right to declare war, to issue coinage and to confer honors.

The authority of the Governor is exercised on the advice of his Ministers who are responsible to Parliament for the advice which they tender to him. The Governor, being in office for a limited period of time, seldom enjoys the

right of close association with his advisers which is done by the King; but if he has less influence, he has greater power than the King. In the United Kingdom, the King is above party strife and proceeds in accordance with the advice of his Ministers. But constitutional usage still permits a Governor in the Dominions to decline the advice of his Ministers if he thinks he can procure other advisers to take their places in the event of resignation. He is expected, in the event of a request for a dissolution on a reverse in Parliament, to withhold assent, if he considers that an alternative Government can be formed to carry on business. But there is noticeable a tendency to disapprove even this limited exercise of independence by a Governor, *e. g.*, Sir R. Munro-Ferguson, Governor-General of Australia (1914—20), acted in entire accord with British usage in accepting the advice of his Ministers. In 1916, an attempt at personal intervention led to the recall of the Governor of N. S. Wales. The British rule is coming into vogue in Canada in the Dominion Government, in New Zealand and in South Africa, though it has not yet been established in the Canadian Provinces or Newfoundland.

The Cabinet: In essentials, the Cabinet System in the Dominions resembles that of the U. K., but a distinction between Cabinet Ministers and ordinary ones is beginning to emerge in Canada. But, as a rule, the limited number of Ministers in the Dominions renders the distinction needless; in the Dominion Cabinets there are generally one or more Ministers without portfolios. The Ministry constitutes the Executive Council which meets (save in Canada) under the presidency of the Governor to transact formal business, *e. g.*, passing of Orders under statutory powers. When policies are discussed, the Governor, like the King, is never present. The Cabinet is formed on the advice of the Prime Minister who is authorised by the Governor to form an administration, and on whose resignation the Ministry ceased to exist. The Prime Minister selects his own colleagues, except in the case

of Labor Ministers where the right is exercised by the Parliamentary Labor Parties in caucus. It is customary in the Dominions for the outgoing Prime Minister to suggest his successor and for the Governor to act on his advice. Throughout the Dominions the type of Government is that of a Parliamentary Executive.

Parliamentary and Non-Parliamentary Executive: When the Legislature appoints and dismisses the Executive which is, in general, chosen from among the members of the Legislature the Executive is Parliamentary; when the Executive whether it be an Emperor and his Ministers or a President and his Cabinet, is not appointed by the Legislature, it is non-Parliamentary. England, Belgium, Italy, France have the former; the U. S. A. and Germany the latter.

A Parliamentary Executive cannot come into conflict with the Legislature, it must follow the lead of Parliament. Hence it will inherit to some extent the weaknesses of an elective Assembly. The strong point of a non-Parliamentary Executive is its comparative independence: it may, and sometimes will, come into conflict with Parliament.

The Swiss Model: The Swiss Federal Council is a Cabinet elected but not dismissible by each Federal Assembly. The Council cannot be dismissed by the Legislature, nor *vice versa*. Conflicts between the Government and the Assembly are unknown, and though Switzerland is an advanced democracy, the Executive possesses a remarkable permanence and stability. In fact, the Swiss Council is more like a Board of Directors appointed to manage the concerns of the Confederation in accordance with the articles of the Constitution and in general deference to the wishes of the Federal Assembly.

The Legislature: The Bicameral Legislature is in force in all the Dominions except in the Provinces of Canada other than Quebec and Nova Scotia. The Lower House in Canada is styled House of Commons; in Australia and New Zealand, House of Representatives; in the other Dominions, the States

and the Provinces, Legislative Assembly or House of Assembly. The Upper Chamber is called the Legislative Council, but Australia, South Africa and Canada have adopted the term Senate.

The franchise for the Lower House is, as a rule, based on full age, and a brief period of existence; aliens are excluded and there are restrictions as regards naturalised persons. Women have franchise in Australia, New Zealand, the Dominion and most of the Provinces of Canada, but not in Newfoundland, nor in South Africa, though the principle has been endorsed by the latter. Restrictions still exist on the election of women, but they have sat in the Canadian Provincial Assemblies. Voting is by ballot everywhere and preferential voting exists in the Commonwealth, Victoria, Queensland, Western Australia; proportional representation in Tasmania, also in New South Wales. Automatic redistribution of seats is being attempted in some cases to meet changes in population. The duration of the Lower Houses in Australia and New Zealand is 3 years, in Newfoundland and some Canadian Provinces 4 years; elsewhere, 5 years, subject in all cases to dissolution by the Governor. Not more than a year may intervene between sessions of Parliament. The Lower House has the sole initiative in matters of Finance and thus controls the Executive. Members are paid £ 1000 a year in the Commonwealth, £ 800 in Canada and smaller sums in other cases, subject to deductions for non-attendance.

The Upper Houses of the Australian Commonwealth, Victoria, S. Australia, Tasmania are elective, members holding office for six years; in the States the franchise is more restricted than in the case of the Lower Houses, and only men not under 30 years are eligible as members. In N. S. Wales, Queensland, the Dominion of Canada, Quebec, Nova Scotia, the members are nominated for life. New Zealand started with life membership, then reduced it to 7 years and has now adopted the principle of proportional voting. In the South

African Union, election by the Provincial Councils applies to four-fifths of the members, and nomination to the remaining fifth.

The Upper Houses of the Australian States, when elective, like the Commonwealth Senate, have asserted their right to a full voice in all legislation and in the control of expenditure out of the normal; in N.S. Wales and Queensland, the number of members in the Upper Houses is unlimited and hence they are liable to be swamped. In Newfoundland, the relations between the two Houses have been adjusted on the model of the Parliament Act. New Zealand has followed the same plan as regards financial powers, but other matters in dispute may be adjusted by a Joint Session or in the last resort a double dissolution of Parliament. In Canada and its Provinces, there are no effective means of coercing the Upper Houses. In South Africa, the Senate contents itself with detailed improvements only of legislation sent up by the Assembly.

The powers of the Dominion Parliaments are extremely wide, except in the case of the two Federations where the limits are necessarily imposed by the principle of division of authority between the Federal and Local Legislatures. Each Legislature makes laws for the peace, order and good Government of the territory it controls; it can enact legislation to exclude any persons it thinks fit including British subjects; it decides in what manner the population of the Dominion is to be recruited; it can deport British subjects if they are unable to maintain themselves; it can appropriate private property and cancel contracts without compensation if it pleases. In short, it is denied no power necessary for Government. Even with regard to coinage, the Dominions have full power to regulate as they please the question of coinage and to settle the conditions. They may empower the grant of titles which would be valid locally, or they may forbid the use of titles in their territory.

The only limitations are: the legislative effect of Dominion enactments is still confined, in the absence of authority by Imperial legislation, to the territorial limits of the Dominion; it cannot punish murder or bigamy committed beyond its limits, and the laws of the Dominions are not normally in force on vessels on the high seas, and their power to regulate their naval vessels and armed forces overseas depends on express Imperial legislation. Canada has already asked for a relaxation of this restriction, subject to arrangements to prevent conflict of jurisdiction between the Imperial and Dominion Parliaments.

Again, no Dominion Legislature may pass laws inconsistent with its status as a member of the British Empire: it may not enact a declaration of war or peace, or the secession of the Dominion from the Empire, for these are powers appropriate only to a fully Sovereign State. It is doubtful to what extent a Dominion Parliament can divert itself of its legislative functions by wholesale delegation to other bodies. Theoretically, also, no Dominion can pass legislation which is repugnant to any Imperial Act applicable to the Dominion, but this restriction is no longer of serious importance, owing to the abstention of the Imperial Parliament from passing legislation applicable to the Dominions and the sanction from time to time given to alter Imperial Acts.

Constitutionally, the Governor in the Dominions is an Imperial Officer subject to the instructions of the Crown issued through the Secretary of State for the Colonies; but in normal circumstances, the Imperial Government exercises no control over the Executive Governments of the Dominions. Constitutionally, also, the Governor may accept or decline the advice of his Ministers, if he can carry on Government with another set of Ministers. But the Legislature may bring pressure to bear on him by the refusal of Supplies, and for practical purposes, independent action of this kind is out of the question.

On the other hand, the Imperial Government possesses wide power over Dominion legislation. No Dominion measure can become law save on the assent of the Governor who, in giving or withholding assent, must act on instructions of the Crown. The refusal of assent outright is now obsolete, but the Governor may reserve Bills for the consideration of the Imperial Government, and unless assent is given by the Crown by an Order in Council within 2 years, the Bill becomes null and void. Or, an Act may be assented to, but may contain a suspending clause providing that it shall become effective only on the declaration of the assent of the Crown. Reservation is necessary in certain classes of Acts, especially those altering the Constitution and the Governor's assent, even if accorded, is a nullity.

The following Bills must be reserved: (a) Under the Australian States Constitution Act of 1907, a Bill passed by any State Parliament which alters the Constitution of the Legislature of the State or of either House, or which affects the salary of the Governor; (b) in New Zealand, a Bill affecting the Governor's salary or the appropriation provided in the Constitution for native affairs; (c) in the Commonwealth of Australia and the South African Union, Bills affecting the right of appeal to the Privy Council; (d) in the South African Union, a Bill repealing or amending the provisions of the South Africa Act of 1909 regarding the House of Assembly or abolishing or abridging the powers of the Provincial Councils; (e) Dominion legislation under the Colonial Courts of Admiralty Acts of 1890 (unless it contains a suspending clause or has had the approval of the Imperial Government); (f) Dominion measures regulating the coasting trade must contain a suspending clause, while legislation regarding shipping registered in the Dominion which varies the terms of the Merchant Shipping Act, 1894, must be confirmed by the Crown by an Order in Council.

It must be added, however, that the right of intervention

is being surrendered in one field after another; its existence is utilised for securing assent of the Dominions to principles to which importance is attached by the Imperial Government, *e. g.*, Merchant Shipping in Australia and New Zealand.

The Imperial Parliament, as distinct from the Executive, possesses no power of disallowance of Dominion legislation, but it may legislate for the whole Empire, and its enactments, by the Colonial Laws Validity Act, 1865, override those of the Dominions when they conflict with them. In this case, again, the power has dwindled to cases where the purpose desired could not be conveniently effected by Dominion legislation and where the Dominion has consented to the legislation. The form adopted is that of legislation which is not to be applicable to any Dominion, unless adopted by it: *e. g.* Copyright Act, 1911, Naturalisation Act, 1914. The Matrimonial Causes (Dominions Troops) Act, 1919, authorises British Courts to grant decrees of divorce where a wife has married in the U. K. an oversea soldier domiciled in a Dominion, but renders the Act applicable only in so far as it is accepted by the Dominion concerned. Imperial legislation is also necessary to extend the powers of the Dominions by the repeal of restrictions imposed by earlier Acts, for these no Dominion can affect by its legislation.

Imperial control is exercised, in the main, over Dominion Shipping legislation which must be confined to ships registered in the Dominions or engaged in the coasting trade; Dominion legislation is regulated also by the Colonial Courts of Admiralty Act of 1890 in regard to Admiralty jurisdiction.

But the main spheres in which Imperial control is exercised are: (a) Foreign Affairs, (b) Defence, (c) Constitutional Change. It is largely enforced by the Dominion Courts which are subject to the overriding authority of the Judicial Committee of the Privy Council.

Foreign Affairs: The position now attained is that no Dominion is bound by any commercial treaty to which it has

not assented, and in negotiating general treaties, the Imperial Government consults the Dominions in order to secure for them whatever concessions they specially desire. If a Dominion wishes to enter into specially close relations with any foreign Power, the Imperial Government will appoint Dominion representatives as plenipotentiaries to negotiate with the foreign Power and to sign, jointly with His Majesty's representative, any treaty arrived at. The treaty must not include any concession by the foreign Power calculated to damage the interests of any part of the Empire and the Dominions must extend to the Empire every concession it makes to a foreign Power. The treaty must be ratified by the Crown on the advice of the Imperial Government, acting on the request of the Dominion.

Consultation of the Dominions on matters of general political policy is of recent growth. They had no part in the Hague Conferences of 1899 and 1907, but the outcome of the latter attracted much attention in the Dominions and evoked at the Imperial Conference of 1911 a protest against the failure to consult the Dominions. The Imperial Government then agreed (a) that the Dominion should in future be consulted when the instructions to the delegates of Hague Conference were being framed; (b) that conventions provisionally agreed to at such Conferences should be circulated to Dominion Governments before final signature; (c) if time, opportunity and subject matter permitted, a similar procedure would be followed in the case of other international agreements affecting the Dominions.

Until the beginning of the War in 1914, the Dominions (with the exception of Canada) were not anxious to be brought into close touch with foreign policy. But in 1912, at the International Radio-Telegraphic Conference, and again at the Conference on Safety of Life at Sea in 1913-14, the Dominions were represented by separate plenipotentiaries endowed with full powers to represent the Crown in respect

of the Dominions. The War of 1914 was declared without the formal assent of the Dominions and the conduct of foreign policy up to the meeting of the Imperial War Cabinet of 1917 was left in the hands of the Imperial Government. The War Cabinet of 1917 and 1918 gave the Dominions an opportunity of consultation and suggestion. In the Peace Conference, the Dominions claimed separate representation, and the result was that the British Empire delegation was composed of five members whose composition could be varied, and in matters specially affecting them the four Dominions were accorded the right of separate representation, although in case of voting only one British vote could be given. In consequence, they have emerged with a diplomatic status of a new kind, being autonomous members of an Empire. In the Assembly of the League of Nations, each Dominion can be represented by three delegates. A Dominion, can cast its vote in the Assembly as it pleases. South Africa, Australia and New Zealand have mandated territories under them and are subject in the execution of their charges to the supervision of the League. The exercise of these has raised problems of constitutional importance: New Zealand has suggested that the communications to the League should be forwarded through the Imperial Government.

Canada, again, has her own diplomatic representative in Washington; he is subordinate to the British Ambassador, but will communicate direct with the Dominion Government in all matters concerning Canada alone, while in the absence of the Ambassador, he may act for him. In matters affecting both Imperial and Dominion interests, the Minister will co-operate with the Ambassador. The Minister is appointed on the advice of the Dominion Government but on the responsibility and authority of the Imperial Government.

Another point of importance is that almost all the treaties, concluded by the Imperial Government since the decision to accord the Dominions and India a separate status,

have been signed also for the Dominions (and India) by separate plenipotentiaries.

There is a growing demand, which has been met in the case of the Peace Treaty, that international arrangements concerning the Dominions should be submitted for Parliamentary approval before ratification. The procedure will be adopted, at least in the case of any treaty which imposes any specific liability on a Dominion. Hitherto, only the assent of the Executive Governments has been deemed necessary for the conclusion of arbitration conventions binding on the whole Empire. Provision has been made to secure that the British member of the Tribunal of Arbitration shall be selected by the Dominion which may be interested in the case.

There remains one problem to be solved: that of continuous consultation between the Dominions and the United Kingdom on foreign policy.

(b) *Defence*: In the early days of Responsible Government in the Dominions, Imperial Forces were used both for internal peace and for protection against foreign attack. By 1870, it was recognised that the Dominions should make at their own cost full provision for the former at any rate. Imperial troops were gradually withdrawn except where garrisons were deemed necessary for the latter purpose. The last Imperial troops were withdrawn from Canada (at Halifax and Esquimalt) in 1905, and from South Africa in 1914, on the outbreak of War and with the assent of the Union Government. The Imperial Government may station troops wherever it may deem them necessary, and the Army Act applies to the whole Empire and cannot be overridden by Dominion legislation. But in time of peace, consideration of the expenditure it would involve has rendered it inadvisable to adopt such a policy. No contribution in respect of the maintenance of such Forces could be required from any Dominion, except as a matter of voluntary arrangement.

For purposes of local Defence, Australia, New Zealand and South Africa have systems of Compulsory Training, while Canada has a Militia System which does not amount to Compulsion. During the War, New Zealand and Canada adopted Compulsion for oversea service, but at referenda, in 1916 and 17, Australia declined to accept Compulsion.

In the Dominions, the troops are governed by local enactments; when overseas the Imperial Army Act applies to them, except in so far as its provisions are modified by local legislation. Throughout the War, Dominion troops overseas were under the command of officers appointed by the Army Council, but they were maintained as units, and the officers in immediate charge were Dominion officers. The aid accorded by the Dominions was entirely voluntary and no attempt was made to compel the grant of assistance. The Imperial Government possesses no control over the troops raised in the Dominions for Home Defence and the Dominions have never agreed to enter into any arrangement with the United Kingdom to maintain Forces available for overseas expeditions. For similarity of training and equipment, which are necessary for successful co-operation, distinguished soldiers are invited by the Dominions; efforts are being made to create in each Dominion a General Staff to be in direct communication with the Imperial General Staff to study plans of military operations but to remain wholly under the control of the Dominion Government. The Esher Committee on the Army in India suggested the creation of a Line Imperial General Staff including Dominion and Indian representatives, to decide the military policy of the Empire. But the Dominions will not consent to any derogation from their autonomy, and War experience has been held to show that co-operation can be effective without any centralised system of control.

In regard to Naval arrangements also there has been no fundamental change in the position. In 1887, for the first time, the Australasian Colonies decided to contribute towards

the cost of maintaining a stronger force on the Australian station, and this policy was reaffirmed and extended in 1902, the Cape and Natal also making small contributions. For purely local Defence, small Australian Forces existed under the Colonial Naval Defence Act, 1865; in 1909, the menace of German Naval enterprise hastened a decision: New Zealand offered unconditionally a Dreadnought to the Navy, and Australia also, in offering help, desired an independent unit to be used during war by the Admiralty. At the Naval and Military Conference in 1909, the principle was accepted that Canada and Australia should create fleet units to be controlled by the Dominion Governments in time of peace, but trained on British lines and subjected to the same form of discipline as vessels of the Royal Navy, while in war, the Admiralty would take complete control. At the Imperial Conference of 1911, definite stations were assigned to Dominion fleets which were to carry the White Ensign, like British ships, but also, at the Jack staff, the distinctive flag of the Dominion. The necessary legal authority for the maintenance of Dominion fleets was given by the Naval Discipline Act, accepted by Australia in 1912.

As a result of War experience, the Admiralty suggested in 1918 the ideal of a single Navy always under one control, but the Dominions rejected the proposal; they were willing, however, to accept in course of time an Imperial body, to perform the functions of the Admiralty during war, which would include Dominion representatives. Admiral Lord Jellicoe visited the Dominions in 1919 and suggested schemes for the development of local navies to fall under central control in time of war; a project of a Pacific fleet, composed of Imperial, New Zealand and Australian units and of a Canadian fleet in the Atlantic.

(For later developments, see the provisions of the Washington Disarmament Conference and the dropping of the Singapore Naval Base scheme by the Labor Cabinet.)

(c) *Constitutional Affairs* : All Dominions do not possess complete power of changing their Constitutions.

In Canada, the Provinces have the power to deal with matters other than the distribution of authority between them and the Dominion and the position of the Lieut.-Governor who is a Dominion officer. Nor can the Dominion touch the distribution of powers, and the essential form of its Government. All changes other than those of detail require Imperial Acts, *e.g.*, the re-appointment of subsidies to the Provinces from the Dominions in 1907, the alteration of the Constitution of the Senate in 1915, and the prolongation of the life of Parliament by a year in 1916. In effect, only such changes are possible as are asked for by clear majorities in both Houses of the Dominion Parliament and are concurred in by the Provincial Governments. The Dominion Government, for instance, would like to have the authority for alteration of the Constitution in the Canadian Parliament, but has not been able to overcome the objections of Quebec which is anxious about the security of the French language and the Roman Catholic religion in the Province. The Imperial Government may be called upon to decide what degree of unanimity is necessary before it confers on the Dominion Parliament power to alter the Constitution as formed by the British North America Act of 1867.

In Australia, the question has arisen as to the extent to which change is possible within the Constitution. For instance: should the Federal nature of the Constitution be maintained? It seems probable that the power given in the Constitution is too limited to render an abandonment of Federalism possible and recourse to the Imperial Parliament would be necessary. The alteration of the State Constitutions, apart from their relations to the Federation, is subject to the restriction that Acts affecting important changes must be passed with the prior assent of the Imperial Government or must be reserved;

e. g., proposals for the abolition of the Upper Houses cannot become law without the assent of the Imperial Government.

New Zealand enjoys great freedom in the alteration of its Constitution, as does Newfoundland, whose Constitution rests on the Royal Prerogative and not on an Imperial Act, though any Bill fundamentally altering the Constitution would be reserved by the Governor.

In South Africa, the Act of 1909 safeguards the native franchise in the Cape against abolition or diminution by providing that it can be changed only by a Bill passed at a Joint Session of both Houses of Parliament, the third reading of which is agreed to by not less than two-thirds of the total number of both Houses. In addition, the Bill must be reserved by the Governor-General.

The salary of the Governor in the States and in New Zealand cannot be altered without reference to the Imperial Government, while the Commonwealth and Union Constitutions forbid alteration of salary during the continuance in office of a Governor-General. In the Australian States, there is a desire to do away with the office of Governor, or for the selection of a nominee of the State Government. The Nationalist Party in South Africa is similarly in favor of the Governor-General being nominated by the Union Government. There are also suggestions for the appointment of Princes of the blood royal to the Governor-Generalship.

The War Conference of 1917 recorded its view that any constitutional readjustment, "while thoroughly preserving all existing powers of Self-Government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous Nations of an Imperial Commonwealth, and of India as an important portion of the same, should recognise the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern

and for such necessary concerted action, founded on consultation, as the several Governments may determine". General Smuts and Sir Robert Borden insisted that the Resolution excluded the possibility of the adoption of a system of Imperial Federation. The Resolution insists that none of the powers of the Dominions shall be impaired; but demands, instead, that their autonomy shall be fully asserted by the removal of the various disabilities under which the Dominions labor as compared with the United Kingdom. General Smuts, in explaining it to the Union Parliament, claimed that the Imperial Parliament had no longer the right to legislate for the Union, except on the request of the Union to extend the powers limited by the South Africa Act; that the right of disallowance of Union Acts by the Imperial Government had disappeared; that the Governor-General must be assimilated in position and powers to the Crown in the United Kingdom. He maintained the right of the Union to appoint and receive diplomatic agents. The only right he said the Union did not and could not possess was that of severing its allegiance to the Crown. All the Dominion Acts are passed by the Imperial Parliament, and express allegiance to "the Crown of the United Kingdom". It would therefore be impossible for a Legislature deriving its authority from such an Act to undo the purpose of the Act. The only legal means by which the Empire can be dissolved remains an Imperial Act.

The Judiciary: The functions of the Judiciary in the Dominions are yet more important and difficult than those of the Judges in the United Kingdom. The latter have only to interpret the legal meaning of enactments, but the former have the obligation, in addition, of determining whether the enactment is in accord with the powers of the Parliament, or whether it exceeds in whole or part the legislative authority granted by the Constitution or is repugnant to an Act of the Imperial Parliament in force in the territory. These

questions occur, naturally, with greater frequency in the Dominions that are federated than elsewhere. The Dominions recognise the principle that a judge should hold office for life, subject to removal by the Crown or its representative on addresses from both Houses of Parliament, conditions which secure complete judicial independence.

Subject to the control of the Supreme Courts in the Dominions exist elaborate systems of inferior jurisdiction, less independent, as regards tenure of office, but subordinate to control by the higher Courts.

Judicial appeals: An Imperial Act of 1844 enables the Judicial Committee of the Privy Council to determine appeals from any Courts in the British possessions, save in cases where Imperial legislation has taken away the privilege. In the Australian Commonwealth, appeals involving the rights of the Commonwealth and the States, or of the States *inter se* are forbidden without the sanction of the High Court, which in practice is hardly ever accorded. Commonwealth legislation has prevented cases of this type being decided by the Supreme Courts of the States from which appeals lie regularly to the Privy Council, and constitutional cases do not therefore go before the Judicial Committee. The South Africa Act forbids appeals from any South African Court save the Appellate division of the Supreme Court. Further restrictions on appeals may be imposed by the Parliaments of the Commonwealth and the Union, but such Bills must be reserved. A Canadian Act forbids appeals in criminal matters, but the Privy Council never deals with ordinary criminal cases, unless they involve constitutional or legal issues. In civil cases also appeals are not entertained from Courts which are not in fact the highest Appellate Courts available in the Dominion, Province or State. In Australia, appeals lie to the High Court or the Privy Council, and in Canada, the choice is between the Supreme Court and the Privy Council; but once the choice has been made in favor

of local jurisdiction, the Privy Council will normally refuse leave for a further appeal from the High Court or the Supreme Court in the event of an unfavorable decision.

The value of the appeal to the Privy Council lies particularly in its competence to pronounce on constitutional issues and the extent of the Royal Prerogative and in its power to enforce the supremacy of Imperial legislation. But there are difficulties of the expense involved in referring cases to it, and of the existence of the appeal being regarded as a symbol of Imperial domination and a reflection on the capacity or integrity of Dominion Judges. The proposal of Mr. Joseph Chamberlain, repeated by Mr. Hughes at the Imperial Conference of 1918, was to merge the House of Lords, which is the final Court of Appeal for the United Kingdom, and the Privy Council, which performs the same function for the rest of the Empire, into one body with Dominion Judges appointed to it, has met with little approval. The disappearance of the appeal to the Privy Council seems only a question of time.

EXTRACTS FROM LORD DURHAM'S REPORT ON CANADA

"Every day during which a final and stable settlement is delayed, the condition of the Colonies becomes worse, the minds of men more exasperated, and the success of any scheme of adjustment more precarious." (p 3)

It was "a dispute between a people demanding an extension of popular privileges, on the one hand, and an Executive, on the other, defending the powers which it conceived necessary for the maintenance of order". (p 8)

"I expected to find a contest between a Government, and a people: I found two Nations warring in the bosom of a single State; I found a struggle not of principles but of races, and I perceived that it would be idle to attempt any amelioration of laws or institutions, until we could first

succeed in terminating the deadly animosity that now separates the inhabitants of lower Canada into the hostile divisions of French and English." (p 9)

"Since the resort to arms (in 1837), the two races have been distinctly and completely arrayed against each other." (p 10)

"The French have been viewed as a Democratic Party, contending for reform; and the English as a Conservative Minority, protecting the menaced connection with the British Crown and the supreme authority of the Empire." (p 12)

"The continued negligence of the British Government left the mass of the people without any of the institutions of Local Self-Government that would have assimilated their character and habits in the easiest and best way, to those of the Empire of which they became a part. They remain an old and stationary society in a new and progressive world." (p. 17.)

"The entire neglect of education by the Government has, thus, more than any other cause, contributed to render this people ungovernable, and to invest the agitator with the power which he wields against the laws and the public tranquillity." (p. 20)

"It is not anywhere a virtue of the English race to look with complacency on any manners, customs, or laws, which appear strange to them; accustomed to form a high estimate of their own superiority, they take no pains to conceal from others their contempt and intolerance of their usages. They found the French Canadians filled with an equal amount of National pride, a sensitive but inactive pride, which disposes that people not to resent insult but rather to keep aloof from those who would keep them asunder." (p. 23)

"The entire mistrust which the two races have thus learned to conceive of each other's intentions, induces them to put the worst construction on the most innocent conduct; to judge every word, every act, and every intention unfairly; to attribute

the most odious designs and reject every overture of kindness or fairness, as covering secret designs of treachery and malignity." "No common education has served to remove and soften the differences of origin and language"....."As they are taught apart, so are their studies different"....."The differences thus early occasioned by education and language are in nowise softened by the intercourse of after life; their business and occupations do not bring the two races into friendly contact and co-operation, but only present them to each other in occasional rivalry." (pp 24 and 25).

"Indeed the difference of manners in the two races renders a general social intercourse almost impossible." (p 26)

"The Assembly complained of the oppressive use of the power of the Executive; the English complained that they, a minority, suffered under the oppressive use to which power was turned by the French majority." (p 33)

The Home Rule Bill for India

OR

THE PROPOSED CONSTITUTION FOR INDIA

PREFATORY NOTE

This pamphlet has been sent to me, but I do not know the author's name. It will be remembered that, in the early days of the Congress, it was proposed that a Bill should be drafted, giving Home Rule to India, and Charles Bradlaugh, M. P., had promised to introduce it into the House of Commons. His death prevented the carrying out of his promise, and the idea fell through. This draft was, however, issued in May, 1895, probably under Mr. Tilak's inspiration, as his practical statesmanship was not content with the advocacy of isolated Reforms.

As we are once again endeavoring to frame a Constitution for India, embodying Home Rule, I think students will be interested in this fore-runner of our present work. It will be seen that feeling at that time was far less advanced than now.

ANNIE BESANT

PREFACE

The author of this pamphlet, in presenting it to the public, begs to mention that it contains the outlines of the Constitution which he wishes India should get in future from the British Government.

The sketch given in these pages is based on the high hopes which the author entertains of the future of India, meditating on the policy which the British Government has been following since its establishment in India.

The author frankly admits that, at this time, India is considerably far from being able to exercise the rights proposed to be conferred upon her people, but he is sanguine that under the benign Government of the British, they will in future be able to enjoy and use them to the greatest advantage of their country and the British Government. The author has consulted the Constitutions of Brazil and the United States in drafting this Bill.

8th May, 1895

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PREAMBLE

Be it enacted by the Queen's Most Excellent Majesty by and with advice and consent of the Lords Spiritual and Temporal and Commons, in——Parliament assembled and by the authority of the same, as follows :

PRELIMINARY

1. This Act may be called the Constitution of India Act. It extends to the whole of India, and it shall come into force on the first day of January——

2. On and from that day, the enactments mentioned in the Schedule shall be repealed to the extent specified in the second column thereof.

3. In this Act, unless there be something repugnant in the subject or context :

(a) The Parliament of India means an Assembly of representatives—official as well as non-official—of the Indian Nation.

(b) The word " District " shall include the capital of a Province.

(c) The word " laws " includes Civil, Criminal, Revenue, Ecclesiastical or Military laws.

(d) The Indian citizens are :

1. Those born in India.

2. The children of an Indian father and the natural children of an Indian mother, born in a foreign country, who may acquire a domicile in the Empire.

3. The children of an Indian father who shall be in a foreign country, in the service of the Empire, although they may not acquire domicile in the Empire.

Foreigners naturalised.

4. OF THE EMPIRE OF INDIA. The Empire of India shall be a National association of all Indian citizens.

5. TERRITORIES OF INDIA. (1) Its territory shall be divided into the following Provinces :

- 1 Bengal, including Behar and Assam.
 - 2 Madrás.
 - 3 Bombay, including Sindh and Baluchistan.
 - 4 North-West Provinces, including Oudh.
 - 5 The Panjab.
 - 6 The Central Provinces and Berars.
 - 7 Burma,
 - 8 Central India.
 - 9 Rajputana.
 - 10 Hyderabad Dominions.
- 2 Each of the above mentioned Provinces shall be divided into as many
- (a) Divisions
 - (b) Districts
 - (c) Talukas and
 - (d) Village Groups

as is necessary for the efficient Government of India.

6. RELIGIONS OF INDIA. All religions, creeds and faiths are allowed in the Empire, and the modes of worship may either be domestic, private or public.

THE GOVERNMENT OF INDIA

PARLIAMENT OF INDIA

7. The Constitution of India shall be divided into 4 powers,
viz :

- (a) The Sovereign power
- (b) The Legislative power
- (c) The Judicial power
- (d) The Executive power

8. All the powers in the Empire are the delegations of the Nation.

9. All the Supreme, Legislative, Judicial and Executive powers shall be vested in the Parliament of India.

10. The Legislative power shall make laws, rules and regulations, the Judicial power shall interpret, declare and enforce them, and the Executive power shall administer them, as interpreted and declared by the Judicial power.

11. The Judicial and the Executive powers shall be subordinate to the Legislative power.

12. No law shall be made unless for public benefit.

13. Every citizen has a right to take part in the affairs of his country. The means by which such right shall be recognised shall be prescribed by the Parliament of India.

14. All citizens of India are required to bear arms, to maintain and defend the Empire against its internal and external enemies.

15. No citizen shall do, or omit to do, any act unless by virtue of law.

16. Every citizen may express his thoughts by words or writings, and publish them in print without liability to censure, but they shall be answerable for abuses, which they may commit in the exercise of this right, in the cases and in the mode the Parliament shall determine.

17. Every citizen has in his house an inviolable asylum.

18. No one can be imprisoned without a special crime proved against him according to law.

19. No one shall be sentenced except by competent authority.

20. The law shall be equal to all.

21. Every citizen may be admitted to public office.

22. No one shall be exempted from contributing to the expenses of the State in proportion to his substance.

23. Every citizen shall enjoy right of property to its fullest extent, except where the law determines otherwise.

24. Every citizen has a right to present to his Sovereign or to the Parliament, or to any Legislative, Judicial or Executive authority claims, petitions and complaints.

25. State Education shall be Free in the Empire.

26. Primary Education shall be Compulsory in the Empire.

27. The rights of an Indian citizenship are lost by

(1) Those who become naturalised in a foreign country.

(2) Those who without the license of the Government of India accept any office, pension or honor, from any foreign Government.

(3) Those sentenced to banishment.

28. The political rights of an Indian citizen are lost by

(1) Physical or moral incapacity.

(2) Sentence of imprisonment or of banishment during the continuance of its operation.

29. Every citizen has a right to give one vote for electing a member to the Parliament of India and one to the Local Legislative Council.

THE SOVEREIGN POWER

30. The Sovereign power of India shall be vested in the Sovereign of Great Britain and Ireland, who is the supreme head of the Indian Nation.

31. The Viceroy of India shall be the representative of the Sovereign of Great Britain and Ireland in India.

32. The Sovereign of Great Britain and Ireland shall reign and rule over the Empire of India.

33. The Viceroy of India may veto any Act of the Parliament of India and may initiate any legislation.

34. The Viceroy of India shall be the President of the Parliament.

34a. The Viceroy of India shall be appointed by the Sovereign of Great Britain and Ireland.

THE LEGISLATIVE FUNCTIONS OF PARLIAMENT

35. All Legislative powers shall be delegated by the Nation to an Assembly of its representatives which shall be called the Parliament of India.

36. The representatives of the Nation shall be officials and non-officials.

37. The Parliament of India shall consist of two Houses

(1) The Upper House and

(2) The Lower House.

38. The Upper House shall be an Assembly composed of :

(a) Members chosen by the people to continue in office for life.

(b) The following Official Members :

(1) Privy Council Judges.

(2) Cabinet Ministers.

(c) Members chosen for life to represent the following professions, trades and interests :

LEGAL PROFESSION. 10 Advocates, Barristers or Vakils elected by the bar.

“Bar” means Advocates, Barristers or Vakils of the High Court or District Court, practising in Privy Council, High Courts, District Courts or Taluka Courts.

MEDICAL PROFESSION. 10 duly qualified medical practitioners elected by duly qualified medical practitioners.

MUNICIPALITIES. 25 members elected by Municipal Commissioners.

UNIVERSITY. 10 Fellows elected by Fellows.

COMMERCE. 30 members elected by all Chambers of Commerce.

(d) 20 nominated by the Sovereign.

39. Each Division shall send two representatives and each District one representative to the Upper House.

40. The Lower House shall be an assembly composed of Members chosen by the people to continue in office for 3 years and Members chosen to represent the following professions to continue in office for 3 years (See Section 38(c).

41. Each Division shall send two representatives and each District one representative to the Lower House.

42. If vacancies happen by resignation or otherwise in any Division or District, the Executive thereof shall issue writs of election to fill such vacancies.

43. No person shall be a representative of the Lower or the Upper House who shall not have attained to the age of 25 years, and been 10 years a citizen of India.

44. There shall be one President for both the Houses of Parliament who shall be the Viceroy of India, and one Vice-President for each House.

45. The Parliament shall choose their Vice-Presidents and other officers.

46. The Legislative functions of the Parliament shall be conducted by both the Houses in the manner prescribed by this Act.

47. The President and the Vice-President of the Upper House shall hold their offices for 5 years, and the Vice-President of the Lower House shall hold his office for 3 years.

48. The Viceroy of India shall be the head of the Parliament during the tenure of his office and shall be assisted in the conduct of the Judicial Administration of India by the Privy Council and the Executive Administration by the Cabinet of Ministers, as constituted under this Act.

49. The Parliament shall make, suspend or revoke laws, rules and regulations, for the Government of India relating to the preservation of the Constitution of the Empire, Ecclesiastical Establishments, or Institutions, Matters of Succession, Inheritance, Adoption, Marriages, Partitions of Estates, Gifts of Property, Wills, Property, Procedures of the Civil and

Criminal Courts, Arbitrations in Disputes, Limitation of Suits, Appeals or Applications, Contracts, Sales and Purchases, Agency, Bailment, Partnership, Indemnity and Guarantee, Civil Wrongs and Defamation, Duties of Masters and Servants, Copyright, Patents, Judicial Evidence, Registration of Documents, Stamps and Court Fees, Crimes, Prison Administration, Municipal Government, Police, Matters of Equity, Specific Relief, Trust, Mortgage, Public Service, Land Revenue Settlements, Forest Administration, Education, Abkari, Customs and Usages of the People, Excise, Income Tax, Tariff and Customs, Press, Opium and other Intoxicating Drugs, Stores and Stationery required for the purposes of State, Currency, Post Office, Telegraphs, Survey of Land, Finances, Legal Profession, Famines, Railways, Canals, Companies, Emigration, Marine Administration, Merchants' Rights, Duties and Obligations, Banking, Negotiable Instruments, Treasury, Ports, Medical Administration, Sanitation, and Arms, Carriers, Judicial Administration, the Giving of Encouragement to or the Development of Science; Industries, Commerce, Transfer of Property, Foreign Politics, Public Works, Extradition, Gambling, the Poor, Easements, Lunatics, Army, Navy, Agriculture, Insurances, Physical Education, Factories, the Preservation of Ancient Monuments, Museums and relating to all matters necessary for the Preservation, Efficiency and Development of the Empire.

50. The Financial Statement of the Government of India shall be explained in the Parliament by the Financial Minister two months before the new year, a printed copy of the same given to each Member and a draft of the Statement placed on the editors' table, and circulated among such of the political associations of the country as the Financial Minister may deem fit.

51. The right of discussion of the Financial Statement shall be allowed to each Member of the Parliament, and no

item shall be passed as a public charge unless it is voted by the majority.

52. Every Member of Parliament has a right to ask any questions regarding the Government of the Empire.

53. Every Member has a right to submit or propose any resolution and divide the Parliament in respect of any financial discussion or the answer to any question asked.

54. The Parliament may examine the Government of the Empire, and reform the abuses introduced into it,

THE JUDICIAL FUNCTIONS OF THE PARLIAMENT

55. The Judicial functions of the Parliament shall be conducted by a Council of Judges called the Privy Council, who shall hold their offices for life unless incapacitated under any laws for the time being in force.

56. The Judges of the Privy Council shall be official members of the Parliament.

57. The Chief Judge of the Privy Council shall be called the Lord High Chancellor of India and the Puisne Judges, the Vice-Chancellors.

58. The Lord High Chancellor and the Vice-Chancellors shall be elected by the Nation in the same manner as the non-official representatives of the Parliament.

59. No one can be a Privy Council Judge unless he shall be a Barrister, Advocate or Pleader of the Privy Council or High Court of not less than 10 years' standing, or a Judge of the High Court of a Province, and unless he possesses the qualifications required of a non-official representative of the people.

60. The President of the Parliament shall be the head of the Privy Council for the time being and in his absence the Lord High Chancellor.

61. From all decrees or orders of the High Court there shall be appeals to the Privy Council.

62. The Privy Council shall possess ordinary Original jurisdiction in the Empire and also extraordinary Appellate, revisional and superintending jurisdiction over all Courts of Justice in the Empire.

THE EXECUTIVE FUNCTIONS OF THE PARLIAMENT

63. For the efficient Executive Administration of the Empire, the following Departments shall be established :

1	Financial	Department
2	Legislative	"
3	Educational	"
4	Trade and Commerce	"
5	Ecclesiastical	"
6	Customs	"
7	Excise	"
8	Press	"
9	Judicial	"
10	Stores & Stationery	"
11	Treasury	"
12	Science	"
13	Post Office	"
14	Telegraph	"
15	Railway	"
16	Survey	"
17	Forest	"
18	Public Works	"
19	Local Government	"
20	Marine	"
21	Medical	"
22	Sanitary	"
23	Military	"
24	Foreign	"
25	Agricultural	"
26	Political	"

- 27 Land Administration Department
 28 Irrigation "
 29 General "

64. The Executive Functions of the Parliament shall be conducted by a Cabinet of Ministers as mentioned below, and the Viceroy of India shall be the head of the Cabinet for the time being.

1 The Prime Minister in charge of the General		Administration
2 The Minister in charge of Financial		Department
3	" "	Legislative "
4	" "	Educational "
5	" "	Trade & Commerce "
6	" "	Ecclesiastical "
7	" "	Custom "
8	" "	Excise "
9	" "	Press "
10	" "	Judicial "
11	" "	Stores & Stationery "
12	" "	Treasury "
13	" "	Science "
14	" "	Post Office "
15	" "	Telegraph "
16	" "	Railway "
17	" "	Survey "
18	" "	Forest "
19	" "	Public Works "
20	" "	Local Government "
21	" "	Marine "
22	" "	Medical "
23	" "	Sanitary "
24	" "	Military "
25	" "	Foreign "
26	" "	Agricultural "

27	The Minister in charge of Political	Department
28	"	General "
29	"	Land Administration,,
30	"	Irrigation "

65. The functions of the Cabinet are :

(1) To execute laws made by the Parliament and to see that they are administered properly.

Where there arises any doubt as to the interpretation or declaration of the laws, the decisions of the Privy Council shall be binding on the Cabinet, which shall administer laws as interpreted and declared by the Privy Council.

(2) To make Rules and Regulations consistent with the laws of the Parliament.

66. The Cabinet Ministers shall hold their offices during life, unless incapacitated under any law for the time being in force. They shall be elected in the same manner as the non-official members of the Parliament.

67. Any one who is eligible to become a Member of Parliament may become a Cabinet Minister.

THE LOCAL LEGISLATIVE POWER

68. Each Province of the Empire mentioned in Section 5 shall have a Local Legislative Council and shall be composed of :

(a) 3 Representatives elected by the people for each Division.

(b)-2 Do. do. for each District

(c) 1 Do. do. for each Taluka

(d) The Governor of the Province

(e) 5 Executive Councillors

(f) The Secretaries of each Department

(g) The Chief Executive Officers

(h) The Judges of the High Court, and

(i) Members chosen to represent the following professions, trades and interests.

LEGAL PROFESSION. 10 Advocates, Barristers or Vakils elected by the Bar.

“ Bar ” means Advocates, Barristers or Vakils, of the High Court or District Court, practising in Privy Council, High Courts, District Courts or Taluka Courts.

MEDICAL PROFESSION. 10 duly qualified medical practitioners elected by duly qualified medical practitioners,

MUNICIPALITIES. 25 members elected by Municipal Commissioners.

UNIVERSITY. 10 Fellows elected by Fellows.

COMMERCE. 30 members elected by all Chambers of Commerce.

69. The functions of the Local Legislative Council shall include the

- (1) Making of Rules and Regulations consistent with Parliamentary laws, according to the requirements of the Province.
- (2) Discussing local finances and to vote expenses for the Government of the Province.
- (3) Examination of the administration of the Province.

70. Each Local Legislative Council shall have a President, who shall be appointed by the Ministry and who shall be called the Governor of the Province to which he shall be appointed.

71. The Members of the Local Legislative Council shall have the same powers as the Members of Parliament with regard to the discussion of the Financial Budget of the Province and the right of interpellation.

72. The Financial Statement of the Local Government shall be explained in the Local Legislative Council by the

official in charge of the Local Finances two months before the commencement of the new year, and a printed copy of the same given to each Member, and a draft of the Statement placed on the editors' table, and circulated among such of the political associations of the country as the officer in charge of the Local Finances may deem fit.

73. The Section 51 regarding the Imperial Financial Statement shall apply to the Provincial Financial Statement.

74. The Governor of the Province shall be the highest administrative authority in the Province.

THE LOCAL JUDICIAL POWER

75. The highest judicial authority in India shall be vested in the Sovereign and the Parliament of India which shall be exercised through the Privy Council.

76. There shall be established High Courts in India subordinate only to the Parliament, and such other inferior Courts as the High Court may deem it necessary for the efficient Government of India.

77. The Judges of the High Courts shall hold their offices during life, unless incapacitated under any law for the time being in force.

78. The Judicial power of the Courts shall extend to all cases arising in law and equity.

79. The Courts of Justice shall interpret, declare, and enforce when necessary, the laws, rules and regulations passed by the Parliament and the Local Legislative Councils, as described in this Act.

80. Each Province of the Empire shall have one High Court as the highest Court of Justice for that Province subordinate to the Parliament.

81. Each High Court shall have one Chief Justice and as many Puisne Judges as the Parliament may determine.

82. Each High Court shall possess Original jurisdiction in the Province for which it shall be established, and Appel-

late, extraordinary, revisional and superintending jurisdiction over all Courts subordinate to it.

83. Each District shall have a Court of Justice which shall be called the District Court.

84. Each Taluka shall have a Court of Justice which shall be called the Taluka Court.

85. All Taluka Courts shall be subordinate to the District Court and the High Court, and all District Courts shall be subordinate to the High Court.

86. The High Court Judges shall be either Barristers, Advocates or Vakils of the High Court of not less than 10 years' standing.

87. The District Judges shall be either Barristers, Advocates or Vakils of the High Court of not less than 5 years' standing.

88. Taluka Judges shall be either Barristers, Advocates or Vakils of the High Court of not less than 3 years' standing or District Pleaders of not less than 5 years' standing.

THE LOCAL EXECUTIVE POWER

89. The highest Executive authority in India shall be vested in the Sovereign and the Parliament of India, which shall be exercised through the Cabinet of Ministers above-mentioned.

90. There shall be a Governor for each Province subordinate to the Cabinet of Ministers.

91. The Governor shall have a Local Executive Council of 5 members and shall be assisted in the administration of the Province by the following Secretaries, who shall also be *ex-officio* Members of the Local Legislative Council :

- | | | |
|---|--|----------------|
| 1 | The Chief Secretary in charge of General | Administration |
| 2 | The Secretary in charge of Financial | Department |
| 3 | " " | Legislative " |
| 4 | " " | Educational " |

5 The Secretary in charge of Trade & Commerce

			Department
6	"	"	Ecclesiastical "
7	"	"	Custom "
8	"	"	Excise "
9	"	"	Press "
10	"	"	Judicial "
11	"	"	Stores and Station- nery "
12	"	"	Treasury "
13	"	"	Science "
14	"	"	Post Office "
15	"	"	Telegraph "
16	"	"	Railway "
17	"	"	Survey "
18	"	"	Forest "
19	"	"	Public Works "
20	"	"	Local Government,,
21	"	"	Marine "
22	"	"	Medical "
23	"	"	Sanitary "
24	"	"	Military "
25	"	"	Foreign "
26	"	"	Agricultural "
27	"	"	Political "
28	"	"	General "
29	"	"	Land Administra- tion "
30	"	"	Irrigation "

92. Each Division shall be in the administrative charge of an official called the Chief Executive Officer, who shall be immediately subordinate to the Governor.

93. Each District shall be in the administrative charge of an official called the District Executive Officer, subordinate to the Chief Executive Officer.

94. Each Taluka shall be in the administrative charge of an official called the Taluka Executive Officer, subordinate to the District and Chief Executive Officer.

95. Each group of villages shall be in the charge of an official who shall be called the Village Officer.

MISCELLANEOUS

96. Any Member of the Parliament may introduce a Bill in the Parliament.

97. No Bill shall become law unless it has passed by majority through the Lower House three times and the Upper House three times and unless it has obtained the sanction of the Sovereign.

98. Any Member of the Local Legislative Council may introduce any rule or regulation, which shall have the force of law after having passed three times by the majority.

99. The Non-Official Members of the Parliament of India shall be paid out of the Imperial Treasury salaries at the rate of 500 rupees for each Member per month and the Non-Official Members of the Local Legislative Councils shall be paid out of the Local Treasury salaries at the rate of 200 rupees for each Member per month.

100. All citizens are eligible for becoming Members of the Parliament and the Local Legislative Council.

101. There shall be kept one journal of the proceedings of the Parliament, the Local Legislative Councils, the High Courts of Judicature and the Executive Councils and the same shall be published every week, excepting such parts as may in their judgment require secrecy.

102. At the meetings of both Houses of Parliament the President of the Parliament shall direct the business of the meeting.

103. At the meetings of the Local Legislative Council the Governor of the Province shall direct the business of the meeting.

104. The sittings of the Parliament and the Local Legislative Councils and the Courts of Justice shall always be public except in cases where secrecy is essential in the interests of public good.

105. The absolute majority of the votes of the Members present shall decide every question before the Parliament and the Local Legislative Councils.

106. The Upper House shall meet for the conduct of business on the first day of January, April, July and October and such other following days as are necessary for the purpose.

107. The Lower House shall meet for the conduct of business on the first day of February, May, August and November and such other following days as are necessary for the purpose.

108. The Local Legislative Councils shall meet on the 15th day of each month and such other following days as are necessary for the conduct of business.

109. Barristers, Advocates, or Vakils of the High Court may appear to plead before the meetings of Parliament, the Privy Council, High Courts, Ministers, the Local Legislative or Executive Councils and District or Taluka Courts and all other Judicial and Executive Officers on behalf of their clients.

110. No one can be a Member of both the Houses of Parliament at the same time.

111. All State Officials are by virtue of their offices the official representatives of the people.

SCHEDULE

ACT	EXTENT OF REPEAL
Indian Councils Act	Whole

MEMORANDUM
OF THE
Women's Indian Association
TO THE
NATIONAL CONVENTION, ALLAHABAD

The Women's Indian Association desires to place before the NATIONAL CONVENTION and those who are considering the construction and form of a new Constitution for India the following statement:

In the drawing up of such a Constitution, it is essential that it should be done on true democratic lines, and that the principle of no sex-disqualification should be laid down from the very first—that "the Indian people" means the men *and women* of India, and not the men only.

The Women of India are very rapidly awakening to their responsibilities and duties as citizens, and are ready to take their place as equals with their sisters in the other parts of the British Commonwealth.

We therefore consider that it would be intolerable that, while India should be a Self-Governing Dominion, half of the people, the women, should be in an inferior position and of a lower status than the women of the other Dominions. The prestige of India would be lowered and her women looked down upon.

Judging from past experience when we worked in Madras, Bombay and the United Provinces for the suffrage for women, we are confident that the politicians and the majority of

the Indian people are at one with us in desiring sex-equality. The reasonableness and justice of our demands have been almost unanimously admitted, and most courteously and swiftly conceded.

We therefore feel that we may hopefully expect that no barriers of sex-disqualification will be admitted into the new Indian Constitution.

We request that a phrase be incorporated into the Draft Constitution such as the following, which is adapted from the wording of the New Irish Constitution: *Men and Women shall have equal rights as citizens throughout India.*

MARGARET E. COUSINS,
Hon. Secretary,

Women's Indian Association and Delegate to the National
Convention for the Women's Indian Association.

Convention Memoranda No 9

(*Reprint*)

THE MADRAS PARLIAMENT TRANSACTIONS

We bring the Light that saves, we bring the Morning Star.
Freedom's good things we bring you,
Whence all good things are.



No. 5

The Commonwealth of India Act

Act III of 1916

With the Speech of the Prime Minister
(*MRS. ANNIE BESANT*)

On the Second Reading of the Bill
On August 26th, 1916



**THE GENERAL SECRETARY'S OFFICE,
POST BOX No, 904, MADRAS, S.**

1924

NOTE

All Memoranda circulated for information and criticism contain the view of the author at the time of writing. Changed conditions might involve modifications. The considered views of the Committee will not be available until it issues its report.

COMMONWEALTH OF INDIA ACT

ACT III OF 1916

Whereas it is necessary for the good of the People of India and for the stability of the Empire that the Provinces and Territories now forming British India should be constituted as a Federal Commonwealth and be granted Self-Government under the Imperial Crown of the United Kingdom of Great Britain and Ireland and of the Overseas Dominions;

And whereas it is expedient to continue and enlarge the powers of legislation and administration enjoyed by the existing Provinces, and to extend them to others that may be constituted out of them or in addition to them hereafter;

Be it therefore enacted as follows :

Title

This Act may be cited as the Commonwealth of India Act III of 1916.

Definitions

In this Act unless otherwise expressed "the Commonwealth" shall be taken to mean the Commonwealth of India as constituted under this Act.

"The Provinces" shall mean such of the Parts of the Commonwealth as are granted Provincial Autonomy under a Governor, an Executive Council, and a Legislative Assembly.

"Original Provinces" shall mean such Parts of the Commonwealth as are now existing as Provinces.

"Parliament" or "National Parliament" shall mean the Parliament of the Commonwealth, composed of the National Representatives.

"Legislative Assembly" shall mean the Legislative Assembly of a Province, composed of the Provincial Representatives.

“ Viceroy ” shall mean the Chief Executive Officer carrying on the Government of the Commonwealth on behalf of and in the name of the King-Emperor, his heirs and successors.

“ Supreme Government ” shall mean the Government of the Commonwealth.

“ Governor ” shall mean the Governor of a Province.

THE COMMONWEALTH

CHAPTER I

THE EXECUTIVE

Executive Power

1. The Executive Power of the Commonwealth is vested in the King-Emperor, and is exercisable by the Viceroy as the King-Emperor's representative, and extends to the execution and maintenance of this Constitution and of the laws of the Commonwealth.

The Viceroy

2. The Viceroy shall be appointed by the King-Emperor, and shall have and may exercise in India during his term of office, but subject to this Constitution, such power and functions of the King-Emperor as His Majesty may be pleased to assign to him.

Salary of Viceroy

3. There shall be payable to the King-Emperor out of the Consolidated Revenue Fund of the Commonwealth for the salary of the Viceroy an annual sum of Rs. 15,000 *per mensem*, until the Parliament shall otherwise decide.

Supreme Executive Council

4. There shall be a Supreme Executive Council not to exceed ten in number, to aid and advise the Viceroy in the Government of India. The Viceroy shall be the President of the Supreme Executive Council, and shall have the right of appointing one half of the members of the Supreme Executive Council, who shall be *ex-officio* members of the Parliament by virtue of his appointment, but he himself shall not sit in the Parliament except as provided in Clause 16. The remaining half of the Supreme Executive Council shall be elected by the Parliament at its first session, as directed in Clause 20, and this Supreme Executive Council

shall hold office until the appointment and the election of their successors.

Vice-President

5. The Viceroy shall nominate a Vice-President of the Supreme Executive Council from among the members of the Executive elected by the Parliament under Clause 20.

Viceroy in Council

6. The provisions of this Act referring to the Viceroy in Council, shall be construed as referring only to the Viceroy acting with the advice of the Supreme Executive Council, and not to action taken by subordinate officials. *

Appointment of Civil Servants

7. Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Viceroy in Council, unless the appointment is delegated by the Viceroy in Council or by a law of the Commonwealth to some other authority.

Command of Naval and Military Forces

8. The command in chief of the Naval and Military Forces of the Crown and of the Commonwealth is vested in the Viceroy as the King-Emperor's representative.

Clemency of the Crown

9. The Viceroy shall have power to pardon criminals and to exercise otherwise the clemency of the Crown with regard to the commutation of sentences.

Transfer of certain Departments

10. On a date or dates to be proclaimed by the Viceroy after the establishment of the Commonwealth, the following Departments of the Public Service in each State shall become transferred to the Commonwealth :

- Tributes, Salt, Opium and Customs;
- Railways, Posts, Telegraphs, and Telephones;
- Naval and Military Defence;

Lighthouses, Lightships, Beacons, and Buoys ;
Quarantine.

Certain Powers of Governors to vest in Governor-General

11. In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Province, or in the Governor of a Province with the advice of his Executive Council, or in any authority of a Province shall vest in the Viceroy, or in the Viceroy in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

CHAPTER II THE PARLIAMENT

Legislative Power

12. The Legislative Power of the Commonwealth is vested in the King-Emperor and the National Parliament, or House of Representatives, hereinafter called "the Parliament".

Sessions of Parliament, Prorogation and Dissolution

13. The Viceroy may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue or dissolve the Parliament.

Duration of Parliament

14. Every Parliament shall continue for no longer than five years from its first meeting, but it may be dissolved before the expiration of its term by the Viceroy.

General Elections

15. The Viceroy in Council shall issue writs for the general election of Members of Parliament, within 30 days of the expiry of its five years term, the writs being returnable at the end of another 30 days. In case of an earlier dissolution by the Viceroy, he shall issue the writs within 15 days thereof and they shall be returnable at the end of another 15 days. After a premature dissolution, the Viceroy may not dissolve the Parliament thereafter elected until the term of the dissolved Parliament shall have expired.

Opening of Parliament

16. The Viceroy shall, notwithstanding Clause 13, after a dissolution, summon the Parliament to meet not later than 30 days after the day appointed for the return of the writs.

He shall open the new Parliament at the end of the fortnight's adjournment provided for in Clause 20 and shall also thereafter summon the Parliament to meet at least once in every year, and shall at its first meeting each year open the Parliament, and lay before it the general programme of business for the session, as agreed upon by himself and the Supreme Executive Council.

Election of Speaker

17. Every Parliament shall, at its first session, before proceeding to the despatch of any other business, choose a Member not an Executive Councillor to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a Member to be the Speaker.

(i) The Speaker shall cease to hold his office if he ceases to be a Member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Viceroy.

Absence of Speaker

18. Before or during any absence of the Speaker, the Parliament may choose a Member to perform his duties in his absence.

Oath of Allegiance

19. Every Member of Parliament, before taking his seat, shall take the Oath or Affirmation of Allegiance in the form set forth in the schedule of this Constitution.

Elected Members of Supreme Executive Council

20. Every Parliament at its first session, immediately after the election of the Speaker, shall, as provided in Clause 4, proceed to elect the Members of the Supreme Executive Council, who must not include the Speaker, and shall then adjourn for a fortnight. The Vice-President of the Supreme Executive Council, nominated under Clause 5, shall be the Leader of the House. It shall proceed to the despatch of

business immediately after Parliament has been opened by the Viceroy.

First Session

21. The Parliament of India shall be summoned to meet not later than seven months after the establishment of the Commonwealth.

Yearly Session of Parliament

22. There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

Provisional Electorates

23. For ten years after the establishment of the Commonwealth, the Members of Parliament shall be elected by the Legislative Assemblies, and the bodies hereinafter mentioned. After the expiration of that period the electorate may be enlarged on a more democratic basis by a Convention of delegates from the Parliament and each Legislative Assembly, to be called by the Viceroy for the purpose.

(i) The Parliament shall consist of 200 members, 100 elected by the Legislative Assemblies, 94 by the great interests of the country—Landed, Trading, Commercial, Financial, Industrial Associations, with the special representatives of minorities; 6 by the registered graduates of the six Universities now chartered. Despite the limit above stated, the registered graduates of further chartered Universities shall also each elect one member.

(ii) The qualifications of voters for Members of Parliament shall be as follows :

- (a) Membership of a Legislative Assembly, or
- (b) Registration as a graduate of a University, or
- (c) Registration as a member of a body representing one of the above-named interests, or
- (d) Registration in an organised minority.

(iii) They must be of the full age of 21 years.

(iv) The Legislative Assembly of each Province shall issue Regulations for the registration and grouping of bodies in classes (c) and (d) into electorates, each returning one member. A group must not be formed comprising residents in different Provinces. All considerable minorities shall be separately provided for, until Parliament shall devise some better scheme for the fair representation of Muhammadan and other communities forming considerable minorities.

Qualification of Member of Parliament

24. A Member of Parliament must be of the full age of 21 years, and must be a citizen of the Empire, ordinarily resident in India for not less than seven years.

Members of Legislative Assemblies Ineligible to Parliament

25. A member of a Legislative Assembly is incapable of being chosen or of sitting as a Member of Parliament.

Disqualifications

26. The following are ineligible to Parliament: Any person who

- (a) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign Power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign Power; or
- (b) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a Province by imprisonment for one year or longer; or
- (c) Is an undischarged bankrupt or insolvent; or
- (d) Holds any office of profit under the Crown; or
- (e) Has any direct or indirect pecuniary interest in

any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company.

(i) But clause (d) does not apply to the office of any of the Executive Councillors for the Commonwealth, or to the receipt of pay, or half pay, by any person as an officer or member of the King-Emperor's Navy or Army, or to the receipt of pay as an Officer or Member of the Naval or Military Forces of the Crown or Commonwealth, by any person whose services are not wholly employed by the Commonwealth.

Vacancy on Happening of Disqualification

27. If a member of Parliament

- (a) Becomes subject to any of the disabilities mentioned in the last preceding section; or
- (b) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors; or
- (c) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or Province;

his place shall thereupon become vacant.

Penalty for Sitting when Disqualified

28. Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a Member of the Parliament shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any Court of competent jurisdiction.

Disputed Elections

29. Until the Parliament otherwise provides, any question respecting the qualification of a Member of Parliament or respecting a vacancy in the Parliament, and any question of

a disputed election to Parliament, shall be determined by Parliament.

Resignation of Member

30. A member may by writing addressed to the Speaker, or to the Viceroy if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by Absence

31. The place of a Member shall become vacant if for two consecutive months of any session of Parliament he, without the permission of the House, fails to attend the House.

Quorum

32. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of its Members shall be necessary to constitute a meeting for the exercise of its powers.

Voting in House of Representatives

33. Questions arising in the Parliament shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

Legislation

34. Parliament alone shall have the power of making laws which shall be valid over the whole of British India within the limits of the powers assigned to it by this Act.

Revenue

35. All revenue raised in India from the sources of revenue assigned to the Supreme Government, as distinct from those sources assigned to the Provincial Governments, and all expenditure incurred for the Supreme Government, shall be under the sole control of Parliament, save such fixed charges as may from time to time be agreed upon between the Viceroy in Council and the Imperial Government.

(i) Where the revenue at the disposal of the Supreme Government is not enough to meet the expenditure incurred by it, the deficit shall be contributed to the Supreme Government by the Provinces in such proportions as the Parliament may fix.

Assent, Veto and Reservation

36. Where a Bill passed by Parliament is presented to the Viceroy for the King-Emperor's Assent, he shall declare, according to his discretion, but subject to this Act, that he assents thereto in the Emperor's name, or that he withholds the Emperor's Assent, or that he reserves the Bill for the Emperor's pleasure. He may return the Bill to Parliament suggesting amendments, and the House may deal with the suggestions.

Withholding Assent

37. The Viceroy may, by withholding the King-Emperor's Assent from any Bill, suspend its coming into force for a year, except the Budget (Appropriation) Bill. But if the same Bill be again passed in the following year, it can only be vetoed by the King-Emperor.

Royal Veto

38. The King-Emperor may disallow any law within one year from the Viceroy's Assent, and such disallowance on being made known by the Viceroy by speech or message to Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.

Reservation

39. A proposed law reserved for the King-Emperor's pleasure shall not have any force unless and until within two years from the day on which it was presented by the Viceroy for the King-Emperor's Assent, the Viceroy makes known by speech or message to Parliament, or by Proclamation that it has received the Emperor's Assent.

Operation of the Constitution and Law

40. This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the Courts, Judges, and people of every Province and of every part of the Commonwealth, notwithstanding anything in the laws of any Province; and the laws of the Commonwealth shall be in force on all British ships, the King-Emperor's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

41. During the five and six months which intervene between the passing of this Act and the first meeting of the Legislative Assemblies and Parliament respectively, the Members of the Executive Government of India and of the Provinces shall carry on their duties and shall continue in office until their successors are ready to take over charge. Due regard shall be paid to existing interests under the laws and regulations passed by Parliament.

CHAPTER III
FINANCE AND TRADE

Consolidated Revenue Fund

42. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

Expenditure Charged Thereon

43. The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

Money to be Appropriated by Law

44. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

(i) But until the expiration of one month after the first meeting of the Parliament the Viceroy in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament.

Exclusive Power over Customs, Excise and Bounties

45. On the imposition of uniform duties of Customs, the power of the Parliament to impose duties of Customs and of Excise, and to grant Bounties on the production or export of goods, shall become exclusive.

(i) On the imposition of uniform duties of Customs, all laws of the several Provinces imposing duties of Customs or

of Excise, or offering Bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such Bounty lawfully made by or under the authority of the Government of any Province shall be taken to be good if made -two years before the passing of this Act.

Financial Assistance to Provinces

46. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any Province on such terms and conditions as the Parliament thinks fit.

Audit

47. Until the Parliament otherwise provides, the laws in force in any Province with respect to the receipt of revenue and the expenditure of money on account of the Government of the Province, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the Province in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth were mentioned whenever the Province, or the Government or an officer of the Province is mentioned.

Payment to Provinces before Uniform Duties

48. Until the imposition of uniform duties of Customs

(i) The Commonwealth shall credit to each Province the revenues collected therein by the Commonwealth.

(ii) The Commonwealth shall debit to each Province

(a) The expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the Province to the Commonwealth;

(b) The proportion of the Province, according to the number of its people, in the other expenditure of the Commonwealth.

(iii) The Commonwealth shall pay to each Province month by month the balance (if any) in favor of the Province.

Commissioner's Appointment, Tenure and Remuneration

49. There shall be created an Inter-Provincial Commission, whose members

- (a) Shall be appointed by the Viceroy in Council;
- (b) Shall hold office for seven years, but any member may be removed within that time by the Viceroy in Council, on an address from Parliament praying for such removal on the ground of proved misbehavior or incapacity;
- (c) Shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office.

Saving of Certain Rates

50. Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a Province, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the Province and if the rate applies equally to goods within the Province and to goods passing into the Province from other Provinces.

Taking over Public Debts of Provinces

51. The Parliament may take over from the Provinces their public debts as existing at the establishment of the Commonwealth, or a proportion thereof, according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or

consolidate such debts, or any part thereof ; and the Provinces shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several Provinces, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several Provinces.

CHAPTER IV
THE PROVINCES
THE EXECUTIVE POWER

The Governor

52. Each Province shall have as its highest Executive Officer a Governor appointed by the Crown for a fixed term of years.

Governor's Salary

53. There shall be payable to the King-Emperor out of the revenues of the Province, for the salary of the Governor, an annual sum of Rs. 10,000 *per mensem*.

Provincial Executive Council

54. There shall be an Executive Council for the Province, not to exceed six in number, of whom the Governor may appoint two, who shall have seats in the Legislative Assembly. He shall be the President of the Executive Council, but shall not sit in the Legislative Assembly, except as provided in Clause 63. The remaining two-thirds of the Council shall be elected by the Legislative Assembly under Clause 67, and the Governor shall appoint one of the Members thus elected as Vice-President of the Executive Council.

Appointment of Civil Servants

55. The appointment and removal of all other Officers of the Executive Government of the Province shall be vested in the Governor in Council.

Governor in Council

56. The provisions of this Act referring to the Governor in Council shall be construed as referring only to the Governor acting with the advice of his Executive Council, and not to action taken by subordinate officials.

The Police, Militia and other Forces

57. The control of the Police and of the Provincial Militia, if any, shall be vested in the Governor, who shall also, in subordination to the Viceroy, have control over the Naval and Military Forces of the Crown stationed within his Province.

Clemency of the Crown

58. The Governor shall have power to pardon criminals and to exercise otherwise the clemency of the Crown.

THE LEGISLATIVE ASSEMBLY

Legislative Power

59. The Legislative Power of the Province is vested in the King-Emperor and the House of Representatives, hereinafter called the Legislative Assembly.

*Sessions of the Legislative Assembly,
Prorogation and Dissolution*

60. The Governor shall appoint such times for the meeting of the Legislative Assembly as he thinks fit, and may also from time to time by Proclamation or otherwise prorogue or dissolve the Assembly.

Duration of Legislative Assembly

61. Every Legislative Assembly shall continue for no longer than five years from its first meeting, but it may be dissolved before the expiration of its term by the Governor.

General Elections

62. The Governor in Council shall issue writs for the general election of Members of the Legislative Assembly within 30 days of the expiry of its five year's term, the writs being returnable at the end of another 30 days. In case of an earlier dissolution by the Governor, he shall issue the writs within 15 days thereof and they shall be returnable at the end of another 15 days. After a premature dissolution, the Governor may not again dissolve the Assembly thereafter

elected until the term of the dissolved Parliament shall have expired.

Opening of the Legislative Assembly

63. The Governor shall, notwithstanding Clause 60, summon the Legislative Assembly to meet not later than 30 days after the day appointed for the return of the writs. He shall open the new Legislative Assembly at the end of the fortnight's adjournment provided for in Clause 67, and shall also thereafter summon the Legislative Assembly to meet at least once in every year, and shall at its first meeting each year open the Assembly, and lay before it the general programme of business for the session as agreed upon between himself and the Executive Council.

Election of Speaker

64. Every Legislative Assembly shall at its first session, before proceeding to the despatch of any other business, choose a Member not an Executive Councillor to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a Member to be Speaker.

(i) The Speaker shall cease to hold his office if he ceases to be a Member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor.

Absence of Speaker

65. Before or during any absence of the Speaker, the Assembly may choose a Member to perform his duties in his absence.

Oath of Allegiance

66. Every Member of the Legislative Assembly, before taking his seat, shall take the Oath or Affirmation of Allegiance in the form set forth in the schedule of this Constitution.

Elected Members of Executive Council

67. Every Legislative Assembly at its first Session, immediately after the election of the Speaker, shall, as provided in Clause 54, proceed to elect four members of the Executive Council, who must not include the Speaker, and shall then adjourn for a fortnight. The Vice-President of the Executive Council nominated under Clause 54 shall be the Leader of the House. It shall proceed to the despatch of business immediately after the Assembly has been opened by the Governor.

First Session

68. The Legislative Assemblies shall be summoned to meet not later than six months after the establishment of the Commonwealth.

Yearly Session

69. Each Legislative Assembly shall hold a session once at least in every year, so that twelve months shall not intervene between the last sitting of the Assembly in one session and its first sitting in the next session.

Provisional Electorates

70. For the first Legislative Assembly in any Province, each District shall elect three members under sub-section (i); the registered graduates of the University of the Province—if it possess a University—shall elect two members; Chambers of Commerce shall each elect two; Trades Associations each two; Landed Proprietors paying a revenue tax of not less than Rs. 250 six; Representatives of considerable Minorities, each in proportion to its number as compared with the population of the Province and the number of its representatives. The Governor in Council shall delimit the electorates and make regulations for carrying out the elections for the first Legislative Assembly; but in the first session thereof, each Assembly shall pass an Electoral Bill specially adapted to the conditions of its

Province. If the Governor shall refuse the King-Emperor's Assent, the Assembly shall pass it again in the following session, when the Governor shall signify the King-Emperor's Assent.

(i) The qualification of voters for District Members shall be the same as of voters for Taluq Boards in the country and for Municipalities in towns possessing them.

Qualification of Members

71. A Member of the Legislative Assembly must be of the full age of 21 years, and must be a citizen of the Empire, ordinarily resident in India for not less than seven years.

Members of Parliament Ineligible to Assemblies

72. A Member of Parliament is incapable of being chosen or of sitting as a Member of a Legislative Assembly.

Disqualifications

73. The following are ineligible to a Legislative Assembly: Any person who

- (a) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign Power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign Power; or
- (b) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a Province by imprisonment for one year or longer; or
- (c) Is an undischarged bankrupt or insolvent; or
- (d) Holds any office of profit under the Crown; or
- (e) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth or the Province otherwise than as a member and in common with the other members of an incorporated company.

But clause (d) does not apply to the office of any of the Executive Councillors for the Province, or to the receipt of pay, or half pay, by any person as an Officer or Member of the King-Emperor's Navy or Army, or to the receipt of pay as an Officer or Member of the Naval or Military forces of the Crown, Commonwealth or Province by any person whose services are not wholly employed by one of these.

Vacancy on Happening of Disqualification

74. If a Member of Parliament

- (a) Becomes subject to any of the disabilities mentioned in the last preceding section; or
- (b) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors; or
- (c) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or the Province, or for services rendered in the Parliament or the Legislative Assembly to any person or Province or the Commonwealth:

his place shall thereupon become vacant.

Penalty for Sitting when Disqualified

75. Until a Legislative Assembly otherwise provides, any person declared by this Constitution to be incapable of sitting as a Member of a Legislative Assembly shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person ordinarily resident in the Province, who sues for it in any Court of competent jurisdiction.

Disputed Elections

76. Any question respecting the qualification of a Member of a Legislative Assembly, or respecting a vacancy in a Legislative Assembly, or any question of a disputed election to a Legislative Assembly, shall, within the limits of this

Constitution, be determined by the Legislative Assembly concerned.

Resignation of Member

77. A Member may by writing addressed to the Speaker, or to the Governor if there is no Speaker, or if the Speaker is absent from the Province, resign his place, which thereupon shall become vacant.

Vacancy by Absence

78. The place of a Member shall become vacant if for two consecutive months of any session of the Legislative Assembly he, without the permission of the House, fails to attend the House.

Quorum -

79. Until the Legislative Assembly otherwise provides, the presence of at least one-third of the whole number of its Members shall be necessary to constitute a meeting for the exercise of its powers.

Voting in House of Representatives

80. Questions arising in the Legislative Assembly shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

Legislation

81. The Legislative Assembly alone shall have the power of making laws within its Province within the limits of the powers assigned to it by this Act.

Revenue

82. All revenue raised in the Province and all expenditure incurred for the Provincial Government shall be under the sole control of the Provincial Legislative Assembly, save such part of the revenue as shall be assigned to the Parliament, and such fixed charges and grants as may be determined upon by the Parliament.

Assent, Veto and Reservation

83. Where a Bill passed by the Legislative Assembly is presented to the Governor for the King-Emperor's Assent, he shall declare, according to his discretion, but subject to this Act, that he assents thereto in the Emperor's name, or that he withholds the Emperor's assent, or that he reserves the Bill for the Emperor's pleasure. He may return the Bill to the Legislative Assembly suggesting amendments, and the House may deal with the suggestions.

Withholding Assent

84. The Governor may, by withholding the King-Emperor's assent from any Bill, suspend its coming into force for a year, except the Budget (Appropriation) Bill. But if the same Bill be again passed in the following year it can only be vetoed by the King-Emperor.

Royal Veto

85. The King-Emperor may disallow any law within one year from the Governor's assent, and such disallowance on being made known by the Governor by speech or message to the Legislative Assembly or by Proclamation, shall annul the law from the day when the disallowance is so made known.

Reservation

86. A proposed law reserved for the King-Emperor's pleasure shall not have any force unless and until within two years from the day on which it was presented by the Governor for the King-Emperor's assent, the Governor makes known by speech or message to the Legislative Assembly or by Proclamation that it has received the Emperor's assent.

MISCELLANEOUS

Education

87. It shall be the duty of the Parliament of the Commonwealth to make adequate provision for the expenditure on

Primary Education, as provided in Act I of 1915. The Provincial Assemblies shall have the right to make laws in relation to Education within their respective Provinces, provided that such laws shall not be repugnant to any Act of Parliament affecting Education.

Provincial Autonomy

88. In each Province the Legislative Assembly shall have exclusive power to make laws in relation to the following matters ; that is to say :

(i) Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes ;

(ii) The borrowing of money on the sole credit of the Province ;

(iii) The establishment and tenure of Provincial Offices, and the appointment and payment of Provincial offices ;

(iv) The management and sale of the Public Lands belonging to the Province, and of the timber and wood thereon ;

(v) The establishment, maintenance and management of public and reformatory prisons in and for the Province ;

(vi) The establishment, maintenance, and management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province other than Military and Marine Hospitals ;

(vii) Municipal Institutions in the Province ;

(viii) Shop, Saloon, Tavern, Auctioneer, and other Licences, in order to the raising of a Revenue for Provincial Local, or Municipal Purposes ;

(ix) Local works and undertakings other than

(a) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of the Commonwealth to be for the general advantage of the Commonwealth, or for the advantage of two or more of the Provinces ;

(x) The Incorporation of Companies with Provincial Objects ;

(xi) The Solemnisation of Marriages in the Province ;

(xii) The Administration of Justice in the Province, including the constitution, maintenance and organisation of Provincial Courts, both of Civil and of Criminal Jurisdiction, provided that nothing be done contrary or repugnant to any Act of Parliament constituting Courts of Judicature ;

(xiii) The imposition of punishment by fine penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this Section ;

(xiv) Generally all matters of a merely local or private nature in the Province.

Residual Powers

89. All powers of legislation on matters not mentioned herein reside in the Parliament of the Commonwealth, unless specifically relinquished by it hereafter to the Legislative Assemblies. Should dispute arise on any matter, the question shall be referred to a Conference of representative members elected by the Parliament and by each Legislative Assembly.

Territories

90. All territories outside the original Provinces shall be under the Jurisdiction of the Parliament of the Commonwealth, which shall from time to time pass measures suitable to each case, and the Viceroy in Council shall appoint all necessary officers, until such Territories are ready to be constituted as Provinces.

(i) The Parliament of the Commonwealth may, on the petition of the original Province or Provinces concerned, presented through their Legislative Assembly or Assemblies, subdivide such Province or delimit anew their respective boundaries.

SCHEDULE

Oath of Allegiance

I, A. B., do swear that I will be faithful and bear true allegiance to His Majesty the King-Emperor George V, and His heirs and successors according to law. So help me God!

Affirmation

I, A. B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to His Majesty the King-Emperor George V, and His heirs and successors according to law.

Note.—The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.

Mrs. Annie Besant, on moving "That this Bill be now read a second time," said:

MR. SPEAKER, SIR:

I rise to move that the Commonwealth of India Bill be now read a second time. The first reading took place some months ago, and the second reading has been delayed until after this House had passed a Bill for Free and Compulsory Education, destined to make possible a wider franchise than we yet dare to propose, and had also passed a Bill for the establishment of Village Panchâyats, intended to revive that ancient habit of local Self-Government which is the true education of the citizen.

We should have preferred, in ordinary times, to have first built up the fabric of Local Self-Government on the foundation of the Village Panchâyats, accompanying this with Municipalities resting on Ward Panchâyats in the towns. But the approaching Reconstruction of the Empire renders it necessary that we should fashion the demand for Home Rule into a practicable shape, more concrete than, though in principle identical with, the outlines prepared by

the Congress Committees for submission to the National Congress.

When the Bill has passed through all its stages, we propose to submit the following Resolution to the House :

“That, in the opinion of the Madras Parliament, a Bill to establish Self-Government in India, drawn on the lines of the Commonwealth of India Bill, or on similar lines, should be introduced into the Parliament of the United Kingdom and passed into law.”

It may seem audacious to make such an attempt, but we believe that it will be useful. Not that we expect to succeed immediately, but that we hope to provoke a discussion on definite lines on a proposed Statute, instead of on general principles. Our Bill is really a contribution to such discussion.

There has been much talk of Self-Government, of Home Rule, in India; large principles have been laid down, and the All-India Committee of the Congress and also the All-India Muslim League are now engaged in considering the broad outline of a scheme; but so far as I am aware, this is the first time when any discussion of a definite measure of Self-Government in a detailed Bill has taken place in this country. We throw the whole question into the form of a Parliamentary enactment, and thus face the many difficulties of a Statute, that can be entirely avoided on the platform and in newspaper discussion.

PREAMBLE OF THE BILL

In the Preamble of the Bill, it is stated that it is “necessary for the good of the People of India and for the stability of the Empire that the Provinces and Territories now forming British India should be constituted as a Federal Commonwealth and be granted Self-Government under the Imperial Crown of the United Kingdom of Great Britain and Ireland and of the Overseas Dominions”. In putting that as the Preamble of the Bill, I must necessarily point out why it is that we consider that Self-Government is necessary for the

good of the People of India and the stability of the Empire. We also state that it is expedient to continue and enlarge the powers of legislation and administration enjoyed by the existing Provinces. As far as possible, the existing machinery should be utilised, although much extended, so that in making the enormous change which is implied, in passing from Other Rule to Home Rule, there may be as little shock as possible to the business and tranquillity of the country.

The larger part of the administration, although not in the higher posts, is already in Indian hands. It is not a case of creating Executive and Legislative powers from the bottom upwards, or from the top downwards. Although it is true, when you come to the Indian Civil Service, that in April, 1913, among the 1319 Civilians on the cadre, there were only 46 Indians, still the business of administration is carried on in the country more by Indian than by foreign agency.

This means that the change will in no way dislocate the administrative business of the country, for it will remain in the same hands. The higher offices will all, it is true, be open to Indians, and it will no longer be a disadvantage to have been born in the country, but this will cause no shock, and no loss of efficiency. The main change in the working of the whole system will be the exclusion of Civilians from Legislative duties, the reduction of Bureaucrats to Civil Servants; but this, by relieving them from inappropriate work, should conduce to the more efficient discharge of their proper functions as officials. The number of officials, moreover, affected by the change, is small. When an English Civil Servant retires, he will be replaced by the best I. C. S. man available, be he Indian or English, and though the personnel of the higher administration will gradually change, and the proportion of Indian and English, as existing in 1913, will very likely be reversed, the reversal will not be sudden, but will be the result of gradual change, largely brought about by the

transference of the place of Indian Civil Service examinations to India. There will be no exclusion of the English.

In order to show that, as said in the Preamble, "it is" necessary for "the good of the People and the stability of the Empire" that Home Rule should be established in India, I must touch on certain points in which India at present, as compared with the other Nations of the world, is at an enormous disadvantage, points which at the present time do not seem likely to be very much improved under the actual system of Government. This system has been existing for 58 years, and for nearly another century English rule, through the East India Company, had been establishing itself. Judging by the rate of progress since the Crown assumed direct rule, centuries must yet elapse ere India can radically improve in some essentials, while in others she is retrograding. The first of these points is Education; the second, the Rising Taxation of the country; the third, the terrible Poverty, and the increasing Poverty, of the masses of the population, as shown by certain definite signs which are recognised as signs of poverty, and cannot be denied by any one who has gone into the statistical questions; and lastly, there is the very heavy cost of the Government as we have it at present, and the immense saving and economy which would accrue if the present very highly paid foreign rulers were replaced by men of the country. I will deal with these seriatim.

EDUCATION

Looking at other countries that are Self-Governing, we find that the education of the masses of the people is one of the primary duties of the State. Taking England as an example, because we have English rulers here, we find that, with a population of some 36 millions only, there are 6 millions of children in Elementary Schools. If we enquire into the cost of that to the parents, we find that the cost is *nil*. Education is free and also compulsory, so that you have practically the whole boyhood and girlhood of the Nation

receiving Elementary Education without any expense to themselves. When you compare that with the condition of things here, we find that out of a population of 312 millions, only 2'6 of the whole population, or 26'8 of the school-going population, are in schools. The English, who are a wealthy people, whose wealth is calculated at 660 shillings per head of the whole population, are getting education free; while we find that in India, where the average income per head of the population runs to 27 shillings, education is not free, and therefore it cannot be compulsory. That makes it necessary that Indians should take their education into their own hands.

Suppose it is said that it is not fair to compare India with a Western Nation which is in the front of civilisation, and suppose we go to Japan, which is an Eastern country, one whose people cannot be said to be in any sense more able than Indians, we find that five millions are there in Primary Schools out of a total population of forty millions. The population is a little larger than that of England and the children that are in school are fewer in number; but comparing five millions of pupils out of forty with our miserable number, 2'6 out of 312 millions, we can see that in an Eastern Nation, Self-Governing, it is quite possible to have popular education which runs even the great British Nation very closely. When we remember also that this has been done within forty years, we can estimate the way in which people governing themselves educate their children. And this is natural. The wealth of a country depends upon the education of the children, and where the Nation governs itself, we may be sure that Government will take care that the children are educated, otherwise prosperity is impossible. Education is an investment rather than an expenditure, and it returns good interest in the productivity of labor.

Suppose it is still argued that we ought not to take Great Britain, or even an Eastern Nation like Japan; is it fair to

take Indians themselves under different conditions, *i. e.* under Indian rule? Take the State then of Baroda, and you find there that 100 per cent of the boys who are fit to go to school are in school, education there also being free and very largely compulsory. The Gaekwar is spending 6½d. per head on the school-going children, while in British India only a penny per head is spent.

It is on these dry figures, taken from Educational Reports issued by the Government, that I base my first argument for the necessity of Home Rule. Suppose we realise, when we are dealing with the wealth of the people, that it amounts in England to 660 shillings per head, out of which they pay 50 shillings in taxes, so that they have plenty left for the education of their children, while here we have 27 shillings per head out of which 3s. 7½d. are paid for taxation, apart from Municipal taxation, I think that the argument that we need free education for the benefit of the country and also for the stability of the Empire stands on a very strong footing.

In giving these averages it must not be forgotten that all incomes are added together, and it by no means follows that the figure reached applies to the whole mass of the people. We must not forget that many of these people are not so wealthy as to have 27 shillings a year. On the contrary, we find from more detailed Reports of Government, that in some cases families have to exist on 13s. 4d. per head and in some cases on 10s. 8d. per head per year. When we come to speak of the poverty of the people, we shall realise that with such figures as these before us, Education, if it is to be effective at all, must be Free. And that it will never be without Home Rule.

With regard to the question of

RISING TAXATION

almost the easiest way of taking a bird's-eye view of that is by turning to the exceedingly useful *Year Book* which is published by the *Times of India*, in which the

figures are taken from the ordinary Government returns ranging over many years. I have tested a number of them and find them to be thoroughly reliable. Taxation is definitely rising here year by year, but one way in which the rise is partly masked is that in some years much more has been raised than was necessary, so that a large surplus is left over, while for the last two years, instead of having a large surplus in addition to the estimated revenue, there is a large deficit, so that there is an apparent drop in the taxation in 1914-15 as compared with 1913-14 that is more than made up by the deficit which meets us instead of a surplus. Revenue in 1913-14 was £84,000,000 and the expenditure 83 and odd millions, leaving a surplus of £587,000. In the next two years (1914-15 and 1915-16), we find £80,000,000 as revenue but £85 and £84,000,000 put down as expenditure, so that in both years we had a deficit that has to be met. You have £80,000,000 revenue and £83,000,000 expenditure in the present year. I have now mentioned only three years, but in order to gain a picture of the rise of taxation, it is necessary to run over a much longer time, and it is possible to take it in decades; or we may take only a few years back and see how steady is the rise. In 1904-5, there is revenue £71,100,000, expenditure £67,700,000. In 1905-6, £70,800,000 and £68,700,000. In 1906-7, £73,100,000 and £71,500,000. In 1907-8, there is a slight fall in both revenue and expenditure, £71,900,000 and £70,700,000. In 1908-9, revenue falls to £69,800,000, but expenditure leaps up to £73,500,000, and thence forward expenditure rises to 1914-15. In 1909-10 revenue is £74,600,000, expenditure £74,000,000. In 1910-11, revenue £80,300,000, expenditure £76,900,000. In 1911-12, £82,835,750 and £78,895,416. In 1912-13, £86,985,300 and £83,623,400. In 1913-14, £84,262,000 and £83,675,000. In 1914-15, £80,156,000 and £85,115,000, leaving a deficit of nearly £5,000,000. In 1915-16, £80,347,000 and £84,180,000, leaving a deficit of nearly £4,000,000. Going

further back we find that there has been a steady rise going on during the whole time during which India has been under the Government of the Crown—since 1858. Taking one single illustration of this, we might look at the

ENORMOUS RISE OF DEBT

and there we have a very useful table which gives the debt of the country from 1820 onwards; but I am not concerned with all these early years. It is enough for me to point out that, if we take the debt in 1850, we find that the sterling debt in England was £3,920,592, while at the present time it has risen to £182,500,000. Similarly for the debt in India. But when we remember that the whole debt in England has interest to be paid on it, and when we also remember that the whole of that interest for the English debt goes out of India, and is dealt with in the "Home Charges"—those which are the famous "drain"—we find that this pressure of interest taken out of the country is one of the forms of a very heavy burden in the taxation of India. The other important point about taxation is the

QUESTION OF LAND REVENUE

and that also is steadily rising, and rising in a way that is peculiarly lamentable, because it is that which is continually bringing us face to face with the ever-increasing burden of debt which is crushing the agricultural population. The amount of gross revenue from the land in 1915-16 was £22,049,600, out of a total revenue of £80,347,000. A serious point in India is that in the re-assessment of land, we constantly find that there is a close relationship between the rise of assessment and the increase of debt of the payers of the enhanced assessment. I shall take only one case from the Deccan, where the borrowings in a year amounted to £359,000, while the rise in assessment was £381,000, *i. e.*, almost the whole of that enhanced assessment was paid not out of the profits of the raiyats but out of the money borrowed from sowcars; and if any one takes the trouble, as I have done, to go

through a large number of statistics and compare the way in which the revenue is assessed here, in the United Provinces, and in other parts of India, they will find that, roughly speaking, the tax must be about 50 per cent of the produce. (In some cases Government takes less, and the land-owner more.) Mr. Gokhalé pointed out that the land-tax trenches on the subsistence of the peasantry. You will find that there is evidence not only of increasing indebtedness, but if you have the patience to go through a large number of papers relating to the Provinces of Oudh and Agra, where the Collectors of the various Districts went over the Districts, collecting budgets from the raiyats, you will find that they were compelled to put down over and over again that the cost of the food of the raiyat and his family exhausted the amount of profit from his land and left him in debt. In the United Provinces, peasants with $5\frac{1}{2}$ acres of land had per head of family Rs. 9-2-10 a year for everything. One with 7 acres spent Rs. 40 on rent, Rs. 50 on food, Rs. 7 on clothing, Rs. 2 on furniture, Rs. 2 on marriage and funeral expenditure—the “recklessness in expenditure on festivals” spoken of by the then Lieutenant-Governor of the Provinces, now Lord Macdonnell—making a deficit of Rs. 22 a year. These figures come from Government returns, and the papers were not at first published. They were sent to England, but Mr. Bradlaugh, who was then alive, moved that they should be laid on the table of the House, and out of them Mr. William Digby collected a large number of peasant budgets and printed them in his famous book. There they are in very large numbers, showing the miserable condition of the agricultural population.

When we remember that the agricultural population forms, according to the 1911 census statistics, 218·3 millions out of a total population of 304 millions, Hon. Gentlemen will see how enormous is the mass of the poverty which has here to be dealt with; and it is especially because of this that

the system of Government in this country should be changed. I need hardly recall the statement of Sir Charles Elliot, that half the agricultural population never know what it is to have a full meal. As the agricultural population numbers 218 millions, that means that 109 millions of our people never know what it is to have their hunger satisfied. There is the reason, above all others, why I say that it is necessary for the stability of the Empire that Self-Government should be introduced. That condition of the masses is not found in any civilised country save this, nor in any civilised country save this do you find one Nation governed by another. The two things are there side by side, and I contend that the connection is causal, and not only coincidental. Increasing poverty is shown by the decreasing income, and details of that have been put in a very striking way by Mr. William Digby. In 1850, 2d. per head was the income of the raiyat. The official figures 32 years after put the income at 1½d., and in 1900 the figures show that the average is further reduced to 3 farthings. You have thus to deal with decreasing income and increasing debt. If that condition continues, it means National bankruptcy. Unless some change is made which shall render the country more prosperous, it will be impossible to avoid a future revolution in this land.

There is another thing which shows underfeeding and poverty, and that is the

RISING DEATH-RATE

Mr. Gokhalé pointed out that in 1882-84 the death-rate was 24 per thousand. In 1892-94, the rate rose to 30 per thousand, and in 1902-4, the rate had risen to 34 per thousand. I have not the figures for 1912-14. There is thus a steady rise with each successive decade in the death rate of the people, whereas with improving sanitation and with the better conditions which, we are told, come with the rule under which we are living, surely the death-rate ought to go down and not be increasing. Another striking way of looking at the question

of underfeeding, malnutrition and death is that of the average life-period in other countries. In England, owing to better sanitation, the average life-period has risen and now stands at 40 years. In New Zealand, where food is abundant and where practically there are no poor and no underfed people, the average life-period is 60 years. In India, the average life-period is 23 $\frac{1}{2}$ years. It is hardly necessary to labor the question any further; these figures are sufficient to show the basis of our contention.

It is with this miserable poverty of the country that you have to face the question of the exceedingly

HEAVY COST OF GOVERNMENT

and the large amount of money that goes out of the country in consequence of that Government being foreign, and the excess of imports over exports which goes to swell the drain. The Secretary of State draws various sums which vary from 16, to 18, to 25 millions a year. The whole of this is paid in England so far as the recipients are concerned, but paid in India so far as the payers are concerned. Looking at the cost of Government, I will not lay so much stress on the cost of the higher officers; they are comparatively few, and that burden is easily changed. The difficulty arises when we deal with the Services of the country, and there we can see in a most striking manner the difference in the rates of pay between the foreign element and the Indian element. Take, for instance,

THE INDIAN EDUCATIONAL SERVICE

into which an Indian may possibly go, after he has taken a degree in England and spent a very large sum of money in taking that degree. There are very, very few of them. The point on which I wish to lay special stress is that a young Englishman appointed to the Indian Educational Service starts at Rs. 500 a month and goes up by increments to Rs. 1,000, and to him are open a number of highly paid educational appointments which rise to Rs. 2,500. From all

these, the Indian is normally shut out, and when we ask what are the rates of pay given in the Indian Provincial Service, there we have Head Masters—except the few who are highly paid and are reserved for the higher Educational Service—who begin at Rs. 200 a month instead of Rs. 500 and rise to Rs. 700 instead of Rs. 1,000; these differences are aggravated by differences of travelling and other allowances which make the salaries exceedingly illusory, because they are largely increased by various sums paid outside the salary which appears on the estimates. When we come to the Subordinate Indian Service where such large numbers of Indians find their living, they begin at Rs. 40 and go up to Rs. 440. Even supposing that no pay so small as Rs. 40 was ever paid to an educated man, there is a large margin between that and Rs. 500 which is the lowest pay which an Englishman earns here. A few years ago this disproportion did not exist to the same extent. I submit that on this Service, an enormous saving might be made.

“HOME CHARGES”

There is an indefinitely large number of private remittances. Government officers have estimated that these practically double the charges drawn as “Home Charges” by the Secretary of State. Among those private remittances you have the difference between exports and imports. There again you have a loss to the country. The imports which come over here are not balanced by the exports, and you find that the balance, which is in favor of India, never reaches India. It is taken up in England to meet some of the charges there, and these have been put by different people from £27,000,000 to £30,000,000 and even £35,000,000 a year. We find that in the admitted charges—admitted on every side—there is reason enough for diminishing the cost of Government, and for putting the Government of the country into Indian hands. But from my own stand-point, it is not so much on this that we should urge our desire to change our form of Government.

It is more on the fact that only by Home Rule can Indians have a

CONTROL OVER FINANCE

The whole prosperity of manufacturers here, the whole question concerning trade and commerce, the whole question concerning concessions which are made to firms—mostly English firms—are now practically controlled by Englishmen, where they ought to be controlled by Indians. A very well-known instance is that of the cotton excise duty, in order to put German and other piece-goods on a level with Indian manufactures. A Manchester journal the other day said the duty put the Indian manufactures on a level with the Lancashire manufactures—but this is putting it upside down. India is the only country where you have Protection used in order to protect a foreign manufacturer against the home manufacturer, and it is the most peculiar form of Protection which one has ever come across. About £ 699,000 are paid for glass bangles from Europe which might just as well be made in India for the benefit of glass manufacturers here. It is necessary to have Self-Government for India in order that Indian manufacturers may be helped as other countries help their manufacturers in early stages, so that there may be some possibility of fostering manufacturers here as the only possible way of curing the poverty of the country. There is no country in the world that is prosperous, where the agriculturists form a vast majority of the population. Exactly what is happening here happened in my own country—Ireland—where you had a population of ten millions thrown on the land, and where now only four millions remain, the surplus having emigrated to find bread in foreign lands. The manufactures in Ireland were destroyed by the English Parliament, and the result was that the people were thrown upon the land, and land alone cannot support a large population in comfort, however fertile that land may be.

It is more on the ground of control of finance than on the well-known ground of drain, that I submit that it is necessary for the welfare of the people that Self-Government shall be established in this land. It was said, and very rightly said, by a well-known Bombay merchant, that Indian Commerce could never go on upon healthy lines unless Home Rule was established in India. I believe that is literally true, and that is perhaps, apart from Education, the strongest reason why Self-Government should be established in this country.

I submit that I have shown, within the exiguous time allowed to me by our Rules, that on the grounds (1) of Education, (2) of Rising Taxation, (3) of Growing Poverty and Debt with the accompaniments of Rising Death-rate and Short Life-period, (4) of the Heavy Cost of Government and the Absence of Fiscal Control by Indians, the Home Rule is necessary for the good of the people, nay, for the very continuance of the National Life. What of the

STABILITY OF THE EMPIRE ?

I submit that it is clear that for the stability of the Empire, there should be the possibility of Self-Defence by India. She must have an Army and a Navy of her own. She is the vulnerable point of the Empire, and she is defenceless against invasion. With the growth of Japan, with the threatening of the Pacific, with the absolute defencelessness of Australia, with India disarmed, helpless as it is with an enormous seaboard, it is necessary for the stability of the British Empire which depends upon India—for without India there will be practically no Empire—it is necessary that India should be put into a position where she shall be able to defend herself, and where she shall have an Army officered by Indians. The demand for arms has been going forth from the National Congress for the last thirty years, but has been absolutely ignored. Having thus put the necessity for Self-Government—I might very much strengthen the case with

further arguments—I will proceed with the main principles of this Bill, for this being a debate on the second reading, we shall confine ourselves to the main principles, and then, when we come to the Committee stage, we shall take up the large mass of details.

THE PRINCIPLES OF THE BILL

The Executive

Putting it broadly, the first great principle is, as expressed in Chap. I, section 1: "The Executive Power of the Commonwealth is vested in the King-Emperor, and is exercisable by the Viceroy as the King-Emperor's representative, and extends to the execution and maintenance of this Constitution and of the laws of the Commonwealth." Certain definite powers are given to the Viceroy and his Council. The very first section on the Executive lays down the principle on which all Acts of this kind were passed in Canada, Australia and South Africa: they all began the chapter on Executive Government in the same way. The Executive of the Commonwealth is vested in the King-Emperor. The fundamental principle is that the King is represented by a Viceroy who is the Chief Executive Officer of the Commonwealth—the Commonwealth being India as a whole. There will be Governors of Provinces who hold the Executive powers of the King over the smaller areas over which they preside. The powers and duties of the Viceroy are laid down in the first chapter. The delegated Executive Power is vested in the Viceroy and his Executive Council, of which latter he is the President. In different countries Executive Councils are made in different ways. In some, it is wholly dependent on the Parliament of the country, but in almost all of them, it is partly dependent on the Parliament and partly dependent on appointment by the Viceroy himself, that being what is left of the prerogative of the Crown, the Crown having the right to choose its own Councillors. We have in this Bill proposed that as far as the Viceroys'

Executive Council is concerned he shall be allowed to appoint half of that Council by virtue of the Royal prerogative; that the Council shall consist of ten members, and that the second half shall be elected by the Parliament of the Commonwealth. That is the only exception throughout the Bill—similar ones occur in the Provinces—in which the pure principle of election is interfered with in regard to the Legislatures. Except the Executive Councillors, five in the National and two in each of the Provincial Legislatures, the Chambers are wholly elective. In the Viceroy's Council, he may appoint half; in the Councils of the Governors of Provinces where the number is six, the Governor may appoint only one-third, the remaining two-thirds will be elected by the Legislature. Those who are elected by Parliament are directly responsible to the Parliament, whereas those appointed by the Viceroy are only secondarily responsible. The Governor-General, as he is usually called in the Dominions, exercises in them an amount of power which may seem somewhat surprising, when we speak of them as Self-Governing Dominions, but it is an English habit in all these matters to leave a certain amount of room for the free play of institutions, and not to tie down too rigidly either the Governor or his Ministers. The English Constitution itself has grown, it was never made, and in these Constitutions, although they are created by Statute, there is some amount of flexibility, some dependence on good sense and fairness on both sides, and a taking for granted that people will behave reasonably; liberty is left to the Governor—who would abuse it at his peril—and he is allowed to dissolve Parliament, for instance, but under restrictions. If he once dissolves it, the new Parliament cannot be dissolved until the term of the original Parliament has run out. In that way fair control is kept.

THE PARLIAMENT

This power and this restriction are given in Chap. II, §§ 13, 14, 15, with an obligation imposed by §§15, 16 to call a

new Parliament within a certain period. The first business Parliament, when it meets, is to elect its Speaker, and the Members take the Oath of Allegiance (§§17-19), and then they elect their half of the Executive Council. From among these the Viceroy selects the Vice-President of the Executive Council, who becomes thereby the Leader of the House (§20). The Viceroy will naturally choose the man who commands a majority in the House, *i.e.*, its natural Leader. If he did not, his Council could not last, inasmuch as half of it can be thrown out by a vote of censure, and this forces either a wiser choice or a dissolution of Parliament. An attempt to force his will on the Parliament would lead to the refusal of supplies. Thus the responsibility of the Executive Council to Parliament is secured.

You, Sir, may have remarked that Lord Hardinge remained away occasionally from the Executive Council, in order that the Vice-President might take his place, and he has pointed out that that is one way of gradually transferring power into Indian hands, and that the Viceroy and the Governors should more and more withdraw as heads of Executive Councils, and so allow the Leader of Parliament, or of the Legislative Assembly, to act as Vice-President over the Executive Council. It is in such ways that liberty spreads in western countries; and they have found, on the whole, that to leave this opening for increased liberty is a wise way of progress. It enables power gradually to come into the people's hands without too much friction, threatening stability. We have not left room in this Bill for as much friction as there is in the Self-Governing Dominions. For, in the Dominions, the people are of one race and are accustomed to give and take. There is less danger of tyranny because of the English tradition. Here the independence of the Parliament is new; the Governor will probably for some time to come be a Briton—as he is, indeed, in the Dominions—and it may be that he will choose, at least at first, five Englishmen as

Councillors, unless he be a man of sound judgment and liberal views. Under these conditions, unwise Governors might try to dominate the new representative Legislatures, might even resent their independence. For this reason we have diminished the opportunities for friction left in the Constitutions of the Dominions.

The Legislatures are wholly elective, both the Commonwealth Parliament and the Provincial Legislative Assemblies, with the exception of five in the one and two in the other. As the Parliament is to consist of 200 members, the presence of five who are appointed will not be a very serious drag, even if they act against the elected members. The exception is not logical, but the difficulty arises from the fact that the Crown has a right by prerogative to appoint Councillors, and to shut them entirely out of Parliament as in England, unless elected, would be exceedingly difficult to begin with. This difficulty has been met in Australia, where the Governor-General appoints his own Executive Council, by making him appoint Heads of the Departments of the State, established by him; these hold offices during his pleasure and are "the King's Ministers of State". This power of the Governor-General is balanced by requiring such Ministers of State to seek election within three months.

We have left the matter as already stated, and it can be further considered later on.

The next important point is that the Viceroy and Governors do not preside over the Legislatures. The Viceroy has no right to enter Parliament except under § 16, on the opening of Parliament to lay before it the general programme of business. He opens Parliament, as the King does in England, but with that one exception, he has no right to step into Parliament so long as the Parliament is sitting (§4). The only thing he can do is to dissolve it. That is a right which vests in the Viceroy as in the King, but, as already said, if he dissolves Parliament, a new Parliament must be elected,

and must continue until the term of the original Parliament expires, so that the power of dissolution is very carefully guarded, and it is not possible for a Viceroy to go very far in the way of coercing Parliament.

The Governors of Provinces exercise similar powers under similar restrictions (Chapter IV, §§52—58).

SOME DETAILS

We come to certain necessary points which make the machine a running machine. The first Legislative Assembly of a Province meets six months after the Commonwealth is proclaimed (§68), while the first Parliament meets seven months thereafter (§21), the reason for the difference being that we have provided that for ten years after the establishment of the Commonwealth, the Members of Parliament shall be elected by the Legislative Assemblies and certain other bodies mentioned (§23). We have provided for that period of ten years in order that the change may be gradual and easy, and also that the Parliament and the Councils themselves may settle how in future the Parliament shall be elected.

The first action of the Parliament or Assemblies is to elect their Speaker (§17 and §64). As soon as the elections are over and representatives are returned, they proceed to elect the Speaker, and then the Members of the Executive Council, five in the one case and four in the other case (§20 and §67). They adjourn for a fortnight, for the Executive Council to arrange the business of the session, and then meet for business. That is roughly the outline which we have made as to the details. We have limited the choice of Speaker to non-officials, so that he may be an absolutely impartial person, presiding over the House. We have also followed other Constitutions in allowing the Legislatures to elect another Speaker when the Speaker is absent. The Dominions have been given that liberty. In the absence of the Speaker the House elects any one it pleases.

We have kept the original Provinces as they are now, and have defined "Original Provinces" as those which exist now as Provinces. The other parts of India may be administered by the Viceroy and Parliament until they are ready to have regular Governments, which consist of the representative of the Crown, an Executive Council and a Legislative Assembly in every case. As soon as any territory is ready, power is given to create a new Province. Power is also given to divide any Province and to delimit boundaries afresh.

With regard to the franchise of Parliament, we have made it as wide as we can, but not as wide as it ought to be, and will be hereafter. As said, we have arranged that for ten years Members of Parliament shall be elected by the Legislative Assemblies and certain other bodies which are mentioned. After that, there is to be a Convention of Delegates who, if they so desire, will make it more democratic than the proposed first two Parliaments (§23). Half of the 200 Members are elected by the Legislative Assemblies, 94 by the great interests of the Country — Land, Trading, Commercial, Financial, Industrial Associations, with the special representatives of Minorities, six by the registered graduates of the six Universities now chartered (§23, i). When more Universities are chartered they will have a similar liberty. There are four qualifications for voters for Members of Parliament. A man must be a Member of a Provincial Assembly, or a registered graduate of a University, or a registered member of a body representing one of the interests above named, or a registered member in an organised Minority (§23, ii). That practice already exists to some extent. There are some of us who believe that it is possible to find a better way of representing Minorities, but we have left that for the time being, and we feel that we ought to yield as far as possible to the wishes of considerable minorities in this country—Musalman brethren and Christi-

an brethren, and also Hindu brethren when they are in a minority. I hope this plan will disappear after a time, but it cannot do so at once. There are minorities everywhere; and all should be treated justly.

There are certain things which make a man ineligible as a Member of Parliament (§§25, 26). We make no distinction between British subjects, and we have followed the English practice by making any citizen of the Empire eligible. There is no color bar nor religion bar in eligibility. But §26 (*d*) and § 73 (*d*) follow England in excluding from the Legislatures the Civil Service of the Crown.

With regard to Provincial Assemblies the plan is the same, but the House there consists of a smaller number of members and the electoral basis there is the same as that of voters for Taluq Boards and for Municipalities, and that gives a very large and democratic basis. We have restricted the power of the Governor in Council to his own action therein, barring its exercise by subordinate officials. Every District in a Province elects three Members to the Legislative Assembly. We cannot fix the number of Members for Provincial Assemblies, as the Provinces vary in their Constitution.

We have inserted a section to create an Inter-Provincial Committee for the discussion of Provincial Questions which affect more Provinces than one (§ 49).

There are miscellaneous points at the end of the Bill which need our careful examination. There is a provision that Provincial Assemblies shall have power to make laws in relation to education within their respective Provinces, provided they do not clash with the provisions made by the Commonwealth Parliament (§ 87). Then follows a clause which says that Legislative Assemblies shall have certain exclusive powers, so as to secure Provincial Autonomy, and we have left residual powers in the Commonwealth Parliament (§§ 88, 89). We have made the necessary arrangements

for the Royal Assent, Veto and Reservation (§§35—39 and §§83—86).

I will conclude, Mr. Speaker, Sir, by thanking you for having allowed me to transcend the time limit, and the House for the patience with which it has listened to me.

The Bill having passed through all its stages, the following Resolution was proposed, seconded and carried on October 28th, 1916 :

That, in the opinion of the Madras Parliament, a Bill to establish Self-Government in India, drawn on the lines of the Commonwealth of India Bill, or on similar lines, should be introduced into the Parliament of the United Kingdom and passed into law.

SUPPLEMENTARY BILL
TO THE COMMONWEALTH OF INDIA ACT
THE INDIAN JUDICATURE

1. Executive and Judicial functions shall be wholly separate, and the appointment and control over the Subordinate Magistracy shall be wholly vested in the High Court, which shall have power to make such rules as may be necessary in this behalf.

2. The Judicial Committee of His Majesty's Privy Council shall, in addition to the powers and functions heretofore exercised by it, have jurisdiction to advise His Majesty on the following matters:

(a) All points which may be referred to the Judicial Committee by any of the High Courts stating a case to the said Committee for its opinion, including any questions of law or customs having the force of law arising in cases where the High Courts established in India have taken different views.

(b) The settlement of all questions arising out of the conflict of the laws of the various Legislatures in India.

3. The Judicial Committee is at liberty to hold any of its sittings in any place in India.

4. Nothing herein contained shall affect the powers and jurisdiction of the various High Courts in India established by His Majesty's Letters Patent or by legislation.

Mr. Ramaswami Aiyar, on moving "That this Bill be now read a second time," said:

MR. SPEAKER, SIR:

I rise to move that the Supplementary Bill to the Commonwealth of India Act, The Indian Judicature, be now read a second time.

The object of the Commonwealth of India Act is to make India autonomous in the Empire. So far as the Executive functions are concerned, the object is made clear by the provisions of that Act. In respect of legislative and financial matters, the Indian functionaries are to have their own way, subject to the final veto or authority of the Sovereign in legislative and other matters. The right of the Indian Legislatures as Indian authority must be supreme in their own House. The object of the Supplementary Bill is to carry the essential idea, underlying the Commonwealth of India Act into force, so far as the Judicature is concerned. The first section deals with the much vexed question of the Separation of Judicial and Executive functions, on which the Congress has concentrated so much of its efforts, and so fruitlessly, during the last thirty years. It is felt to be an ever-present evil that a man in charge of the peace of a District should also be the judge of the matters arising in the criminal administration of the District. As matters at present stand, the Magistrate of the District, who is incidentally the Collector of the revenues of the District, is mainly responsible for what is called the peace of the District. He is to see to it that crime is repressed as soon as possible, and that potential criminals are discovered and kept in their proper places. The essential mischief of the present system, which is acknowledged to be so by every sane administrator who has had to confront this problem, is that the question, whether a man has actually committed an offence or not, is not considered, but the question whether he might not be guilty of a crime in the future is also taken into consideration, so that the possibility of committing an offence in the future may be nipped in the bud. It is admitted that in essence the theory is vicious, of making the man

who is responsible for the peace of a District also the judge in the criminal trials which come up before him. One of the plausible arguments the Anglo-Indians urge against the separation of the Judicial from Executive functions is that the prestige of the Indian Administration demands the system; that unless a Magistrate has a widespread control over every one in the District, his revenue functions and general supervision in the District cannot be properly performed. The Indian is such a primitive animal that unless he is sure that the man at the head of the District has got the chance of putting him in gaol, he generally will not obey him. The other ground urged is that the reform would be a matter of considerable expense, and that the experiment ought not to be lightly undertaken. It is stated, and stated with some justice, that in the trial of criminal offences mandates might possibly be sent from higher quarters directing that a certain class of offences should be dealt with with greater severity than usual, and that absolute judicial impartiality and doctrines of law could not be applied, if they had Executive authorities scanning narrowly the progress of the trial, anxious to get a conviction, or some result which they had at heart. It is, therefore, laid down in the Bill that the High Court, the highest judicial administration in the Province, should have under its control the whole of the inferior judicial establishments. The evils of the present system have been dealt with at great length by several eminent men, such as Messrs. Romesh Chandra Dutt, Rash Behari Ghosh and the much lamented leader of the Congress, Bishan Narayan Dhar, and to those full statements I refer Hon. Members, the time allowed to the Mover being so brief.

At one time, it was thought that it would be necessary to have a kind of Supreme Court of Appeal in India, and Sir Subramaniam, with the facility and clear-sightedness characteristic of him, has contributed to the *Commonweal* a series of

articles, urging the necessity of establishing a Supreme Court of Appeal to be located in India itself. There are a number of arguments which could be adduced in support of that view. On the other hand, we have to consider that we are working towards a kind of Imperial Federation, and for the establishment of India as an autonomous unit in a great scheme of an Imperial Federated Commonwealth. If that be so, it would be essential to secure a logical continuity, so that the ultimate judicial tribunal should be one which had cognisance of matters not only arising in India, but in all the Dependencies and Colonies of the Empire. It is with reference to that aspect, and also in view of the fact that in the seat of the Empire they have collected together a mass of judicial talent of the most conspicuous character, that it is necessary to keep that Constitution of the Judicial Committee undisturbed. The change that is sought to be introduced in the work of the Judicial Committee under the Bill arises by reason of two or three difficulties, which stand in the way of an Indian suitor in the prosecution of his appeals to the Judicial Committee. The cost of a litigant in an appeal to that Committee is prohibitive. One of the many reasons why the help of the Judicial Committee is invoked is that, because the various Indian Courts have co-ordinate powers in regard to their decisions, there are conflicts of decisions, which it is necessary for the Judicial Committee to settle. It is one of the maxims of the law that a Court of Law shall not take action with reference to a hypothetical state of affairs; but Judges often travel out of their specific province to deliver *obiter dicta*, and they are sometimes taken to task for so doing. But the practice has nevertheless not been abdicating in this country or elsewhere. The main function of a Court is said to be the determination of a particular case before it. It is a wholesome rule, because it prevents the Judges from launching out into extraneous enquiries; but in cases where there is a conflict of authorities in the various Courts on a certain

matter, it is thought useful that a case should be stated for the Judicial Committee, to settle vexed questions owing to difference of opinion, so that the litigant need not be put to the expense and trouble of travelling over to England, or sending his representative there, and the great cost of printing the records may also be prevented. The third Clause of the Bill arises out of the conflict of laws, which arise in relation to the various systems in the country. The difficulty of the litigants in carrying their suits to the Judicial Committee is a great one on account of expense. It is, therefore, suggested that it ought to be possible for the Judicial Committee to hold some of its sittings in India. At present, about two months in the year are spent by the Judicial Committee on Indian cases, taking all the sessions together. What with the extension of travelling facilities, what with the aeroplanes and other facilities, such as the Trans-Persian Railway when it becomes a *fait accompli*, it ought to be possible for the Judicial Committee to come to India and sit here, so that not only might the Indian litigant be spared much trouble and the expense involved in going to England, but the example of the Committee would be of great value to the Indian Courts in conducting their business. The fourth section of the Bill keeps alive the Jurisdiction of the High Courts in India, so that it may not be said that any of the provisions affect their powers or their prerogative in Jurisdiction.

The Bill passed through Committee and was read for the third time on December 10th, 1916.

Convention Memoranda No 10

(Reprint)

THE MADRAS PARLIAMENT TRANSACTIONS

We bring the Light that saves, we bring the Morning Star,
Freedom's good things we bring you,
Whence all good things are.



No. 3

Madras Panchayats Act



THE GENERAL SECRETARY'S OFFICE,
POST BOX No, 904. MADRAS, S.
1924

NOTE

All Memoranda circulated for information and criticism contain the view of the author at the time of writing. Changed conditions might involve modifications. The considered views of the Committee will not be available until it issues its report.

Madras Panchayats Act I of 1916

PREAMBLE

An Act for authorising the institution of Village Panchâyats, and District Panchâyats, in the Presidency of Madras, and for amending laws in relation thereto and relating to Village Courts.

It being desirable to revive the ancient institution of Panchâyats, with a view to diminish the expense of litigation and to render the principal and more intelligent inhabitants useful and self-reliant by employing them in the work of Local Government and of administering justice to their neighbors

It is hereby enacted as follows :

PRELIMINARY

Title :—1. This Act may be called the Madras Panchâyats Act I of 1916.

COMMENCEMENT

2. It shall come into force at once.

3. It extends to the Presidency of Madras, provided that the Local Government may by notification exempt any District or portions of District, any area or portions of area, from the operation of this Act for a period of 5 years from the commencement of this Act, provided also that it shall be further competent to the Local Government to extend the period for a further period of 5 years if authorised therefor by a resolution in the Council for making laws and regulations.

3 (a). In this Act and the Rules thereunder, unless there is something repugnant in the subject or context :

(1) Panchâyat means a Panchâyat constituted under this Act, and includes a District Panchâyat or a Village Panchâyat.

Panjab Panchâyat Act VI of 1912.

(2) Bench means the members of a Panchâyat nominated for the trial of a suit under this Act.

(3) District Munsif and Subordinate Judge shall mean a District Munsif and Subordinate Judge within the meaning of the Madras Civil Courts Act III of 1873.

(4) Revenue Divisional Officer means a Revenue Divisional Officer within the meaning of the standing orders of the Board of Revenue.

(5) Registrar includes an Assistant Registrar and means the Registrar of Co-operative Societies.

(6) Immovable property does not include growing crops or grass.

(7) Prescribed means prescribed by rules made under this Act.

Panjab Panchâyat Act VI of 1912.

(8) Village includes a village so declared under this Act.

(9) District Board shall mean a District Board constituted under the provisions of Act V of 1884.

(10) Public Road means a road within the meaning of Act V of 1884. And Street includes public pathways.

(11) Village Munsif means a Village Munsif within the meaning of Madras Act I of 1889.

CHAPTER I
CONSTITUTION AND JURISDICTION

4. (a) The Local Government may from time to time by notification declare any village or villages or portion or portions thereof to be a village for the purposes of this Act.

s. 5 of Act V, 1884, Madras L. B. Act.

(b) The Local Government shall by notification establish a Panchâyat or Panchâyats for each village or group of villages declared to be a village under the Act and fix the maximum number of members for each Panchâyat, provided however that there shall be a minimum of five members on each Panchâyat.

s. 3 of the Panjab Panchâyat Act VI of 1912.

5. The members of a Panchâyat shall be appointed in accordance with the rules under this Act and shall hold office for a period of 3 years, provided however that for the present not less than two-thirds of the members shall be appointed by election by the inhabitants. Inhabitants shall mean adult resident owners or occupiers of house or land in the village, and includes a member of a joint Hindu family, trustee, or guardian of infant householders or landowners.

s. 4 of the Panjab Panchâyat Act VI of 1912.

The Village Munsif of each village shall ex-officio be a member of the Panchâyat.

6. (a) The Local Government shall also by notification establish a District Panchâyat or Panchâyats for each District within the jurisdiction of a District Munsif under the Madras Civil Courts Act III of 1873 and fix the maximum number of members for each District Panchâyat.

s. 6 of the Madras Local Boards Act, 1884.

(b) Members of the District Panchâyat shall be appointed in accordance with the rules under the Act and shall hold office for 3 years.

s. 4 (a) of the P. P. Act.

7. Subject to such rules as may be made from time to time, no person shall be made a member of a District Panchâyat who has not been a resident of the District for one year or proprietor of land or local agent therein for such proprietor.

8. (a) Every Village Panchâyat shall appoint every year from among their own number such Committees consisting of such number of persons as may be prescribed by the rules for the purpose of carrying out the administrative powers and duties vested in the Panchâyat by this Act, provided that no member shall be entitled to sit on more than two Committees.

(b) The proceedings of every such Committee shall be recorded in writing and submitted to the whole Panchâyat at least once every year on a day to be specified by the rules hereunder.

9. Subject to such rules as may be framed no person shall be appointed a member of a Village Panchâyat unless he be resident in such village for 3 years or be a proprietor or holder of land therein or his local agent, provided that such proprietor or local agent shall not be appointed unless he be a resident within one mile from some part of such village.

s. 7 of the Bengal Chauthdari Act of 1870.

10. Every Panchâyat shall elect once a year their own Chairman from among their own number any person not being the Village Munsif or Karnam, who shall be ex-officio Chairman of each Committee and each Committee shall elect every year a Vice-Chairman from among their own number any person not being a Village Munsif or Karnam of the village.

s. 123 of the Madras L.B. Act of 1884.

11. The District Judge or Subordinate Judge having jurisdiction in their respective areas may, by order in writing, suspend or remove any member of a Panchâyat, subject to such appeal, if any, as may be prescribed by the rules.

s. 126 of the Madras L. B. Act of 1884.

12. The Local Government in each village or group of villages in which there is a Panchâyat established shall provide an office for the transaction of its business.

s. 129 of the Madras L. B. Act of 1884.

13. If any person appointed to be a member of a Panchâyat shall refuse to undertake the office or wilfully omit to perform the duties thereof and shall not within 30 days from the date of his appointment or from such omission show grounds to the satisfaction of the Subordinate Judge for such refusal or omission, he shall be liable to a penalty which may extend to Rs. 25, provided that every person who shall have paid any penalty under the provisions of this section shall thereupon cease to be a member and shall not be liable to be reappointed a member of a Panchâyat for the space of 3 years from the date of payment of such penalty.

s. 8 of the Bengal Chaukidari Act of 1870.

14. No member of a Panchâyat after the expiry of his term of office shall be again appointed a member of a Panchâyat without his consent till after the lapse of 3 years.

s. 9a B. C. A. of 1870.

15. Every Panchâyat shall, subject to such rules as may from time to time be prescribed, have jurisdiction to exercise all or any of the functions and powers administrative or judicial hereby conferred upon it.

CHAPTER II
ADMINISTRATIVE POWERS

16. To enable the Panchâyat to carry out the purposes of this Act, all public roads, streets, drains, tanks, wells, minor irrigation sources, ferries, burning grounds and burial grounds, bathing ghats, village pasture grounds, playgrounds, minor reserves in forests, and other public places in the village shall be under the control and management of the Village Panchâyat.

ss. 49-50 M. L. B. A., 1884.

17. Every Panchâyat shall in the village under its authority, subject to such rules as may from time to time be prescribed and so far as the funds at its disposal permit, have the control of and provide for the following matters :

ss. 95 and 141 M. L. B. A., 1884.

- (a) Lighting of public roads and streets ;
- (b) constructing, repairing, maintaining and cleansing the public roads, streets, bridges and other means of communication, tanks, wells, drains, minor irrigation channels, bathing ghats, burning grounds and burial grounds, and other public places in the village ;
- (c) constructing and repairing tanks and wells and such other works as will supply the inhabitants of the village with a sufficient supply of water for domestic use ;
- (d) the establishment and maintenance and repair of hospitals, dispensaries, choultries, markets, cattle pounds, slaughter-houses, latrines, water works and the payment of all charges connected with the objects for which such buildings have been constructed ;
- (e) the diffusion of Primary Education including elementary manual instruction, and with this view the construction and repair of school houses and workshops establishment,

and maintenance of schools either wholly or partly by grants-in-aid, organisation, management and development of local industries ;

(f) the maintenance and repairing of the minor irrigation channels and irrigation sources in the village ;

(g) the maintenance, preservation and control of the minor rural-forest reserves within the boundaries of the village concerned ;

(h) the management and control of fairs and ferries ;

(i) the establishment of village relief works in times of famine and scarcity, and the distribution of famine relief funds and control of such village famine works ;

(j) the distribution of agricultural loans and taccavi advances ;

(k) the control and supervision of the village police and petty village servants ;

(l) the preservation, maintenance and control of village sites, threshing floors and all other communal properties, and the organisation and conduct of village charities and village trusts, usually managed by village communities ;

(m) all other measures of local public utility calculated to promote the safety and material advancement, health, comfort and convenience of the people generally ;

(n) recommending for the guidance of the Revenue authorities claims for remission or suspension of Land Revenue ;

(o) regulating the distribution of water within the village limits for purposes of irrigation.

18. (a) Every Village Panchâyat shall, so far as may be, subject to the control of the District Board, have and exercise all the powers conferred on the Taluk Board and its President by sections 99, 100, 101 and 117, and also the powers under sections 129, 134, 143 (a), and 143 (b) of the Madras Compulsory Labor Act, Act V of 1884.

- s. 99, closing and cleaning of wells.
- s. 100, directing owners to fill tanks, etc.
- s. 101, cleaning unwholesome buildings.
- s. 107, private latrines.
- s. 134, appointment of servants.
- s. 143, (a), filthy buildings.
- s. 143, (b), wells in bad order.

(b) The Chairman of the Village Panchayat shall have all the powers conferred on the head of a village under Madras Act I of 1858.

19. The Panchayat may from time to time, subject to such general rules that may be framed by the Local Government, in consultation with the District Board, for carrying out of all or any of the purposes recited in the aforesaid sections, also frame its own bye-laws not inconsistent with the provisions of this Act or rules made thereunder by the Local Government, which, after approval by the District Board, shall be published in the District Gazette and in such other manner as it may deem expedient and thereupon such bye-laws shall have the force of law.

20. The Local Government in consultation with the several District Boards shall have power to frame rules and bye-laws of general applicability throughout the respective Districts in the matter referred to in s. 17.

Mode of Transacting Business

21. (a) The Panchayats or the Committees thereof shall meet for the transaction of business at such time and place as may be prescribed by the rules;

(b) the Chairman or the Vice-Chairman shall preside at each meeting, and in his absence the members of the Panchayat shall elect one of their number present to preside thereat;

s. 130 (i) M. L. B. Act 1884.

(c) all questions coming before a meeting shall be decided by a majority, and in the case of equality of votes, the Chairman or presiding member shall have a second, or casting vote;

s. 130 (ii) M. L. B. A., 1884.

(d) no business shall be transacted unless at least one-third of the Panchâyatdars be present not being less than 3 in number.

s. 130 (iii) M. L. B. A., 1884.

22. (a) Minutes of resolutions passed at each meeting shall be recorded in a book kept for the purpose and shall be signed by the Chairman or the member of the Panchâyat who presides and shall be open to inspection by the inhabitants of the area of the Panchâyat ;

s. 131 M. L. B. A., 1884.

(b) copies of the resolutions shall be sent by the Chairman in 3 days after the passing thereof to the President of the District Board.

s. 132 (i) and (ii) M. L. B. A., 1884.

23. (a) The resolutions of the Panchâyat shall be carried out by the Chairman in whom the entire executive power is vested and who shall be directly responsible for the due fulfilment of the purposes of this Act.

(b) Any Chairman may with the previous consent of the Panchâyat and on his own responsibility authorise any member of the Panchâyat by order in writing to exercise for not more than four months any of the powers conferred on the Chairman by this Act and may cancel or modify such authority.

24. (1) The Chairman may, by order in writing, require the Karnam of the village comprised within the Panchâyat limits to furnish within a reasonable time any statement, account, or return in respect of such village for any of the purposes of this Act.

s. 133 M. L. B. A., 1884.

(2) Any Karnam who, without reasonable cause, disobeys such order, shall be liable, on conviction by a Magistrate, to a fine of not more than Rs. 20.

25. (1) If on complaint made or by other means the District Board has reason to consider that any Panchâyat has passed any resolution, order or proceeding in excess of its authority, the President of the District Board may by notice in writing call upon the Panchâyat to show cause to the satisfaction of the District Board, within such time as shall be specified in the notice, why such resolution, order or proceeding shall not be set aside.

s. 135 (i) and (ii) M. L. B. A., 1884.

(2) If the Panchâyat fails to show such cause within the time specified to the satisfaction of the District Board, the District Board may by a resolution passed to that effect at a meeting and supported by not less than two-thirds of the members for the time being of such Board set aside the resolution, order or proceeding of such Panchâyat and may pass such other orders as it may deem fit.

26. (1) The District Board may from time to time employ such officers as may be required for the purpose of superintending and inspecting the working of Panchâyats within the District or may authorise any officer of Government in that behalf.

s. 136 M. L. B. A., 1884.

(2) Any officer so employed or authorised may, at any time, inspect any property, accounts, books and other documents under the control of the Panchâyat, and may record such remarks as he may deem necessary for the information of the Panchâyat and shall submit a copy of such remarks for the consideration of the District Board.

27. (1) In cases of emergency the Revenue Officer in charge of the Division of the District wherein any Panchâyat is situated, or any person duly authorised in that behalf by the Governor in Council may provide for the execution of any work or the doing of any act which the Panchâyat is empowered to execute or do and the immediate execution or the doing of which is, in his opinion, necessary for the service or

safety of the public, and may direct that the expense of executing or doing the act shall be paid by the Panchâyat.

s. 137 M. L. B. A., 1884.

(2) If the expense be not so paid the Revenue Officer may make an order in writing directing the person having custody of the fund at the disposal of the Panchâyat to pay the same in priority to any other charges against such fund except charges for the service of authorised loans or for the establishment. Such person shall, so far as the funds to the credit of the Panchâyat admit, be bound to comply with such order.

(3) A report of any action taken under this section shall at once be forwarded by such Revenue Officer or other person to the District Board and to the Panchâyat,

28. (1) If at any time it appears to the District Board that a Panchâyat has made default in performing any duty imposed upon it by this Act, the President may by an order in writing fix a period for the performance of such duty.

s. 138 M. L. B. A., 1884.

(2) If the duty is not performed within the period so fixed, the District Board may appoint some person to perform it and may direct that the expense of performing it shall be paid within such time as he may fix to such person by the Panchâyat.

(3) If the expense be not so paid the District Board may make an order in writing directing the person having custody of the fund at the disposal of the Panchâyat to pay the same in priority to any other charges against such fund except charges for the service of authorised loans or for the establishment. Such person shall so far as the funds to the credit of the Panchâyat admit be bound to comply with such order.

CHAPTER III
JUDICIAL: CIVIL

29. All suits pending in the Courts of the Village Munsifs at the time of this Act coming into force shall be deemed to have been instituted under this Act, and all decrees passed by Village Munsifs before such date may be executed under the provisions hereinafter contained relating to execution of decrees passed under this Act.

s. 3 of Madras Village Courts Act I of 1889.

30. The Village Panchâyat or any Bench thereof shall be deemed to be a Village Court within the meaning of the Madras Village Courts Act I of 1889.

31. All suits instituted before the Village Panchâyat shall be tried by a Bench of 3 members therefor nominated as provided herein.

32. A list of persons forming the Village Panchâyat shall be prepared by the Chairman of the Panchâyat and shall be hung up in the Office of the Panchâyat and such other places of public resort as the Panchâyat may direct.

s. 9 (ii) of Madras Village Courts Act I of 1889.

33. (1) In any suit which may be instituted before the Panchâyat of any village the plaintiff in his plaint or the defendant in his answer may nominate as a member of that Bench any person named in the list mentioned in s. 32, provided that such person is not his servant, dependant, relative or tenant or otherwise personally interested in the result of the suit.

s. 9 (iii) of Madras Village Courts Act I of 1889.

(2) When either party has nominated such a person the other party shall be required to nominate one also.

s. 9 (iv) of Madras Village Courts Act I of 1889.

After two clear days from the date of service of the requisition under this clause, if it has not been complied with,

the Chairman shall select by casting lots from the list a person to serve on the Bench on behalf of the person so making default.

34. The Chairman shall summon the two persons thus chosen to sit together with himself, and if either party objects to his taking part in the Bench, some other person mentioned in the list and agreed to by both parties or chosen by casting lots from among the persons in the list shall take the place of the Chairman.

s. 9 (v) of Madras Village Courts Act I of 1889.

35. (1) The Chairman or the member chosen in his behalf shall be the President of such Bench and shall regulate the procedure and issue all summonses, notices and the like in his own name, but the decree shall run in the name of all the three members of the Bench. If the members of the Bench cannot agree, the opinion of the majority shall prevail.

s. 9 (vi) of Madras Village Courts Act I of 1889.

(2) No person summoned under this section to serve on a Bench shall be bound to sit for more than 5 days in any month; provided that every such person shall be bound to attend the trial of any case which has been commenced before him until its completion.

s. 9 (vii) of Madras Village Courts Act I of 1889.

(3) Whoever being duly summoned under this section to serve on a Bench, without reasonable excuse, declines or omits to do so, shall on proof of the default before the District Munsif of the locality be liable to a fine not exceeding Rs. 20.

s. 9 (viii) of Madras Village Courts Act I of 1889.

36. (a) The Chairman of a Panchâyat shall keep a register of suits preferred to the Panchâyat and shall write the proceedings of the Court, and it shall be the duty of the Village Karnam if so required to assist in keeping such register and in writing the proceedings of the Court.

s. 10 of Madras Village Courts Act I of 1899.

(b) It shall be the duty of the village servants usually employed in carrying messages to serve all summonses, notices, orders issued under this Act, and to act under the orders of the Chairman in seizing, and selling movables attached under this Act.

s. 11 of Madras Village Courts Act I of 1889.

(c) It shall be competent to the District Board, subject to the consent of the Governor in Council, to appoint any person in lieu of or in addition to the Village Karnam or village servants mentioned in ss. 36 a & b.

s. 12 of Madras Village Courts Act I of 1889.

37. The following are the suits which shall be cognisable by Panchâyat Courts, *viz.* :

(1) Claims for money due on contract or for personal property or for the value of such property when the debt or demand does not exceed in amount or value the sum of Rs. 100, whether on balance of account or otherwise: provided that no action shall be brought in any such Court:

s. 13 of Madras Village Courts Act I of 1889.

(1) on a balance of a partnership account unless the balance shall have been struck by the parties or their agents;

(2) for a share or part of a share under an intestacy or for a legacy or part of a legacy under a will;

(3) by or against Government or public officers in their official capacity;

(4) by and against minors or persons of unsound mind.

38. With the written consent of both parties executed before the Court, a Panchâyat may hear and determine suits of the nature described in s. 37 to any extent in value subject to such rules as may be prescribed by the Local Government from time to time as to Court fees and other fees.

s. 14 of Madras Village Courts Act I of 1889.

39. Subject to the provisions contained in s. 40 every suit brought under this Act shall be instituted in the Court of the Panchâyat within the local limits of whose jurisdiction all

the defendants at the time of the commencement of the suit reside or carry on business or personally work for gain, and in cases where all the defendants do not so reside or carry on business or personally work for gain the suit shall be instituted in the place where the cause of action arose.

s. 15 of Madras Village Courts Act I of 1889.

Explanation :—A Panchâyat Court shall be deemed to be the Court of the lowest grade for the purpose of s. 15 of C. P. C. of 1908.

40. No Member of a Panchâyat shall try any suit to which he is a party or in which he is personally interested or shall adjudicate upon any proceeding connected with or arising out of such suit.

s. 16 of Madras Village Courts Act I of 1889.

41. No Panchâyat shall try any suit brought on a cause of action which has been heard and determined by a Court of competent jurisdiction in a former suit between the same parties or those under whom they claim.

s. 17 of Madras Village Courts Act I of 1889.

42. Every suit instituted in a Panchâyat shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but he may relinquish any portion of his claim in order to bring the suit within the jurisdiction of such Court.

s. 18 of Madras Village Courts Act I of 1889.

If a plaintiff omit to sue in respect of or intentionally relinquish any portion of his claim he shall be precluded from bringing a fresh suit for or in respect of the portion so omitted or relinquished.

43. If in the decision of a suit cognisable by a Panchâyat under Sections 37 and 39, it becomes necessary to decide incidentally any matter in dispute between the parties to the suit concerning title to immovable property or the legal character of either of them or of those under whom they claim or the existence of any contract or obligation which if it had been

the immediate subject matter of the suit would not be cognisable under this Act by a Panchâyat, it shall be competent to the Panchâyat to decide such question of title, legal character, contract or obligation as far as may be necessary for the determination of such suit, but such decision shall not be evidence of such title, legal character, contract or obligation in any other action though between the same parties or their representatives.

44. The provisions of the Indian Limitation Act IX of 1908 shall apply to suits and applications under this Act.

s. 20 of Madras Village Courts Act I of 1889.

Provided that no suit or application shall be entertained by a Panchâyat after the expiration of three years from the time when the right to sue or make the application first accrued.

45. The District Munsif may on the application of any of the parties, withdraw any suit from a Village Court and try the suit himself as if it had been instituted in his Court or transfer it for trial to the District Panchâyat within the limits of his jurisdiction provided that any party applying to have a suit withdrawn from Panchâyat shall before any order of transfer is made pay the amount of fees payable in respect thereof under the Court Fees Act.

s. 21 of Madras Village Courts Act I of 1889.

Provided also the District Munsif may for sufficient cause, instead of transferring the suit to a District Panchâyat, try the suit himself if in his opinion the suit involves the decision on intricate questions of law or refer it for trial to a Court competent to try the suit, and such Court shall be bound to try the suit as if it had been instituted in that Court.

46. (a) The District Panchâyat shall always consist of an odd number never less than three nor more than five and the majority shall decide. The District Panchâyat shall sit at the station where the District Munsif's Court is held.

s. 3 (i) of Reg. VII of 1816.

(b) The parties shall each name one member chosen from a list of persons appointed for the purposes of this Act and published in accordance with the rules hereunder and the District Munsif shall nominate the rest of the Bench.

s. 3 (vi) of Reg. VII of 1816.

(c) If either party object to one or more of the members nominated to compose the District Panchâyat and the District Munsif considers such objection to be well grounded, he shall withdraw such members and shall appoint others chosen by casting lots from the list of persons maintained therefor.

s. 3 (v) of Reg. VII of 1816.

(d) The District Panchâyat being formed in the manner herein prescribed shall be assembled by the written summons of the District Munsif.

s. 6 (i) of Reg. VII of 1816.

(e) The District Panchâyat shall so far as may be proceed to determine such suits in the manner and subject to the rules in the Village Courts Act I of 1889.

47. In suits filed before the Village Panchâyat the stamp duty payable shall be half an anna in the rupee up to Rs. 100 and for amounts more than Rs. 100 the duty payable shall be that fixed by the rules framed hereunder.

48. The provisions of Chapter IV to VI of the Village Courts Act shall so far as may be held applicable to Panchâyats.

c. iv. Institution and framing of suits
Issue of summons to parties.
Adjournments and appearances.

c. v. Hearing, withdrawal or compromising of suits, and summoning of witnesses.

c. vi. Decree and execution.

49. The District Munsif may on a petition being presented within 60 days from the date of any decree or order of any Panchâyat Court by any party deeming himself aggrieved by such decree or order set aside such decree or order on the

ground of corruption, gross partiality or misconduct of the Panchâyat Court,

s. 73 M. V. C., 1889.

or of its having exercised the jurisdiction not vested in it by law,

or otherwise acted illegally,

or with material irregularity,

provided that no decree or order of a Village Court shall be set aside without notice to the other party; pending disposal of any such petition the District Munsif may stay execution of the decree or order.

A petition under this section may be entertained after 60 days by the District Munsif if he is satisfied with the cause shown for the delay, provided also that the District Munsif shall refer all suits to the Subordinate Judge or District Judge in cases where the value exceeds Rs. 2,500.

50. The District Munsif shall assist the District Panchâyat in the trial of suits by rendering the necessary assistance for enforcing the attendance of witnesses and production of documents and in such other ways as may be necessary, and shall also subject to rules to be framed by the High Court incur all expenditure in that connection as part of the expenditure of his Court.

51. Any person refusing to attend on a requisition by the District Munsif without proper cause shall be liable to a fine which may extend to Rs. 50.

MISCELLANEOUS

52 (a) All Civil Courts shall on the application of either party transfer all suits or claims arising out of disputes relating to religious or social or caste matters to District Panchâyats and the District Panchâyats shall try and determine such suits in the ordinary way.

(b) All Civil Courts shall have power on their own motion or on the application of either party to refer for trial and determination of suits or claims regarding lands or crops the

validity of which claims may depend on the determination of disputed boundaries, and also suits arising out of disputes respecting irrigation of land between private persons to District or Village Panchâyats and the Village or District Panchâyats shall have power to try and determine such suits in the same way as ordinary suits instituted therein or transferred thereto.

Madras Village Land D Regulation XII, 1816.

CHAPTER IV
JUDICIAL : CRIMINAL

53. The Panchâyat or a Bench thereof consisting of not less than three members shall in cases of trivial nature such as abusive language and inconsiderable assaults or affrays and petty thefts where the value of the property does not exceed Rs. 20,

s. 10 (xi) Regulation XI of 1816 (Police).

s. 6 (i) Regulation IV of 1821,

have the power and authority on a verbal examination either to dismiss the parties or, if the offence charged shall be found to have been committed by the persons accused of it and shall appear deserving of punishment, to confine the offending parties in the village choultry for a time not exceeding 12 hours or impose a fine not exceeding Rs. 10.

54. The Heads of villages and Karnams shall be bound to assist the Panchâyats in the performance of the duties imposed on the Panchâyat by the previous section.

55. It shall be the duty of the Chairman of a Panchâyat to arrange a Bench of the Panchâyat for the disposal of complaints under s. 53 and the same procedure as in civil suits for the constitution of the Court shall be followed.

CHAPTER V
FINANCE

56. In each village, there shall be constituted a fund called the Village Fund, and unless otherwise appropriated under this Act there shall be placed at the credit thereof:

s. 56 of Madras Local Boards Act, 1884.

(1) The whole of the proceeds of house taxes now levied or hereafter to be levied, in the village under Act 5 of 1884 and half of the proceeds of the taxes and fees now or hereafter to be levied by the District Board under this Act in that area.

(2) All fines and penalties levied under the provisions of this Act within the area of the village.

(3) Cattle pound receipts.

(4) All contributions received from the District Boards and Municipal Councils and all moneys which may be received by the Panchâyat in trust for all or any of the purposes of this Act.

(5) All Court fees levied in suits filed before the Panchâyat.

(6) Realisations from village pasture fees, village forests, fishery income, and ferries and fairs as by the rules, to be framed by the Local Government, the Panchâyat may be empowered to collect.

(7) The incomes from charitable or other trust funds or village communal funds which may have been set apart for communal purposes of the village of which the Panchâyat has the control and management.

(8) All funds which may be collected in the area for education.

57. The village fund may be lodged in such Co-operative Society or other Bank as the Chairman under the rules framed by the Governor in Council may be authorised to lodge in.

s. 56 (ii) of Madras Local Boards Act, 1884.

58. All expenses incurred by the Panchâyat shall be paid out of such fund and all orders and cheques on that fund shall be signed by the Chairman or in his absence by any person authorised by him in writing in that behalf, and the Bank in which such funds are lodged shall so far as the funds to the credit of the Panchâyat admit pay all such orders and cheques so signed.

s. 56 (ii) Madras Local Boards Act, 1884.

59. The Local Government shall provide the Village Panchâyats with the necessary funds for the purpose of carrying out the duties imposed on the Panchâyats under this Act and shall also render all reasonable assistance to the Panchâyats to perform their duties by issuing suitable instructions to their officers in the various departments concerned and by delegating so far as may be such powers as they or their officers possess under Madras Act I of 1858 for Compulsory Labor and under Boards Standing Order No. 86 and under the Laws and Rules relating to forests, ferries, fairs and markets.

60. Every Panchâyat shall furnish to the District Board at such time and manner, as may be prescribed by the rules, an estimate of their probable receipts during the next financial year and of the expenditure for the next ensuing year and of the time thereof, and the District Board may at its meeting modify it or pass any orders it thinks fit.

CHAPTER VI
MISCELLANEOUS

61. It shall be the duty of the Registrar and Assistant Registrar of Co-operative Societies, as also of the Collector and Revenue Divisional Officers in the course of their inspection to inspect the Village Panchâyats and report on their working to the Local Government.

62. On the receipt of such report it shall be competent for the Local Government to exercise the powers contained in the proviso to s. 128 of the Madras Act of 1884.

63. The Governor in Council may from time to time with the approval of District Boards frame rules consistent with this Act:

s. 144 Madras Local Boards Act V of 1884.

i. As to the qualification of electors and of candidates, the appointment as members of a Panchâyat by election and the method and time of appointment of members of a Panchâyat by election and in regard to the following matters:

- (a) The division of the village or a part thereof into wards;
- (b) the number of representatives for each ward;
- (c) the provision if any if made for the special representation of any classes of the community;
- (d) the registration of elections;
- (e) the nomination of candidates at the time of election and the mode of recording votes;
- (f) any other matters regarding the system of representation and of election.

ii. As to the qualifications of members of a Panchâyat to be appointed Chairman by election and the method and time of appointment of such Chairman.

iii. As to matters connected with and mentioned in ss. 4 to 9, 11, 15, 17, 19, 27, 46, 47, 50, 56-cl. vi, 57, 59 and 60.

iv. As to the formation of Committees and powers of Committees.

v. As to the preparation of plans and estimates for works which are to be partly or wholly constructed at the expense of Panchâyats and as to authority by which and the conditions subject to which such plans and estimates may be sanctioned.

vi. As to the accounts to be kept and as to the manner in which such accounts shall be audited and published.

vii. As to the preparation of estimates of receipts and expenditure and the authority by whom and the conditions subject to which such estimates may be sanctioned.

viii. As to the returns, statements and reports to be submitted, and the authorities if any through whom they ought to be submitted.

ix. As to the mode in which Government Officers are to advise and assist Panchâyats in carrying out the purposes of this Act.

x. As to pay or any remuneration to the Chairman of a Panchâyat and also as to travelling allowances to members and Chairman of District Panchâyats.

xi. Generally for the guidance of Panchâyats, their agents and officers of Government in all matters connected with the carrying out of this Act.

64. i. All schools and other institutions of an educational character, all hospitals, dispensaries and other institutions maintained by Panchâyats and all accounts, books, registers, returns, reports, statements, and other documents appertaining thereto shall at all times be open to the inspection of such officers of Government as the Governor in Council may from time to time appoint in that behalf.

s. 152 Madras Local Boards Act V of 1884.

ii. The Governor in Council may from time to time appoint such officers as may be required for the purpose of inspecting and superintending the operations of Panchâyats

or any particular Panchâyat and also such secretaries, clerks and other servants as may be necessary for the exercise of the power vested in him by this Act and may assign to them such salaries if any as he shall think reasonable, and the expense incurred by reason of such appointment shall be defrayed by the District Board.

65. The District Board may from time to time with the sanction of the Governor in Council make bye-laws and cancel or alter the same :

a. 152A Madras Local Boards Act V of 1884.

i. For the general or special regulation or control of markets, slaughter-houses, cart-stands, burial and burning grounds and offensive trades and all matters connected with conservancy ;

ii. for regulating the use of public roads and traffic thereon and for securing cleanliness, safety and order in respect of the same ;

iii. for carrying out all the purposes of this Act, and may affix fines and penalties not exceeding Rs. 20 for the infringement of such bye-laws.

66. (1) No action shall be brought against any Panchâyat or against any member or servant of such Panchâyat or against any person acting under the directions of such Panchâyat or of a member or servant of such Panchâyat on account of any act done or purporting to be done in pursuance of the execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act until the expiration of one month next after notice in writing shall have been delivered or left either at the office of the Panchâyat or at the place of abode of such member or servant, explicitly stating the cause of action, the nature of the relief sought, amount of compensation claimed and the name and place of abode of the intended plaintiff; and unless such notice be proved to have been so delivered or left the Court shall find for the defendant.

s. 156 Madras Local Boards Act V of 1884.

(2) If the Panchâyat or member or servant to whom notice is given as provided by sub-sec. 1 shall before action is commenced tender amends to the plaintiff sufficient in the opinion of the Court, such plaintiff shall not recover more than the amount tendered.

(3) No action such as is described in sub-sec. 1 shall lie unless the action for the recovery of movable property or for a declaration of title thereto be commenced within six months after the accrual of the cause of action.

(4) No action shall be brought against the Chairman of a Panchâyat on account of any act done in pursuance or execution or intended execution of any power vested in him under this Act, if such act was done or default made in good faith; but any such action shall so far as it is maintainable by a Court be brought against the Panchâyat.

NOTE

All Memoranda circulated for information and criticism contain the view of the author at the time of writing. Changed conditions might involve modifications. The considered views of the Committee will not be available until it issues its report.

Swaraj Through National Convention

BY A. RANGASWAMI AIYAR

The Problem Stated

The accession to office of the Labor Party in Great Britain, and the wielding of responsibility in ruling the Commonwealth by the leaders of that Party must perforce exert considerable influence in deflecting the Non-Co-Operation movement in our country into paths of constructive statesmanship. The Labor Party had its origin, like Indian Nationalism, in obscure and modest beginnings. Originally confined to the workers by hand and differentiated from workers by brain, its existence was on sufferance, if it was not treated with disdain. Its antagonism to capital confined its energies to the activities of Trade Unionism and gave rise to strikes and lock-outs, and its narrow intellectual horizon, apart from its ideals, gave little promise of its being trusted early with the responsibility of rule. Even some years ago "Direct Action" was recommended by some of its ranks as a means of coercing the State to accede to their demands. If they had succeeded in paralysing Railway transport at the time, it is doubtful whether a Labor Ministry would be in office at the present time. The Party has discarded "Direct Action," and broadened its platform to include those who work with their brains chiefly and, what is more important, has utilised every circumstance which improved its power and influence in the State and used every opportunity by which a new outlook can be gained and wider experience

gathered. In its Advisory Committees, it has worked at schemes of practical legislation, and has striven to test its idealism by the hard facts of practical politics. Some of its leading members have sat in important Committees, and trained their prentice hands for future work as Members of Cabinets, Liberal or Coalition. Therefore it is no wonder that when Mr. J. H. Thomas, the Colonial Secretary, a typical man of his Party, declared that the Labor Party yielded to none in its desire to promote the welfare of the Empire and draw its ties closer, his words should have given assurance to those who differed widely from his Party's ideals and programme of work.

Such a party is now in office but not in power. It holds office permissively, by the sufferance of the other two great parties in the State, and has grasped the opportunity to strive to work out its principles under great limitations. If it strives faithfully, even partially, to realise its principles in action under these limitations, it is sure to gather strength and influence and win public trust and confidence, and leaven British statesmanship with some of its ideals and enthusiasm.

The interaction of the working of such a party on our own political parties is not likely to be barren. The Labor Party would not be able to translate all its plans for the elevation of India's status in the Commonwealth into action, if it is minded to do so, unless we, Indians, render substantial help to it by our united effort in presenting a well devised scheme of Self-Government for India. Our earnestness in winning Swarāj for India will not be measured by vague though insistent cries for it on the part of different political parties in our midst, each working on its own account without a co-ordinated plan. It cannot be won by merely weakening or paralysing the Executive in the Central Government or the Provinces. All these may be useful in bringing home the acceptance

of the ideal of Swarāj to the minds of those who are opposed to it. This was the state of affairs prior to 1919. But in the era which followed the Reforms, when Dominion Status or Responsible Government has been recognised as our destination to be reached sooner or later, our work lies in taking stock of all our resources available under the Reforms, and, augmented by the pressure of public opinion, framing a Scheme of Self-Government adapted to the conditions of India and Indian people in the light of the experiences of other Nations and different parts of the Indo-British Commonwealth, with all the details duly investigated and considered, and pressing it home by steady action on the attention of British Parliament, until it finds a place on the Statute Book.

All in India are agreed that rebellion and revolution would not lead to it. Paralysis or deadlocks in Central and Provincial Governments would not by themselves be helpful in framing a scheme of Swarāj for India, nor in enriching our experience to administer it when attained. They will not help Parliament to know what precisely we want by our Self-Determination. Of all the British political parties, the Labor Party is the most sympathetic towards Indian ideals and aspirations. In its present condition of lack of power, and even after it attains power so as to be independent of the support of other political parties, should we not give it sufficient momentum to take up work on our behalf by previously enunciating what we want—not in terms of a vague and general formula like "We Want Swarāj"—but all the several constituents which make up Swarāj, which should be worked out before they could be implemented into the form of a statute. There is first the question whether India should frame its own scheme of Responsible Government in the first instance, as Canada, South Africa and Australia did, and demand for its transformation into a Parliamentary enactment, or should India content itself by merely amending the present Government of India

Act, or whether India should be allowed by a short Statute of Parliament, like the Irish Free State, to frame its own Constitution as an independent Dominion of the Indo-British Commonwealth. In the Central Government, the subjects on which the Viceroy's Cabinet will be responsible to the Indian Legislature, and the subjects which would be outside such responsibility in the beginning like the Army or the Foreign Affairs, or the limitation within which the expenditure for the Army would be votable by the elected Chamber, for example, by making the expenditure up to a limit, not votable, the question whether the Legislature should be Unicameral or Bicameral, the establishment of a Supreme Court or the Court of Final Appeal for all India, the relation between the Central Government and the Governments in the Provinces in regard to Administration, Finance, and Taxation, the settlement of Communal Differences, and the Protection of Minorities which are peculiar to India, including the question whether safeguards for the same should find a place in the Indian Constitution or not, the question of Franchise, and Modifications, if any, in the Constitution of Electoral Bodies, and the Methods of Election, at every stage ranging from Village Government to Central Legislature, which Indian conditions may demand and which perhaps may be India's contribution to Modern Democracy, the Process and Pace of Indianisation of Army, Navy and Aerial Service, the Process and Pace of Indianisation of the Services, without overlooking the existing obligations, the consideration of what should be All-India Services, and what should be Provincialised, the place of Indian Native States in the future Constitution of India and their relation to it, and similar questions are matters which would need close and deep consideration at the hands of the leaders and representatives of the Indian Nation. A Self-Determining India would have to consider carefully many of these questions and formulate its views definitely thereon

simultaneously with the demand for Swarâj, and the rest would become ripe for discussion shortly after, before full Dominion Status is achieved. What is the machinery for helping the discussion and formulation of such views? The present fissiparous tendencies in our political life, though seeming to show vitality, are really enfeebling us and are far from creating that atmosphere in which these questions should be approached, and proper solutions arrived at. In the present condition of our country, a NATIONAL CONVENTION consisting of the elected representatives of the people and co-opted members is the only machinery which can arrive at conclusions on the above subjects and speak in the name of the Indian Nation. No party in England, however well intentioned it may be, can render help to India without the latter determining for herself through a NATIONAL CONVENTION.

METHODS OF WINNING SWARAJ

A new Party called the Nationalist Party, including the Swarâjists and Independents, has been formed consisting of more than 70 members. They are said to have agreed upon a demand for a Round Table Conference to be summoned by the Government to frame a scheme for full Responsible Government in India, and the programme of work. If the Government do not make satisfactory response to the Resolution demanding Reforms within a reasonable time, the Party will be pledged to a policy of obstruction which may begin as early as next month (April), when demands for grants would be made by Government. Even in spite of the formation of this new Party, it is yet to be known whether the demand for a representative Round Table Conference will have the support of the majority of Members of the Legislative Assembly, on the occasion of the discussion of Mr. T. Rangachariar's Resolution. The list of amendments proposed in regard to Mr. T. Rangachariar's Resolution indicates several shades of opinions amongst the elected Members, on the method of achieving Swarâj, rather than practical unanimity.

Apart from the question, whether the demand for a Round Table Conference is passed in the Assembly or not, what is more important and proximate is whether a representative Round Table Conference, summoned by Government, is the most suitable machinery at the present time for ascertaining the Self-Determination of India regarding the political Constitution she wants. The Round Table Conference constituted by Government will be representative of diverse political views prevailing in the country as the Government sees, and is likely to be far from acceptable to the Swarâjists or the new Nationalists. A perusal of the evidence of witnesses put forward as representatives of different sections before the Lee Commission will shew how some of them mutually destroy each other, and the discussions at the Round Table Conference may not lead to the result aimed at by the supporters of the Resolution for the summoning of that Conference. On the other hand, the result of the discussions of this Conference, composed of all shades of views ranging between the limits of extremism and reactionary obscurantism, which it may be presumed that Government may legitimately arrange to be represented in case they give effect to the Resolution, may perhaps become a handicap in the very early realisation of Swarâj. Perhaps the Government may be able to flaunt the views of this Conference in the face of the world as indicating that India does not want immediate Swarâj or only wants Swarâj by distant stages. The second objection which arises is: How can this Conference be helpful in ascertaining the views of the Indian people? It is a creature of the Indian Government, albeit the representative character assumed for it. Submission of the scheme framed by it to the acceptance, modification, or rejection by a newly elected Indian Legislature on a future occasion will not make it authoritative until that Legislature accepts it. Until that stage is reached, the Round Table Conference would have helped to delay the realisation of Responsible

Government in India.

But the most formidable objection to the Conference will be its inefficiency to evolve a scheme of Responsible Government which India wants. At best, the Conference will compose divergent views ranging between wide limits, settle differences, and bring about a middling policy between what the elected representatives of the people want and what the Government is prepared to yield. More cannot be expected out of a Conference whose composition is in the hands of Government. Besides, before the Government or any body of men constituted by Government considers the question of what political Constitution is suitable for India, the Indian people must formulate their demands not merely in the form of a general and, therefore, a vague scheme of Swarāj, but in the form of a definite Bill with the necessary details filled in. In the past, the Indian National Congress and the Muslim League framed the Congress-League Scheme which was discussed in the Montagu-Chelmsford Scheme as "the latest, most complete, and most authoritative presentation of the claims of the leading Indian political organisations". That Scheme was helpful in settling the question of the representation of Muhammadan interests in the Legislative Councils in the most amicable manner between the several communities inhabiting this country. Therefore a scheme of political Constitution for India should first be initiated not by a Round Table Conference appointed by Government, but by a body of people, who, as the law stands at present, can speak in the name of the Indian people, and cannot, but be recognised as such by the British Democracy which passed the Indian Reforms Act in its Parliament in 1919. The NATIONAL CONVENTION which is proposed to be called by the Second National Conference which meets at Delhi on 22nd, 23rd and 24th inst., will be such a representative body entitled to speak in the name of the Indian people, and its credentials to do so, are further

strengthened by the pledge to call the NATIONAL CONVENTION having been before the electorate at the last election and taken by some of the Members of the Legislative Councils returned.

National Convention or Round Table Conference

The Second National Conference, held at Delhi, on the 22nd and 23rd February, has made it possible for the holding of the NATIONAL CONVENTION at Allahabad in the third week of April next. The first National Conference which met in Delhi, in February, 1923, had to contend for recognition as an effective constitutional machinery for shaping out India's Self-Determination in her political destiny, at a time when the average political worker viewed it as a strange political expedient, and was unfamiliar with all its necessary implications. But to a student of constitutional history, as it has transpired in the several Dominions in the British Commonwealth including the Irish Free State, the NATIONAL CONVENTION is the only logical method for expressing the National Will in a constitutional manner. Last year, it fought its way to a necessary recognition of its existence, and made its objective, the winning of Swarâj for India, a vital question to the electorate, by taking a pledge from candidates at the last elections to assist in calling a NATIONAL CONVENTION for the above purpose. It justified the work of the Reformed Legislatures, and recognised the value of the Reforms as it is only the voters recognised under the Reforms who can at the present time express the articulate voice of the Nation and its Will in Self-Determination to the British Parliament.

The success of the Second National Conference is all the more significant, in the face of two peculiar circumstances coloring the Indian political horizon before it met. The Swarâjist Party attained a modicum of success at the Assembly elections, and was able to persuade a number of constitutionalist members of the Assembly to join it

in making up the new Nationalist Party in the Assembly, pledged to co-operate in a vaguely conceived plan of obstruction. The amendment of Pandit Motilal Nehru to Mr. T. Rangachariar's motion, calling upon the Government to summon a representative Round Table Conference by whom a scheme of Constitution for India may be framed and recommended, and by which such a scheme may be placed before a new Central Legislature for its approval after the dissolution of the present, before its ultimate presentation to Parliament for being embodied in a statute, had been passed in the Legislative Assembly just [then, with the Government equally determined not to give effect to it. Although the goal of the "Swarâjist" or "Independent" Party is identically the same as that of the National Conference, in spite of the fact that their methods are vitally different, the bulk of the Swarâjists Party or rather the diehards amongst them irrevocably pledged to the method of obstruction were not inclined to favor the National Conference albeit it held the field in the absence of a Round Table Conference for achieving the common object, the winning of Swarâj for India. Although the National Conference and NATIONAL CONVENTION were stages in a comprehensive political plan conceived about two years ago and worked at steadily for enabling India to work out its own political destinies, some of the Swarâjists came to view the second National Conference as an isolated movement, detached from the first and the ensuing NATIONAL CONVENTION, and fondly believed that it weakened their attempt at a Round Table Conference. Nevertheless, the second National Conference was held successfully; and though its proceedings were short and carried on in a businesslike manner, it has led to the third stage—the holding of the NATIONAL CONVENTION at Allahabad in the next month.

It seems extraordinary that oftentimes those who think themselves to be forward politicians are found to be victims

of freed ideas which, whatever be their value at one time, become speedily out of place in the quick march of political events in our country. The Congress continued to adumbrate the Reforms with the same appellations expressing their disappointing and unsatisfactory character, without seeing the vital modifications made by the Joint Committee in the original Bill, just as the Congress did before. Our politicians continued the same policy of wholesale condemnation and criticism which was in its proper place during the pre-Reform period, even after the Reforms were introduced, though more delicate and detailed criticism and constructive statesmanship became necessary, and the resources available under the Reforms had to be sought for and marshalled in our support. The Round Table Conference proposed in the amendment of Pandit Motilal Nehru appears to be a faint echo of a similar one, heard of before the visit of the Prince of Wales to our country, which was believed to have been favored by the Viceroy to avoid an impending *hartal* at the time, and which was rejected by Mr. Gandhi under circumstances whose controversial character was dealt with by Mr. C. R. Das even quite recently. The Round Table Conference, whatever be its value in 1921, is quite out of date in 1924.

It is an effective machinery for coming to a workable conclusion as regards a question in which a few details are concerned, and there is a definite but wide divergence of views, and a *via media* has to be struck satisfactory to the differing parties. In disputes between labor and capital, in which questions of wages and working hours are concerned, or in cases of communal differences as regards the proportions in which different communities should have representation in the Legislatures or Public Services, a Round Table Conference may be eminently useful to find a way out of the *impasse*. But a Round Table Conference and a *fortiori* one called by Government is a most cumbrous way of

evolving a political Constitution for India as is wanted by the Indian people, a Constitution in which a mass of differing and complex details have to be studied, investigated analysed and built into a sympathetic whole. The outcome of such a Round Table Conference is likely to be an unsatisfactory one from an Indian point of view, even if it be supposed that a well-defined one would be forthcoming, and may not have the chance of being approved by a new Legislature. The "Nationalist" Party in the Indian Legislative Assembly omitted to take note of the fact that during the last elections, the question of National Self-Determination through a NATIONAL CONVENTION was made a plank in the electoral platform and became a vital issue to which the attention of the electorate was pointedly drawn. The Nationalist Party by demanding the dissolution of the Central Legislature and the election of a new one to consider the scheme of the proposed Round Table Conference only defeated its own object of speeding up its attainment of Swarāj. In its ardent desire of finding out Indian Self-Determination, it left out of account the Provincial Legislatures, and did not reckon the voters who, though not qualified to elect members to the Central Legislature, form yet an articulate part of the Nation. Verily the Swarājist or the forward politician who complains that his quickness is handicapped by others whose progress is not equal to his often turns to be a reactionary, not taking stock of all the factors in the quick-changing political situation, and adjusting his methods to the end in view. The NATIONAL CONVENTION will take us more speedily to our goal than a Round Table Conference.

The statement of Lord Olivier, read as a whole, and the attitude of His Majesty's Government, as portrayed therein, indicate a sympathetic, non-committal or, rather, a positive inclination to examine without prejudice any practical proposals to be made, and there is a significant passage which

leaves beyond doubt or controversy that it is the considered view of His Majesty's Government that the Royal Commission contemplated by the Government of India Act should not be sent out "later than 1929," that is, it may be sent out at any time between now and 1929. The NATIONAL CONVENTION is intended to frame and make such practical proposals.

The Nature of the Federation

The din of conflict and the confusion, born of excitement which makes the Nationalist Party in the Indian Legislative Assembly not capable of planning even a rational method of obstruction in that Chamber but aimlessly to reject a few Demands for Grants on the first day, irrespective of their merits, and practically ask the Government to restore them, and on the succeeding day assist the Government like any other loyal Co-Operators, do not offer the ideal conditions under which the best minds of India should be laboring to devise a scheme of Swarāj suited to Indian conditions and Indian genius. Nevertheless, India must be ready ere long with such a Constitution framed, and, at the same time, back it with the force of public opinion sufficient to act as a driving power, so that the Labor Party which, as Lord Curzon reminded the Upper House the other day on the occasion of Lord Olivier's statement, "represented only a minority in Parliament" and is powerless "to propose any sudden, violent or drastic changes in the Indian Constitution," may now or after attaining to greater power be stimulated to give practical expression to its sympathies in giving Dominion Status to India.

There are some general questions bearing on the framing of a Constitution for India, which it may be useful to consider before going into more specific details which would necessarily arise for consideration in either amending the present Government of India Act or in drafting a new Bill in its place. All these questions and details will, I hope, be divided under suitable heads, and considered by the

several Committees to be appointed by the NATIONAL CONVENTION which would meet at Allahābad, on the 21st April, 1924, and the succeeding days.

In a scheme of Swarāj giving Dominion Status to India, the Secretary of State for India will have no place of authority or power, and come to occupy the same place in the British Cabinet which the Secretary of State for Colonies occupies with regard to the Self-Governing Colonies and Dominions. His Council will disappear. The Viceroy and Governor-General will be the representative of the Sovereign ruling with the aid of an Executive Council or Cabinet, responsible to the Central Legislature.

The nature of the relation of the Provinces to the Central Government will be one of the general questions which would arise for consideration. The formation of our Provinces has followed the accidents of history and has no relation to linguistic uniformity or homogeneity of population. The Presidencies of Fort William in Bengal, Fort S. George in Madras, and Bombay, and the Provinces known as the United Provinces, the Panjab, Bihar and Orissa, which are now governed by a Governor in Council, Burma, which is now under a Lieutenant-Governor, and the Provinces of the North-West Frontier Province, British Baluchistan, Delhi, Ajmere-Merwara, Coorg, and the Andaman and Nicobar Islands, which are each administered by a Chief Commissioner, are illustrative of diversities in extent, races and languages prevailing in many of these Provinces. A study of the several forms of Federal Governments obtaining in the world and in the different parts of the British Commonwealth will throw much light on the nature of the relation which should exist between the Provincial Governments in India and the Central Government. Our ideal should be to evolve a Federation which, though giving free play to the genius, initiative and autonomous capacities of the several Provinces, must bind them in essential subordination to a Central Government truly National, and

responsible for the safety and defence of the Nation, and representing India as a Nation before the whole world. Switzerland and the United States at present represent two outstanding Federations which have successfully striven to bring together different Sovereign States inhabited by people who speak different languages even now, or whose ancestors spoke different languages in the near past. They belong to different races. Yet both these Federations are distinguished by intense Nationalism, and combat by their existence the comfortable assumption, often aggressively put forward, that diversities of languages and races are barriers to the evolution of India as a Nation. The Confederations came into being for purposes of defence against a common foe. Each State in the American Union has parted with a portion of its Sovereign rights to the Federal Government, and is supreme with what are called its Residual Sovereign Powers. In Switzerland, each Canton gave up a certain part of its Sovereign rights to the Federal or Central Government, retaining the rest. But "by the Constitutions of 1848 and 1878. Switzerland has ceased to be a mere union of independent States joined by a treaty, and has become a single State with a well organised Central Government, though the Cantons are not merely administrative units, but living political communities". Within the limits of the British Empire the types of Federations afforded by the different Dominions differ from each other widely.

In Canada, the Lieutenant-Governors of Provinces are appointed by the Governor-General in Council, and the legislative enactments of Provincial Legislatures are subject to disallowance by the Dominion Government. The legislative powers have been distributed between the Dominion and the Provinces, so that there should be no overlapping.

While the proximity of the United States and the need for a strong British Government in Canada led to Canadian Federation, the independent States of Australia were led to

federate mainly owing to the exigencies of trade and customs. Like the United States, the States have all their powers except those that have been expressly taken away, while in Canada, the Provinces have only such powers as are expressly left to them. Each State has its Agent-General in England fully recognised by the Colonial Office.

In the Union of South Africa, the Parliament of the Union has got plenary power of legislation for the Union. The Legislature of the Provinces is in no sense a Parliament. The Union Parliament can legislate in any case on the same subject as the Provincial Councils, and such legislation is paramount. The Governor of the Province who is called an administrator is appointed by the Governor-General in Council. He is helped by an Executive Committee elected by the Provincial Council for a term of years, but not responsible to it. Once elected, it remains in office. It cannot control the Council which elected it. These Provincial Councils in the South African Union are in a hopeless state of subordination to the Central Legislature as compared with the Provinces in Canada or the States in Australia.

In the consideration of these different Federations, both outside the British Empire and within it, we see there is a gradation from what are called States with Sovereign rights and possessing Residuary Powers to Provinces in practical subordination to a Central Government and a Central Legislature not far removed from the relation of administrative units in a Unitary Government to that Government.

In a country like India, whose history in the past shews a tendency for the Provinces to weaken the link with the Central, and the differences in habits, customs and manners, and religious, racial and linguistic differences have accentuated the centrifugal tendencies amongst the people, a strong Central Government with autonomous Provincial Governments in strict subordination to it in all questions which affect the country as a whole and which tend to unify the

Nation, is the ideal which should be reflected in the system of Federation set up. The Provinces should have only such powers as are not reserved to Central Government.

Legislature, Unicameral or Bicameral ?

The present Government of India Act makes the Central Legislature Bicameral and the Provincial Legislatures Unicameral. The Montagu-Chelmsford Reform proposals, while advising a Second Chamber in the Central Legislature and a Unicameral system in the Provinces, devised a Grand Committee of the Provincial Legislature, in some manner to serve the functions of a revising Chamber in the Provinces. But the Joint Committee of both Houses of Parliament, which sat to consider the proposed Reforms in the law which took shape ultimately as the present Government of India Act, thought fit not to recommend the institution of such Grand Committees in the Provincial Legislatures, and they accordingly remain purely Unicameral in the Provinces.

In democratic countries, the need for a Second Chamber as a revising body, independent and not merely acting as an echo of the Popular Chamber or the Lower House as it is sometimes called, and which should give time to the country to reconsider questions, perhaps hastily considered by the Popular House, has been felt and provided against. When a country has been divided into Provinces, each of which is provided with a subordinate Legislature of its own, the need for a revising Second Chamber is not felt as much for the Provinces as for the country as a whole. When such a Second Chamber rests on an elective basis, its usefulness is often neutralised by its coming frequently in conflict with the Assembly of popular representatives, or remaining as an ineffective appendage to the Constitution, or sometimes acting as a dead-weight to the country's progress by its reactionary attitude to progressive schemes of legislation. How these Upper Houses have been

constituted in the important democratic countries of the world, and more particularly in the Dominions and the different Provinces of such Dominions within the British Commonwealth, in what ways these Second Chambers have interacted with the work of Popular or Lower Houses, and how their respective powers over what are called "Money Bills" have been defined by law or usage, will be helpful in shaping the form which the revising chamber in the Indian Central Legislature should take.

In England, the House of Lords is an ancient institution, existing partly by virtue of hereditary right and partly by nomination, and illustrates the way by which the muddling common-sense of the Englishman often succeeds in attaining the objects which more logical minds seek to realise by more elaborate processes devised to have the appearance of thorough-going completeness. The Reform of the House of Lords as a revising chamber according to modern conceptions has been in the air for many years. It has been accepted by all parties, and yet at the same time held up for one reason or another. Meanwhile, it is discharging its functions as a Second Chamber, giving Self-Government to Ireland while at the same time bestowing its benediction on General Dyer.

Some Upper Houses are wholly nominated, some partly nominated and partly elected, and some constituted on a wholly elective basis. Democracies outside the British Commonwealth, like France, Switzerland and the United States, have elected Senates, but the methods of representation are different. In Switzerland, there are 2 Deputies for each Canton. France, which abolished all hereditary types of nobility, has a certain portion of its Senate consisting of life-holders, while others are elected for a term of 9 years by special bodies ranging from the Chamber of Deputies to delegates of Municipal Councils. In America, each State of the Union sends 2 Senators to the Senate of the United States to serve for 6 years. Curiously in the British Commonwealth and especially in Australia, an

elective Upper House has shewn greater demerits in its working than a nominated one. In Victoria, the two Houses have always been elective, and it has been impossible from the first to induce them to work harmoniously, and deadlocks and litigations have arisen owing to their conflict. The situation is similar in South Australia and Tasmania, which together with West Australia, have elective Upper Chambers. That of Tasmania is the most reactionary of all, and the democracy there is so feeble that there is no early prospect of powers of its Upper House being lessened. In the Commonwealth of Australia, there is manhood and womanhood suffrage for both Houses, the only difference being that in regard to the Senate, each State is regarded as a single area, and 3 Senators are elected at each election. The Australian Senate possesses a power which no other Upper House has ever possessed, and its control has been secured by the Labor Party which has been helped to do so by its better organisation and the low franchise.

The Colonies of New South Wales and Queensland in Australia, New Zealand, and Natal, Transvaal and Orange River Colony in South Africa, and Newfoundland have nominated Upper Houses, which appear to subserve their purposes fairly well. The Second Chamber in New South Wales and Newfoundland is unlimited and can be swamped if necessary like the English House of Lords. The Labor Party in New South Wales intends to abolish it. Canada after giving a long trial to an elective Upper House has returned to a system of nomination. Quebec and Nova Scotia have both nominated Second Chambers, the members being appointed for life in Quebec. The Upper Houses wherever they exist in the Dominion of Canada are not particularly strong. In the Cape of Good Hope whose Upper House is elected has not served any useful purpose, having existed merely as a duplication of the Lower House. In the Union of South Africa, the Senate is partly nominated by the

Governor-General in Council on the advice of Ministers, and partly elected at special sittings of both Houses of the Legislature in the four Colonies forming the Union, 1/5 being so nominated and 4/5 elected. Though thus constituted on a predominantly elective basis, it has not the wide powers which some of the elected Senates in the Australian Colonies claim to exercise, Colonies or States which possess non-elective Upper Houses.

Some of the Colonies in British North America, like New Brunswick, Prince Edward Island and Manitoba, after having tried a Second Chamber for a time, have found no use for it and abolished it. British Columbia, Ontario, and the new Province of Alberta and Saskatchewan possess only Single Chambers.

Some of these Senates, as in France and the United States, are sought to be made continuous bodies by allowing a portion to be renewed by election in a shorter period than the term of office of a Member of the Senate. In the United States, for example, although the Senator's term is 6 years, the Members are divided into 3 classes, the term of one class expiring every two years.

The result of these endeavors in the other countries of the world appears to justify the existence of Single Chambers in the Provinces, and of a revising chamber in the Central Legislature in India, and these experiments in other countries should enable us in so constituting our Senate or Council of State, that it does not merely serve as a reduplication of the Legislative Assembly, or to retard the useful and progressive work carried on by the Assembly, but by its greater wisdom and experience seeks to correct any hasty legislation or measure which popular zeal may attempt to introduce.

The Supreme Court

In practically every stage of human civilisation, the dispensing of Justice is one of the attributes of Sovereign

Power, and when functions of the State came to be classified, they were divided into (i) Executive, (ii) Legislative and (iii) Judicial. In all schemes of Federation, careful consideration has been given to this function of the Federal Constitution, and the Constitution and powers of the Federal Supreme Court have been attempted to be defined. "The Supreme Court of British India Bill," for the establishment of a Supreme Court above the High Courts in India, was proposed by Dr. H. S. Gour in the last Legislative Assembly, but was disallowed on the ground that the House had no jurisdiction.

By the time the Indian Constitution framed by the NATIONAL CONVENTION comes before Parliament for its consideration and approval, the Bar Committee, which has recently concluded its labors, would have helped to remove some of the outstanding disabilities of the Indian Bar, and place it on more or less terms of equality with the English Bar in India. It will be helpful to consider how the question of the Judiciary in a scheme of Federation has been dealt with in some of the Federal Governments both outside and inside the British Commonwealth, as such solutions will enable those who would be responsible in the ensuing NATIONAL CONVENTION to define the Constitution and powers of the Judiciary in the Indian Constitution. In the Swiss Confederation, the Federal Tribunal has jurisdiction in constitutional disputes between Cantons and Federal authorities, and also in civil cases in which the Confederation figures as a party. If one of the Cantons happens to be a party, the Federal Council or Cabinet may refer the case to the Federal Tribunal. Its jurisdiction extends also to political crimes.

The Supreme Court of the United States has Original jurisdiction in cases affecting Foreign Ministers and Consuls, and in cases in which a State figures as a party. It has Appellate jurisdiction from such Subordinate Courts as the Congress may, from time to time, establish. These Federal Courts deal with all cases in law and equity arising under

the Constitution or laws or treaties made under it, and with cases affecting Admiralty of Maritime Law. Suits by or against the United States, by one State against another, by a citizen of one State against a citizen of another State, by a citizen of a State against his fellow-citizen in regard to grant of land from different States, by a State or its citizen against a foreigner, or by a foreigner against an American, come within the purview of these Federal Courts.

Within the limits of the British Commonwealth itself, the powers of the several Federal Supreme Courts are not similar. In the Dominion of Canada, the British North America Act did not itself create the Supreme Court of Canada, but left its creation to the Dominion Parliament. The Supreme Court of Canada was constituted in 1875. Its Appellate jurisdiction varies from Province to Province. Appeals lie from it by special leave to the Privy Council in every case. It exercises original jurisdiction in a curious way. "The Governor-General in Council can refer to it any question affecting the interpretation of the British North America Acts, the constitutionality of any Dominion or Provincial Act, the powers of the Parliament of Canada and the Legislatures of the Provinces or their Governments in regard to any particular matter and the Appellate jurisdiction in educational matters conferred under certain Acts." He can also refer any other matter. Each Province has also a Supreme Court from which appeals lie direct to the Privy Council, both by special leave and as of right.

Under the Constitution, there is a Federal Supreme Court in Australia called the High Court of Australia having both Original and Appellate jurisdictions. Appeals lie to it amongst others from the decisions of the Supreme Court of States in regard to matters up to a particular value, or when these relate to status like marriage, divorce, insolvency, etc., or when these decisions are given in exercise of Federal jurisdiction. The High Court has Original jurisdiction,

amongst others, in all matters arising under a treaty, or affecting Consuls or representatives of other countries, and in cases in which the Commonwealth or a State is a party, or which arise between residents of different States of the Commonwealth, or in which writs of *Mandamus* or injunction are sought against officers of the Commonwealth, in all matters arising under the Constitution or involving its interpretation. By the Constitution of the Union of South Africa, the Supreme Court of South Africa consists of two portions, *viz.*, (1) the Provincial and Local Divisions of the Supreme Court exercising jurisdiction in each Province of the Union, and (2) the Appellate Division. The Provincial and Local Divisions preserve the Original jurisdiction which they had prior to the Act plus the jurisdiction in all suits where the Union is a party or a Provincial Ordinance is challenged as invalid. Generally, all appeals from the Superior Courts of the Colonies in the Union lie to the Appellate Division of the Supreme Court; and no appeal lies from the Supreme Court or any of its Divisions to the King-in-Council except in cases where the King-in-Council grants special leave to appeal from a decision of the Appellate Division. The Parliament of South Africa may, by legislation, limit the matters in which such special leave may be asked, though such legislation may be disallowed by His Majesty's Government. The powers of the Supreme Judiciary in the South African Union go beyond anything which exists in other Dominions.

In the case of Canada, appeals lie by right from every Provincial Court to the Privy Council and also by special leave. In the case of Dominion Supreme Court no appeal lies to Privy Council as of right but by special leave. In the case of the Australian Commonwealth, appeals be by right and by special leave from all the State Supreme Courts to the Privy Council. From the High Court of Australia appeals lie only by special leave, and in cases involving the question of the rights *inter se* of the Commonwealth and the

States, or any two or more States, appeal lies only with the permission of the Court itself whose decision is appealed against. In South Africa, the right to appeal from any Court to the Privy Council is abolished, save in regard to the Appellate Division of the Supreme Court, against whose decision appeal lies in cases where the King-in-Council is pleased to grant special leave.

In the light of the experiences of other countries which have worked at a Federal Government, a Supreme Court would be recognised as a desideratum, and a necessary limb of the Constitution. In some of the early tentative schemes of the Australian Constitution, it was not included, but ultimately it came to have its place. A common Supreme Court in India for all the Provinces will operate as an additional unifying factor amongst the divergent elements in this country. If the other Dominions which have common traditions, common language, common culture and civilisation, and similar habits and customs with the mother country deem it necessary to have a Supreme Court, much more necessary is it for India, which has more points of difference with England. The Judicial Committee of the Privy Council has done signal service to the evolution of Law and the Administration of Justice in British India, but that is no reason why India should not aim at Self-Government in having its own Supreme Judiciary embodied in its Constitution. The study and practice of Law in India would not suffer in comparison with Dominions and Colonies, and new responsibilities would give additional stimulus to the training of men of greater juristic eminence amongst us. The cost of dispensing Justice in a Supreme Court located in India will be much less than carrying a case before the Privy Council in England. As in the case of the South African Union, appeal may lie from such a Supreme Court of India to the Privy Council in such cases when the King-in-Council grants special leave.

The Constitution may provide for the establishment of such a Supreme Court, as in the Commonwealth Constitution, or may leave it to be done by the Indian Legislature, as in the case of Canada. The relation between the Supreme Court and the High Courts of Provinces and their respective powers will have to be determined.

NOTE

All Memoranda circulated for information and criticism contain the view of the author at the time of writing. Changed conditions might involve modifications. The considered views of the Committee will not be available until it issues its report.

Provincial Contributions to Central Exchequer

Mr. Jamnadas Dwarkadas' Speech in the Assembly

MR. JAMNADAS DWARKADAS (Bombay City: Non-Muhammadan Urban): Sir, I rise to move the amendment that stands in my name on the agenda paper. It runs thus:

That all words after the words "the Governor-General-in-Council" be omitted and the following be substituted:

"That the Provincial Contributions as fixed at present under the Devolution Rules having been found unworkable in the case of many Provinces, immediate steps be taken to examine through a Royal Commission or any other impartial agency, the financial relations between the Central and Provincial Governments, as now laid down in the Devolution Rules, with a view to a more satisfactory allocation of revenues."

Sir, my Hon. friend the Finance Member has anticipated me in my arguments for not accepting the original Resolution of my friend, Mr. Bakshi Sohan Lal, and, as far as possible, I shall avoid going over the same arguments. Now, Sir, I confess I was a little surprised when my Hon. friend the Finance Member rose to a point of order in order to get my amendment, for all practical purposes, excluded from to-day's discussion, and in order to prove his

case, he had to draw upon his imagination to use illustrations which did not apply in this case at all. Fortunately, Sir, you have ruled that the subject that I propose to discuss falls within the scope of the subject raised by the Resolution; and it is obviously so, for the contributions are a result of the award made by the Committee of which Lord Meston was the President, and if you take up the question of contributions for discussion you cannot avoid the question of discussing the whole award along with the question of the contributions, and so it rather passes my understanding how my Hon. friend, who is, I believe, an authority on these questions, should have even ventured to get my subject ruled out of order. Well, Sir, fortunately, it has been ruled that it is in order, and I am happy that it is so.

Sir, I want to make it clear, at the very outset, that I do not wish to discuss this question from the point of view of narrow Provincialism. A discussion of that kind cannot but do harm to the reputation of this Assembly. If I may say so, we, representatives coming from different Provinces, are certainly entitled to champion the cause of our Provinces, but we are not here in a spirit of grabbing in order that our own little Provinces may gain and gain at the expense of the other Provinces, and may gain in a manner by which the finances of the Central Government, of which, as my Hon. friend pointed out, we are naturally the custodians, may be entirely crippled. And so I do not want to approach this question in that spirit at all. On the contrary, I want to place before this House some considerations which naturally accord with those that have been placed by other Hon. Members, so far as the grievances of the Provinces are concerned, that the revenues allocated to them and the heavy burden of Provincial Contributions placed on their shoulders do not leave any resources for Provincial Governments to go along the path of advancement which we had expected we would go after the Reforms

came into existence. So far as those grievances are concerned, I am entirely at one with the Hon. Members who have spoken; but what is the remedy? My Hon. friend from Madras would suggest: "Let Madras have a portion of her contribution." My Hon. friend from the United Provinces would suggest: "Let his Provinces have a portion of their contribution." If you take this question piecemeal, if you detach the question of contribution from the main question of the whole award of the Meston Committee, then, if you succeed in getting back these contributions or a portion of them, I am afraid you are doing it at the expense of the other Provinces. I should like to elaborate that point.

Suppose for a moment that this Assembly favored the idea that two crores should be given and that Madras, Panjab and the United Provinces should share the spoils. What would be the result? First of all, Government would have to find from somewhere money to meet the deficit that would occur. As the Hon. the Finance Member pointed out, to increase the floating debt of the country is not only to affect ultimately your revenues, but to affect the very foundation of all revenues, namely, trade and industrial development. So that is out of the question. Where are these two crores, then, to come from? Suppose as a result of the vote of the Assembly two crores were given away; the Hon. the Finance Member and this House will have to find these two crores, perhaps by increasing the revenue from customs; and who will pay the customs revenue? Bombay, if I may say so, and Bengal are the two Provinces who are paying the largest portion of the revenue in customs, and the burden will have to fall on them. Now, I say that the fundamental basis of the Meston Award is false. It is not merely that the contributions fall heavily upon the shoulders of those who are called upon to pay them; but the whole basis, if you consider it, of the Meston Award

is entirely incorrect. What is the basis of the Meston Award? Of course, I know that Bengal is practically in the same boat as Bombay is, but I speak with a certain amount of knowledge of Bombay and therefore I shall have to use detailed arguments to prove my case from the point of view of Bombay. I do that, of course, merely as an illustration; what applies to Bombay is likely to apply to other Provinces; I know that it does apply to Bengal. Now, what is the basis of the Meston Award? It is that the main heads of Provincial revenue should be Excise, Land Revenue and General Stamps and other minor heads which do not count very much. In so far as General Stamps are concerned, our revenue has fallen from the revenue that was expected by the Meston Award; it has gone down. If I may just venture to quote figures, the Budget figure for 1920-21, which was taken as the basis by the Meston Committee, was 94 lakhs for General Stamps and the actuals were 102 lakhs. The Budget figure for 1921-22 was 103 lakhs; the revised figure now stands at 86 lakhs; the Meston Committee anticipated an annual rise of 15 per cent; we should therefore have had an increase of 14 lakhs this year above the datum line of 94 lakhs, but actually we have 8 lakhs less; and the estimates of 1922-23 give 90 lakhs. That is with regard to General Stamps; but even that is a minor head. Let us consider the main heads of revenue which are available for the use of the Provinces. They are Land Revenue and Excise. Now all those who are acquainted with conditions in Bombay know full well that in Bombay you cannot expect a large increase in land revenue. We are asked to depend for our expenditure on these two sources of revenue practically, namely, Land Revenue, that is, cultivation, and Excise, that is, drink. Now, Land Revenue cannot yield more. As a matter of fact, during the ten years preceding the Meston Award, Land Revenue has always been between the figures of 3 and 4 crores, or perhaps, a little more than that. Well, the Meston Committee

anticipated an annual increase of 4 per cent in Land Revenue—I do not know on what basis. There is one thing peculiar to Bombay which I must mention. There we experience years of famine, and during these years the collection of revenue is suspended; in the next year, if it is a prosperous year, the suspended revenue is collected and the figure would show the revenue of the past year as well as of the current year. Now, the Meston Committee took as its basis a year which was preceded by a year of famine. The Meston Committee anticipated then an annual increase of 4 per cent; they took the Budget figure of 1920-21 of 488 lakhs; the actual figure, however, was 340 lakhs or a loss of 148 lakhs. In the current year, we have budgetted for 478 lakhs or 10 lakhs less than the original figure and that only by the collection of famine arrears, and next year we anticipate a higher revenue, namely, 506 lakhs, by a similar surplus collection; the net result so far is a decrease of 140 lakhs instead of an increase of 38 lakhs. There also the calculations of the Meston Committee have proved absolutely inaccurate; instead of gaining we have lost in Land Revenue, and no one who knew the conditions of Bombay would have ever taken a year which was preceded by a year of famine as a basis and no one would have ever ventured to suggest that there would be a steady increase in Land Revenue in Bombay. That is with regard to one of the heads.

Now, take Excise. What is the condition of our Excise? In the first place, I think the House will agree with me, and I think there is not one Member in the House who would even for a moment dream that it is desirable to increase your Excise by means of encouraging the habit of drinking among the masses. As a matter of fact, since the Department was transferred to the Minister, the Minister's policy has been steadily to discourage this, from the moral point of view and from the point of view of social reform, and the result is that in Excise also our revenue has been steadily decreasing, and I

long for the day when, by the efforts of the Minister to whom the Department is transferred, the revenue from Excise will amount to *nil*. But even there the Meston Committee, expecting that the habit of drinking among the people would grow, anticipated an increase. Fortunately, there also it is proved that they are not in the right. As a matter of fact, the Budget figure of 1920-21 with regard to Excise, taken by the Meston Committee, was 430 lakhs and the revenue realised was 454 lakhs. In 1921-22, although the Budget figure was 424 lakhs the revenue now anticipated is 331 lakhs. For the next year, we have estimated 371 lakhs; in these two years, 1921-23, where the Meston Committee led the Government of India to anticipate that the revenues would amount with an annual increase of $12\frac{1}{2}$ per cent on the datum line to 10·2 crores, we shall have realised roughly 7 crores, or a loss of 3 crores roughly. The results are very fortunate from our point of view; but how does it affect Bombay? Bombay is left entirely crippled with regard to its resources for carrying on the work of the Government. What was the one head of revenue, a portion of which ought to have been allotted to us? It is not my business here to suggest a remedy; but if I were to do so, I would beg of this House to consider the claim of Bombay to a portion, a substantial portion, of the Income Tax revenue. Of course my Hon. friend says that the Meston Committee gave their award on the principle that they wanted to have a clear cut division. I can understand a clear cut division between indirect and direct taxation, I can understand the Central Government taking all the customs revenue for its own purposes and leaving direct taxation to the Provinces, or at least a portion of it. But I cannot conceive of the argument that the Meston Committee wanted to have a clear cut line when in some cases they take indirect taxation and in other cases they take direct taxation. However, it does happen in the case of many countries. I admit that Income Tax is a Central revenue. Now as a

matter of fact, the Meston Committee were not going even to take into consideration the claim of Bombay to the Income Tax revenue, but the Bombay Government urged the importance of taking that into consideration; and the Meston Committee did so, but it was to no purpose, because they decided that as other heads would steadily grow, Bombay must give all its Income Tax revenue to the Central Government. What was the result? Our growing head of income is Income Tax. I told you just now that while during 10 years the Land Revenue has practically been stationary and not grown, with regard to Income Tax, from a revenue of 48 lakhs we have brought the figure to 6 crores, and even that will not remain fixed. Probably, if our Province is allowed to develop, as it ought to be allowed to develop, I am sure that its Income Tax revenue will be larger. Well, this consideration weighed so much with the Joint Committee that they decided that the Government of Bombay may be entitled to some portion of its Income Tax. But what is that portion? They took the revenue from Income Tax which exceeded 6 crores in the year 1920-21. Then they said that on all additional assessments the Government of Bombay should be entitled to three pies in the rupee—very charitable indeed, but what does that amount to? If from 50 crores assessed, the revenue was 6 crores, and if the sum assessed would be 60 crores, then the Government of India would get $7\frac{1}{2}$ crores and Bombay would get 15 lakhs out of that. But further, if the rate of Income Tax was increased, Bombay was not to get any benefit out of it. Suppose, for instance, that the rate of Income Tax was increased to 25 per cent, then on 60 crores assessed, Bombay would be entitled only to 15 lakhs, and not a pie more, while the Government of India would get 9 crores. Now I ask the House to consider this question most impartially. As I said, we are not here in the spirit of narrow Provincialism to grab for our Province at the expense of other Provinces. We are here to do

justice to every Province that is represented in this Assembly. Our main head of revenue, our growing head of revenue, is taken away by the Government of India. We are left with Excise which is falling; we are left with Land Revenue which cannot yield more, and the result is that we have actually lost, while other Provinces have gained by this allocation, though I may say they may have lost by the method of contributions, our Province has realised 49 per cent less than what the Meston Committee anticipated it would. While the revenues of other Provinces have been more than the anticipations of the Meston Committee, so far as Bombay is concerned, we have actually received 49 per cent less than what the Meston Committee anticipated. Now, my Hon. friend Mr. Rangachariar referred to the riches of Bombay and to the increasing wealth of the Bombay Presidency, and said that he wished that all Provinces were like Bombay. Yes, but is it Bombay's crime—I say with all respect to my Hon. friend—is it Bombay's crime that it developed, when other Provinces did not, its trade and industries? If it is your pride, are you entitled, I ask the Government of India, to deprive Bombay even of a fraction of the income that she earns by the sweat of her brow for the use of her own Province? Bombay gives you a large amount of income-tax, Bombay cannot use any fraction of it except when, if there is any additional assessment made, she is to have the advantage of getting 3 pies in the rupee from this additional assessment. I ask the House to consider the question most impartially, and ask whether it is fair. Are you not crippling the resources of Bombay entirely when you deny to her any portion of her revenue which she has earned by the sweat of her brow? I think Bengal is in the same boat. I grant that the United Provinces and Madras have great possibilities so far as Land Revenue is concerned, but it must be admitted, and I think the Government of India ought to admit, that Bombay has no possibilities so far as Land Reve-

nue is concerned. What is Bombay to do? My Hon. friend Mr. Moir rightly pointed out what the needs of Education, Sanitation, and Medical Relief were. We are suffering from the same difficulties in Bombay in every direction. If you are in touch with the newspapers of Bombay, you will find that we have had to reduce the staffs of our hospitals, we have had to dispense with many who were eagaged in educational services; our Ministers in charge of Local Self-Government, Agriculture and Education cannot enable Bombay to take one step in advance, they cannot introduce any reform for want of funds. As a matter of fact, in the last meeting of the Legislative Council, the Council knowing that Bombay was being deprived of the source of its real income, refused to accept expenditure to the extent of 60 lakhs of rupees. Well, if after the Reforms, when we were expected to make progress by rapid strides from the moral and material point of view, if these strange financial relations between the Government of India and the Provinces deprive the Provinces of the opportunity for want of funds of making any progress, then I ask the Hon. the Finance Member, is it not the surest way of making "this experiment," to use the Premier's words, shall I say, a failure?

Well, you aimed at Provincial Autonomy when you gave Reforms. Is that what you have got? You gave Provincial Autonomy in name; you transferred departments, and deprived both the Transferred as well as the Reserved Departments of the opportunity of having any money available for carrying out their schemes. Leave aside the new schemes; they had to exercise stringency even in the ordinary things that they used to do before the Reforms came into existence. I do not say that it is a case peculiar to Bombay; I say it is the case in every Province. But I blame entirely the unjust award that the Meston Committee made. Figures conclusively prove that all expectations raised by the Meston Committee have been falsified. Well, if

I were to suggest a remedy here, I would have suggested to give us half of the Income Tax. I would have been in the same position as I think my Hon. friends from the Panjab, Madras and the United Provinces are. I don't want to take it upon myself to suggest a remedy, because I don't want to do anything which might be a gain to Bombay at the expense of other Provinces. Therefore, I suggest the most reasonable course I can suggest. We are all dissatisfied with the Meston Committee's Report. It has crippled the finances of all the Provinces. It has given them no opportunity for progress, to develop their resources, to make use of the Reforms to promote the moral and material advancement of the people. Is it not fair, then, that we should all say with one voice, if the award is so unjust and if the contributions which rest on it are so unjust: "Let us, for heaven's sake, get the whole question re-examined by means of an impartial agency." I think it is the fairest thing to do. I cannot understand how my Hon. friend the Finance Member will oppose this suggestion. Is he afraid, I ask him, of putting this whole question to the test of re-examination? He will have the opportunity of putting forward his case again. If he is in need of finances, probably his case will be strengthened. Why, I say, should he oppose this? If as I see my Hon. friend is applauding my arguments, then I feel sure he will jump at my suggestion and accept it. Why won't he do it? Because he is afraid he will not get another impartial Commission to do the same act of injustice as this Committee has unfortunately done. I ask my Hon. friend: "Is the Government of India going always to base its claim on an accidental unjust award made by a Committee which ought to have known its business a little better than it did? Why is he afraid of putting this question again to the test of examination?" Bombay is quite prepared to do so. And therefore I don't suggest an arbitrary remedy. I am so confident of the strength of my case, that I am prepared to put it

to any test. Of course, in the amendment I have suggested that it should be gone into by a Royal Commission.

Sir, I must frankly admit that I am not always in love with Royal Commissions. But in this instance, my object in suggesting a Royal Commission was that the Government of India is an interested party. You cannot deny that fact. They want to keep a tight hold over the finances which by an accidental unjust award they have obtained. And naturally Provinces would feel—if I may say so—that unconsciously the Government of India might appoint men who may not do justice to the task, who might rather be inclined to the Government of India's view. I say unconsciously. I don't say that the Government of India would deliberately do it. But in these days of stringency, everybody wants to keep any money he has in his pocket. Otherwise I am not in love with Royal Commissions. But I have also provided that, if the idea of a Royal Commission is not acceptable to the Government or to this House, it be done by any impartial Committee. I am not afraid. I will go further and say I am prepared to leave the case to the arbitration of my Hon. friend Mr. Rangachariar himself. I am so convinced of the strength of my case on its merits, that I am sure that, impartial as my Hon. friend is, he will never be able to deny justice to those Provinces which claim it.

Well, if there is anything in the pretence that is made that Bombay has developed the resources of India, that Bombay has, by the development of its industries and the development of its trade, contributed largely to the good name that India enjoys, then I say that this injustice to Bombay should not be prolonged for a minute longer. But do you know of the services Bombay has been rendering you? Take the last Loan. My Hon. friend is busy talking there, but I want just to remind him of that. Take the last Loan. The total figure is 45½ crores. What do you think Bombay has contributed to that amount? I want my Hon. friend

the Finance Member to hear this. What has Bombay contributed to the total figure of the loan? Out of 45½ crores, Bombay has subscribed loans worth 23½ crores. Bengal, another Province which is affected unfavorably by this arrangement, has contributed 13 crores. The remaining Provinces, all combined, only 9 crores. Well, I want to give some idea of the feeling that exists in Bombay with regard to this question.

I pointed out when we were discussing the Bengal question, that we have had no question during the last few years where at a public meeting in Bombay we had extremists like Sir Arthur Froom, on the one hand, and Mr. Gandhi, on the other, joining hands to protest against, except on the award made by the Meston Committee. There is such an amount of feeling in Bombay. And think of it. Is it at all fair that we should earn by the sweat of our brow and send it to the Government of India and not have any fraction of it for the advancement of our Province? I say it is most unjust, and I think it will be to the advantage of all Provinces to have the matter re-examined. I am not suggesting an arbitrary remedy, as my friends from Madras and the Panjab are doing. Why should we be afraid of putting the whole question to the test of re-examination by an impartial Commission? When all of us are dissatisfied with the award, that seems to me to be the best course.

Convention Memoranda No. 13.

NOTE.—All memoranda circulated for information and criticism contain the view of the author at the time of writing. Changed conditions might involve modifications. The considered views of the Committee will not be available until it issues its report.

Dominion Home Rule for India

By ANNIE BESANT, D. L.

Why India Should Draft Her Own Constitution

There is a fundamental difference between the methods by which Governments and Freedom were harmonised in the East and the West, and a breach of continuity in either case, ignoring the genius of the Nation concerned, its traditions, its customs, its attitude to life, can never result in a stable and prosperous condition. A Nation's Present must be built on its Past, and the attempt of one Nation to impose on another a Constitution not rooted in the Past of the latter must always prove a failure, no matter how benevolent the intention of the ruler.

The fundamental difference between India and Britain is dual: first, as to the nature of the human being, the units constituting the Nation; secondly, as to his relations with his fellows, his methods of Government and conduct of affairs.

In India, the human being is the man, the wife and the child, *i. e.*, the family; in England, after the destruction of free Saxon England—constituted on the Eastern model—by the Norman Conquest and the imposition of Feudalism, the man was an isolated individual; the first was born into a complex of obligations, duties, family and social;

the other had inherent rights, however he might be temporarily enslaved. Hence, in India, a group of families made the village; a group of villages the town; a larger group of villages the City-State or the Republic, or the Kingdom or the Empire—the village organisation traceable through all; the village was governed by its Panchâyat or Village Council; “little republics” foreigners called them, wondering at their independence, the personal liberty enjoyed, the happiness of the people; the City-State, like the later ones of Aristotle, governed by its Panchâyat with its Committees, elected by the citizens; the Republics similarly by their Councils; the Kingdoms by a King—elected, hereditary, as the case might be—and his Council; as Kautilya said in the 4th century B. C., a Kingdom without a Council was like a cart with one wheel; an Empire by its Emperor, and its administration, a collection of Panchâyats, as the six of Chandragupta Morya, a group of Kingdoms owning a Suzerain, a Chakravarti. And the King or Emperor differed in theory from the similar potentates of the West, in that he was regarded as a trustee—as the father was the trustee of the family property, accountable to the family—accountable in the last resort to the people, and disposed of if too bad to endure.

In the feudal system the King and his Barons possessed all and ruled all, and the people did not count, desperately as Saxon England resisted its conquerors, clinging to its old liberties.

In India, the village owned its land, and all lived upon it; the craftsmen were maintained by shares in the land, and their products paid for its tillage; in a Kingdom, the “King’s land” was set aside and cultivated, and the crops on it went to him, in exchange for protection and the settling of quarrels between villages. When the inhabitants grew too numerous, a group of families went off and, founded another village. In England, in theory, the land belonged to the King,

and he parcelled it out among his nobles, in exchange for their military service and certain levies (?) maintained by him. The struggle for freedom there was by Barons against King, and then, as towns grew large and merchants and producers strong, by these against King and Barons ; always a struggle by the lower to wrest rights from those above them, and to increase the power of the many by wresting some portion of power from the few. In India, there was no such struggle ; the villages and the aggregations of villages ruled themselves, and, where incorporated in a larger whole, paid for protection and justice against intrusive neighbors with part of their products. They troubled not in larger areas about the higher Governments, but paid their dues and went on in their own way, managing their own local affairs. Hence the extraordinary stability of Indian civilisation : from the dawn of recognised history until the terrible 18th century A. D., internal records and the reports of all visiting foreigners describe her as rich, well-ordered, fertile, the abode of a law-abiding and happy people. The Indian rulers fought with each other locally, as did kings everywhere, but they respected the villages, for on them depended their wealth. Raiders from the north devastated, and they carried away much portable wealth ; they could not carry away the land, nor the producing power of the people ; they were a local temporary scourge, like floods or drought, and did no lasting harm. Serious invaders who came to settle down, respected the non-combatant villagers and townsmen, collected the normal taxes, and assimilated themselves, quickly or slowly, to the customs they found. They became Indianised, and added something to the many-sided civilisation of the huge peninsula.

In India, Government has begun in the village and widened itself over larger areas ; in England, after the Norman Conquest, it began an individual and widened during nine centuries into a democracy, and before

it has finished its first millennium, doubtless every adult man and woman will have a vote and will thus have a share in the Government. In India, after at least seven millennia—not to shock overmuch the shortsighted historians of the West—she is having imposed upon her a hybrid Western Constitution, with 2 per cent of the population “enjoying” the franchise, and with its utility largely destroyed by imposing on the top-heavy fabric as “safeguards” many of the royal prerogatives which England has shaken off as destructive of liberty, and which are peculiarly irritating to highly cultured men, who find their power of helping their country largely neutralised by these mediæval shackles.

Because of these basic fundamental differences, which penetrate the two National lives, we claim that India should frame her own Constitution.

The Foundation

No sex disqualification should exist for any franchise or office from the Village Council to the Central Government. The village should again be the unit of Government, and every adult—either of 18 or 21 years of age—should have a vote for the Village Panchâyat (Council). Nearly all the voters will be illiterate—thanks to the destruction of village education in the general destruction of the Village System—but they are not, by any means, wholly uncultured, for they know the great laws of Karma and Re-incarnation, the existence of other worlds with their inhabitants, the stories of Shri Ramachandra and Sita Devi, of Shri Krishna and of the heroes of the *Mahâbhârata*, and these truths are woven into their lives; they understand their own work, and are shrewd in its management, and alert to grasp rational improvements. The instinct of Self-Government is still in them and is readily awakened, if they are given real control; they have the spirit of working co-operatively for

common improvements, such as making wells, irrigation channels, putting up a school-shed, improving roadways and so on, and readily give labor for such purposes, if left to do it in their own way, and will even tax themselves if they control the product of the tax. The Panchâyat must have power to administer all internal village affairs, such as primary schools including workshops, local irrigation and forestry, civil and criminal jurisdiction within defined limits, local cesses, keeping in repair and good order all public conveniences, development of local industries, appointment of village servants, etc. It should be elected annually, and refusal to serve should entail a fine, but no one should be compelled to serve more than once in a term of years. In towns there should be one or more Ward Panchâyats, according to size of town. (A specimen Panchâyat Act, drafted by Dewan Bahadur T. Rangachariar, now M.L.A., Madras, and discussed and amended by a Debating Club, the "Madras Parliament," in 1916, has been published as *Convention Memoranda* No. 10. It may serve as a specimen while needing a few amendments.)

Taluqs

The Taluq or Sub-District Council should be correlated with the Panchâyat below it and the District Council above. In this we come to a principle easy to carry out in India—but probably impossible in the West—the restriction of the electorate by the demand for higher qualifications for power over the larger area, but in consonance with Democracy, qualification within the reach of the average person, if he will improve himself. It is dangerous to the welfare of the State to allow a man to vote for a representative who will deal with matters of far-reaching importance of which the voter has never heard. The qualifications for a vote for the Taluq Council should be such that a villager could acquire one of them if he chose to improve

himself; thus: he should be able to read, write and cipher or, is a teacher in a primary school; or, has been a member of a Panchayat for three years, thus gaining a knowledge of administration; or, has gained a small property qualification; or, is a skilled, as compared with an unskilled, workman; or, has done some marked service to his village, or, who being not less than 25 years of age, is elected as their representative on the Taluq Council by a majority vote of the village electorate. Taluq elections should be triennial. The Taluq Council duties would include the maintenance of means of communication outside village boundaries; of model farms; of extra-village channels of irrigation; superintendence of secondary schools with technical departments; holding of agricultural and other machinery for hire by villages, and of stud animals for improving breed of village flocks and herds; Reserve granaries; Institutes for distribution of necessaries for village industries and for disposal of surplus products; and the like. Civil and criminal jurisdiction within fixed limits, and appeals from the Village Benches and decisions of disputes between villages. Municipalities with population under a fixed number should be of the grade of Taluq Councils.

Districts

District Councils form the third grade of Councils, and should be correlated with the Taluq below and the Provincial above. The qualifications for the franchise should be higher, but within reach, again, of all who work to improve themselves. The District Franchise should be open to all who have passed through the Secondary course (Middle and High School); or, have educated themselves to that level; or have reached a similar level in technical or scientific education, or, is a teacher in such institutions; or, has served for six years on a Taluk Council; or, skilled workmen who are of the grade of overseers, superintendents, etc.; or, who have

a certain property qualification; or, being not less than 30 years of age, is elected as their representative on the District Council by a majority vote of the Taluq electorate. District elections should be quinquennial. District Council duties should include the allocation of District taxes to Taluqs and villages, and the proportion to be retained by each for local use; the inspection of Taluq and Village accounts; civil and criminal jurisdiction within fixed limits, and the hearing of appeals from the Taluq Court decisions and sanctioned appeals from the Village Benches; District railways and general superintendence of roads and decisions in disputes between Taluqs; second-grade colleges and Technical Institutes; an Institute for Special Research into District capacities—differences of soil, manures best for each, crops most suitable to each, local agricultural pests, the distribution of seeds to the Model Taluk Farm or Farms with supply for the villagers; supply of information needed by cultivators, craftsmen and others, the Institute being a centre for distribution of expert knowledge and the means of using it to the whole District, while the Taluq Model Farm and Technical Institute will bring both to the villages. Municipalities should have Wards, acting as Panchâyats, in charge of inspection of food stuffs, house sanitation, cleaning of streets, inspection of water supply, public baths and latrines, Baby Welfare centres, milk-supply, and the like. The Municipality should own all public means of transport, lighting, water-supply, markets, schools and colleges within its area, and utilise its profits for decreasing taxation, as is largely done in Great Britain.

Needless, perhaps, to say that all who possess a higher Franchise, *ipso facto* possess the lower ones.

The Province

The fourth grade of Councils, the Provincial Government, and the fifth, the Central Government, are specially dealt

with by the NATIONAL CONVENTION Committees I, II and III. It is therefore necessary here only to indicate how the foregoing should influence the franchises and some of the duties of these.

The franchise should be held severally by all with one of the following qualifications: Graduates, and all educated up to graduate level, all "professional" men and women; heads of departments in commerce and industry; payers of income-tax; earners of wages of Rs. 25 per mensem; yearly subscribers to a daily paper; owners of property of a fixed amount; payers of Rs. 10 per mensem rental. Also by all who have served for five years on a District Council, or who, being not less than 35 years of age, are elected by a majority vote of their District electorate to the Provincial Council; also, all members of Chambers of Commerce or of Councils of Trade Unions.

Among the duties of a Provincial Council should be: The recognition by its Education Minister of Universities with approved standards and curricula, the Universities affiliating in turn residential and teaching Colleges, the establishment and maintenance of a Research Institute of Science (including Agriculture and Commerce) manned by a staff of experts, in touch with the District Institutes mentioned, and supplying them with the results of the highest attainable knowledge on the branches on which the material prosperity of the Province depends. By the correlation proposed, a clever village boy or girl could climb to the University, through general culture or special technical training, and the University hand in hand with the Provincial Institute would send down through the linked grades of teaching knowledge which would put at the disposal of the villager the highest expert results of its use.

I have not noted that these Councils should also add gradually the amenities of life to the areas under their control, such as the library, the recreation club, the game tournament,

the ball for music, for drama, for lecture, giving higher culture and emotional and physical pleasure at each stage, until India became again a cultured Nation.

But she must be free. Take Free Education, and remember how Gokhalé fought for it and failed; but in the first three years of partial Indian rule in matters of Education, measures were passed for Compulsory Free Primary Education in Bombay, United Provinces and Panjab, while in Bengal, Madras, Bihar-Orissa and Central Provinces compulsion was left to the local authorities but Free Primary Education was sanctioned. The 3·4 per cent of 1923, after 88 years of education by our English trustees for the masses, will soon shew a tremendous leap upwards, now that Education is under Indian control, their natural trustees.

I do not know if this scheme of Government, founded on the Indian Past, will overcome the pseudo-democratic schemes of the West, accepted by our English-educated Indians, largely ignorant of their own history, or if they will prefer building from the top once more. But now, or later, India will quench her thirst for Liberty at her own pure springs of living water. She will realise that the peasant will be free and happy when he manages his own affairs, on which his welfare depends, and also that the Government of a Nation needs the highest Wisdom, chosen for that great work by educated brains and patriotic hearts.

APPENDIX I

REPORT OF THE SUB-COMMITTEE APPOINTED BY THE MADRAS PROVINCIAL CONGRESS COMMITTEE TO CONSIDER A SCHEME OF SELF-GOVERNMENT

Delivered by August 15th, 1915

YOUR Sub-Committee believes that useful and relevant discussion will be best subserved, if the alternative schemes discussed by them are set out in their Report, so that the subject may be considered in the light of the main suggestions made by the various members.

Two main outlines were discussed, one submitted, with a valuable Prefactory Note, by Mr. S. Srinivasa Iyengar, and the other stated in tabular form by Mrs. Annie Besant, as a mere outline for discussion. The first deals only with Provincial and All-India Legislatures, stating that Local Self-Government should be dealt with separately. The second considers that the outline of Local Self-Government should be given, as a necessary part of the whole. Some of your Sub-Committee take the former view, some the latter. Both are submitted.

PRINCIPLES AGREED ON BY WHOLE SUB-COMMITTEE

(a) India shall have Fiscal Autonomy, subject to certain fixed charges—as the military expenditure.

(b) Every District in a Province shall elect at least one member to the Provincial Parliament.

(c) There shall be no nominated non-official members, but all non-officials shall be elected.

(d) Permanent Civil Servants shall have no place in the Legislature or Executive, but shall be a purely administrative body, as in England.

(e) 1. All taxation shall be under the control of the Legislature.

2. All expenditure shall be under the control of the Legislature.

(f) The All-India Legislature shall control the Customs. It shall have no power over relations with countries outside the Empire, *i. e.*, cannot conclude treaties with foreign Powers, or the like.

(g) The Governors and Governor-General shall be appointed by the Crown for a fixed term of years.

(h) The electorates of the Provincial and All-India Legislatures shall be so arranged as to represent adequately the whole people.

CONSTITUTIONAL DETAILS ON WHICH THERE IS
DIFFERENCE OF OPINION

EXECUTIVE COUNCIL. 1ST SCHEME. The Governor shall be *ex officio* the President of the Council.

Half the members of the Council shall be nominated by the Crown, and half shall be elected by the Legislature.

(As a step towards full election)

All resolutions of the Legislature except those of the Budget, if objected to by the Executive, shall not be binding on it unless passed in two consecutive years.

2ND SCHEME. Governor to be non-responsible, representing Crown, having only power to veto in specified cases, and with no seat on Executive Council.

Governor to nominate a Premier.

Premier to invite members of the Legislature to form Executive Council, and assign portfolio to each.

Cabinet, on vote of censure, either to resign, or to ask for a dissolution.

ARMY AND NAVY

1ST SCHEME. Legislative Council bound to sanction expenditure on Army, a minimum amount to be fixed by the Viceroy in Council, in the light of the proportion to the revenue during the last ten years.

2ND SCHEME. Provision shall be made for the admission of Indians to the higher offices in the Army to the extent of not less than one half.

3RD SCHEME. A Territorial Army bound to serve only within India, under the control of the Viceroy as representing the Crown, but the number of men and the expenditure to be voted by the Legislature; the Army to be allowed in case of war to volunteer for

service outside India. A body of Imperial Troops to be maintained to serve outside India, when called on by the Crown, the number of such troops to be determined by the Legislature and to be supported by a fixed charge; while in India, to be under the control of the Viceroy. A Home Navy to be maintained under similar condition, a fixed proportion to be available for foreign service

SYED MUHAMMAD

B. N. SARMA

L. A. GOVINDARAGHAVA IYER

C. KARUNAKARA MENON

S. SRINIVASA IYENGAR

ANNIE BESANT

(The Hon. Mr. V. S. Srinivasa Sastri was not in Madras)

NOTE BY MR. S. SRINIVASA IYENGAR

1. What India asks for is not Self-Government, but Self-Government within the Empire. The connection with the Imperial Government need not be in any way less than what it is in the case of the Self-Governing Colonies

2. In the second place, we should clearly distinguish between Self-Government and Local Self-Government. We are concerned immediately with Self-Government for each of the Provinces and for India as a whole. It is clear that the franchise which must be the basis for the Parliament, or the Legislative Council, of India and of the Provinces cannot solely be rested upon Municipalities and Local Boards. Land-holding, of all descriptions, income, education, commerce and industry, etc., etc., will also have to furnish the bases of a parliamentary franchise.

3. Undoubtedly Local Self-Government ought to be strengthened by a wide franchise, greater power, and more responsibilities. But a scheme in connection with it requires a separate and detailed treatment, otherwise, it may possibly be embarrassing.

4. There is no doubt the Congress ideal is the one for which we should strive, that is, the ideal of the Self-Government within the Empire on Colonial lines.

5. Ordinarily Self-Government within the Empire means a Governor appointed by the Crown and a Legislature elected by the inhabitants of the country, and possessing the power of the purse. An elective assembly with power to lay down taxes and appropriate

the proceeds, and a Governor to be appointed by the Crown so as to preserve connection with the Imperial Government, these two are *sine qua non*. If we would avoid the chequered fortunes which the British Colonies underwent in the attempts of their Legislatures to control the Governor a third point has to be conceded. The principle that the Ministers should be responsible to the representative assembly has to be accepted to avoid perpetual conflict between the Executive and the Legislature. Equally there can be no doubt that there should be a Confederation of the Provinces of India subject to a Central all-India Parliament and Government.

6. The control of the Empire over the Self-Governing Colonies is exercised through four channels :

(i) The appointment of the Governor by the Crown.

(ii) The power to veto legislation.

(iii) Control of foreign relations.

(iv) Appeals from Colonial Courts to the Privy Council.

The Governor, or Governor-General, as the case may be, must be supreme in all matters which do not affect the internal affairs of the Province or of India. It is, I think, impracticable and undesirable in India at present to imitate the Party System with a self-constituted Cabinet, and, in fact, in England at the present day, the Party System is already being replaced. Political power has practically passed, according to acute observers, from the Parliament to the people, and the Cabinet is only the sensitised medium of the people and not of the Parliament. Having regard to the existing Indian conditions, it is impossible to mould institutions as to make the Party System the pivot. Unless therefore we have, as in England, the whole community divided into two or three political parties it is not easy to see light. The lines of cleavage here in India are not political but religious, social or linguistic; are economic or administrative, but not intellectual and emotional. As has been well said : "In order that the warfare of parties may not only be safe but healthy, it must be based on real difference of opinion about the needs of the community as a whole. In so far as it is waged not for public objects but for private gain, whether of individuals or of classes or of collective interests, rich or poor, to that extent political life will degenerate into a scramble of self-seekers."

7. A Party System of the English type can only be the slow

growth of centuries, and it has been said to exist in its purest form only in England and in no other country, not even in America. So too on the Continent, it has, according to acute observers, proved somewhat of a failure. For the English Parliamentary system was the result of long-standing political parties, and was not the cause of the Party System of Government. While therefore we must make provision for the eventual emergence of a sound Party System, and of a full Responsible Ministerial Government, the step that can now be safely taken in the interests of India is, however, not to try to produce a replica of the English Parliamentary system.

There is no need to frame a detailed scheme of Self-Government on Colonial lines; for every English politician understands, and we all understand, what the Parliamentary system of the English and the Colonial type means. We are therefore more concerned with suggesting one or more alternative schemes of Self-Government in case it is considered undesirable to ask for the introduction of the Party System of Government in India. Many may hold the view that it is impracticable, and many others may hold the view that it is even injurious to the best interests of India at present. But whatever differences of opinion there may be, opinion will be almost unanimous that party Self-Government is not at the present moment within the reach of practical politics.

Moreover, Self-Government is of many types and of all degrees. It is also very doubtful whether the Party System of Government is either the wisest or the last word upon the question: "What is the best form of Self-Government?" There, can, however, be no doubt that a representative assembly with the power of the purse, and an Executive in subordination thereto are vital to any system of Self-Government. Any scheme to be suggested must divide under the following heads:

(1) The constitution of the Provincial Legislative Councils and of the All-India Legislative Council.

(2) The constitution of the Executive in connection with the Provincial administration and the All-India administration.

(3) How to make the Executive effectively subordinate to the Legislature, wholly or partially?

(4) To what extent and in what matters should the Provincial Governments be independent of the All-India Government, and in

what matters should the latter have control over the former?

(5) Should there be a separate secretariat for India in the Imperial Government, and if so, what its control should be. Certain vital details in connection with these heads have also to be considered. The Self-Governing Colonies of the Empire being more or less inhabited or controlled by men of the same race, should not the British connection with India be further recognised by conceding, in addition to the four heads of control, that the Crown is to appoint directly to a certain percentage of offices of the Indian administration such persons as it chooses, and should not the salaries of such establishment along with the Army and the Navy expenditure be a fixed charge on the revenues of India, or of the Province, as the case may be, in the sense that the vote of the All-Indian, or the Provincial, Legislature shall not affect such charges?

The most difficult, as it is the most important, point is how are we to secure a real subordination of the Executive to the Legislature. The system of a Premier and his Cabinet may be put aside. A servant is none the less a servant, even if he is appointed for a fixed period, and even if he is not at every moment and in all details controlled by the master. Sir William Wedderburn has forcibly pointed out, in *The New Statesman*, that members of the Civil Service should be servants of the State and not its masters. They should correspond to the staff of the permanent administration in England, and should not be entitled to sit in the Executive Council of the Provinces or of India.

In the second place, it is possible to have the whole Executive Council elected by the Legislature, at any rate by each Provincial, if not by the All-India, Legislature. This, again, is perhaps not practical politics, and we may be content if, say, out of 6 members of each Provincial Executive Council 3 are English politicians sent out to assist the Governor and 3 are non-official Indians to be elected by the Legislature directly, or to be appointed by the Crown from out of a small panel of 10 or 15 persons elected by the Legislative Council.

The principle of election to the Executive Council has been recognised in the South Africa Act, 1909. Each Province of the Union is governed by an administrator and by four persons who are elected by the Provincial to form, with the administrator as chairman, an Executive Committee for the province, which carries

on the whole administration of provincial affairs (cf. Edw. 7, cap. 9, sections 78 and 80). Even in Colonies which have not full Responsible Government, Members of the Legislative Council are appointed to the Executive Council. In Malta, two are elected Members of the Legislative Council. In Barbadoes, the Bahamas and Bermuda, Members of the Colonial Legislature are placed on the Executive Council for the purpose of reconciling the opposition of Executive and Legislative powers.

In the third place, the present law by which the resolutions of the Legislative Council have only recommendatory and not obligatory value requires amendment. All resolutions of the Legislature, if carried in two consecutive years, should be made binding on the Executive, except resolutions concerning the Army and the Navy, the Native States, Foreign Relations, and the proportion of the Services which must be assigned to Englishmen directly appointed by the Crown. The scope of the Provincial Legislatures in relation to the All-India Legislature should be designed more or less on the lines adopted in the South African Union and in the Dominion of Canada. If the members of the Civil Service are to be Members of the Executive Council, and if the principle of election is not to be recognised in connection with the Executive Councils, the Legislature must be enabled to pass a vote of censure which shall ordinarily be given effect to by the Governor calling upon the Member in charge of the portfolio to resign.

In order to make the connection between India and England more intimate and to give India a real place in the Empire, she must be represented in the British Parliament at least to the extent of one Member for each of the Provinces.

As regards the power of the purse, while all taxation should be under the control of the Legislature, all expenditure need not be on the same footing. The civil services and the military services, being necessary to carry on the administration, should for the present remain as fixed charges not liable to stoppage by a vote of the Legislature.

Lastly, all political relations with Native States should be controlled only by the Governor or the Vicerey as the case may be; but all matters not being political should be under the control of the Provincial or All-India Legislature, or exclusively of the latter

TABULATED SCHEME, ANNIE BESANT

It seems necessary at least to indicate a scheme which is complete, so as to show the basis of Government, which is here the Panchâyat for the village and the Ward for the town, with universal suffrage for all over 21. After this the suffrage becomes restricted by age and educational qualifications, considered necessary as the questions decided become more and more complex.

The electorate is composite, the Council of the next lower grade, *plus* all the people in its area who are qualified to vote.

IV and V are replaced by the Principles agreed on, by the 2nd scheme of Councils, and 3rd scheme of Army and Navy.

COUNCIL	AREA	ELECTORATE	DUTIES	ELECTIONS
I Panchâyat I Ward	Village Ward of Town	Every person over 21	Sanitation and scavenging, Food (inspection in Market), School and Workshops, Industries, Suits up to Rs. 50, Irrigation, Wells, Roads Lighting, Dispensary	Annual
II Taluq II Municipalities (? under 10,000)	Taluq Town	Village Councils, Ward Councils; and all over 25, education to Matriculation level	Secondary and Technical Schools, Model farm, Lighting, Water, Canals, Roads, Granaries, machinery, Organise industry	Triennial
III District III Municipalities (? over 10,000)	District Town	2nd grade Councils; and all over 30, education to F. A. level	Colleges, Roads, etc., Assignment of proportion of taxes	Quinquennial
IV Provincial Parliament	Province	3rd grade Councils; and all over 35, education up to Graduate level	Ministry, Governor for Crown, Administration of Province	Septennial
V National Parliament	India	4th grade Councils: Chambers of Commerce, etc.		

We suggest that the Report should be sent to each Cong
Committee, to All-India Congress Committee, and to paper
Madras, Bombay, Calcutta, Allahabad, Lucknow, Lahore.

Convention Memoranda No 14

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NATIONAL CONVENTION

AMENDMENT OF THE ACT OR A NEW BILL?

By A. RANGASWAMI AIYAR

One of the general questions which would arise for the consideration of the NATIONAL CONVENTION is whether the object of the CONVENTION of securing Swarāj or Self-Government for India would be achieved by retaining the framework of the present Government of India Act, and introducing suitable modifications therein for securing the object in view, or in framing a new Commonwealth of India Bill, without any reference to the existing Act. The report of the Official Committee appointed by the Government of India is expected to deal mainly with the possibilities of the rule-making powers conferred by the Act. It was explained by the Secretary of State "as an expert body to undertake the preliminary investigations essential before the precise lines of further proceedings could be settled and embarked on". The investigation is to be in consonance with the structure, policy and purpose of the Act, and the difficulties and defects disclosed are sought to be remedied by action taken under the Act and the Rules, or by such amendments of the Act as may be necessary to rectify any administrative inconvenience. The limitations thus placed on the Committee are exactly the limitations which the labors of the NATIONAL CONVENTION are intended to work without and transcend.

The Government of India Act in its present form is a patch-work legislative effort consisting of various layers of earlier enactments which came into existence when different

political policies or administrative conveniences demanded their introduction. It possesses all the disadvantages of such a multiple scheme of legislation, and will ill-afford to serve as a sound basis for a scheme of Self-Government expressing the Self-Determination of the people of India. Such a scheme as voiced by the representatives of the Indian people would certainly be at variance with the principles of the bureaucratic system at the top of which stands the Secretary of State for India in Council. It is likely to embody principles of democratic Government foreign to Western Democracy in some aspects, but suited to the genius and traditions of the Indian people. These principles need not be worked out in detail in the scheme, but will give ample scope for expansion into details. In the words of Mr. Ramsay MacDonald: "We have not said the only, nor the last, word in democratic representation, and the system that is to be applied to any country must be moulded to suit the conditions of the country." Again he says: "The fundamental fact is that no mere Reform of the existing system will be of avail, because the conception of India's place in the Empire which that system embodied has changed, and now no longer exists."

A cursory examination of the present Government of India Act will show that it constitutes a haphazard piece of legislation characteristic of its Anglo-Saxon origin, intended to satisfy the needs which the exigencies of particular situations demanded. Its pivot is the Secretary of State for India and his Council who succeeded to the powers of the East India Company or the Court of Directors or Court of Proprietors of that Company acting alone or with the assent of the Commissioners for the affairs of India. The control of the Secretary of State over the Government of India stands out prominently in many of the provisions of the Act. As the attainment of Dominion Status for India, which it is the object of the Commonwealth of India Bill to

secure, will relegate the Secretary of State for India to the position which the Secretary of State for the Colonies now occupies in the Government of Great Britain, save in regard to such subjects like Army and Political and Foreign Affairs, which may be temporarily excluded from the control of the Indian Legislature, very large modifications will have to be introduced into the structure of the Act, by which the Government of India will succeed to most of the powers now vested in the Secretary of State for India in Council which will transform the Act past recognition and make it, so modified, neither an artistic, nor an elegant performance. Parts I, II and III of the present Act will be primarily affected in this manner along with other sections in the later portions of the Act. Parts IV and V, which deal with the general powers and duties of Governor-General in Council and Local Government, will be practically reshaped with the position of Governor-General as the representative of the sovereign, assisted by a Cabinet responsible to the Imperial Legislature in most of the subjects for the present, and Local Governors with Cabinets fully responsible under conditions of full Provincial Autonomy, the present Executive Councils of the Imperial and Local Governments disappearing as vestiges of the irresponsible Bureaucratic Government of the past. Part VI dealing with the Legislatures, both Imperial and Provincial, as the vital machinery in the institution of Responsible Government, will have to be completely overhauled. Many omissions, amendments and additions will have to be made; many important provisions which are now relegated to a comparatively obscure place in the Rules may be embodied in the Bill itself. The foundation of Responsible Government will be laid not from the top, as legislation hitherto in a haphazard fashion has sought to do, while scrapping away the ancient foundations of village communities which stood the impacts of centuries and millennia, and the onslaughts of

foreign invasions and domestic disturbances. Principles of Local Self-Government starting from the villages, going through larger rural and urban areas and Taluqs and Towns to Districts, will have to be enunciated, and find their proper places in the proposed statute. The present Part VI will therefore become an anachronism.

Part VI A which deals with the Statutory Commission which should come into existence in 1929 to enquire into the working of representative institutions and the need for extending or restricting the principle of Responsible Government in British India would have been rendered superfluous by the proposed Commonwealth of India Bill. If the Lee Commission has to some extent made an inroad on the present Act, it would be compelled by the Draft Bill.

Part VII dealing with the salaries and leave of absence and vacation of office, etc., has been modified by the legislative measure in Parliament allowing leave to be granted to Governor-General and Governors. If Executive Councils disappear, provisions relating to their appointment, leave of absence, etc., found in Part VII, will go. The solitary section 96 in the present Act removing disabilities on a native of British India from holding any office under the Crown in India by reason of his religion, place of birth, descent, color, etc., will have to be expanded, and the right of free speech, writing and association, the right of trial, and the removal of any disability on account of sex, equality of all persons before law, the right to free education up to a certain standard and familiar elementary rights of a citizen in a free democracy may have to be embodied in the Bill.

Parts VIIA and VIII dealing with the civil services in India and Indian Civil Services, respectively, have been interfered with by the appointment of the Lee Commission and the suggested action on the recommendations of the Commission. The more rapid Indianisation of the Services, the establishment of a permanent Public Services Commis-

sion and the recruitment of the Services and their control by, the responsible element in the Central Government and the autonomous Provinces will necessitate modifications in these portions of the present Act.

Part IX dealing with the High Courts, their constitution, jurisdiction, etc., will have to be modified if a Supreme Court of India is contemplated in the Draft Bill, and certainly in regard to the requirement in the present Act that one-third of the Judges should be Barristers or Advocates, and that not less than one-third must be members of the Indian Civil Service.

Part X dealing with Ecclesiastical Establishments will disappear when the separation of Church from State becomes a recognised principle in Indian Self-Government, as in other civilised countries.

Part XI dealing with Offences, Procedure, and Penalties will have to be approximated to Indian Criminal Law while affording facilities for the prosecution of offences in England. Part XII refers to supplemental provisions and saving clauses.

To graft far-reaching changes on the existing Act, as some Indian politicians appear to think, will make the Act, as incomplete, as it is, and more clumsy than it is at present, and, perhaps, the Act itself would have to be modified beyond recognition while at the same time the resulting production would retain its unsatisfactory character. Therefore, it would be extremely desirable for the NATIONAL CONVENTION to leave the present Act as it is and start to frame a different Draft Bill altogether, embodying all its recommendations.



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DEFENCE

BY B. SHIVA RAO, M. A.

It is obvious from the history of the Dominions that the grant of Responsible Government did not depend on their capacity to maintain internal peace and order or to protect themselves against foreign attack. In 1862, the House of Commons passed a resolution that "Colonies exercising the rights of Self-Government ought to undertake the main responsibility of providing for their own internal order and security and ought to assist in their own external defence". Troops were withdrawn from Australia fairly early, partly because of the comparative safety of the Colonies; but in Canada, the Imperial Government spent money freely on the defences of Quebec even after Confederation and guaranteed a Canadian loan to improve the Militia and provide fortifications for Montreal. The last Imperial troops were withdrawn from Canada only in 1905 with the consent of the Dominion, and from South Africa not until 1914, on the outbreak of the War.

In regard to naval protection, the Dominions were even slower to recognise the need for development of their own forces. Canada was content for many years to leave Naval Defence to the Imperial Government, and so late as 1907, Sir Wilfred Laurier pleaded at the Imperial Conference that it was premature to open the question. Australia made a start earlier. In 1881, an Australian Intercolonial Conference decided that the duty of maintaining "the Imperial Navy should rest on the Imperial Government which ought at its own cost to defend Australia by sea". After negotiations, they consented to pay a subsidy of £126,000 towards the upkeep of a squadron, provided it was not moved from

Australian waters without the consent of the Colonial Government.

A great step forward was taken after the Imperial Conference of 1907, at which a resolution was passed, at the suggestion of Mr. (now Lord) Haldane, that the British General Staff should be expanded into an Imperial General Staff, "selected from the forces of the Empire as a whole," to study military science in all its branches, to collect and disseminate military information and intelligence to the various Governments, to undertake schemes of defence on a common principle, and, without in the least interfering in questions connected with command and administration, to advise as to training, education and war organisation of the military forces of the Crown in every part of the Empire. At a Defence Conference in 1909, a plan was adopted, according to Mr. Asquith, for rapidly combining in an emergency the forces of the Empire into one homogeneous Imperial Army without affecting the autonomy of the Dominions. Since then, the Dominions have entered on an era of rapid *building up* of their forces. In 1909-10, Australia and New Zealand adopted compulsory military training in time of peace; South Africa followed the example in 1912: by 1914, with the partial exception of Canada, the Dominions had assumed full responsibility of their National Defence on the military side. It may be added, without going into details, that the German naval menace in 1909 and the consequent withdrawal of British squadrons from Colonial stations to the North Sea had a similar stimulating effect on the Dominions towards the adoption of a National policy of Dominion Navies.

The position has changed greatly since the War. The Imperial Government may now station troops in any part of the Empire, but must maintain them at its own cost, unless a Dominion volunteers a contribution. It cannot command the service of a single Dominion soldier overseas, and the Dominions have never agreed to any arrangement for main-

taining a force available for overseas expeditions. They have also refused to accept an Imperial General Staff to decide the military policy of the Empire, on the ground that the experience of the War has shown co-operation to be possible without any centralised system of control. The only point conceded is with regard to similarity of training and equipment, to facilitate which soldiers of distinction are invited for opinion and advice. It is possible that General Staffs may be created in the Dominions to study military plans with the Imperial General Staff, but remaining wholly under the control of their respective Governments. These principles determine in a substantial degree the relations also between Dominion Navies and the British Admiralty.

From the foregoing account, it is to be observed that (a) the grant of Responsible Government did not depend on the capacity of the Colonies for Self-Defence; (b) the Imperial Government regarded it as an obligation on its revenues to render protection until they were ready to assume the burden: (Consider Disraeli's outburst in 1852 with reference to the Canadian Colonies: "These wretched Colonies will all be independent too in a few years and are a mill-stone round our necks."); (c) now that they are self-reliant the Dominions do not feel a reciprocal obligation of maintaining a standing army for Imperial purposes; (d) they will not accept any scheme for Imperial Defence which derogates to the least extent from their status as autonomous States.

Mr. Ramsay MacDonald observes in *The Government of India*: "Undoubtedly India has not been dealt with fairly in this respect (military expenditure). It has had to bear the expense of operations that have been mainly Imperial.....A large part of the Army in India, certainly one-half, is an Imperial Army which we require for other than purely Indian purposes, and its cost, therefore, should be met from Imperial, and not Indian, funds. When we station troops in other parts of the Empire, we do not charge them upon

the Colonies, but in India, we have the influence of the dead hand. India is treated as an independent State which, however, we rule, and whose military policy we control, while it "borrows" from us a certain number of troops for which it pays. The arrangement is most unsatisfactory.....A Self-Governing India would no doubt insist upon bearing some definite share in Defence, but like the Dominions it would settle how much it ought to bear: it would adjust the cost to its means and it would decide in what form it was to make its contribution—perhaps an Indian recruited army. In any event, the present plan, by which India pays for the Imperial Army stationed there, without in any way determining policy, is as bad as it can be. If the existing system of military defence is to last the whole cost of the British Army stationed in India should be borne by the Imperial Exchequer."

India's aspiration for Dominion Status cannot be thwarted by the argument that she is incapable of defending herself against foreign aggression. While, therefore, control of her defence, in the full sense of the term, cannot be conceded to her until her National Army and National Navy are adequately developed (and such a demand has not been made from any responsible quarter), arrangements must be made to hasten their development. In particular, attention should be drawn to the following unsatisfactory features of our defence problems: (a) In the covering forces, the ratio between Indian and British troops is 1 to 6·7; in the field army it is 1: 2·7; in internal security troops, it is 1: 1'24 (altogether there are 57,000 British and 140,000 Indian troops). Internal security should be the concern of the Provinces on whom should be impressed the desirability of organising their police forces, or a part of them at any rate, into special militia for the purpose of coping with internal disturbances. Madras has already made a beginning in this direction.

(b) The Indianisation of the eight units of the Army is an utterly unsatisfactory measure. The Army includes not only

the Infantry, but Army, Artillery and other branches of the fighting services and the Ancillary Services. Indians must be admitted into all branches without reservation: the Commander-in-Chief mentioned in his Budget speech this year that careers were being opened for Indians in many branches but was silent on the point of commissions being given to them.

(c) The continual interference of the military authorities in England with the Government of India and the Commander-in-Chief should be ended. On this the Esher Committee observed: "We are confronted with evidence of the continued reluctance of the India Office to relinquish into the hands of the Government of India greater freedom in the administration of the Army, even in cases where this could be done without compromising the administration of the Army at home or contravening the sound principle of uniformity in military policy. We are strongly of opinion that greater latitude should be allowed to the Governor-General in Council and to the Commander-in-Chief in India in matters affecting internal military administration."

Sir Purshotamdas Thakurdas, who was a member of Lord Inchcape's Committee on Retrenchment, more emphatically condemned the present system of control in the following terms: "The Commander-in-Chief is the responsible adviser to the Government of India regarding military policy and affairs. Should the Government of India differ from the Commander-in-Chief on any question, the Secretary of State may, and not infrequently does, uphold the Commander-in-Chief and force a certain line of action on the Government of India, contrary to their wishes. At times, even when, as sometimes happens, the Government of India and the Commander-in-Chief agree, the Secretary of State rejects their unanimous recommendation and forces on them a different line of action, irrespective of the additional cost to the Indian Exchequer. This interference of the Secretary of State is not

confined to questions of Imperial interests or to broad lines of policy, but extends to such administrative details as the comforts of British soldiers or the emoluments of officers."

The position, briefly, appears to be, in practice at any rate, one of complete subordination of the civil to the military authorities in India, and of both to the War Office and the Committee of Imperial Defence. The Resolution of the Legislative Assembly in March, 1921, recommending the appointment of the Commander-in-Chief and the Chief of the General Staff in India on the nomination of the Secretary of State for India and after previous consultation with the Government of India and the War Office, and another, restricting direct communication between the Commander-in-Chief and the Chief of the Imperial General Staff to matters which would not involve the Government of India in financial or military obligations without their concurrence, appear to have been ineffective in practice. The remedy seems to be in making the Commander-in-Chief entirely subordinate to the Government of India. India's inability to assume control of her Defence is not a valid reason for adopting a relationship with the Imperial General Staff different in any sense from that which the Dominions have accepted. India should be as free from outside interference in the regulation of her military policy as are the Dominions. This can be achieved by (i) removal of all control of the War Office over Indian affairs, (ii) the acceptance of the principle that the Commander-in-Chief should, without prejudice to his official precedence, cease to be a member of the Governor-General's Executive Council, and the portfolio of Defence, including Supply, should be entrusted to a civilian member of the Executive Council assisted by an Army Council including the Commander-in-Chief and other high military experts, and a certain number of civilians, (iii) the fixing of a minimum for army expenditure as non-votable, but all estimates exceeding this figure to be submitted to the

vote of the Legislative Assembly. (Lord Meston's Committee on Provincial Contributions estimated military expenditure at Rs. 42 crores per annum; but the figure has been considerably exceeded within the last five years. Sir Purshotamdas Thakurdas suggested Rs. 50 crores as the minimum. It may be added that Lord Inchcape's Committee arrived at this figure as the maximum limit for military expenditure.)



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Our Future Democratic Federal Government

BY I. N. GURTU, M. A., LL. B.

(Member of the First Reformed U. P. Legislative Council)

I

The Nature of our Future Constitution

The one topic of absorbing interest which moves the heart of Young India to-day is the aspiration to attain complete Self-Government or Swarāj. Although the necessary period of struggle and earnest and unceasing effort has to be gone through, the goal is now much nearer and more clearly visible. The practical shape in which the question has now begun to appeal to thinking minds is : "What is to be the form of that Self-Government?" It may be safely asserted that there is a large consensus of opinion—with only, perhaps, a few exceptions here and there—that India is to remain an integral part of the Commonwealth of Nations brought together in, what is at present called, the British Empire. The question of Self-Government, therefore, presents itself in its two aspects—one, the external, which would define the character of our Government in relation to Great Britain and other Self-Governing Dominions, the other would be the internal character of the entire Indian Government as an organic whole; in other words, the character of the Central Government and its relation with its component parts, the Provinces. Although the relations of the Self-Governing Dominions with Great Britain are still in a process of rapid growth and evolution,

making it impossible for anyone to forecast their ultimate future, they have yet the advantage of having attained a certain degree of definiteness so far as they go. Without going into details at this stage, it may be stated, in general terms, that India claims to secure the same position in relation to Great Britain which the Dominions occupy to-day and may occupy in future. India is no more to be considered and to be treated as a Dependency and a "Subordinate Branch" of the British Parliament. But more of this later on.

When we turn our attention to the basic features of our future Self-Governing Constitution new issues of far-reaching importance claim our attention. Is our Constitution to be on the lines adopted by Western Democracies and by the Self-Governing Colonies of the British Empire, or is it to be of a brand-new type altogether in consonance with the "genius of the people"? An enquiry into what is exactly the genius of the Indian people involves a reference to the past. That past includes what in Indian History has been technically styled as (1) the "Brahmanic" civilisation and its mode of Government, (2) the Buddhist, (3) the Hindu and (4) the Muhammadan civilisations and their modes of Government, separately as well as their contribution collectively. Nor can we exclude from our purview the by no means negligible period of a century and a half of our contact with the British, resulting in a culture which we have either imbibed or modified, and in certain political institutions that have either decayed or developed during that period.

It must be frankly admitted that we cannot clearly survey nor accurately comprehend the remote past in a manner which would justify us in postulating with any amount of definite certainty the frame-work of any ancient or standard Constitution. Undoubtedly there are valuable traces left here and there, but the rents in the veil of time only permit us a peep into those ancient systems and afford us but a

partial glimpse of their effects. A more intensive, systematic and impartial study may, perhaps, further reveal to us new features at present hidden from our sight. It is true that in the huge mass of ruins of our old Constitutions we have found more or less well preserved the Village Communities and their Panchâyat System. These had had a more undisturbed and continuous existence and have, in the main, survived till the recent past. They are therefore better known. But the Constitutions of the larger areas of Government have undoubtedly been different and ever-changing. The old Constitutions of the various Governments in India are our sub-conscious inheritance, but their growth and modifications, their successes and failures are not yet quite clear and well-defined, nor have they yet been fully studied, grasped and understood in their different bearings. The few treatises of our ancient sages that are extant and certain philosophical dissertations, however thought-provoking and however useful in placing high and noble ideals before us, cannot be regarded as tangible Constitutions which were actually worked out from day to day, or which could be expected to work out again in their entirety in future.

Our growing Nationalism in its appeal to the past is developing an idealism at once captivating and pleasing. It is forcibly pointing out certain undoubted evils of present day democracy and of the Parliamentary System as it has been developed in England and other parts of the World. The essence of the Parliamentary System lies in (1) election of a representative by a majority of votes, (2) decision of the Legislature by a majority of the votes of these representatives, (3) the Executive chosen from among the members of the legislative body and owning responsibility to the Legislature involving Government by a party in majority in the House. According to our idealistic political philosophers, the essential nature of true Swarâj is "to secure the Government by

its own higher self," i.e., by legislators who are pure, wise, unselfish and philanthropic, and who, while possessing ripe experience, are free from any class bias and would consequently possess a dispassionate judgment. They are also to be men who have retired from the competition of worldly life and have the necessary leisure to devote themselves entirely to public work. Such philosophy, while advocating decisions by the majority of votes of the "elected" representatives who are not to canvass or seek election, fails to point out any practical and satisfactory method by which the purity, the unselfishness, the freedom from class bias of a candidate (?) for election could be assured by the unerring judgment of any responsible authority, or could be tested by the general mass of electors who are to make a choice between more than one candidate. Nor does it show us the way how the voters can be protected by the influence of the admirers, if not agents and canvassers, of these different men. Does not this contemplated happy system of election postulate a degree of wisdom, unselfishness and freedom from class bias on the part of voters, which alone could ensure that their choice would fall on a person pre-eminently possessing those virtues? The old and the "retired" may not, in fact, show that detachedness which our political philosophers expect from them, but even if they do, a Government moved exclusively by such forces would soon become either "out of date" or might sadly lack in qualities of energy, initiative and vigor which are so necessary for the permanence of a Nation and for the due maintenance of its self-respect. Then, again, if the representation of separate interests, even in a partial degree, is to be disallowed, how could the Legislature be in a position to form any sound judgment on the various complicated technical problems that arise in day to day administration? The wise man free from class bias may not have any experience of a particular business. How is a happy combination of experience

in different lines to be ensured where there is neither to be nomination by the Executive, nor any canvassing on the part of the candidates? Moreover, the advocates of such an idealistic philosophy, while they wish to keep the Executive absolutely separate from the elected Legislature, are anxious to keep the Executive subordinate and responsible to it. But they do not suggest any method by which that control could be effectively secured when there is a clash between the Executive and the Legislature. Has such an experiment been successful in America? Is it not now generally admitted that the Parliamentary System of Responsible Government has, on the whole, proved more successful and has afforded a fairly effective control of the Legislature and of the people?

The aim of all systems of Government and Constitutions has undoubtedly been to secure the services of the best men in a Nation. The means adopted to achieve this universally desired object have been either election or selection or nomination, or partly a combination of all these three methods. The system of election adopted has been either direct or indirect or a combination of both. But no device of man has yet fully succeeded in its attempts because certain features of any Constitution are always liable to be abused, and the various systems adopted have broken in the past and are in the process of breaking to-day on the rock of human ignorance and selfishness. A vigorous and healthy "public opinion" has always been the ultimate hope of safety. The answer to the question whether public opinion is to be allowed to be misled by the selfish or to be guided by the unselfish and the wise, can only be one and no other. There can be no two opinions on the point that in every society the real impulse and corrective to any conceivable system of Government must ultimately come from a well-informed and vigilant public opinion. But it must at the same time be recognised that it is an impulse coming more from outside the Legislatures than through the instrumentality of any specific system or Constitution. To

shape public opinion in a higher mould and to keep its inner springs clean has always been, and must always remain, the field of the indispensable activity of the Sage and the Reformer. But it is idle to expect an assembly exclusively composed of Sages, even assuming that they could all necessarily get in through election. Sages are not so cheap and common, and the vast machinery of Government usually requires a much larger number of people to look after it. Nor can ideals and fundamental principles be "settled" for ever and be susceptible of exact definition. They have to be sensed and approached. You can only allow certain big ideas to form the background of a Constitution and to dominate it almost invisibly. Constitutions are a joint product of the immediate past and the present, a reconciliation between logic and prejudices, a mixture of ideals with human imperfections, and at best a compromise between the past and the future. Bryce has truly remarked: "History teaches that it is safer to build on the foundations of experience and tradition than upon abstract principles, not that the abstract principles can be ignored—far from it—but because it is seldom possible to predict what results they will give when applied under new conditions. Philosophy is no doubt the guide of life. But political philosophy is itself drawn from the observation of actual phenomena, and the precepts it gives are not equally and similarly applicable everywhere; if they are to succeed in practice they must be adjusted to the facts of each particular case."

The only practical course for us would be to frame our future Constitution more or less on the model of the modern Constitutions with which we are more familiar, particularly those that are current in Great Britain and her Dominions to-day. Not that we must necessarily adopt them in their entirety, but it would neither be expedient nor possible to make any violent departure from modern Constitutions. We may, however, adapt them here and there according to our

special traditions as revealed during the last 15 or 16 centuries—a period sufficiently long to survey the cultural, the social, the economic and the political conditions of any people. We may with advantage confine our attention to the period stretching down from the Guptas to the present day. This would include all the three main factors and influences in Indian history, namely, the later Hindu, the Muhammadan and the British. But of all these three we must lay sufficient stress on the last as constituting our immediate past from which we are to proceed further and which is to be used as the foundation of our future superstructure.

II

Federal and Unitary Governments in the British Empire

Looking back to the past 15 or 16 centuries one fact stands out prominent and unchallenged, namely, that India has always shown herself at her best when her component parts have stood politically welded together. This does not necessarily mean that a highly centralised autocratic Government is indispensably necessary to maintain that political union, but it does mean that it is necessary to maintain a Central Government, whether autocratic or democratic in character, which is strong enough to defend the country against foreign aggression and to look after and promote the common political and economic interests of the people inhabiting different 'geographical and linguistic areas. It is the character of the Central Government which has been the key to our common National life, and which will constitute the pivot of any system of Government which we may think of establishing in the future. This does not contemplate complete centralisation or the withdrawal of sufficient freedom to its component parts to express their individual life. What is important is that the variety of life must not be allowed to become a diversity of incohesion, but should play a subordinate part in a common National life.

In certain democratic countries where populations have not been homogeneous, either in race, religion or language, or where the different parts of the country have at first been politically independent of each other, and such populations or Governments have later on agreed to confederate into a political union, they have either constituted themselves into (1) a Federal Government or (2) a Legislative Union where the Government is unitary in its character. According to Keith a Federal System "is a form of Government which preserves multiplicity in unity, which admits that union is strength, but which insists that individuality must not be swamped". While a Legislative Union, in the words of Lord Durham, "would imply a complete incorporation of the Provinces included in it under one Legislature, exercising universal and sole legislative authority over all of them, in exactly the same manner as the Parliament legislates alone for the whole of the British Isles". Unitarianism in contrast with Federalism stands thus, according to Dicey: "Unitarianism, in short, means the concentration of the strength of the State in the hands of one visible Sovereign power, be that power Parliament or Czar. Federation means the distribution of the force of the State among a number of co-ordinate bodies, each originating in and controlled by the Constitution." Taking the case of certain Dominion Governments in the British Empire, Canada and Australia are Federal in character, while South Africa is Unitary. Regard being had to vast distances, the varieties and complexities of administration, and diversities of race, religion and geographical characteristics, the feasibility of a Unitary System of Government in India may at once be dismissed in favor of a Federal system. But there are also different types of Federal Unions. The United States, the Swiss Confederation, the Canadian Dominion, the Commonwealth of Australia and the German Empire present five different Federal Systems. Confining our attention to the Dominions in the British Empire

Canada and Australia represent two different varieties, and although conditions in none of these two Colonies are exactly like those in India, yet it may be said that conditions in Canada afford a nearer approach to our conditions here.

III

India and the Canadian Model

While discussing the principle of Federalism and its aims, Dicey remarks: "The method by which Federalism attempts to reconcile the apparently inconsistent claims of National Sovereignty and of the State Sovereignty consists of the formation of a Constitution under which the ordinary powers of Sovereignty are elaborately divided between the common or National Government and the separate States. The details of this division may vary under every different Federal Constitution, but the general principle on which it should rest is obvious. Whatever concerns the Nation as a whole should be placed under the control of the National Government. All matters which are not primarily of common interest should remain in the hands of the several States." When we come to the details of the division of powers, we mark an important difference between the Constitutions of Australia and of Canada. In Australia (1) the authority of the Federal Government is definite and specified; the authority of the States is indefinite and they have all the residuary powers regarding matters left unspecified. (2) The Federal Government has no power to annul or disallow the legislation of a State Parliament. (3) Amendments of the Commonwealth Constitution may be effected by a Bill passed by the Commonwealth Parliament, provided it is approved by a majority of the electors on Referendum and also by a majority of the States.

On the contrary, in Canada (1) the authority of the Federal Government is indefinite and it possesses residuary powers; the authority of the States is very much narrower and well-defined. (2) The Federal Government has authority

to disallow the Act passed by a Provincial Legislature.

(3) The Constitution of the Federal Parliament can be changed only by an Act of the Imperial Parliament, except where otherwise provided by the Statute.

Of all the important Federal Constitutions in the world it is in Canada alone that the residuary powers are vested in the Central Government, *viz*: the Dominion Parliament. The reasons for these material differences in the two Constitutions are both of an internal and external character. In Australia, before the Federal Government was established each of the six separate States enjoyed (subject to the ultimate authority of the Imperial Parliament) practically the position of a separate autonomous Nation. These States were proud of their separate local life, and in order to gain entrance into a federation of Colonies, they had to part with some of their own powers which were allocated to a new State that was created. But in other respects, they retained their old autonomy and hence they hold the residuary powers. The main object of the Commonwealth Act was to create, so to say, a new State which would look to the common interests of the united people; clearly, the object was not to frame a Government for the States themselves.

On the other hand, when Responsible Government was granted to Canada by the Act of Union of 1840, the two Canadas that were consolidated into one and also two other Colonies were brought together under a Legislative Union, and for nearly thirty years remained under a Unitary Government. When in 1867 the character of the Central Government was altered from the Unitary to the Federal, certain powers previously exercised by the Union Parliament had to be conferred on the Provincial Governments, and hence the residuary powers are still held by the Dominion Parliament. It was not only the Dominion Government but also the Provincial Governments that had to be organised. Moreover, the American Civil War had discredited the policy of insist-

ing too much upon "State rights" and had warned Canada of the dangers of that policy.

If we take a hurried survey of the history of our Provincial divisions in India, during several centuries past down to the commencement of the British Period, we find that most of these areas, with shifting dimensions, have passed through varied experiences alternating between complete or partial independence, on the one hand, and complete or partial subordination to neighboring kingdoms or to strong flourishing Indian Empires, on the other. Leaving ancient history aside, and limiting our enquiry to the century and a half of the British Period, we find that the entire Government system in India has been recognised as one indivisible whole subordinate to Parliament. The character of the Government has been hierarchical with the supremacy of Parliament over the Government of India and that of the latter over the Provincial Government, and the principle of unity within the Indian Executives has been adhered to. The control exercised by the Government of India in legislative, financial and administrative affairs has been very real and sufficiently tight; so much so, that the Provincial Governments have been often described as mere agents of their immediate superior authority, the Government of India. It is true that owing to vast distances and the variety of the details of local administration, there has been a gradually progressive decentralisation and devolution of powers. The Reformed Scheme of Government in 1919 has attempted to start with a changed standpoint, *viz.*, of making the Provinces ultimately autonomous, and, with that object in view, has allowed them a substantial, if not complete, liberty of financial action. But the control of the Central Government in legislative and administrative spheres is by no means inconsiderable even now. Powers of legislation for purposes of uniformity throughout the Provinces and general over,

riding powers of legislation are still reserved to the Government of India. Similarly, large powers of intervention in administrative affairs have still been retained. The whole history of the Provincial Governments during the last century and a half shows that we have not started with full Self-Governing States marching towards a federal goal, where they will in future be required to surrender some of those functions which they previously exercised themselves, but that they have occupied an extremely subordinate position in a highly centralised hierarchical system of Government, and through a slow process of devolution are being evolved into Self-Governing States which are to confederate in future under a Central Government. Before that consummation takes place, to quote the authors of the Montford Report: "The Government of India must give and the Provinces must receive." The whole history is so unlike what happened in Australia, where the States voluntarily gave and the newly established National Government received. In our future reconstruction on Federal lines, we shall have not only to reorganise the National Government but the Provincial Governments will also have to be organised along with it. As history is apt to repeat itself our Central Government is bound to retain residuary powers in its own hands and remain comparatively stronger than the Provinces. At least for some time to come, till the Provinces settle down completely into their newly acquired position of autonomy, and their legislation shows that a fair degree of readjustment of conflicting social and economic interests has been attained, it would be wise to keep the power in the hands of the National Government to disallow under special cases Acts passed by a Provincial Legislature. Canada has still that power in the Constitution, and although in the past there have been several cases of disallowance of Provincial laws that were found contrary to reason, natural justice or equity, this overriding power has been more and more sparingly

used latterly, as the Provinces began to show an increasing sense of sobriety born of responsibility.

IV

Indian Conditions—A Comparison

In order to appreciate the reason why India might well follow the Canadian model, it is also necessary to analyse the social and economic conditions prevailing in Australia and Canada and to compare them with conditions in India. The conditions in Australia are at once so unlike those in India. Australia was altogether a new country without any weight of traditions. When the Colonies developed they were geographically isolated from the world and there was for a long time very little danger of invasion from outside. The population has been homogeneous, about 98 per cent being Anglo-Saxons; thus it is singularly free from religious or racial differences. The country cannot be called agricultural but pastoral; it has big landed estates but no small cultivators and farmers owning land. The rural areas are very thinly populated. There are only a few great cities, but they contain a substantial portion of the entire population. Turning from the economic to social life, we find that there is no aristocracy of either birth or rank, and Australia is unique in its misfortune of having no middle class—the only strong class being that of Labor. There is complete social equality so far, but there is intense jealousy between the rich and the poor. Owing to the social and economic conditions described above, the political parties are not based on the interests of landed aristocracy or of different communities, but are based on "Class" antagonisms between the rich and the poor, the latter included among "Labor".

On the other hand, conditions in Canada show many points of similarity with India. In Lower Canada, the vast majority of the population is French which owed its inspiration to the traditions in France before the French Rev-

lution; while the British Settlements in Upper Canada and the Maritime Provinces were influenced by the social and economic conditions of the Anglo-Saxon population in the United States. North America has not been so isolated as Australia, and the danger of invasion from the South of the United States was always present. The people were clearly divided on racial lines—the French and the Anglo-Saxons, the former being Catholics and the latter Protestants. The population was thus not so homogeneous as in Australia, and there were bitter racial as well as religious differences. The country is decidedly agricultural. Three fourths of the population consists of cultivators and farmers owning small holdings and living in rural areas. There are no big landed estates, nor are there yet many great Capitalists or incorporated companies influencing politics. There are only a few big cities and they are all great industrial centres where working classes congregate. A comparatively smaller number of the working population is found here and there in manufactures or mines. Unlike Australia, racial and communal parties do still exist. They were very strong at first, and the relations were extremely bitter; though now, after nearly 60 years of closer political union and a Federal System of Government, that unhappy feature has very much disappeared, and the party system is much more based on politics. There are no "Class" antagonisms of the type so prominent in Australia.

Social and economic conditions in India need not be analysed at length, being so familiar to us. The striking similarity between conditions in Canada and in India is so clear and evident. Certain aspects are indeed even more intensively present here. The weight of traditions is overwhelming. The danger of invasion from other countries has not been merely temporary, as was the case in Canada, but has been so sadly and intensely real in our history. The popula-

tion is still less homogeneous than that of Canada—the number of different races being so very much larger and the multiplicity of religions so very much more marked. The economic conditions are also similar with perhaps the one difference that in India there are also a few big landed estates also along with cultivators of small holdings. Industrial conditions are more advanced in Canada than they have been till now in India, but when the Federal System was established they must have been so very much less in existence. Although in India political parties are still chiefly based on racial and communal lines, there is happily yet no "Class" antagonism noticeable in this country. The one great point of dissimilarity between the two countries is that of the only two races inhabiting Canada, the French so overwhelmingly predominated in Lower Canada, while in Upper Canada the population was exclusively Anglo-Saxon. In India, the different races and communities are so very much mixed up in every Province, and in none is there any particular race or community so overwhelming in number as could be said to exist almost to the exclusion of the other. Taking, however, the totality of circumstances, it could, on the whole, be safely asserted that conditions in Canada and in India approach very near each other, and are thus likely to reflect themselves in a similar manner in our future Federal Constitution, resulting in the need of our emphasising and exalting the position of the Central Government.

But apart from the considerations of the subordinate position of the Provinces historically, and the lack of a homogeneous population in various Provinces, there are other very important factors which unmistakably point to the necessity of the Central Government being made sufficiently strong, and of its holding all unspecified and residuary powers, together with the power of disallowance of certain Provincial legislation.

There is the problem of the Indian States, both big and small—about 700 in number. It is not proposed to enter here into the delicate question of the political relations between these States and the paramount power— all questions pertaining to Foreign Affairs having been expressly excluded for some time from the purview of our Federal Constitution. It is also a more or less universally accepted principle that a policy of mutual non-interference with the internal administration of "British" India and of the Indian States must be rigidly observed. Nor is it our immediate object here to devise any satisfactory scheme—however necessary and desirable—of joint deliberations on matters of common interest between these two big political divisions of India. We only wish to refer here to the bare fact that there are so many points of contact between British India and the Indian States, and matters of common concern to both are growing in number and importance. To quote the Montagu-Chelmsford Report once more: "We have helped the States in times of famine, we have lent them officers trained in British India to revise or supervise their revenue or financial administration, or to improve their agriculture and irrigation. Many of them have adopted our Civil and Criminal Codes. Some have imitated, and even further extended, our educational system. Co-operation in matters of police and justice has been developed. Our railway and telegraph systems have been carried through and serve many of the States. The Indian Customs tariff is a matter of concern to all States, including those which have ports of their own..." Besides certain important legislation and questions of tariff, railways, posts and telegraphs there are matters connected with salt, opium and exchange, etc., which equally affect the interests of the Indian States. There is a growing demand on their part to be consulted in such matters and this demand will have to be somehow met. But the main point which we have to bear in mind is that a weak Central Government with defined and

enumerated powers may prove a source of embarrassment, and may fail in discharging its proper financial and legislative functions under the stress of possible and even probable conflicting interests.

There is another important factor also which must be borne in mind, and that is the question of Defence in its varied aspects. It is true that like Foreign Affairs the question of Defence is also to be excluded for some time. But we should not lose sight of the fact that the framework of our system of Government is to be of such a character that it may be able to bear the weight of those additional responsibilities in future, and it may not be difficult for us then to fit all these new elements into our Constitution. The question of common defence in its larger aspects is of intimate concern both to British India and to the Indian States. The North-West Frontiers in particular are a perpetual warning to both. A strong Central Government is imperative for our National Safety. It must not be forgotten that Federal Governments are apt to be weaker than Unitary Governments on account of division of powers between the different members of a confederacy and the friction that often arises therefrom. A Federal System of an extreme type in which "State rights" are very much emphasised is apt to suffer still more from a much weaker form of Government. Enough has been said to show that under a false and popular sentiment of making the Provinces "completely autonomous," the country, it is hoped, will not commit the fateful blunder of restricting the powers of the Central Government and thus making it weak and impotent. Historical antecedents of the Provinces, our social and economic conditions, the intricate problem of the Indian States and the possibilities of a closer contact with them in future, and, above all, the ever-pressing problem of Defence—all point to the need of keeping the Central Government stronger and its powers less restricted.

Self-Government in Canada

I

History of the Growth of the Present Constitution

The Dominion of Canada, including all British North America, was formed out of several separate Colonies, differing altogether in their origin and character. In Canada, the old French system of Government came to an end by the Constitutional Act of 1791. After the Independence of America in 1783 a large number of loyal Americans had come and settled in Upper Canada. The British Government, with a view to placate the Loyalists and at the same time to keep them separate from the French Settlers, provided in 1791 that Canada was to be divided into (1) Upper and (2) Lower Canada, and each was given a *representative* Assembly. In Lower Canada, the French population predominated and was keen on retaining its own Nationality and language, and the spirit of separation was supreme in them. Then a long quarrel ensued between the Executive (which was manned by the English) and the Assembly in Lower Canada, where the French predominated and the English settlers were in a small minority. This Constitutional quarrel was in reality based on a bitter race hatred between the two Nationalities. The French Canadians had, however, no experience in Local Self-Government and were for the most part wholly uneducated. The masses could be easily misled by the agitators. In Upper Canada, where almost the entire population was English, there was also constant friction between an irresponsible Executive and the Representative Assembly. There was thus a break-down of the system of Colonial Government both in Upper and Lower Canada. For lack of opportunities for development, discontent was more or less felt in other Colonies also. But of all other Colonies in North America

it was Canada (both Upper and Lower) which, from her position and population, held the key to the entire situation.

It was under these circumstances, almost verging on a complete deadlock, that Lord Durham was sent to report to Her Majesty in 1838. Lord Durham started with the idea of solving the difficulties by (1) the application of the Federal Principle and (2) the introduction of a grant of complete Responsible Government. But the French Canadians, although friendly to the idea of Responsible Government, were entirely opposed to the idea of partnership in a Federal British North America. They were indeed clamoring for an elected Legislature for Lower Canada that should be granted Responsible Government, but their demand was strenuously opposed by the British minority for fear of the French domination in the Assembly as well as in the Government of Lower Canada. Lord Durham felt that if Upper and Lower Canada could not be brought together within a Federation with separate Provincial Legislatures, the only practical alternative was a complete union of the Legislatures of the two Canadas. He had no intention to diminish the British Empire, and he feared that if complete Self-Government were granted to Lower Canada separately, the first thing that the French Canadian Executive with the majority of French votes in the Assembly might do would be to announce secession from the British Empire. Responsible Government demanded that the majority of the people should be loyal subjects of the British Empire. The loyalty of Upper Canada was undoubted, and Lord Durham trusted that with the grant of Responsible Government to a United Legislature matters would ultimately be satisfactorily settled, and the British connection made permanent with the help of Upper Canadian electors and that of the British minority in Lower Canada. He expected that, on the whole, a complete fusion of the two Provinces would result in a balance of advantages, and he

thus decided in favor of a United Legislature with a grant of complete Responsible Government. But owing to racial difficulties he had to proceed cautiously and, therefore, in his scheme of Self-Government he did not include the management by the Colonial authorities of questions of trade, the Crown lands or military defence.

The type of Unitary Responsible Government advocated by Lord Durham was, however, not fully attempted. It was modified to this extent that the two divisions of the Province were treated as separate entities, artificially brought together under a Union Government, each having under the Act of Union of 1840 an equal number of members, though, in fact, at the time, the combined French and British population in Lower Canada was superior in numbers. The system of the separate Government of the two Canadas, however, came to an end by this Act of Union, and at the same time the grant of Responsible Government settled the political controversy between the North American Colonies and Great Britain. But in Lower Canada, in its actual results, the Union, in the form in which it was introduced, only served to emphasise racial distinctions. The French Canadians believed that this scheme was only intended to crush their separate Nationality and they did all they could to safeguard their own position and remained hostile to the system introduced. The majority of them were, however, wise enough to see that their interests lay not in standing aloof from the new reforms, as the extremists advised, but in getting the most out of it in their own favor.

Within a decade of the introduction of the new system of Government other complications developed. Responsible Government postulates a two-party system, but in the Canadian Assembly, there grew up nearly four or five parties more or less grouped under two broad divisions, the Upper and the French Canadians. Thus every Ministry was a Coalition, with all its necessary weaknesses. There were

two First Ministers, one English and one French. There was so much of mutual suspicion and distrust that almost a convention grew up that a Ministry must possess a dual majority from both Upper and Lower Canada. The Union of 1840, when put to practical trial, was found defective as the Dual nature of Government was much emphasised and the Roman Catholics and Protestants could hardly see eye to eye on several questions. It was thus chiefly owing to the utter failure of the peculiar Canadian Party Government that people ultimately began to think of the adoption of the Federation system in place of the Unitary system. Besides, the fear and suspicion of American aggression very largely contributed towards a change in favor of the Federation movement. There was also a welcome third factor now distinctly felt and recognised, namely, the idea of a Greater Canada. All these forces led to the organisation of a Conference which was called and met at Quebec in 1864.

The "Quebec Resolutions" unanimously adopted the scheme of a Federal Government charged with the administration of matters of common interest to the whole country. Local Governments were to be established for each of the two Canadas and also for the Maritime Provinces which were to administer local affairs within their respective areas. The American Civil War had given sufficient warning as to the danger of insisting too much upon the rights of the different component parts, the Provincial Governments. Hence the form of Federal Government elected deliberately made the Central Government strong.

After a certain amount of unavoidable delay and after certain further modifications introduced in consultation with the Government in England, the provisions and recommendations contained in the Quebec Resolutions were framed into a Bill which finally became law in 1867 under the title of The British North America Act. At that time many people in England in their hearts looked upon it as a half-way house

to Independence, but the experience of subsequent years has ultimately removed this suspicion.

II

Economic Conditions

In Canada, the economic and social conditions of the country are generally similar to those of the United States. But the noteworthy fact is that political institutions have been framed more on English models. Like India, agriculture is the chief source of livelihood there, and at present the bulk of the population are cultivators dwelling in rural areas or small towns. There are very few big cities like those in Britain or America. The land is almost all in the hands of small cultivating owners. About three-fourths of the Canadian householders are farmers who are well-off. The class of workers in manufactures or mines is comparatively small, for there are few great industrial centres and only four cities with a population exceeding 120,000. Big landlords or great financial or commercial magnates do not exist. Those who have risen to wealth are men who have benefited either by an increase in the value of land or by speculative land investments or investments in Railways. Neither are there many large capitalists or incorporated companies influencing politics in their own interests. Nor have the working men yet gathered in large industrial centres, organising themselves into Labor Unions and exercising pressure on Governments and the different political parties. No Labor party has arisen except in the four industrial cities mentioned above and among the organised Unions of the mines on the Pacific Coast.

Religious Differences and Parties

Again, like India, the influence of Race and Religion has been very strong. In certain Provinces, where the French-speaking population had been predominant, there was a distinct tendency towards separation, they being all Roman

Catholics. Any source of danger to peace and good Government that was present chiefly in Lower Canada lay in the existence of two races that were jealous of each other and showed no tendency to blend. Till about 30 years ago, the Catholic Bishops used to rule through the priests who used to direct their parishioners how to vote, and not only the cultivators but also the laborers used to obey them. The religious conflict and suspicion easily intensified party spirit in the beginning, but in course of time, after the grant of Federal and Responsible Government, religious differences gradually ceased to form the basis of parties. For this there were two causes: (1) The Federal System allowed the Roman Catholics to have their own way in the Province where they had a vast majority, and similar was the case with the Protestants in the other Province. (2) On many questions which had nothing to do with race or religion the two political parties consisted of both the French Catholics and English Protestants. In controversies over religious teaching in schools or the relations of Canada to Great Britain, the leading statesmen, belonging to both races and religions, feeling the danger of raising racial or religious issues and thus alienating some of their party supporters, did their best to smooth matters. Whatever political difficulties due to differences of race and religion may sometimes arise in the Dominion Parliament, such difficulties do not arise in the Provinces where one or other element is entirely predominant (a feature dissimilar to conditions in the different Provinces in India).

The party organisation in Canada is still loose. The system of the constituency determining its candidate does prevail, but the methods of choice are undefined and informal. A man is selected either because he is of some local note or because he is recommended by influential persons in the party. When the elector comes to cast his vote, his choice is still to some extent primarily colored by his racial and

religious bias, though the element of party choice is not altogether absent. Often his own material interests override all other considerations of party, race or religion.

Public Opinion and Public Life

There is less of demagogism in Canada than in many other Democracies. Law and order are well maintained, perhaps largely due to British traditions. The spirit of license, a contempt of authority and a negligence in enforcing laws is not noticeable there. Even after nearly sixty years of Responsible Government the volume and force of public opinion is still comparatively weak in Canada, chiefly because (1) there are only three or four Universities and only three or four large cities possessing a society of highly educated men who can give a lead in political thinking; (2) there is still a gulf which separates the French Roman Catholics under ecclesiastical influences from other elements. Their fundamental habits and ideas are different on most of the non-economic subjects. Fortunately no "class" opinion has grown, nor do "professional" politicians yet exist. A profound study and a firmer grasp of the principles underlying fiscal questions, labor problems and the assumption by the State of Railways and Mines—in short, a wider outlook on social and economic problems, is still wanting. As pointed out above, there is not yet a body of trained opinion which would be strong enough to criticise and control the action of Government. Moreover, on account of large distances the available opinion is not sufficiently concentrated and cohesive through constant interchange of ideas, to be able to keep legislators and administrators up to the mark and develop in them a strong sense of public duty.

There has been bribery at elections, but extensions of the suffrage have tended to reduce it. How much corruption there is among legislators there is no satisfactory means of finding out, but Ministers have from time to time been

suspected of the abuse of official position for purposes of personal gain. Those who sit in the Dominion House belong chiefly to the professional and commercial classes with means independent of salaries paid to Members. There are few agriculturists and still fewer laborers. The number of lawyers is small in the Dominion House though in Provincial Legislatures lawyers of second or third rank are in a fairly large proportion and the farmers are in the largest number. The career of politics does not draw to itself enough of the best talent of the Nation. Canadians complain of the decline of the quality of Members. A demoralising spirit of localism has been a marked feature in Canadian politics. It grew up by the Ministers trying to capture local votes by obliging local applicants for grants of public funds. This has lowered the standard of political thinking among statesmen and turned the political interest of the citizen away from the larger aspects of civic duty.

The Services

The Permanent Civil Service, though not inefficient, has not risen to the level of modern requirements, because in selections for posts and in promotions, favoritism has prevailed in the past and merit was not allowed to be the sole test. A Civil Service Commission has been recently created which now fills up all posts.

III

Chief Features of the Canadian Constitution

1. The Dominion Legislature consists of two Houses. The House of Commons is elected for 5 years on the basis of universal suffrage including women. It controls finance and is to all intents and purposes the chief Legislature, as its votes make or mar the Ministers.

2. The Second Chamber, called the Senate, consists of persons of the age of 30 and above, nominated *for life* by the Governor-General, *i.e.*, virtually by the Ministry, as vacancies

occur by death or resignation. Its functions are equal to those of the Lower House except in financial matters. It is empowered to revise and amend Bills, but in practice it seldom exercises that power. (The Senate has proved of very little importance in giving effect to the Federal idea, so much so that no serious attempt at the proper representation on it of the new Provinces added afterwards, has been made.)

3. The Dominion Legislature has plenary powers, but it cannot directly and by its own action alter the Constitution. It is only by a statute of the Imperial Parliament that the Constitution can be amended. This follows from the fact that the Constitution itself is a statute of that Parliament.

4. Under S. 91 of the Act the Dominion Legislature deals with certain specified subjects, but has also residuary powers not specifically assigned to Provincial Legislatures under S. 92.

5. The power of veto upon the legislation of the Dominion Parliament rests with the British Crown on the advice of the Cabinet and also on the Governor-General at the direction of the Crown. (Such power though given in law is not in fact exercised. Interests common to other British Dominions or matters of International obligation might very well in future necessitate the exercise of this power by the Crown.)

6. The Governor-General is appointed by the Crown. (But the convention has grown that the Dominion Government is consulted before the appointment is made.) He is advised by the Cabinet of Ministers which has the support of the majority of the House and is responsible to it.

7. There are nine Provinces and the head of the Executive is the Lieutenant-Governor who is appointed and can also be dismissed by the Governor-General or, in other words, by the Dominion Cabinet. (The Lieutenant-Governor is usually a member of the party to which the Cabinet belongs

and a leading politician of the Province, though he does not take any share in party politics.) He is advised by the Cabinet of Ministers which has the support of the majority of the Provincial Legislative Assembly and is responsible to it.

8. The Chief Provincial Legislature, called the Legislative Assembly, is elected by universal suffrage (including women) for 4 years. It controls finances and makes and unmakes Provincial Ministers.

9. In only two out of nine Provinces there is a Second Chamber called the Legislative Council. The qualifications of the Councillors are the same as those of the Senators and they are appointed by the Lieutenant-Governor and hold office for life, *unless the Provincial Legislature otherwise provide.* (The remaining seven Provinces have not introduced the Second Chamber, perhaps because it is considered weak, owing to the principle of nomination.)

10. The Provincial Legislature can only exclusively legislate on subjects specified under S. 92 and on no other. No residuary powers rest with it.

11. The Provincial Legislature can amend the Provincial Constitution, but such amendment of its Constitution, *like other legislation passed by it,* is subject to the rarely exercised power of the veto vested in the Governor-General in Council, or, in other words, the Central Dominion Government.

12. There is a Supreme Court of the Dominions as well as the Superior Courts in the Provinces. The Judges in both kinds of Courts are appointed for life by the Governor-General in Council, or, in other words, the Dominion Cabinet. An appeal lies from the Supreme Court of Canada to the Judicial Committee of the Privy Council in England.

IV

Conclusions

In the first place, diversity of race and interests ultimately demanded that the Canadian Constitution should be a

Federation and not a Legislative Union, as a continuance of the latter system would have meant failure and disaster. Moreover, the distances between the various Provinces were so great as to necessitate a more complete system of Provincial Self-Government. Then, again, the Federation was introduced in a country where there were no very large towns with a well-organised labor class or public opinion in general, and therefore the founders of the Dominion Federation drew up their Constitution in a spirit of cautious conservatism. That is why the British Parliament is still the authority which can amend the Dominion Constitution, unlike the Australian Constitution, which provides for its alteration by the people of Australia after a referendum. But in reality it does not amount to any restriction on the powers of the Dominion, for it is, according to Bryce, "well understood that in such a matter the British Parliament would take no action except when satisfied that the Canadian people as a whole wished it to do so, and were approving any request made by the Dominion Parliament to that effect.....This theoretical or technical Sovereignty of the British Parliament provides a more convenient method of altering the Constitution than the complicated machinery created for that purpose in the United States and Australia, and is even more certain to give to a dissident minority whatever consideration it deserves."

It is further to be noted that a bias in favor of Legislative Union is clearly marked in its Federal Constitution. The power is given to the Governor-General in Council, or, in other words, the Central Government, to appoint and dismiss Provincial Lieutenant-Governors. Similarly, the Dominion Government has the power to disallow Provincial legislation, although that power has been very sparingly used and with great caution. In the division of subjects in Ss. 91 and 92, there is an evident desire to emphasise and exalt the position of the Central Government, as all powers and functions of Government, not expressly assigned either to the

Dominion or to the Provinces respectively, are deemed to belong to the Dominion.

The Canadian Constitution is a mixture of the United States Federal System, which was not a Unitary Government, with the Parliamentary and Cabinet system of Britain. Nothing has been framed on an abstract theory or the dogmas of "Popular Sovereignty" and of the so-called "Separation of Powers". Bryce holds that "Experience has shown that those constitutional provisions in which the influence of these doctrines went furthest are those whose working has proved least satisfactory, both in the National and in the State Governments".

Self-Government in Australia

I

History of the Growth of the Constitution

In Australia, long before the Commonwealth Act of 1900, the States had been separate Self-Governing Colonies. Each had developed its own institutions, system and policy. They were naturally more or less jealous of each other. Some looked down upon others as having originally been convict settlements; others greatly exceeded the rest in population and importance. Most of them had framed against each other hostile tariffs with all the complications and difficulties that result from such a policy. Thus so many factors were present which would not easily allow them to welcome any Federal co-operation for fear of losing their individuality and independence.

As early as 1846, the Colonial Secretary of New South Wales recognised the need of some general control over inter-Colonial legislation and prepared a scheme for enabling the various Legislatures of the Australian Colonies (States) to co-operate with each other in the laws affecting the common interests. Among other things there was one useful suggestion of an Inter-Colonial Congress. Lord Grey in England, about the same time, referred the subject of the future of Australian Government to the Committee of the Privy Council on Trade and Plantations which in its report urged the necessity of a uniform tariff. Such a tariff was to be at first introduced by the Imperial Parliament, but it could be subsequently altered by any authority competent to act for the Australian Colonies jointly. For this purpose it was proposed that there should be a Governor-General of Australia, who should convene a General Assembly of Australia. It was further proposed that this body should, besides the specific subject of

tariff, also exercise more general powers of legislation, if so desired by the Legislatures of all the Colonies represented on it. No mention was made of Military Defence. Lord Grey made the serious mistake of introducing a Bill on the above lines in 1849 without consulting the Colonies affected. Under the Bill, it was also provided that any two Colonies joined together might compel the others to take part in a Federal Legislature. This naturally created a storm of opposition, and although in a subsequent Bill in 1850 provisions regarding a uniform tariff were dropped and the use of the General Assembly was made permissive instead of compulsory, the Bill did not find much favor in Australia. It was thereupon felt that it was necessary to create a public opinion in Australia favorable to the idea of a Federal Unity as any proposal from the British Parliament would be looked upon with considerable mistrust. After the failure of the Act of 1850 the British Ministers refused to insert Federal clauses in the new Constitution of 1855 for the Australian Colonies. It was now the settled policy of British statesmen to wait till the separate Legislatures of the Colonies affected took the initiative and found out a solution themselves. Responsible Government was, however, set on foot at about this time, *i. e.*, about the middle of the 19th Century.

Inter-Colonial Conferences

From the time of the grant of Responsible Government the question of some kind of Federal Union was constantly discussed among the Australians. The policy of Inter-Colonial Conference and of some co-operative action through them had the largest amount of support. Still there were not wanting signs which pointed to the ultimate success of the Federation movement. The celebrated Mr. Duffy, in Victoria, took up the question in right earnest. The report of the Committee of the Victorian Assembly written by him

stated: "Neighboring States of the second rank inevitably became confederates or enemies. By becoming confederates so early in their career the Australian Colonies would, we believe, immensely economise their strength and resources. No single Colony ought to take exclusive possession of a subject of such National importance, or venture to dictate the programme of Union to the rest." The idea of a Conference of delegates from the respective Colonies was encouraged, but this appeal for conjoint action towards closer union did not meet with sufficient response, and the movement in favor of a Federal Union remained dormant. The favorite alternative of Inter-Colonial Conferences was, however, more and more adopted between 1863 and 1883.

At one of these Inter-Colonial Conferences the idea of a Federal Union was again forcibly put forward in 1867, but with no success. Australia was beginning to realise the gravity of foreign affairs when France and other Great Powers started increasing their possessions in the Pacific and the subject of defence became important for the Australians. It was not before 1880 that at another of these Conferences the delegates of three Colonies passed a resolution in favor of a "Federal Council" to deal with Inter-Colonial matters. A Bill for creating such a "Council" was drafted and submitted before the adjourned Conference of the next year, at which representatives of seven Colonies were present. In the memorandum accompanying the Bill, although it was clearly stated that the time had not come for the construction of a Constitution for a Federal Parliament but that a number of matters of common concern to all the Colonies might with advantage be dealt with by some Federal authority, the Bill was negatived.

It was really the threat in 1883 of German aggression in New Guinea which ultimately moved the Australian public opinion in favor of a Federation. It was felt that the Inter-Colonial Conferences were failures, and a Constitutional

body which could be regularly summoned and make laws was an absolute necessity. Attempts were made at a Convention held in that year to bring about a real Federation Government, but the Convention only recommended the creation of a "Federal Council" for specific purposes, among which the most important was the protection of Australian interests in the Pacific. A Bill was drafted with the provision that it applied only to the Colonies whose Legislatures should pass Acts adopting it. With the exception of two Colonies the rest adopted it in their Legislatures, and the Act of 1885 was passed through the British Parliament.

Federal Council

The establishment of this Federal Council marked the first stage. But this Council only possessed a subordinate legislative function but no executive powers, nor had it any financial means of enforcing its measures. The representatives of the Colonies in the Council were not elected delegates but only nominated.

In 1889, the issue of a report on the Military Defences of the Australian Colonies emphasised the need of a Federal Union. A Conference was invited wherein it was proposed that the delegates appointed by the Legislatures of different Colonies should meet at a Convention which would devise the Constitution necessary for the establishment of a Federal Parliament and Government. It was to be a Government with a complete legislative and executive equipment, possessed of plenary power for the defence of the country and for the discharge of all National functions. The members of the Conference unanimously agreed to take steps to induce the Legislatures of their respective Colonies to appoint delegates to the National Convention.

National Convention, 1891

This Convention met at Sydney in 1891 and appointed Sub-Committees which informally started the work of draft-

ing a Constitution in the shape of a Bill which, it was proposed should be first submitted to and adopted by a majority of a plebiscite of the people of Australia and then laid before the British Parliament. The outcome of the labors of the Convention of 1891 was a Bill which contained in substance the Constitution of the Commonwealth Act of 1900. But even at this stage there was no readiness on the part of any of the Colonial Legislatures to accept its conclusions in more than a tentative fashion. It was thought that if the question was looked upon as too big for the Colonial Legislatures the only feasible plan, under the circumstances, was that the electors themselves throughout the Colonies should elect another Convention to revise the Draft Constitution, already prepared, and to frame a new Bill, if necessary.

Federation League Conference

An Australian Federation League was formed in 1893 with branches all over the country. The League organised a Conference at which a resolution was passed recommending that the respective Legislatures in the Colonies should pass an Act providing for the election of representatives to attend a Statutory Convention to consider and adopt a Bill to establish a Federal Constitution, which should afterwards be submitted to a referendum. A Draft Bill which formed the basis of the various Enabling Acts subsequently passed by the different Colonies was also prepared. In 1895-96, all except one Colony passed the Enabling Act. In the following year each of the consenting Colonial Legislatures elected members to sit on the Statutory Convention.

Statutory Convention, 1897

The first meeting of this Statutory Convention was held in March, 1897. The Bill drafted by the first Convention in 1891 was further modified in the second draft prepared by this Convention. The proposed Federal Scheme contained in this second draft of 1898 was approved by substantial majori-

ties in all the Colonies with the exception of one or two.

A deputation of Australian Ministers brought the Bill to England. After a few further modifications the Bill was passed by the Imperial Parliament in 1900 and on 1st January, 1901, the Commonwealth of Australia was established.

II

The People and their Economic and Social Condition

Australia has been a new country which the Colonists have built up free from all external influences or old traditions. Nearly 98 per cent of them came from Great Britain and mostly belonged to the upper and middle sections of the working classes; the poor amongst the Australians came from among the English convicts. Their economic conditions are so unlike those of India and Canada. In Australia, while there are four great cities containing large populations, the rural areas are very thinly populated. There are big landed estates held by a small number of proprietors, and these large estates being almost pastoral (as sheep raising is the most important source of wealth), they provide employment for comparatively few workers. The number of small farmers having small agricultural holdings is very meagre and consequently there is no "middle class". It has been a political as well as an economic misfortune of Australia that the middle class has been so conspicuously absent. The bulk of the laborers are confined to the four cities and to certain mining areas. There being no aristocracy either of birth or of rank, hereditary class interests do not influence political affairs. Consequently also the sentiment of social equality is extremely strong and has gone even so far as to produce considerable social jealousy, antagonism and suspicion between the rich and the poor and between the wage-earning and the employing classes. Material interests have completely occupied people's attention and dominated their politics.

Class Antagonisms and Parties

There being no racial or religious antagonisms, political parties have not formed on that basis in Australia. Nor were there present the influences of either the Church or the Landowners or the Commercial class. The land question has to a certain extent furnished a social basis for parties. It is in fact class antagonism which reigns supreme and Party coincides with Class.

It was Labor that first gained control of the Government in Australia. Here it has a closely knit party organisation compelling all members of the Legislature belonging to the party to act as a compact body. In every constituency there is a Trade Union Council and a Political Labor League. Every member has to sign its Constitution and every candidate is required to take the party pledge.

Public Opinion and Public Life

In Australia, there is no leisured class with means to enable it to devote itself to public life, and it is not many who aspire to a political career. The pastoralists, the manufacturers or the bankers or lawyers are not drawn to the Legislatures. Women have votes, but the women of the richer classes do not care to exercise their votes and take little interest in public affairs. The working-women, of course, go to the polls in large numbers. Elections are honestly conducted and no complaints of bribery are heard. Constituencies are not bought nor are the newspapers. The system of payment to members has brought many uneducated persons into the Legislatures who come for the sake of salary. Politics have been very unstable and there have been frequent Ministerial changes. Party discipline was lax until the rise of the Labor Party.

Though illiteracy is practically unknown and people are well off, the average citizen cares little about public affairs and is not serious about his civic responsibilities. There is

less of a general National opinion in Australia, as they do very little thinking and have very few intellectual interests. Among the public there are very few highly trained minds capable of taking a broad view of political and economic questions. Those who are occupied in the Universities in study, thinking and teaching, contribute very little to the formation of National opinion. Intellectual interests are not keen among the richer people, the professional class—which is always included there in the mercantile class—is very small outside the four great capital cities. The few centres in which any opinion on public questions is formed are much too diffuse and too distant from each other. It is only from the Labor class that a few political leaders of capacity and ability have arisen. Consequently, in Australia, there is a Government of the people by a Class and for a Class.

The Services

The regular Civil Service is permanent. In one State any person removed by the Minister in charge of the department may appeal to an independent non-political Board usually composed of high officials. In every State, there is a Public Service Commission acting under well defined statutory provisions. The Commissions have kept the Services pure and outside politics. In the Commonwealth also there is a Public Service Commission, but its laws permit greater freedom in promotion for efficiency. This freedom does lead to a certain amount of political patronage and consequently, in certain cases, less efficiency is noticeable in upper posts.

III

Chief Features of the Constitution

1. The Commonwealth Parliament consists of two Houses. The House of Representatives is elected for three years by universal suffrage (including women). Measures relating to the appropriation of revenue or moneys or the

imposing of taxes originate only in this House and its votes make and unmake the Ministers.

2. The Second Chamber, called the Senate, consists of an equal number of persons of the age of 21 and above, from each "State," directly chosen for a term of six years by the people of the State as one electorate. Half the number of members retire every three years by rotation. In case of casual vacancies, new Senators are chosen by the Legislatures of the State for which the first member was chosen. The Senate has equal powers with the Lower House in respect of all matters except financial. (The Senate is an elective body which ensures equal representation to all States whether large or small. But it has failed in protecting State interests or in improving measures. This is partly due to the peculiar method of election by a popular State vote where every elector has three votes for the three seats to be filled. Candidates are often not personally known to such a vast constituency. The tendency is to cast a party vote for the three whom the party managers put forward. The Labor Party being the best organised, the Senate has become the champion of one Class, *viz*: Labor.)

3. The Commonwealth Parliament has been given the power to alter the Constitution. But before it can be so done a definite procedure has to be followed. The proposed law for alteration must, in the first place, be passed by a majority of each of the two Commonwealth Legislatures. Then it has to be submitted in each "State" to the electors, and if in a majority of States a majority of the electors voting also approve the proposed law, it should be presented to the Governor-General for the assent of the Crown.

4. The power of veto upon the legislation of the Commonwealth Parliament rests with the British Crown and also with the Governor-General. Similarly, in the States, the Governor can also on behalf of the Crown refuse consent to a Bill, or the Crown on reference from the Governor can

exercise the veto. But this right of veto is now extremely rarely exercised, and does not constitute a check on Self-Government.

5. The Governor-General is appointed by the Crown (with the acceptance of the Colonial Government). He is advised by a Federal Executive Council which constitutes the Ministry responsible to the Legislatures and having the support of the majority of the House.

6. There are at present six States. Each State has a Governor appointed by the Crown and is advised by a Cabinet of Ministers responsible to the Legislatures and having the support of the majority.

7. In each State there are two Houses. The lower and larger House called the Assembly is elected by universal suffrage for 3 years. It controls finance and makes and unmakes Ministers.

8. In all States there are Second Chambers called the Legislative Councils, in only two of which the members are nominated for life by the Crown, *i. e.*, by the Ministry of the day. In the other four they are elected for six years by voters possessing a certain "small property" qualification. The scope of their action does not include finance, but they can amend or reject Bills and have imposed a certain check on the popular House. (This has sometimes led to friction with the lower House and the Labor Party's programme is either to abolish these Second Chambers in the States or to elect them by universal suffrage. These Councils play a subordinate part in State politics and they are little noticed.)

9. The State Legislatures have full power to alter their Constitutions by ordinary legislation and are not required to invoke a popular vote for that purpose. The Commonwealth Legislature has no power of veto of legislation passed by the States.

10. Under Ss. 51 and 52 of the Act, the Commonwealth Parliament can only deal with matters expressly specified in

these Sections and has no residuary powers.

11. Under S. 107 State Legislatures can deal with all matters not exclusively vested in the Commonwealth or withdrawn from the State Legislature. Thus they possess all the residuary powers. (The line of demarcation between the Commonwealth and the State Parliaments has been the subject of many judicial decisions and of considerable controversy.)

12. Both in the Commonwealth and the States the superior Judges are appointed for life by the Crown (*i. e.*, by the responsible Ministry). The High Court of Australia is the final Court of Appeal for all Australia in all matters whether arising under the law of the Commonwealth or of the State. It has the right of determining constitutional questions subject to an appeal to the Judicial Committee of the Privy Council in England, provided leave has been given by the High Court of Australia.

IV

Conclusions

In Australia it took even a longer time than in Canada to bring about Federation. In both these countries, according to Keith "the particularism of the units prevented the change of Government being made until the force of circumstance made choice practically unavoidable". External pressure and reasons of defence contributed materially towards the acceptance of Federation both in Canada and in Australia. It was particularly after 1883 that the fear of German aggression made the people in Australia think furiously. The form of the Australian Constitution clearly indicates that many compromises had to be accepted before the consent of the States to the Union could be obtained. It took the Colonies nearly 50 years to change their attitude of an uncompromising hostility to the Federal idea into an attitude of earnest and well-organised effort to bring about

its consummation. The extremely slow evolution of the idea of Federal Union was marked by distinct stages of growth.

FIRST:—The introduction of the system of Inter-Colonial Conferences attended by delegates from the various Colonies.

SECOND:—The formation of a "Federal Council" under an Act of the British Parliament "for the protection of Australian interests in the Pacific".

THIRD:—The calling of a "National" Convention attended by the delegates appointed by the various Legislatures and the drafting of a Bill by that Convention outlining a scheme of Federal Union.

FOURTH:—The establishment by the Colonial Legislatures of a "Statutory" Convention at which their representatives adopted a re-drafted Bill which after a referendum to the Australian people and its subsequent approval by the majority of electors was placed before the British Parliament.

FIFTH:—The passing of the Commonwealth of Australia Act by the Imperial Parliament in 1900.

In Australia, there are no racial divisions or religious dissensions. To quote Bryce: "There is a homogeneous population, isolated, left free to shape its own institutions and steer its own course, protected from foreign interference by the naval power of Britain, to which it is now adding its own, with no old animosities to forget, no old wrongs to redress, no bad traditions to unlearn. Inequalities of wealth have grown up, but there are few monopolists and no millionaires, and nowhere does wealth exert less influence on legislation or administration. Social influences count for little or nothing in politics." The historical antecedents and present social and economic conditions are so dissimilar to those of India.

Each State in Australia was, before the establishment of the Commonwealth, a separate Government framed on the British Parliamentary model—monarchical in its form but "Republican in its spirit and operation". That accounts for

the fact that each State has still a Governor appointed by the Crown, and not a Lieutenant-Governor as in Canada. Certain powers, which the States at first enjoyed have been modified by the creation of the Commonwealth and transferred to the Federal Legislature. The Commonwealth Parliament has thus received narrower powers than those enjoyed by the Dominion Government in Canada. It is "a Government of limited and enumerated powers". The reason is obvious. The Colonies (States) were jealously proud of their separate independent life and they have therefore been allowed to hold the residuary power not specifically allotted either to the Commonwealth or to the States Parliaments. With a few exceptions the relations between the Federal Government and the States' Governments are not "hierarchical". But the Commonwealth Constitution is more democratic than the Canadian, for we find that both the Houses are elective, there is no veto by the Executive, and there are scarcely any restrictions on legislative powers (other than those which safeguard State rights) which extend even to the alteration of the Constitution. The procedure for the alteration of the Constitution provided in the Act, which requires a referendum to the electors in all the States, over and above the consent by a majority of votes in both the Houses, is based historically on the methods that were adopted for gaining popular sanction to the Draft Constitution before it was incorporated in the Commonwealth Act, passed by the British Parliament in 1900. The Commonwealth Constitution is in one respect even more democratic than the "States" Constitutions, for in the former the Senate being an elective body is very much less conservative than the Legislative Councils in the States which have on them persons nominated for six years, and, in the case of two States, even for life. There is already a demand for the amendment of the Federal Constitution with a view to enlarge the powers of the Commonwealth Government, for through swift means of transportation resulting in

increase in internal trade, the conditions have changed in favor of the allotment of larger powers to a National Government.

The one great defect of the Australian system at present is that it has given rise to a Labor Caucus. To quote Bryce once more: "Among the general lessons for democratic Governments which Australian experience affords, that of widest import bears upon the character which Party Government takes when Party coincides with Class, and upon the consequences to a Representative Assembly when it passes under the control of a pledge-bound majority of its own members, each foregoing his own liberty and owning the authority of an extra-parliamentary organisation. It is hard to keep popular Government more popular, for power seems inevitably to slip back into the hands of the few, however strictly constitutional may be the forms. Australia has got no nearer than has any other country to solving the problem of Government by the whole people with fairness to the whole people, but has given one more proof of what needed no proving, that a Class dominant as a Class will always govern in its own interests."

Self-Government in South Africa

I

History of the Growth of the Union Constitution

The four Colonies that at present form part of the South African Union are (1) Natal, predominantly British; (2) Cape Colony, British-Dutch; (3) Orange River Colony, and (4) Transvaal. The last two were formerly Dutch Republics which became British Colonies. Besides, in the South African Colonies there has been a large native population and other colored races.

If we turn to the previous history of the relation of the Dutch and the British, the "Key-note," according to Egerton, "is found in the opposing methods of dealing with the natives adopted by the Dutch Colonists and the British Government". The former distrusted the methods of the British Government, and the more bitter of the Dutch population migrated farther to the North. The Orange River Colony was afterwards annexed by Great Britain in 1848, the annexation being unsuccessfully resisted by the Dutch. Meanwhile the British policy was growing more and more against the extension of responsibilities, and ultimately the Imperial Government decided to renounce its sovereignty over the Dutch Colonies and allowed the creation of independent States. The policy adopted was "of recognising by treaty the formation of independent States on the frontiers of British possessions by emigrant subjects, and thus raising an effectual barrier to the system of continual and indefinite expansion of the frontier towards the interior". This policy of separation resulted in South Africa being parcelled out into small States. People's minds became necessarily dominated by petty and local affairs and the wider outlook was completely lost. The only right course

to remedy this evil was in fact to have established some system of a Federation which would bind together the various portions of South Africa.

At first the idea of a United South Africa under the British Flag, with sufficient freedom of action to individual Colonies, was not acceptable to the British Government. Later on, however, a change in the attitude of responsible British Ministers became noticeable, and the prospects of the idea becoming acceptable even to certain Colonies seemed to be quite favorable. But Lord Carnarvan, who was Secretary of State for the Colonies and had taken part in the establishment of the Canadian Federation in 1867, showed a little over-enthusiasm in the matter of the introduction of a similar system of Government in South Africa also. He sent Sir Bartle Frere to the Governorship of Cape Colony "to carry my scheme of Confederation into effect". The move was very tactless and unnecessarily created distrust and suspicion in the Colonies. He forgot that a new system of Government on Federal principles could not be established by imposing it from without on a people possessing independent spirit, unless they themselves desired to have it. The Conference invited by Lord Carnarvan was a failure, but he forwarded a Draft Bill of the Federation to South Africa for opinion. The Constitution proposed in the Bill was more or less similar to that of Canada. The Bill after some further amendments was passed by the Imperial Parliament in 1877. The Act was merely an enabling one; it was never put into force and having lapsed after five years it ceased to have any effect.

Meanwhile, Transvaal regained its independence and a powerful Dutch Republic was established there hostile to Great Britain. This spoilt all chances of the Colonies being federated. Then followed the Boer War (1899-1902) and Transvaal again came under British possession. Soon after, Responsible Government was extended to the Orange River

Colony and the Transvaal. Responsible Government, be it noted, was already introduced in Cape Colony after 1870 and in Natal in 1893 before the Boer War. After the introduction of Responsible Government in all the four Colonies, the movement towards close co-operation became not only possible but, as subsequent facts will show, absolutely necessary. Like Canada in the North American Colonies, Transvaal, on account of its favorable position economically, possessed a controlling voice in any scheme of closer union.

The causes which compelled joint action were economic, pure and simple. The three questions on which it was felt a common policy was necessary were :

(1) The Native question, with which was closely connected the labor question and that of the colored people; (2) the question of Railway rates; and (3) Tariff. But the antagonism of interests was such as to make agreement in the beginning almost impossible. Opinion continued to remain divided in the Colonies on the policy that should be followed as regards the "Natives," and it was thought advisable that the various systems prevailing in different Colonies should be allowed to remain. The policy adhered to by the British statesmen has been that the settlement of such questions must rest with the people of South Africa alone. But very much more than the "Native" problem, the question of Railway rates and Tariffs were pressing on the attention of the Colonists for an early solution. It was being more and more realised by the different Colonies that joint action was the only practicable course.

A Conference was summoned early in 1908 to deal with the question of Railway rates and of Tariffs, but the members assembled at the Conference were driven to the conclusion that not only these but other questions also could only be satisfactorily settled when a political union between the different Colonies was brought about. The Conference could not arrive at any definite decision on this crucial point, but

for some years past public opinion in South Africa was becoming more and more strongly in favor of a closer union. Closer Union Societies were started to carry on an active campaign in favor of Union. The propaganda succeeded wonderfully, with the result that the four Colonial Parliaments expressed their readiness to send representatives to the Convention which was to meet at Durban in October, 1908. The Convention met accordingly and again adjourned till the next year.

Although for long the idea of a Federal instead of a Unitary Government was favored by public opinion, but when a serious attempt to frame a Constitution was made the Federal solution was felt to be impossible. It was being recognised that the nature of the country was such that matters on which an united action was required far outweighed in number and importance such matters on which the Provinces could engage in separate action, and therefore the most suitable form of Government for South Africa would be of a Unitary type. The Convention that met in 1909 drafted a Bill which was submitted to the respective Parliaments for their approval. Difficulties and disagreements on certain points again arose. Natal, which was proud of its British character, feared absorption in a preponderantly Dutch South Africa and therefore favored the idea of Federation more than of a Unitary Government. But when the question was submitted to the referendum of its people, the majority showed itself to be in favor of the Unitary form of Government. By 1909, the new Constitution was accepted by resolutions of the Parliaments of all the four Colonies and passed by the British Parliament.

II

Chief Features of the Constitution

1. The Parliament of the South African Union consists of two Houses. The House of Assembly consists of

members of the age of 21 and above having *only* British Subjects of *European* descent elected for 5 years by *European Male Adults*. (Only in Cape Colony, which has been so far allowed to keep its original system of franchise, are the colored people allowed to vote, but this could any day be amended by a Bill brought before the two Houses sitting jointly and passed by a two-thirds majority. According to S. 44 no colored man, even from the Cape, can be elected as a member.)

Money Bills can only be initiated in the Lower House—the Assembly.

2. The Second Chamber, called the Senate, is composed partly of nominated and partly of elected members. Eight persons are nominated by the Governor-General in Council, and for each of the original Provinces eight are elected by members of the Provincial Council together with members of Assembly from that Province. The minimum age is 30 years and the members are appointed or elected for 10 years. (Out of the eight nominated members, 4 are appointed for special knowledge of the wants and wishes of the colored races who are deprived of the franchise.) The power of the Senate over the amendment of the money Bills is restricted.

3. Barring certain provisions which must remain in force till a definite period prescribed in the original Act and barring also a few other provisions, the Union Parliament can amend the Constitution after both the Houses sitting together have passed an Amending Bill by a two-thirds majority.

4. Under Ss. 59 and 64 the Union Parliament has full power to make laws for the entire Union and to abolish Provincial Councils or curtail their powers. Such Bills shall be reserved for the King's pleasure.

5. The power of veto rests with the Governor-General and the Crown.

6. The Governor-General, who is also in command of the Forces, is appointed by the Crown. He is advised by an

Executive Council consisting of Ministers appointed by him but responsible to the Parliament and having the support of the majority of the House.

7. For each Province there is only one House—a Provincial Council—elected for three years in the same manner as the members of the Assembly are elected.

8. The Provincial Councils can pass Ordinances on matters coming under a class of specified subjects and it is the Governor-General in Council (*i. e.*, the Union Ministry) who has the power to decide whether a matter is of a “merely local or private nature” so as to come within the jurisdiction of the Provincial Council. The Provincial Council can, however, recommend to the Union Parliament to pass any law relating to any matter which cannot be dealt with by the Provincial Council.

9. All proposed ordinances by the Provincial Council must receive the assent of the Governor-General in Council.

10. Each of the four Provinces has a Provincial Administrator appointed and removable by the Governor-General in Council. The Administrator can by right take part in the proceedings of the Provincial Council.

11. The Provincial Administrator is the Chairman of an Executive Committee consisting of four persons *elected* by the Provincial Council to carry on administration on its behalf. In matters in respect of which powers have not been reserved or delegated to the Provincial Council, the Administrator is empowered to act even without referring them to the Executive Committee.

12. There is a Supreme Court for South Africa with its Provincial Divisions. No appeal lies from the Supreme Court to the Privy Council in England, but the latter may grant special leave to appeal from the Appellate Division of the Supreme Court.

III

Conclusions

Racial distinctions and differences have been of a very acute nature in South Africa. The two dominant races have been the Dutch and the English and for a long time their mutual relations were more or less hostile.

Economic complications were added to racial jealousies and suspicions. It is in fact the economic factor that led the two unfriendly races ultimately to agree to joint action, but it took them nearly half a century before they could accept such a policy. The three main problems were (1) the Native question, closely interwoven with the question of labor and of the other colored people; (2) the Railway rates; (3) Tariff. It is the economic considerations that ultimately led to the preference of the Unitary over the Federal form of Government.

The whole spirit of the Constitution shows greater centralisation, which is so very different from the extremely democratic character of the Australian Commonwealth or even the moderately democratic nature of the Canadian Constitution. The Provinces have been reduced to a considerably inferior position, their powers are very undefined and restricted. With the exception of education which the Dutch would not agree to leave in the hands of the Union, the Provinces are entirely at the mercy of the Union Parliament. The Provinces can be abolished at any time and their Constitutions altered; they cannot raise money without the sanction of the Governor-General and their Bills cannot have any force unless they receive his assent. The Provincial Administrators have large Executive powers independent of the Provincial Council.

In fact, there is no Responsible Government in the management of the Provinces which have been probably allowed to exist because it would have been difficult to

concentrate Government from four capitals to only one and would have left no scope for local patriotism.

It is noteworthy that women have no vote. Except in one Province the natives and the colored races have no franchise. Only Europeans can be elected.





Local Self-Government



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NOTE—All Memoranda circulated for information and criticism contain the view of the author at the time of writing. Changed conditions might involve modifications. The considered views of the Committee will not be available until it issues its report.

Local Self-Government

In this Memorandum I propose to discuss the position which Local Bodies should occupy in the system of Government to be established in India, the functions that may be assigned to them, the taxes that may be set apart for local purposes and finally, the principles that should govern the relations, financial and administrative, between them and the Provincial and Central Governments. In order to realise clearly the complexities of the problem of Local Self-Government in India, it is necessary to understand how the present system has been evolved and the circumstances which have contributed to our present difficulties. I shall, therefore, begin with a brief sketch of the history of municipal and other local institutions in India.

Municipalities.—The system of Municipal Administration as it exists now in British India is of comparatively recent growth, although it was introduced in the Presidency towns at a very much earlier date. In 1687, James II sanctioned the establishment of a Corporation and Mayor's Court in Madras with a view to the solution of the question of town conservancy. The Corporation was entirely on the prevailing English pattern, with a Mayor, Alderman and Burgesses who were empowered to levy taxes. The people, however, strenuously resisted the imposition of anything in the nature of a tax, and ultimately the Mayor

had to take permission to levy octroi duty on certain articles of consumption so that he might provide the necessary funds for cleaning the streets. The system was extended to the other towns in 1726.

The first statutory enforcement of Municipal Administration is contained in the Charter Act of 1793, which empowered the Governor-General to appoint Justices of the Peace for the Presidency towns, who in addition to their judicial duties were authorised to provide for scavenging, watching and repairing the streets, the expenditure on which was to be defrayed by an assessment on houses and lands. The system of election of representatives by the rate-payers was first established in Bombay, Calcutta and Madras by Acts passed in 1872, 1876 and 1878 respectively.

Outside the Presidency towns there was practically no attempt at Municipal legislation before 1842. In that year an Act was passed applicable only to Bengal to enable the inhabitants of any place to make better provision for purposes connected with public health and convenience. The Act, however, was a complete failure, for it was based on the voluntary principle and could not be introduced in any place except on the application of two-thirds of the householders. The next attempt at Municipal legislation for country towns was made in 1850 by an Act which applied to the whole of India. This Act was permissive in its nature; but it was more workable than its predecessor and, unlike it, made provision for taxation by indirect methods. It was largely used in the United Provinces and to a considerable extent in Bombay; but it had practically no effect in Madras and Bengal.

The next stage in the development of Municipal institutions in India was the Report of the Royal Army Sanitary Commission published in 1863. Although it primarily dealt with the health of the Army, it drew prominent attention to the unhealthy condition of the towns. The need for more

extensive Municipal measures was recognised by the Government, and Acts were passed in almost all the Provinces, which resulted in the constitution of a large number of Municipalities. These Acts provided for the appointment of Commissioners to manage Municipal affairs and authorised the levy of various taxes. The election of Commissioners, however, was permissive, and in practice they were nominated.

The next important stage in the evolution of Local Self-Government is associated with the Government of Lord Mayo, who recognised the fact that local interest, supervision and care were necessary to success in the management of funds devoted to education, sanitation, medical relief and local public works. New Municipal Acts were passed in almost all the Provinces, which considerably widened the sphere of Municipal usefulness and extended the election principle. Election was not, however, brought into practical operation in many places until 1881-82, when Lord Ripon introduced many important and far-reaching changes in the system of Local Self-Government. The Acts passed in 1883-4 considerably altered the constitution, powers and functions of Local Bodies. A wide extension was now given to the elective system, and independence and responsibility were conferred on the Committees of many towns by permitting them to elect a private citizen as Chairman in the place of the executive officer who had hitherto filled the post. Arrangements were also made to increase Municipal resources and financial responsibilities. A considerable portion of the Municipal revenues had hitherto been devoted to the maintenance of town police, over which the Municipal authorities had no control. They were now in most of the Provinces relieved of this burden on the understanding that they would incur an equivalent expenditure on education, medical relief and public works. Certain items of Provincial revenue suited to and capable of development under local management were transferred from the Provincial account

with a proportionate amount of Provincial expenditure for local objects. Official control was thus to some extent relaxed, but even in Municipalities which had an elected Chairman, the Commissioner and the Collector were, in practice, in a position effectively to interfere in the administration. The annual budgets of the Municipalities had to be submitted to the Government for approval with the remarks of the local Government Officers, and the Government did not hesitate to enforce the changes in the allotments recommended by their District Officers. The election of the Chairman was in most Provinces subject to the approval of the Government, which was not, however, withheld, save in exceptional circumstances. The Chairman could also be removed by the Government for mismanagement or gross incompetency.

These Acts with minor modifications were the basis of Municipal Government in India almost until the introduction of the Montagu-Chelmsford reforms. The authors of the Report on the Indian Constitutional Reforms recognised the fact " that it is of the utmost importance to the Constitutional progress of the country that every effort should be made in Local Bodies to extend the franchise, to arouse interest in elections and to develop Local Committees so that education in citizenship may, as far as possible, be extended and everywhere begun in a practical manner".

The amendments of the Municipal Acts introduced during the last four years in the various Provinces are mainly based on the recommendations made in this Report. The main features of the changes introduced are :

- (1). An expansion of the elected element, nominations being practically restricted to minorities and backward classes.
- (2). The adoption of a sufficiently low franchise to obtain constituencies which will be representative of the general body of taxpayers.

- (3). An extension of the system of Elected Chairmen.
- (4). Grant of power to impose and alter taxation within prescribed limits without the previous sanction of the Government.
- (5). Almost complete control over the services under Local Bodies.
- (6). Practically complete control over the budget. The powers of interference of the local Government officials have been severely curtailed. They are now restricted to cases in which maladministration or neglect is likely "to be a menace to public health or safety". In practice, these emergency powers are rarely exercised.

Rural Boards.—I have so far dealt with the history of Municipal institutions. The development of local institutions in rural areas began later than the growth of Municipal Government. In Madras and Bombay, some voluntary funds for local improvement were the first germ of *modern* Local Self-Government. I have used the word "modern," because village Panchâyats have been (or rather, I should say, were) in existence for thousands of years. This system of voluntary association, however, did not extend to Bengal and the United Provinces, but consultative Committees assisted the District Officers in the management of funds devoted to local schools, roads and dispensaries. The earliest legislation for raising rates for local purposes was that applied to Sindh in 1865, replacing a system of local cesses inherited from the pre-British administration. This Act authorised the imposition of a small cess on land and a tax on houses. In the following year, an Act was passed to authorise the levy of a similar rate in the Madras Presidency, but the rate-payers took no part in the administration of the proceeds. In 1871, as a result of the financial Decentralisation Scheme of Lord Mayo's Government, Acts were passed for Madras, Bombay, the present United Provinces and the Panjab.

The main feature of the Acts was the division of the country into Local Fund circles and the constitution of consultative Committees or Boards nominated by the Government and under the presidency of the Collector. The whole system, however, was reorganised in accordance with the policy laid down by Lord Ripon's Government in 1881-82. The lowest administrative unit was made small enough to secure local knowledge and interest on the part of each member of the Board. The non-official element was made to preponderate, and the elective principle was recognised as in the case of Municipalities. At the same time the resources and the financial responsibility of the Boards were to be increased by the transfer to them of certain items of Provincial revenue with a proportionate share of Provincial expenditure. Local Governments were, however, given full discretion as to the manner of and the time for giving effect to the instructions conveyed in the orders of the Government of India. The systems introduced by the Acts of 1883-85 varied greatly in different parts of India.

The Madras organisation provides for three grades of Local Boards: (1) District Boards (2) Taluk Boards (3) Union Panchâyats or Boards, larger villages and groups of villages being organised as Unions. The Unions levy a light tax on houses mainly for sanitary purposes. Next come the Taluk Boards, which originally formed the agency for local works in the administrative section into which the Districts are divided, but which, since 1920, have become more or less independent bodies with the administrative charge of specific services. The District Board originally had a complete general control over the local administration of the District, but its power of control over Taluk Boards has now been considerably curtailed by legislation and specific services have been assigned to the District Board and specific sources of revenue allotted for the maintenance of these services.

In Bombay, there are only 2 classes of Boards for Districts

and Taluks respectively. The peculiarity of the Bombay system is that it recognises the local Municipalities as being entitled to a voice in the Board elections. In Bengal, the Panjab and the N.-W. F. Province, the law requires a District Board to be established in each District, but leaves the establishment of the subordinate Local Boards to the discretion of the Local Government. In the United Provinces, the special Boards were abolished in 1906, and the District Boards received a large measure of administrative and financial independence. In the Central Provinces, the system resembled more or less that which prevailed in Madras.

In all the Provinces, the Collector or Deputy Commissioner was invariably the President of the District Board. With his power of nomination, he had always a majority in the Board and was, therefore, in a position effectively to carry through any measures he desired. The administration of rural Boards was thus directly under official control. It is only during the last 5 or 6 years that official control has been relaxed and non-official Presidents been appointed. The privilege of electing the President has not yet been granted in many Provinces. In Madras, only 5 or 6 Districts enjoy this concession.

It will be observed from this brief historical sketch that the Local Bodies in India have not risen to their present position by a gradual process of evolution from indigenous institutions, but were created comparatively recently by legislation. The territorial units adopted for local purposes were not the villages (which in some parts of the country at any rate possessed a system of local administration), but the revenue District and the revenue Sub-Division or Taluk. This was inevitable for the Collector and his subordinates not only presided over the Boards, but actually carried on the administration as the executive heads of Local Bodies. It is interesting to note that when the Local Bodies were de-officialised and the control transferred to elected or nomi-

nated non-officials very few changes were made in the machinery, and consequently in many Provinces the non-official President, who is often a busy professional man, is now the head of the executive. It will also be noticed that official control has been relaxed only during the last 5 or 6 years, and that until the Reforms Local Self-Government existed only in name except perhaps in Municipalities which had the privilege of electing their Chairman.

I shall deal first with the question of relations that should subsist between the local authorities and the Provincial Government, for on the nature of the control exercised by the latter will depend largely the possibility of assigning further subjects to Local Bodies. It should be superfluous to state that Local Self-Government does not imply complete freedom from control by the Central or Provincial Government, but in India it was assumed that freedom in local affairs would be easier to get than Responsible Government in Provincial affairs and the efforts of politicians were for several decades consequently directed towards liberating Local Bodies from Provincial control which was exercised through their officials.

But we actually got a system of Responsible Government in certain departments in the Provinces, including, of course, Local Self-Government, almost before the Local Bodies were de-officialised. The people, however, have not been able to adjust their minds to the new situation created by the Reforms, and the cry for autonomous local authorities still persists. Any advice for or interference by the Provincial Government is often strangely resented, and Provincial control over local affairs has almost come to be regarded as something peculiar to the system of Government established by the British in India. It is, therefore, worth while examining the position of Local Bodies in the democratic countries of Europe.

In no democratic country of the West, except the United

States of America, are local bodies independent of the Central Government, and according to Mr. Sidney Webb, one of the greatest living authorities on Local Government, America possesses "the worst Local Government of any State claiming to be civilised". In France, Germany, Belgium, Austria and generally throughout the Continent of Europe, local administration is mainly entrusted to salaried officials who are directly subordinate to the various departments of the executive Government. There are, of course, representative local Councils of various grades by which the wishes of the inhabitants are expressed and some degree of local control is secured, but their powers are very limited and control by the Central Government is very rigorous. In France, for instance, the Prefect, whose position is in many respects similar to that of the Collector and District Magistrate in India, is the head of the *Department* which is the largest territorial unit for local purposes in France and corresponds to the District in India. He has the power of annulling the decision of a Municipal Council for excess of powers or breach of law or regulation. He can suspend temporarily any official including the Mayor. He may suspend the whole Council and, with the approval of the Minister, dissolve it. He is the sole executive officer of the *Department* regarded as a self-governing corporation, and is bound to carry out the resolutions of the Departmental Assembly. He is appointed by the Ministry, is dependent on it and can appeal to it from the local body.

In England, local authorities were almost entirely independent of the Central Government until 1835, but the administration was corrupt and inefficient. The need for control was recognised by the Central Government, but statutory powers for enforcing efficiency proved ineffective in practice. Gradually the system of control by means of Grants-in-aid was evolved and it is now the most conspicuous feature of local administration in England. How stringent

this control is will be evident from a perusal of Mr. Sidney Webb's book *The Grant-in-aid*.

It will thus be seen that independent local authorities are rather the exception than the rule in the democratic countries of the West, and it can hardly be asserted that in India, where Local Self-Government in the real sense has existed for only 4 or 5 years, we can dispense with Provincial control. Local Bodies in India are in charge of some services, such as education, which are of vital importance to the Nation, and no Provincial Government can allow such services to suffer in any locality on account of mismanagement by the Local Body concerned. No Minister can hold himself responsible to the Legislative Council for the administration of these services, if they are to be entrusted to local authorities over whom he has no control.

There are three possible ways in which control can be exercised by the Provincial Government over local authorities:

(1) Direct interference by means of statutory powers. This is essentially the bureaucratic system prevailing in France and other Continental countries. The services under the local authorities are divided into "optional" and "obligatory," the latter including all the services of National importance. The State through their territorial representatives compels local authorities to make adequate provision in their annual budgets for the obligatory services and sees that they are maintained efficiently. The system involves such an amount of interference in the details of administration by local officers that it will be extremely undesirable to introduce it in India. It deprives Local Bodies of the power of initiative and freedom to experiment, and it does not provide the political education, which was one of the important objects of the establishment of Self-Governing Local Bodies in India. Besides the prejudice against the Indian Civil Service which represents the Government in the Districts is so strong that any interference by local officers, whether justifiable or

not, is likely to provoke strong opposition, and Local Bodies, owing partly to the facilities which non-official Presidents of Boards get for electioneering purposes, are strongly represented in the Legislative Council and are in a position effectively to influence the Minister in charge. As a matter of fact, even the few powers of interference retained by the Government under the present Act are rarely or never exercised in practice.

(2) The second method is by the use of the Grant-in-aid as an instrument of control. This is the device commonly adopted in England. The superiority of this system to the bureaucratic and other systems of control by means of statutory powers is well brought out in the following passage in the Minority Report of the Royal Commission appointed about 15 years ago, to enquire into the system of the Poor Law administration in England:

Finally we have to consider those Grants-in-Aid..... from the stand-point of their effect on the suggestions, criticism and authoritative instructions by which the Central Authority seeks to secure greater efficiency and economy of administration. This indeed is by far the most important aspect of Grants-in-aid. The verdict of administrative experience is that, properly devised, they afford a basis for the best of all relations between the National Government and the Local Authorities.

A century of experience has demonstrated that it is undesirable for Local Authorities to be subject to no administrative control whatsoever from a Central Authority, for them to be left without independent inspection or audit, without access to centralised experience and specialist knowledge, without any enforcement of the minimum indispensably required for the common weal, and without mitigation of the stupendous inequality of local rates that complete autonomy involves. On the other hand, the grant to a Government department of arbitrary powers to sanction or disallow, or peremptorily to order this or that is felt in this country to be derogatory to the independence, the dignity and the spontaneous activity of freely elected representatives of local ratepayers spending their own funds. Such mandatory instructions from a Government Office in Whitehall can be

enforced only by cumbrous legal processes; and they have proved in practice to give the Government department little real power over recalcitrant Local Bodies. It is in vain that Parliament endows the Local Government Board with ample statutory powers—on paper—to compel typhoid-smitten Little Peddlington to provide itself with a proper drainage system and water supply. Little Peddlington flatly refuses or stubbornly refuses to do so. The Local Government Board for all its paper powers of coercing Little Peddlington by *Mandamus* or by independent action in default finds itself practically impotent; and hundreds of Little Peddlingtons retain to this day their primitive insanitation triumphantly. Very different has been the experience of the influence of a Central Authority wielding the instrument of a well-devised Grant-in-Aid. Between 1830 and 1856 there was felt to be urgent need of a well-organised constabulary force in the provincial boroughs and counties. By the Act of 1835, Parliament attempted to make it compulsory on the Municipal boroughs to establish such a force. In the counties the Justices were empowered to establish one. In both boroughs and counties the constabulary remained weak and inefficient. By an Act of 1856, the establishment of an efficient force was not only made everywhere obligatory, but what was far more important, the Government agreed to contribute one-fourth—after 1874, one-half—of whatever expense the locality incurred on its police force, provided that the Home Office was satisfied after inspection that the force was adequate and efficient. Under this combination of pressure and inducement, all the provincial police forces have steadily improved, rapidly rising, indeed, to a common level of adequacy and efficiency. At every inspection the defects have been pointed out in a way that could not be ignored. The mere intimation that unless these shortcomings were, somehow or another, remedied before the next annual inspection came round, the Secretary of State might have to consider the propriety of withholding a portion of the Grant (now the certificate without which the Exchequer Contribution cannot be paid) has usually sufficed to induce the Local Authority—not necessarily next month, but gradually, in due course—to effect more or less the necessary improvements, not necessarily in exact compliance with any Government pattern, but with the fullest sense of local independence, exercising its own judgment in its own way, and often apparently on its own initiative. In the course of fifty years, though the official criticisms have been incessant, and though the Home Office has not been afraid in,

at any rate, one bad case of recent years actually to withhold the Government contribution, it has seldom been necessary to take this course. Of legal proceedings, by *Mandamus* or otherwise, to compel a recalcitrant Local Authority to do what the statute required, there has, in this matter of providing a constabulary force, been no question.

The system of control by means of the Grant-in-aid has been gradually evolved in England, because the right of local bodies to govern themselves had become traditional, and interference by the Central Government by means of an extension of the prescribed statutory duties was universally viewed with suspicion as an encroachment on the freedom of local bodies. What was traditional in England has been conferred by the statute in India, and Local Bodies in India are very jealous of their newly acquired powers. The only possible and effective means of enforcing efficiency in India at the present time is by resorting to the device adopted in England. I believe this practice is being gradually followed in the United Provinces and the Madras Presidency.

(3) The third method is practically a modification of the second. Efficiency in local administration can to some extent be ensured by insisting on the appointment of officers from a central *cadre* to the chief executive offices under the local administration. This measure is particularly important in a country like India where control has rapidly passed from a Bureaucratic Government to elected non-officials. It makes the efficiency of the administration to some extent independent of the vagaries of inexperienced non-officials, for a Government official, whose services are lent to a Local Body, feels that his position is more secure than that of a purely local servant and he is compelled to follow the traditions of a Government Service as regards standards of efficiency and purity of administration. The Local Body will, of course, have absolute disciplinary control over these officers, but if it is dissatisfied with him or wants to get rid of him, the Central Government need only transfer him and send the

Local Body another official. The security of tenure which this system affords to officers under Local Bodies attracts a better class of men for local services. The importance of this has been recognised even in England. The Town Clerk cannot be dismissed by the Local Authority under which he is serving. All the privileges and concessions enjoyed by Government officials have gradually been extended to local officials in England, and it is even proposed to compel local bodies by statute to make these offices pensionable.

The system has already been introduced in the Madras Presidency with success. In order to induce Local Bodies to submit to this form of control, it is usually necessary that the Central Government should either give the services of their officers free or contribute towards their salaries. In other words, the Central Government should offer a subsidy in the shape of the free services of their officers.

I have attempted to show that control by the Central Government over services administered by Local Bodies is essential in the interests of efficiency in every country and that experience of other countries indicates that this control can best be exercised by means of the Grant-in-Aid and to some extent by the "centralisation" of the chief executive offices under local authorities. I shall now proceed to discuss what services are suitable for local administration in the present condition of India.

It will be observed from the historical introduction to this Memorandum that the functions of local authorities have varied from time to time. Before Lord Ripon's time, Municipal revenues were spent on the maintenance of the town police, although the Municipal authorities had no control over them. Since 1884, elementary education, secondary education in some Provinces, sanitation, medical relief and communications have come to be recognised as the services which should be administered by local bodies, but the division of functions between the Central Government and the local authorities is

not based on any definite principle. Subjects which are of more than parochial importance such as education, trunk roads, control of epidemics, etc., have been entrusted to Local Bodies, while many functions which are ordinarily discharged by local authorities in European countries have been retained by the Provincial Government. It is, however, impracticable to deprive Local Bodies of the control over any of the services now entrusted to them, for a complete redistribution of subjects between Provincial Governments and local authorities will result in a dislocation of the administrative machine, and there will probably be a serious loss of efficiency for some time. It is, however, essential for the political development of the country that some of the Provincial services, which affect the rural population directly and in the efficiency of which they are consequently very much interested, should be transferred to local authorities. In the first place, complete Responsible Government in the Provinces is bound to be followed by a very wide extension of the franchise. In India, Provincial areas are very extensive and are on what would elsewhere be considered as a National scale, and a large majority of the people are illiterate. There are obvious dangers in entrusting the administration to a Government which is nominally responsible to a large mass of illiterate voters who are not in a position to follow intelligently the proceedings of the Provincial Councils. It is important, therefore, that the franchise should be restricted in the case of the Provincial Councils and the Central Assembly, and that the extension of the electoral privilege should be in the domain of local administration. On the other hand, in order that the interests of the people in general may not be ignored by the Provincial Government, it is desirable that the control over the services which directly affect the people should be handed over to Local Bodies. An illiterate villager is in a position to express an opinion on a service which affects him, such as rural water supply, minor irrigation works, smaller

forests, rural Co-operative Societies, etc., and he is interested in its efficiency. He can effectively influence the District Board by his vote, and it is likely that he will exercise his electoral privilege if the Board deals with matters which affect him materially.

In the second place, a highly centralised Government over a large Provincial area can be carried on efficiently only through the agency of a highly paid civil service which has a high sense of duty, is not open to corrupt influences and which does not require specific instructions on matters of detail from the Central Secretariat. If the cost of the service is to be reduced considerably without any loss of efficiency, it is necessary that the civil servant should be controlled by a local responsible elected body. This can be rendered possible only by a transference of control over many of the directly administered subjects to Local Bodies. Of course, any such transfer will make it exceedingly difficult for a non-official elected President of a District Board to administer without the help of a fairly well-paid executive officer. I consider it essential that any such decentralisation should be followed by the appointment of the Collector as the Chief Executive Officer of the District Board. Any such proposal at the present time is likely to be opposed very strongly by the non-official public, for the large majority of civil servants are Europeans, but I am assuming that when India gets Dominion Status the civil services will be almost completely Indianised and that we shall have a class of Indian officials who have been as carefully chosen and trained as the present civil service but who will loyally carry out the policy of the Boards. The Boards will lay down the policy, and the Collector will carry it out as the Chief Executive Officer of the Board under the general control of the elected President. By control of the President, I do not mean to suggest that the President will have power to dismiss or punish the Collector. Even in England, the Town Clerk cannot be dismissed by the

local Council without the approval of the Central Government. The position of the Collector will be similar to that of the Commissioner of the Corporation of the Presidency towns.

In the third place, it is important that, whatever happens in the Provincial and Central Government, the services which affect the people vitally should be maintained in an efficient condition, and should not be subject to the influence of Provincial party politics. This can be ensured by a considerable decentralisation of authority and by the provision of a highly qualified civil service for carrying out the policy of the Local Bodies.

The general principle which should be observed in deciding which subjects should be transferred to local authorities has already been indicated. Conditions vary so considerably in different Provinces that it would be difficult to suggest a distribution of functions which would be applicable to the whole of India. The case of each Province will have to be considered separately. Agriculture, excepting agricultural education and Research Institutes, may be transferred to local control. Local Bodies with their knowledge of local conditions and with the technical advice of the experts of the Department should be in a better position to introduce improvements in agriculture and to organise seed-depôts, etc., than the Provincial Government. Rural Co-operative Credit Societies may also perhaps be transferred to the control of Local Bodies subject to Central audit. All public works can be handed over to them, as has already been suggested by the Public Works Reorganisation Committee. Minor irrigation works and the smaller forests can easily be maintained by Local Bodies. I have mentioned only a few subjects. The matter will have to be considered in detail with reference to the conditions in each Province.

Constitution.—The two classes of local authorities that now exist in India have already been described. We have the

Municipal Councils in the large towns which are responsible for local affairs within the Municipal limits. They deal direct with the Provincial Government and, except in Bombay, they are not represented on the District Board which is in charge of the District area outside Municipalities. Under the District Board in many Provinces we have the Taluk or Sub-District Boards, which are survivals of the old bureaucratic system of administration, under which the District Officers presided over these Boards and the units of local administration were coterminous with the revenue jurisdictions of these officers. There are also in the smaller towns in some Provinces what are called Union Boards, which are really miniature Municipalities controlled by the District Board instead of the Provincial Government. The ancient unit of Local Self-Government, the Village Community, was completely ignored until the system was examined by the Decentralisation Commission in 1910. The importance of developing these has been recognised by the authors of the Montagu-Chelmsford Report, who recommended that where conditions were favorable for their revival "they might be endowed with civil and criminal jurisdiction in petty cases, some administrative powers as regards sanitation and education, and permissive powers of imposing a rate".

Sporadic attempts have been made to develop Village Panchâyats in several Provinces recently, but in no Province, as far as I know, has the subject received the attention it deserves. Nor has the importance of the village as a unit of local administration been recognised. As long as the administration of rural areas was strictly under official control, it was perhaps inevitable that the village should be neglected; now that the system has been de-officialised, the village should again occupy its proper place in the system of Local Government. No country in the West has attempted to administer local affairs in areas as large as the jurisdiction

of an ordinary Taluk Board without a subordinate organisation in each village or homogeneous group of villages. In England, we have the parish, and in France, Belgium and Germany, the *communes*. The smallest *commune* in France contains less than 50 inhabitants. Local Self-Government in India will never be an efficient system until the Village Council or Panchayat is revived and made the lowest unit of administration.

The Taluk or Sub-District Board is already becoming a superfluous and rather inefficient body. As I have pointed out it is a survival of the older system; and if the Village Councils are definitely recognised as local administrative units, it would be difficult to justify its extension. In the Central Provinces, the Government some months ago commented at great length on the inefficiency of Taluk Boards and discussed the justification for their existence. In Madras, in spite of an attempt to give the Taluk Board a higher status by assigning to it definite services and specific sources of revenue, Taluk Board administration has not been a success. The main argument that has been advanced for the retention of this intermediate body is that it serves an educative purpose, but the Taluk Board has become merely an agent for disbursing money and all the more important functions have been gradually transferred either to the District Board or Special Boards such as the Education Boards. Taluk Board administration is very expensive, for it has to keep an independent office establishment though its resources are small. When Village Councils become fairly universal, this body may safely be abolished. We shall then have only 3 types of Councils.

(1) The Municipal Council in the larger towns dealing direct with the Provincial Government.

(2) The District Board.

(3) The Village Panchayat in Non-Municipal towns and villages controlled by the District Board.

The District should be split up into 2 parts in cases in which it is found to be too extensive for efficient local administration, and a separate District Board established for each.

I shall now attempt to indicate the sources of taxation that may be assigned or set apart for local purposes. Under the Government of India Act, the taxes which a Provincial Government may authorise a Local Body to levy without the sanction of the Government of India as specified in Schedule II of the Scheduled Taxes Rules framed under section 80-A (3) (a) of the Act. They 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 into a local area in which an octroi was levied on or before the 6th July, 1917, (9) A tax on trades, professions and callings, (10) A tax on private markets, (11) A tax imposed in return for services rendered: (a) a water-rate, (b) a lighting rate, (c) a scavenging, sanitary or sewage rate, (d) a drainage tax, (e) fees for the use of markets and other public conveniences.

The principal sources of revenue are the octroi and the property (houses and lands) tax in the case of Municipalities and the land cess in the case of Local Boards. The following statement shows the total income of Municipalities in 1920-21 from the different sources specified in the last paragraph:

	Rs. (in lakhs)
Octroi	... 194'00
Taxes on houses and lands	... 253'54
Taxes on animals and vehicles	... 26'77
Tax on professions and trades	.. 26'47
Tolls on roads and ferries	.. 25'78
Water-rate	... 132'11
Lighting rate	... 18'93
Conservancy rates	... 75'22
Other taxes	. 48'38
Total	.. <u>801'20</u>

The octroi is the principal source of Municipal income in the Panjab, United Provinces, Central Provinces and Bombay. In the Panjab, it provides more than three-fourths of the total income of the Municipalities. The tax is open to serious objection since its management is expensive, and unless the charge is moderate, it is likely to degenerate into a transit duty and thus inflict injury on trade. The main justification for its levy is that direct taxation is very unpopular in India and that through long usage it has become familiar to the inhabitants of northern and western India. This opposition to direct taxation in any form makes it difficult for local authorities to raise all the money required for their needs by local taxation, for local taxes in most countries (except the Latin countries, France and Italy) are usually direct taxes.

In the case of Village Panchâyats the only possible source of income is the land tax, which is already the most unpopular tax in India although it has been levied from time immemorial in India. Even the poorest raiyat does not mind the tax when he has a good harvest, for the tax is not high assuming a normal harvest. It is only when he has a poor harvest that he finds it difficult to pay. Unfortunately remissions are given only when there is an almost complete failure of the crop, and the tax fixed at the settlement is collected whatever the nature of the crop. It is this lack of elasticity in the British Revenue System that largely accounts for the unpopularity of the tax, and it is important to remember this fact when we are considering what would be an appropriate source of income for Village Panchâyats. The only possible course in the present stage of development seems to be to assign a small portion of the Provincial Land Revenue collected in the village for the use of the Panchâyet, say, about an anna in the rupee. The assignment should be conditional on the maintenance of village communications (by which I mean the roads connecting the village with the

main District road and with the adjoining villages) in a reasonable condition and of a prescribed number of protected wells for the different communications. The failure of the efforts to revive Village Panchâyats so far made is largely due to the fact that only permissive powers of imposing rates have been conferred on the Panchâyats and no encouragement in the shape of a Provincial subsidy has been given. If a definite annual assignment is made and certain statutory duties are imposed, the Panchâyats are likely to raise some money by taxes, perhaps not imposed regularly in the official fashion but collected at harvest time during years of good harvest. The village system of taxation must be elastic if it is to be a success, otherwise the Panchâyat is doomed to be a failure. An anna in the rupee may mean an assignment of nearly Rs. 40 lakhs in a Province such as Madras, but a revival of village life is so important from the social as well as the economic point of view that it would be worthwhile spending the money.

In the earlier paragraphs I have suggested that additional responsibilities should be thrown on local authorities. How are they to find the additional funds necessary for the administration of these services? The problem presents considerable difficulties in India owing to the general reluctance to impose direct taxes, which are the most appropriate sources of income for local purposes. There are three possible ways of finding the money ;

- (1) Levy of additional rates and cesses.
- (2) Levy of surcharges on Provincial and Imperial taxes collected within the jurisdiction of the local area, or
- (3) Provincial subsidies.

In practice it is likely that all these three methods will have to be adopted to some extent. Provincial subsidies would be most appropriate in the case of the services of National importance such as elementary education, trunk roads, etc., which have been entrusted to Local Bodies fo

administrative convenience. The Local Bodies have a right to expect financial assistance for the maintenance of these services, and Provincial subsidies, as has been pointed out in the earlier portion of the Memorandum, are very important as instruments of control in enforcing efficiency.

For the reason explained already, the method of raising funds by raising the rate of direct taxation can be utilised only to a limited extent, but equity requires that at least in the case of urban areas local authorities should be compelled to resort to this method. At present the inhabitants of towns contribute comparatively little towards the Provincial and the Central Exchequer. They pay very little in the shape of land tax and, excepting the few whose income is over Rs. 2000 per annum, they pay no income tax. The urban laborer contributes something towards the excise revenue, but he can easily avoid paying the tax by not indulging in drink, which certainly cannot be classed as a necessity. Any Provincial subsidies to Municipalities will therefore have to be found from the taxes collected in the rural areas, and they will only aggravate the inequality as regards the incidence of the present system of taxation.

The second method is that generally followed in some of the countries on the Continent, notably France. A very large proportion of the revenues of the *Departments* and *Communes* in France is derived by the simple process of adding hundredths (*Centimes additionales*) to the amount of the principal taxes which go to the Central authority. There is no objection to the introduction of this method in India, provided the taxes on which a surcharge may be levied are clearly specified. In fact, the land cess now levied by Local Boards is exactly similar to the *Centimes additionales* levied in France. This method is very convenient for the tax can be collected without any additional expense by the State revenue collecting agency.

To what extent these different methods of providing

money should be resorted to will depend on local circumstances, and the services entrusted to the local administrations. It is impossible to go into details, unless the problem is considered with reference to each Province separately. I have, therefore, confined myself to general principles.

I shall now conclude with a few general observations on local Franchise. For the village Panchâyat it will be generally agreed that the franchise should be practically universal. It is when we come to the higher spheres of administration that we have differences of opinion on the question of franchise. In the case of Municipalities the principle of restricting the franchise to those who pay the Municipal taxes has often been advocated, and, in fact, has been given effect to in the Madras Acts. This system has been justified on the ground that only the people who pay the taxes have the right to determine how those taxes should be spent. The principle is based on an economic fallacy that the people who pay the taxes to the Local Body actually bear the burden of taxation. I shall give only one instance to show the absurdity of this position. In the Panjab nearly 75 per cent of the total income of Municipalities is derived from octroi, which is a tax on the common articles of consumption brought into the town. The shopkeeper who imports the articles pays the tax to the Municipalities, but he passes it on to the consumer by raising the price of the taxed article. If the principle introduced in the Madras Act is adopted in the Panjab, none but the importers and a few others will have the Municipal vote. In the higher spheres of administration, the Provincial and the Central Government, this principle is even more vicious, for a large portion of our Provincial and Central revenues is derived from indirect taxes which are almost invariably passed on to the consumers. Any system of franchise based on such misleading conceptions regarding the incidence of taxation will not give us a truly representative Council.

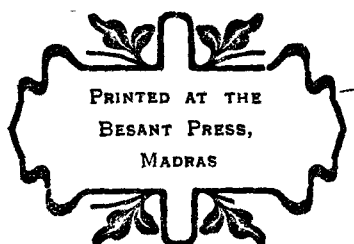
A second suggestion that has been made is that in order to avoid the disadvantages and inconvenience of an electorate consisting of a large number of illiterate voters, the franchise for the Provincial Councils should be largely confined to the elected Panchâyatdârs and members of District Boards. This system of indirect election is not new to India, but it has in my opinion very serious disadvantages. In the first place, it is not justifiable to assume that the Panchâyatdârs and Board members who represent the people on local affairs can adequately give expression to the opinions of the people on questions of Provincial and Imperial interest. The lines of division in local politics are not often identical with those in National politics. In England, we had the Progressives and the Moderates in the London County Council roughly corresponding to the Liberals and Conservatives, but London, which is usually a Conservative stronghold had the Progressives in power in the L. C. C. for over twenty years. In the second place, it is important that the representatives of the people in the Provincial Councils and the Imperial Assembly should not lose touch with the people whom they represent. The people can make their influence felt more effectively under a system of direct election. I would therefore advocate direct election for the District Councils and even for the Provincial Councils. The electorate may be restricted by eliminating the illiterate, but the election should not be indirect. I would therefore suggest that

(1) In the case of Panchâyats and Municipalities the franchise should be universal.

(2) In the case of District Councils the franchise may be restricted to:

(a) All adults who are literates;

(b) All persons paying more than Rs. 30 annually as land tax, and all persons paying income-tax, whether literate or illiterate.



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NOTE—All memoranda circulated for information and criticism contain the view of the author at the time of writing. Changed conditions might involve modifications. The considered views of the Committee will not be available until it issues its report.

A Memorandum on Executive Government

By A. RANGASWAMI AIYAR, MADURA

In framing a Constitution for India, it appears to me to be desirable to start with the present framework in its broad outlines, with such alterations or modifications as Indian conditions, National ideals, or historical tradition may demand, or the study of Constitutions of other countries may suggest as improvements. The chief features of such a Constitution cannot be divorced from the cardinal conceptions of democratic Government as current at the present time. Constitutions are generally compromises between different views on constitutional questions, and ideal schemes like *The Outline of a Scheme of Swarāj*, published as CONVENTION MEMORANDA No. 2, though logically correct and based on a well thought-out plan, may not have the same chance of acceptance as one more closely connected with current democratic ideas. I give my views in the form of the following articles stating, in separate notes in small type, any remarks which may bear on the corresponding article.

The Executive Government

1. The Executive Government of the Commonwealth of India and its several Provinces shall consist of:
 - (i) The King-Emperor.

- (ii) The Viceroy and Governor-General with his Council of Ministers called "The Supreme Executive Council".
- (iii) The Governors and Deputy Governors of Provinces with their Councils of Ministers called "Executive Councils".

"Deputy Governor" will be the name for the present "Chief Commissioner" who will administer a Province until such Province ceases to exist as such either by being absorbed into a Governor's Province or is constituted into a Governor's Province.

The expression Lieutenant-Governor will disappear and his Province will be administered by a Governor.

- (iv) The Public Service.

The Supreme Government

2. The Executive power of the Commonwealth shall be vested in His Majesty the King-Emperor of India, and shall be exercised by the Viceroy and Governor-General of India in Council and shall extend to the maintenance of the Constitution and laws of the Commonwealth.

3. The Viceroy and Governor-General of India shall be appointed by His Majesty the King-Emperor, and shall exercise during the term of his office, but subject to this Act, such powers as His Majesty the King-Emperor may be pleased to delegate to him.

In the making of the appointment to the office of Governor-General the Prime Minister of the Commonwealth shall be consulted as regards the nominee to be appointed.

E. g. Such consultation has taken place in regard to Australian States and New Zealand.

According to the Constitution of the South African Union the Governor-General holds office during His Majesty's Pleasure.

4. The term of office of a Governor-General shall be 5 years.

5. The salary of the Viceroy and Governor-General shall be Rs. per mensem, payable out of the revenues of the Commonwealth of India.

6. There shall be a Supreme Executive Council consisting of not less than persons or not more than persons for advising the Governor-General in the Government of the Commonwealth. At least one half of the Members of the Supreme Executive Council shall be Members of the Indian Legislative Assembly or the Council of State. Those Members of the Supreme Executive Council who are not Members of the Indian Legislative Assembly or the Council of State shall be entitled to be present and speak in either House. *

I think it is desirable that the Prime Minister should be at liberty to choose some of his Ministers outside the Legislature if he deems it necessary. This would promote efficiency in some departments where a wider range of selection would be useful. Such Members of Council would resign along with Members who have seats in the Legislature on the fall of the Ministry. There are such Members in the Cabinet Councils of the United States, France, etc., who do not sit in the Legislature.

7. The Supreme Executive Council shall be responsible to the Indian Legislative Assembly for the advice tendered by it to the Governor-General in the Government of the Commonwealth in accordance with this Constitution.

8. On the assembling of the Indian Legislative Assembly after a general election, the Governor-General shall summon such person who is a Member of either House, and who, in the opinion of the Governor-General, possesses such a support of Members in the Legislative Assembly that he could advise the Governor-General in the Government of the Commonwealth to form the Supreme Executive Council. Such a person shall be called the Prime Minister. The Supreme Executive Council shall be formed accordingly.

9. The Governor-General shall preside over the meetings of the Supreme Executive Council; and in his absence, any Member thereof who is appointed Vice-President of the Council by the Governor-General shall preside.

This possesses certain advantages over the English practice where the King does not preside for obvious reasons. In Australia, the Governor presides in all the States of the Commonwealth.

10. The Governor-General shall act on the advice of the Supreme Executive Council in all matters relating to the Government of the Commonwealth and the administration of its laws except in regard to questions which relate to Foreign Affairs including Native States in India in alliance with His Majesty, or involve Imperial Interests, or which relate to Army, Navy and Air Forces or which relate to the Ecclesiastical Department subject to the provisions of the next article.

• 11. When the Indian Legislature resolves to bring the Army, Navy and Air Forces under its control, the Supreme Executive Council shall be entitled to advise the Viceroy in the administration of these subjects. When the Indian Legislature resolves that the Ecclesiastical Department shall cease to be maintained out of the funds of the Commonwealth that Department will cease to exist. After the rights and obligations existing between the Imperial Government and the Native States in India in alliance with His Majesty, which are regulated by treaties or otherwise, devolve on the Indian Legislature by special arrangement between the Imperial Government and the Indian Legislature, the Governor-General shall act on the advice of the Supreme Executive Council in the administration of affairs relating to the said Native States. Until the affairs relating to the Army, Navy and Air Forces, or the Native States in alliance with His Majesty come under the control of Indian Legislature, and until the Ecclesiastical Department ceases to exist, they shall be administered by the Viceroy who will be responsible to the Imperial Government for their due and proper administration.

12. The Governor-General shall have the power of summoning, proroguing and dissolving the Legislature.

13. When the Supreme Executive Council resigns as a body or is dismissed by the Governor-General, the said Supreme Executive Council shall nevertheless continue in office for the carrying on of the ordinary duties of Govern-

ment until the succeeding Supreme Executive Council takes over charge.

14. The various Ministries comprised in the Supreme Executive Council may be determined and modified from time to time by the Governor-General in Council with the approval of the Indian Legislative Assembly.

15. The total salary of Ministers comprising the Supreme Executive Council shall be Rs. per annum.

16. When a Member of the Indian Legislature accepts office as a Minister it shall not be necessary for him to resign his seat in the Legislature and seek re-election.

The English practice of resigning his seat is inconvenient. This practice does not obtain in some of the Australian States, New Zealand and South Africa.

17. The Viceroy and Governor-General will have power to give or withhold Royal Assent to Bills passed by the Indian Legislature or to reserve them for His Majesty's pleasure.

18. The Viceroy and Governor-General shall be entitled to exercise the prerogative of pardon.

19. The Council of the Secretary of State shall be abolished.

20. The Governor-General in Council shall have power to declare war or commence hostilities or make treaties with foreign powers; but the same shall be communicated to the Legislature as early as possible and the treaties so made shall be subject to ratification by the Indian Legislative Assembly.

21. The Revenues of the Commonwealth shall be applied for the purposes of the Commonwealth alone, and no grant or appropriation of any part of those revenues shall be made except under this Act or with the consent of the Indian Legislature.

22. There shall be an Auditor-General for India appointed by the Governor-General in Council holding office during

good behavior. But he may be removed from office on an address by both Houses of Legislature. Rules may be framed by the Governor-General in Council as regards his pay, powers, duties and conditions of employment or for discharge of his duties in case of temporary vacancy or absence of duty; but such rules shall be subject to the approval of the Indian Legislative Assembly.

23. The Commonwealth may sue or be sued in its own name as a body corporate.

24. The Indian Legislature shall be Bi-cameral consisting of an Upper Chamber called the Council of State and a Popular Chamber called the Indian Legislative Assembly.

25. The Commonwealth shall be divided as at present into the following Provinces under Governors and Deputy Governors respectively :

i. Provinces under Governors :

1. Bengal.
2. Bombay.
3. Madras.
4. United Provinces.
5. The Panjab.
6. Behar and Orissa.
7. Central Provinces.
8. Assam.
9. Burma.

ii. Provinces under Deputy Governors :

1. North-West Frontier Province.
2. British Baluchistan.
3. Delhi.
4. Ajmer-Merwara.
5. Coorg.
6. The Andaman and Nicobar Islands.

Although India should be divided into Provinces on a linguistic basis, any attempt at present to do so is likely to raise inter-Provincial jealousies or bitterness, and weaken the united demand for Swaraj. That work may be left to the Reformed Legislature to accomplish.

26. It shall be competent for the Indian Legislature to appoint or alter the boundaries of any of the Provinces into which the Commonwealth is now divided, or constitute new Provinces under Governors or Deputy Governors, but such appointments or alterations of boundaries shall not be made without ascertaining the views of the Legislatures of the Provinces affected by such appointment, alteration or constitution.

27. The Governor-General in Council may appoint a person as High Commissioner for India in Great Britain and shall fix the pay, pension, powers, duties and conditions of employment of such High Commissioner and his assistants.

Governors and Deputy Governors Provinces

28. The Governor of a Province shall be appointed by His Majesty the King-Emperor and shall exercise during the term of his office such powers as His Majesty the King-Emperor may be pleased to delegate to him. The Deputy Governor of a Province shall be appointed by the Governor-General in Council.

In the making of the appointment of a Governor the Prime Minister of the Province concerned shall be consulted as regards the nominee to be appointed.

29. The term of office of a Governor or a Deputy Governor shall be five years.

30. Each Province under a Governor or a Deputy Governor shall have a Legislature consisting of a single Chamber called the Provincial Legislative Council.

31. The salaries of the Governors or Deputy Governors of Provinces shall be as follows, payable out of the revenues of their respective Provinces :

BOMBAY	... Rs.	per mensem
BENGAL	... Rs.	"
MADRAS	... Rs.	"
etc.	etc.	etc.

But it shall be competent for each Provincial Legislature to reduce the salary of its Governor or Deputy Governor, but the salary of a Governor or a Deputy Governor shall not be diminished during his tenure of office.

32. There shall be an Executive Council for each Governor's Province consisting of such number of Members as the Legislative Council of the Province may determine for advising the Governor in the administration of the Province. At least one half of the said Executive Council shall be Members of the Legislative Council of the Province. But those Members of the Executive Council who are not Members of the Legislative Council shall be entitled to be present and speak in the Legislative Council.

33. The Executive Council of the Province shall be responsible to the Legislative Council for the exercise of all the powers vested by the Constitution in the Governor.

34. On the assembling of the Provincial Legislative Council after a general election the Governor of the Province shall summon such person who is a Member of the Legislative Council of the Province, and who in the opinion of the Governor possesses such a support of Members in that Legislative Council that he could advise the Governor in the Government of the Province, to form the Executive Council. Such a person shall be called the Chief Minister. The Executive Council shall be formed accordingly.

35. The Governor shall preside over the meetings of the Executive Council, and in his absence any Member thereof who is appointed Vice-President of the Council by the Governor.

There is no Executive Council provided for a Deputy Governor's Province. It is only a stage in transition. We should alternately have only Governor's Provinces.

36. The Governor shall act on the advice of the Executive Council in all matters relating to the Province and the administration of its laws.

37. The Governor or Deputy Governor shall have the power of summoning, proroguing and dissolving the Provincial Legislative Council.

38. When the Executive Council resigns as a body or is dismissed by the Governor it shall nevertheless continue in office for the carrying on of the ordinary duties of Government until the succeeding Executive Council takes charge.

39. It shall be competent to the Provincial Legislative Council to determine and modify the Ministries comprising the Provincial Executive Council and the salaries of the Ministers.

40. When a Member of the Provincial Legislative Council accepts office as a Minister, it shall not be necessary for him to resign his seat in the Legislative Council, and seek re-election.

41. The Governor or Deputy Governor shall have power to give or withhold assent to Bills passed by the Legislative Council of his Province. The Governor-General shall have power to give or withhold his assent to any Act passed by the Provincial Legislative Council.

42. The Governor or Deputy Governor shall be entitled to exercise the prerogative of pardon within the limits of his Province.

Public Service

43. There shall be established for the Commonwealth a Public Service Commission consisting of not more than 5 members of whom one shall be Chairman appointed by the Governor-General in Council. Each member shall hold office for five years, and may be reappointed. No member shall be removed before the expiry of the term of his office except on an address from both Houses of the Indian Legislature.

General

44. It shall be competent for the Indian Legislature to modify the Constitution or any part thereof in a Joint Session of the Indian Legislative Assembly and the Council of State

by the votes of an absolute majority of two-thirds of the Members of both Houses, subsequently confirmed by the votes of a similar absolute majority of two-thirds of the Members of the said two Houses after an interval of not less than three months.

I think the complicated processes of Initiative and Referendum, etc., for effecting changes in the Constitution may not be suitable to Indian conditions.

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Powers of Provincial Legislatures

BY KANJI DWARKADAS

Section 80 A of the Government of India Act, 1919, deals with the powers of the Provincial Legislatures and Section 80 A (3) reads as follows :

The Local Legislature of any Province may not, without the previous sanction of the Governor-General, make or take into consideration any law

- (e) regulating any Central Subject,
- (f) regulating any Provincial Subject which has been declared by rules under this Act to be, either in whole or in part, subject to legislation by the Indian Legislature in respect of any matter to which such declaration applies,

provided that an Act or a provision of Act made by a Local Legislature and subsequently assented to by the Governor-General, in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

This clause created certain difficulties in the Bombay Legislative Council on more than one occasion, and it should be brought to the notice of the Reforms Enquiry Committee whose terms of reference are :

The Committee will enquire into the difficulties arising from or the defects inherent in the working of the Government of India Act and the rules thereunder and in regard to the Central Government and Governments of Governors of Provinces. (2) Investigate the feasibility and desirability of securing remedies for such difficul-

ties or defects consistent with the structure, policy and purposes of the Act by action taken under the Act or by such amendments as appear necessary to rectify any administrative imperfections.

In December, 1922, the Bombay Legislative Council passed the first reading of and committed to a Select Committee the Bombay Port Trust Act Amendment Bill which made provision for an increase of Indian representation on the Port Trust Board. The Select Committee then made some changes in the Bill, and whilst formally presenting the Report of the Select Committee and moving the second reading of the Bill at the February (1923) Session of the Council, Sir Chimanlal Setalvad submitted for the consideration and ruling of the President a question that arose with regard to the Bill. The Port of Bombay, he said, being a major port, was a Central Subject, and therefore, under Section 80 (3) A, no legislation affecting such Central Subject could be considered or passed by the Council without the previous sanction of the Governor-General. The Bombay Government had, therefore, before introducing the Bill, obtained the previous sanction, and when the Select Committee made certain alterations in the Bill the assent of the Governor-General was again obtained. Sir Chimanlal pointed out that notices for further amendments had been given by certain Members, and said: "My submission is that under Section 80 (3), these amendments could not be considered unless the previous assent of the Governor-General has been obtained." He said that if the Members pressed their amendments, Government would have to abstain from moving the second reading of the Bill and to go to the Governor-General to obtain his assent to these amendments being considered by the Council. "Even if the second reading of the Bill is moved, it cannot become finally law till the previous assent of the Governor-General is obtained."

The President (the late Sir Narayan Chandavarkar) said that he could not assent to the argument of the General Member that when the Council was called upon to consider a

Bill of this kind, it could do so only in one of two ways, either by accepting the Bill as it is brought with that consent or by rejecting it, but it had no power to consider any amendments proposed to be moved unless their consideration also had been previously assented to and allowed by the Governor-General. He pointed out that the word "considered" was a well-known phrase in Parliamentary usage and that it was used in May's *Parliamentary Practice* in its ordinary and more comprehensive sense. He said that the meaning of the expression "to take into consideration" cannot be restricted and the Council cannot be deprived of its inherent right of debate, effective vote and amendment unless the statute concerned cuts down that right in clear and unambiguous terms. *Section 80 does nothing of the kind.* The President added: "If I were to accede to the position maintained by the General Member of Government, namely, that this House has no option but to consider the Bill only by way either of rejecting or accepting it, then I should be giving a ruling subverting the Constitution altogether and depriving this Council of its rights and liberties." The President summed up his ruling as follows:

The proper procedure for the Council is this: the amendments of which notices have been given can be moved without the previous consent of the Governor-General, provided they are in accordance with our Rules and Standing Orders. The House has every right to amend the Bill or to accept or reject it as amended by the Select Committee. That Bill, so amended and assented, to is now submitted for the Council's consideration by way of second reading. If the Council on second reading amends the Bill, then the previous sanction of the Governor-General to the Bill so amended shall have to be obtained before the Bill can be proceeded with to the further stage of a third reading.

That is my ruling on the points of order raised. My ruling preserves to the House its rights and at the same time carries out the intention of the Act as to the previous sanction of the Governor-General.

On this ruling being given, Sir Chimanlal appealed to the Hon. Members that the best course would be to go

through the Bill as it stood and get the new constitution to work with the elected members as proposed, and then for any further proposals for amendments they might take the necessary steps under the law. Otherwise the result would be that the Bill would not come into operation for many months more or might not come into operation at all.

The result of the President's ruling and the subsequent appeal of the Member in charge was that the Bill for which the previous sanction of the Governor-General was obtained was passed by the Legislative Council without making any alterations.

* Let us now examine the Point of Order raised by Sir Chimanlal Setalvad. He said: "My submission is that, under Section 80 A to which I have already referred, these amendments could not be considered unless the previous assent of the Governor-General had been obtained." But here Sir Chimanlal was in the wrong, for the proviso quoted above makes provision for subsequent assent by the Governor-General, *i.e.*, the amendments could have been moved, but in the event of their being accepted by the Council, the Council could not finally adopt any legislation in that direction till the Governor-General had given his assent to the changes adopted by the Council. Sir Chimanlal was again in the wrong when he said that if non-official Members pressed their amendments, Government would have to abstain from moving the second reading of the Bill as they would have to go to the Governor-General to obtain his assent to these amendments being considered by the Council. But he was right when he warned the Council that "the Governor-General may not give his assent to the further amendments that have been proposed".

The President's ruling, however, places restrictions on the powers of the Council, *viz.*, that having made certain alterations in the Bill in the second reading the Council cannot "proceed with the further stage of a third reading".

But if we keep in mind the proviso, even as the Section stands at present, this restriction is not valid, for it is very clearly stated that an Act subsequently assented to by the Governor-General would mean that the previous sanction was obtained. It seems Sir Narayan Chandavarkar lost sight of the proviso, and to that extent, if I may be permitted to say so, without meaning any offence to the memory of the able President, his ruling was defective.

Similarly this question of "previous sanction of the Governor-General" interfered with the wishes of the Bombay Legislative Council when it discussed and passed the Prevention of Prostitution Bill. Here the case is still more striking as both the Bombay Government and non-official Members agreed that certain amendments were necessary in order to make the Bill better, but the ghost of the previous sanction of the Governor-General was brought up, with the result that the amendments were left out. Clause 5 of this Bill read :

(1) Any male person who knowingly lives wholly or in part on the earnings of prostitution shall be punished with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with whipping, or with any two of those punishments.

(2) Where a male person is proved to be living with or to be habitually in the company of a prostitute, or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person or generally, it shall be presumed, until the contrary is proved, that he is knowingly living on the earnings of prostitution.

The Select Committee in their Report say : " We considered at some length the question whether in Section 5 the word ' male ' should be deleted so as to give the Section a much wider application ; but since the change will probably involve a reference to the Government of India for previous sanction which will delay the passing of the measure, we decided that the change will be better effected hereafter by an amending Act." The Report is signed by Sir Maurice

Hayward (Home Member), Messrs. S. D. Garud, Kanji Dwarkadas, Jehangir B. Petit, O. Rothfield and S. J. Murphy (Legal Remembrancer).

Without going into the merits of the amendment which it is unnecessary to do for the purposes of this article, it will be noticed that this amendment was a very important one, and in spite of the fact that both the Government, as represented in the Select Committee by the Home Member and the Legal Remembrancer, and the non-officials were in favor of it, they had reluctantly to give it up as "the change will probably involve a reference to the Government of India for previous sanction which will delay the passing of the measure".

Other instances will also be found not only in the Bombay Legislative Council but in the other Provincial Councils, where the rule regarding the previous sanction of the Governor-General has interfered with their freedom to legislate in any way they liked on subjects on which they were competent to legislate.

In view of the difficulties that have arisen in the past, this point should be carefully considered by the Reforms Enquiry Committee especially because with the granting of full Provincial Autonomy, there would be very great temptation on the part of the Government of India to exercise to the fullest possible extent its hold on all legislation. And if the Section is allowed to remain as it is, it is bound to interfere with the full and proper working of Provincial Autonomy.

Convention Memoranda,—No 29

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A MEMORANDUM

BY BISWANATH DAS, M.L.C. (Madras)

Legislative

1. Nomination of officials either into the Local or Central Legislatures be put a stop to, nominations of depressed, untouchable and unrepresented classes being replaced by an indirect election by members of Local Boards and Municipalities as a temporary and the only satisfactory measure without a separate communal electorate.

Expert Members should not have the power to vote.

2. The sessions of the Council or Assembly be fixed by the Statute and its duration by the head of the Executive. A House may be arbitrarily dissolved only in grave and serious cases. Ordinarily, short period dissolutions be done by a resolution of the Legislature.

3. Resolutions of the Assembly or the Councils should not be optional in the sense in which they are at present. These must be imperative so far as the Ministers are concerned. Even in the Central Legislature, the Government should place on the table the non-accepted resolutions with the reasons therefor.

4. The Budget should be thoroughly discussed by the Legislature while voting on actual grants. More time than is allowed at present is necessary. This is very pressing in the Local Legislature at present.

Budget estimates should not be exaggerated figures and estimates should come before the House a month before discussion, for their study.

5. The procedure followed by certain Legislatures by adding a Bill or an amending Bill to the Statute on the same day, be put a stop to.

Select Committees should not have, on any account, power to make a root and branch change in a certain Bill, *e. g.*, the Madras Hindu Religious Endowment Bill.

Power of Certification must be abolished. It may be resorted to in extraordinary cases on specified occasions. The Certificate should contain along with other facts the agreement or disagreement of the various Members of the Cabinet. A Certificate should follow the resignation of the popular representatives in the Cabinet.

Tenancy legislation should precede and not follow any Constitutional Advance. This is because a dependent voter or an electorate is but a pocket-borough. Hence legislation be undertaken on the lines of para. 138 and page 88 of the Montford Report and Part V, para. 11 of the Joint Committee Report. The Central Legislature should not be Bicameral. Assembly should only deal with all Central Subjects. All subjects except Army, Navy and Diplomacy should be transferred to Ministers, responsible to the Assembly.

The smaller Provinces now kept under the Central Government be made autonomous with Responsible Legislative Councils.

I shall be satisfied if even half the Army and Navy including officers be Indianised within 10 years.

All transactions regarding Property, Contracts and Liabilities be made in the name of the Government of India. Any Assurance or Mortgage or Railway leases should be made by the sanction of the Legislature.

There should be a re-distribution of Provinces on the basis of language to facilitate the work of the Local Legislatures in their vernaculars as soon as possible.

The High Commissioner for India should always be an Indian, responsible only to the Central Legislature.

6. The Council of the Secretary of State should be abolished.

Control of the Secretary of State over Provincial and Transferred Departments of the Central Legislature be limited to the extent of calling for all necessary papers. Interference of the Secretary of State be limited to very grave cases of internal unrest amounting to rebellion or external invasion.

The position of the Secretary of State for India should be that of the Secretary of State for the Colonies in case of autonomous Colonies.

General

7. There should be, in India, established a statutory Public Service Commission.

There should be no taxation without the sanction of the Legislature. The existing taxation or fees without legislative sanction be done away with or be enforced by at least a resolution of the Legislature concerned, till a Bill is actually brought out.

There should be a statutory Committee of the House like the Local Self-Government Board in England to look after Local Self-Governing Institutions.

Representatives in the League of Nations, Imperial Conferences and such other International Conferences, from and on behalf of India, should be elected. The Members of the Central and Local Legislatures as also members of Local Boards and Municipalities be enrolled as electors. An Indian Privy Council be established at the headquarters of the Central Government.

Constituencies should always be single-seated and franchise be wider than the present, fixing rupees five as the minimum tax or fee payable in any shape

Ministers be allowed like Chairmen of Local Boards and Municipalities to have the option of work without pay, drawing only their ordinary allowances but without any other vocation as whole-time workers.



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FRANCHISE

BY GULAB SINGH, M. L. A. (For the Panjab)

I am of opinion that for any new democratic Constitution that may be framed for India the one great requisite is an extensive franchise. I, therefore, recommend that every sane adult be given the privilege of voting irrespective of sex. But whereas I do make this proposal, I am not oblivious of the fact that every person who will thus be enfranchised will under the present conditions be a fit candidate for any of the legislative bodies. This undoubtedly has been the pitfall of the past Constitution. Experience in the past has clearly shown that until education becomes universal there is every possibility of ignorant, illiterate mammons going into the legislative bodies in preference to modest but much more intelligent and useful members of the Nation. In the past, even though the franchise was extremely narrow, members were able to get elected whose education and intelligence in no way fitted them to represent the interests of their constituents. I, therefore, think that until the time education becomes universal and the electorate gets sufficient experience to develop that feeling of responsible self-interest it would be prudent to expect from candidates certain qualifications, educational or administrative. I, therefore, propose that members for legislative bodies must either have had

education to a certain standard or must have worked on any Local Bodies for a year or more at least.

With the franchise thus broad-based Communal Representation would be impracticable and impossible, besides being dangerously antagonistic to any democratic development of the National Constitution, and unified progress of the country.

I am therefore strictly against Communal Representation. On the other hand, I believe that the fears of communities are dictated fundamentally from a feeling of selfishness and are at best chimerical. I personally think that the interests of any community cannot suffer in any way if there is no Communal Representation. Each member individually will need to please those of his constituents who belong to the opposite community, and not one member but apparently the whole Legislature will have to adopt a policy which finally must please all communities. Those who stand for Communal Representation have a very narrow conception of National life, and do not see far ahead. They are primarily concerned for bettering the present condition of their community at the sacrifice of the future benefit of the Nation.

Taxation

I am a firm believer in the old doctrine of no taxation without representation. I am in favor of levying taxation on the lines of the Federal Government of the United States as much as I am in favor of developing the Constitution of the country on similar lines. I therefore think that the Provinces should be allowed to tax, on a Provincial basis, their own people, and to use as far as possible all their revenues within their own area. The Federal or Central Government may have in its hands such taxes only as Customs, Tariffs, Post, Telegraph, Justice, etc., and should get a certain levy from the Provinces to carry on its functions of an All-India and International nature. This principle, I think, is alone consistent with the development of Provincial Autonomy. It has the added advantage of making taxation suit the particu-

lar conditions of each Province, and therefore to be based on more scientific methods. In a large country, conditions vary and therefore in a small area more realisations can be made with least trouble. Again, it will be the direct interest of the Provincial Government to levy a popular tax, and to make taxation least irksome for their people, while the same immediate considerations may not weigh with the Central Legislature. Or even a tax levied by the Central Legislature may be vastly popular in one Province and highly unpopular in another. Again the Provincial Government will try to give immediate utility to the Province for the tax they levy, and will try to make the machinery of administration as cheap and efficient as possible.

I am a Protectionist, and believe that a consistent protectionist policy must be carried on in India on the basis of the United States until India has fully developed its industry and is in a position to compete with foreign manufacturers effectively. In the early stages, I think, the Government will have to devote itself actively to the development of industries, which will give occupation to the people and bring increased revenues to the administration. And for this purpose, Protection alone can be of great help; with Protection the Government can aid the local manufacturer immensely, and all the classic arguments in favor of this policy are applicable to the conditions of India.



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A Memorandum on Units of Government and Franchise and Functions

BY

A. RANGASWAMI AIYAR, B. A., B. L.,
HIGH COURT VAKIL, MADURA

I. The Draft Constitution should call upon and empower each Provincial Legislature to frame a comprehensive Local Self-Government Act of which the main features would be as follows :

The various Units of Government will be :

1. The Village Council or Panchayat, or, as it is at present called in Madras, The Union Board.
2. The Taluq Council or Taluq Board.
3. The District Council or District Board.
4. The Provincial Government: the Governor, the Executive Council and the Provincial Legislative Council.
5. The Central Government: the Governor-General in Council, the Supreme Executive Council and the Indian Legislature consisting of the Indian Legislative Assembly and the Council of State.

II. *The Village Council.*—As every village or group of villages situated in close proximity would not be suitable for

being constituted into a Village Council, every District Council should be authorised to declare that a particular village or group of villages is constituted into a Village Council, and it should be the aim of Provincial Legislature to see that a Revenue Village, or Group of Villages in close proximity, of not less than five hundred inhabitants is constituted into a Village Council.

Every Village Council should consist of not less than seven and not more than fifteen elected members.

All adult men and women of 21 years of age and above, except lunatics, bankrupts, certain classes of convicted persons, etc., should be entitled to vote for these elected members of Village Councils. The election should be direct; not more than two members may be nominated by the President of the Taluq Board to the Village Councils within his area to give them the benefit of administrative or technical skill. The members of the Village Councils should be able to read and write in the Vernacular, while the voters need not necessarily be literate. The members of the Village Council should be elected once in two years. Election every year would cause frequent changes and would not give sufficient scope for members to gain experience in Village Government. The members of these Village Councils in addition to being literate should possess also a certain property qualification like owning a house or paying revenue or rent of not less than Rs. 10 per annum, or occupy a house of certain annual letting value of not less than Rs. 10 or earn an income of not less than Rs. 15 per mensem; but if they possess an educational qualification up to the Elementary Grade or anything corresponding to it, they need not possess the above qualifications based on property, rent or income.

Refusal to serve in the Village Council should entail payment of a fine up to a certain extent in the absence of justifiable cause though he need not be compelled to serve for more than one term.

As there may be wide differences between the villages thus constituted, in population, education, enlightenment, wealth, etc., it would be desirable to divide these Village Councils into two Classes, much in the same way as we have Major and Minor Unions in this Presidency. The difference between these two kinds of Village Councils will lie in the Village Councils of the Higher Class exercising more responsible functions than those of the Lower Class. The functions allotted to these Village Councils with due differentiation between the two sorts of Councils mentioned above would be :

1. Providing water supply, and control over wells, tanks, ponds, streams and watercourses used for drinking, culinary, bathing or washing purposes, in the village.
2. Elementary schools with workshops for the village.
3. Village libraries, parks, gymnasia, recreation grounds, etc.
4. Control over roads, streets, bridges and waterways in the village.
5. Control over erection of buildings.
6. Development of local industries.
7. Village irrigation, Kudimaramath, distribution of water for irrigation purposes.
8. Village forests.
9. Village sanitation and conservancy. Prevention of public nuisance. Sanitation at fairs and festivals.
10. Village medical help and village dispensary, if any.
11. Control over offensive or dangerous trades in the village by issuing licences.
12. Control over village fairs, cattle stands, threshing floors, village topes, fishery, chavadies,

chhatrams, rest houses, burning ghats, burial grounds, etc.

13. Control over village pounds.
14. Registration of births and deaths in the village.
15. Civil and criminal jurisdiction up to a certain extent.
16. Other works of Public Utility which may be handed over to the Village Council by the District Council or the Taluq Council.

There should be different Benches or Courts constituted by these Village Councils from amongst the members whose functions should be to administer Civil and Criminal Justice respectively up to certain limits, as stated above.

There should be different Committees constituted by the Village Council to which non-members may be elected by the Village Council, if necessary, so that these members of Committees may remain in close touch with Public Work in the village to which each Committee is related.

The village officers like the Headman, the village Accountant and the village Watchman should be nominated in the first instance by the Village Council to their respective posts before they are appointed by the District Collector or the corresponding Officer of Government in the District. Then only these Officers of Government in the village are likely to feel their responsibility to the village people as public servants of the village as they felt in olden times and not as masters or petty tyrants of the village as many of them are at present. The selection of efficient men to these offices is guaranteed by the power of appointing them being vested in the head of the District while the nomination alone would be with the Village Council.

III. *The Taluq Council.*—For the Taluq Council the election should be both direct and indirect. The total strength of elected members should be at a minimum of 20 and a maximum of 30 varying according to the Taluq. Each Taluq

area will be divided into circles, and the circles will elect $\frac{3}{4}$ of the elected members, while the Village Councils in the Taluq area will elect the remaining one-fourth. The President of the District Council will nominate two members to the Taluq Board within his area to give it the benefit of administrative or technical skill.

A voter should have completed 21 years.

He must know how to read and write besides owning a house or occupying a house of an annual letting value of Rs. 10 or upwards, or be a pattadar paying revenue to Government, or pay rent of not less than Rs. 10 per annum, or pay tax to the Taluq or District Council of a similar amount, or be one who is assessed to income tax, or a teacher in a school of the Secondary or Higher Grade, or a graduate, or a skilled artisan, or a person whose monthly income is Rs. 20 or upwards, or has been a member of a Village Council for a term. A member of a Taluq Council, besides being qualified as a voter should have an educational qualification of not less than the elementary grade, or, if not a voter, should possess an educational qualification of not less than the Lower Secondary Grade.

The Taluq elections should be held once in three years.

The Functions of Taluq Councils would be :

1. Providing water supply and control over wells, tanks, ponds, streams and watercourses in Taluq area but not under the control of Village Councils, which are used for drinking, culinary, bathing, or washing purposes.
2. Secondary Schools and Elementary Schools in the Taluq area not taken over by Village Councils with technical departments, etc.
3. Public libraries, parks, gymnasia, recreation grounds, etc., in Taluq area but outside Village Councils.

4. Control of roads and public communications including bridges, etc., outside Village Councils and which are not directly under the District Councils.
5. Control over erection of buildings in Taluq area but outside Village Councils.
6. Promotion of village industries and removal of village produce.
7. Irrigation channels in Taluq area outside the jurisdiction of Village Councils.
8. Decision of disputes between the villages.
9. Public health, sanitation, prevention of nuisances, and conservancy in Taluq area.
10. Hospitals and dispensaries in Taluq areas outside the jurisdiction of Village Councils.
11. Control over offensive or dangerous trades in Taluq areas outside Village Councils.
12. Control over markets, fairs, ferries, chavadies, chhatrams, rest houses, slaughter houses, burning ghats, burial grounds and other communal properties in Taluq area but outside Village Councils.
13. Control over village pounds in Taluq area outside Village Councils.
14. Registration of births and deaths in Taluq area but outside the jurisdiction of Village Councils.
15. Improvement of breed of cattle.
16. Other works of Public Utility which may be handed over to the Taluq Council by the District Council.

Administration of Civil and Criminal Justice, which may be entrusted up to certain limits to Village Benches and Courts in order to make Justice cheap and easily available and satisfactorily dispensed in villages, may be excluded from the functions of Taluq Councils, District Councils and

Municipal Councils, as the administration of Justice beyond the limits suitable for Village Benches and Courts becomes much more technical and should rightly be vested in trained Judges, as they are in our Civil and Criminal Courts, who should all be brought under the Control of the High Court.

IV. *The District Council.*—For the District Council, the election should both be direct and indirect. The total strength of elected members should be at a minimum of 30 and at a maximum of 50. The Taluq Council would elect $\frac{1}{4}$ of the members and the Taluq areas would elect the remaining $\frac{3}{4}$. The Government would nominate not more than 5 members to give the District Council the benefit of technical and administrative skill.

A voter should have completed 21 years.

He must possess the property, rent, income etc., qualification of a voter of the Taluq Council together with an educational qualification corresponding to the Elementary Grade or should be assessed to income tax, or he may be a graduate, or a skilled artisan, or a person whose monthly income is Rs. 30 and upwards, or has been a member of a Taluq Council for a term.

A member of the District Council should, if he be a voter, possess educational qualifications at least corresponding to the Lower Secondary Grade and, if not a voter, should have educational qualifications of the higher secondary grade.

The District Council elections shall be once in three years.

Functions

1. Control of Public Colleges, general and technical, in the District outside Municipal areas.
2. Control over main roads, public communications, bridges, etc., outside the control of Taluq Councils and not under control of Government.
3. Central Hospital.

4. General supervision of Taluq and Village Councils.
5. District Council railways.
6. Institutes for scientific research.
7. Decisions in disputes between Taluq Councils.

V. *The Municipal Council.*—The strength of the Council should be as follows :

Minimum at 15 and Maximum at 50— According to population.

Up to 20,000 inhabitants	15
„ 30,000 „	20
„ 40,000 „	30
„ 50,000 „	35
„ 75,000 „	40
„ 100,000 „	45
Above 100,000 „	50

FRANCHISE

The voters, besides having residential qualification should be payers of Municipal tax, except taxes and tolls on vehicles and animals, or be occupiers of houses of annual letting value of Rs. 20 or upwards, or be income tax assesseees, or be graduates.

Functions would be as follows :

Public health, sanitation, conservancy.

Water supply, lighting and drainage.

Maintenance of streets and roads.

Encroachments on streets.

Building regulations.

Control over wells, pools, dangerous or insanitary buildings.

Public baths, washhouses, latrines.

Markets, bazaars, slaughter houses.

Trade in milk and dairy products.

Inspection and control of articles of consumption.

Education up to the grade of Municipal Colleges.

Registration of births and deaths.

Burning ghats, burial grounds, crematoria, etc.

Lodging houses, industries, factories, depôts of

combustibles.

Hospitals and dispensaries.

Epidemic diseases.

Parks, cart-stands.

Public libraries, theatres, cinema shows.

Baby welfare and milk centres.

Tramways.

There should be a Special Municipal Act to suit the conditions of Municipalities having a population of over 150,000.

The devolution of power from Municipal Council to each Ward Council and the Constitution of Ward Councils may be left to the Local Government or to the Municipal Council concerned, as local circumstances will have a large part to play, and decentralisation from Municipal Council to Ward Council in any particular Municipal area may weaken Municipal Government and therefore should be regulated according to circumstances. Municipal Councils in each District should be kept distinct from the District Councils and must singly or in groups send their representatives to Provincial Legislative Councils.

Municipalities should own :

all public means of transport.

Lighting.

Water supply.

Markets.

Schools and colleges, general and technical.

VI. *Provincial Legislative Council.*—Membership will be about 100; but this will vary according to the population of Provinces.

Those entitled to franchise :—This would be as follows :

Those educated up to Higher Secondary Grade stage.

Payers of income tax, wage-earners earning Rs. 40 per month and upwards.

Owners and occupiers of houses of the annual value of Rs. 20.

Owners of lands paying revenue of Rs. 20, or occupiers of lands paying similar rent, or paying tax to a Local Council of a similar amount.

All who have served for a term in the District Councils.

Members of the Chambers of Commerce or Councils of Trade Unions.

Those who have served for a term in the Provincial Legislative Councils or Central Legislature. Graduates.

(*For Functions, Vide Appendix A at the end.*)

VII. *Central (a). Indian Legislative Assembly.*—Membership will be about 200.

Those entitled to franchise :

Graduates.

Payers of income tax.

Wage-earners earning Rs. 50 per mensem.

Owners and occupiers of houses of the annual letting value of Rs. 50.

Owners of lands paying revenue of Rs. 50, or occupiers of lands paying similar rent, or payers of taxes to local Councils of similar amount.

All who have served for a term in the District Councils, Members of Chambers of Commerce or Councils of Trade Unions.

Those who have served for a term in Provincial Legislatures or the Central Legislature.

(*For Functions, Vide Appendix B at the end.*)

Central (b). Council of State.—Membership will be about 48.

I would not favor the idea of making this Chamber elected by an electorate similar to that of the Legislative Assembly, though more limited. The Second Chamber should not compete with the more popular Chamber in being the Representative Chamber for the Nation, as such competition has not borne desirable consequences in some of the Australian

States. It should be a strictly Revising Chamber. A certain number may be elected by the Provincial Legislatures, a certain number by the Legislative Assembly and a certain number nominated by the Governor-General in Council, *i. e.*, on the advice of the Ministry. The term should be six years ; one third should retire in every two years. There should be a Second Chamber with a continuous life as in the U. S. A. and France.

VIII. The ultimate aim of the Indian Legislature should be to divide India into several Provinces according to the chief languages which prevail in such Provinces :

1. Bengal Province—Bengalee.
2. Mahārāshtra, including a portion of the Central Provinces—Marathi.
3. Bombay including Gujerat—Gujerati.
4. Bihar—Bihari.
5. U. P. including a portion of the C. P.—Hindi.
6. Orissa—Urīya.
7. Panjab including N.-W. Frontier Provinces—Panjabī, etc.
8. Sindh and Baluchistan—Sindhi and Baluchi.
9. Burma—Burmese.
10. Assam—Assamese.
11. Andhra Districts in Madras—Telugu.
12. Tamil, Canarese and Malayālam Districts in Madras and Coorg—Tamil, Canarese and Malayālam.

This should be attempted later when the Indian Legislature gets the Commonwealth of India Bill passed through Parliament and gains the power under that Constitution to reconstitute the Provinces on a linguistic basis. Then it may perhaps be found that the cost of administration on the scale of a Governor's Province may be too great a burden on some of the Provinces constituted on a linguistic basis. Modifications may then be made to reduce the cost.

There will be a neutral territory like the Delhi Province under the Central Government.

IX. The franchises as sketched in the preceding paragraphs are graded, the qualifications of the electorate rising higher and higher with each Council from the Village Council to the Central Government, as indicated therein.

X. The qualifications for the candidate should be higher than for the voter except in regard to the Provincial and Central Legislatures, where it may be the same. In elections to the Provincial and Central Legislatures we may more confidently expect that the intrinsic merits and the capacity of the candidate to do his work in those Councils would weigh with the electorate to a greater extent than in the Village, Taluq and District Councils.

XI. In the condition in which India is at present, where the unifying tendencies helping to make the different Provinces, races, creeds and cultures realise a common National feeling are weaker than the factors tending to separate the several Provinces, races and creeds, a strong Central Government with all residual powers should be aimed at rather than a strong Provincial Autonomous Government with a weak Central Government. Besides, the Defence of India is an important point necessitating a strong Central Government.

XII. For making the Village Government strong and respected the following measures are necessary:

1. There must be a definite contribution from particular taxes or general Provincial revenues to the Village Fund, apart from special taxes which the Village Councils can raise.
2. The Village Councils should have a definite part in the village officers' appointment, punishment and dismissal, subject to such checks for safeguarding the interests of the Provincial Government.
3. The nomination to Village Councils of persons to strengthen the technical and administrative side of

such Councils.

- (4) The free and compulsory education of boys and girls in which a sound knowledge of the responsibility of a citizen for the good and ordered Government in the several units of administration should be imparted along with the usual subjects of study. A definite control over this department should be vested in the Central Government over and above the control of Provincial Governments and Local Councils, so that a definite standard of enlightened citizenship should be established all over India, in a definite number of years. Then only the present intensity of communal differences will disappear giving place to a true National sentiment and feeling.
- (5) The Central Government should have authority to examine periodically the administration of Village Councils throughout India through its officers or through the Provincial Governments and publish reports with advice, suggestions or directions for improvement, as the Village Councils are the foundation of good Government and prosperity of the people as a whole.

APPENDIX A

PROVINCIAL SUBJECTS

1. Local Self-Government.
2. Medical Administration.
3. Public Health, Sanitation and Vital Statistics.
4. Pilgrimages in British India.
5. Education except (a) General control of Elementary Education reserved to the Governor-General in Council or under Legislation by the Indian Legislature.
 - (b) Benares Hindu University.
 - (c) Aligarh Muslim University.
 - (d) Colleges or institutions maintained by the Governor-General in Council.
6. Public Works including buildings, roads, bridges, ferries, tunnels, ropeways, causeways, tramways, light and feeder railways, etc.
7. Water Supply and Irrigation.
8. Land Revenue.
9. Famine Relief.
10. Agriculture.
11. Civil Veterinary Department.
12. Fisheries.
13. Co-operative Credit Societies.
14. Forests.
15. Land Acquisition.
16. Excise.
17. Administration of Justice except Legislation by the Central Government.
18. Law Reports.

19. Administrator-General and Official Trustee.
20. Stamps.
21. Registration of Deeds and Documents.
22. Religious and Charitable Endowments.
23. Development of Mineral Resources.
24. Development of Industries.
25. Registration of Births and Deaths and Marriages.
26. Industrial Matters subject to legislation by the Indian Legislature in regard to such of the matters defined.
27. Stores and Stationery.
28. Adulteration of foodstuffs and other articles.
29. Weights and Measures.
30. Ports, except such ports as are declared to be major ports by the Governor-General in Council or by the Indian Legislature.
31. Inland Waterways, subject as regards inland Steam Vessels to legislation by the Indian Legislature.
32. Police.
33. Control of Newspapers, books and Printing Presses.
34. Criminal Tribes.
35. Prisons.
36. Pounds and prevention of cattle trespass.
37. Treasure-Trove.
38. Libraries and Museums except those maintained by the Central Government.
39. Provincial Government Presses.
40. Elections to Indian and Provincial Legislatures.
41. Regulation of medical and other professional qualifications subject to legislation by the Indian Legislature.
42. Local Fund Audit.
43. Control of All-India Services in the Provinces.
44. Provincial Revenue.
45. Borrowings by the Provinces.

46. Punishments by way of enforcing any law of the Province.
47. Any matter which though falling within the Central Government is declared by the Governor-General in Council as of merely Provincial nature.
48. Matters pertaining to a Central Subject in respect of which powers have been conferred on a local Government by the Governor-General in Council or under legislation by a Central Legislature.
49. The following miscellaneous matters :
 - (a) Regulation of Betting and Gambling.
 - (b) Prevention of Cruelty to Animals.
 - (c) Protection of Wild Birds and Animals.
 - (d) Control of Poisons subject to legislation by Indian Legislature.
 - (e) Control of Motor Vehicles subject to legislation by the Indian Legislature as regards Licences valid throughout British India.
 - (f) Control of Dramatic Performances and Cinematographs subject to legislation by the Indian Legislature in regard to sanction of films for exhibition.

APPENDIX B.
CENTRAL SUBJECTS

1. Defence of India and all matters connected with Military, Naval and Air Forces.
2. Foreign Affairs, Naturalisation and Aliens, Pilgrimages beyond India.
3. Relations with States in India.
4. Political Charges.
5. Certain Railways, Tramways and Waterways excepted from Provincial Subjects by Legislation by the Indian Legislature.
6. Shipping and Navigation.
7. Lighthouses, Beacons and Buoys.
8. Quarantine and Marine Hospitals.
9. Ports declared by the Governor-General in Council or by Legislation by the Indian Legislature.
10. Posts, Telegraphs, Telephones, including Wireless Installations.
11. Customs, Cotton Excise Duties, Income tax, Salt, and other Sources.
12. Currency and Exchange.
13. Public Debt of India.
14. Savings Banks.
15. Indian Audit Department.
16. Civil Law including Civil Procedure.
17. Criminal Law including Criminal Procedure.
18. Commerce including Banking and Insurance.
19. Trading Companies and other Associations.
20. Copyrights.
21. Patents of Invention and Discovery.
22. Standardisation of Weights and Measures when the Indian Legislature decides to legislate thereon.
23. Control of Production, Supply, and Distribution of any articles in cases when the Governor-General in Council or the Indian Legislature declares that the Control by Central Authority is necessary,

24. Development of Industries in cases where Development by Central Authority is deemed essential by the Governor-General in Council or by the Indian Legislature.
25. Control of Cultivation, Manufacture and Sale of Opium.
26. Stores and Stationery required by the Central Government.
27. Control of Petroleum and Explosives.
28. Geological Survey.
29. Botanical Survey.
30. Emigration from and Immigration into British India.
31. Central Police Organisation.
32. Control of Arms and Ammunition.
33. Central Institutes for Research, Technical or Professional training.
34. Ecclesiastical Department.
35. Survey of India.
36. Archæology.
37. Zoological Survey.
38. Meteorology.
39. Census and Statistics.
40. Services defined as All-India Services under legislation by the Indian Legislature.
41. Changes in the Boundaries of Provinces.
42. Honors and Titles.
43. Public Service Commission.
44. All other subjects not expressly included in Provincial Subjects.
45. Legislation in regard to any Provincial Subject expressly reserved to Central Legislature and any powers relating to a Provincial Subject which may be reserved by legislation of the Central Legislature to the Governor-General in Council.
46. General Control of Elementary Education in the Provinces.

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**SOME POINTS SUGGESTED FOR CONSIDERATION
IN CONNECTION WITH THE DRAFTING
OF THE PROPOSED COMMONWEALTH
OF INDIA BILL**

By ALAKH DHARI

Position of India

1. The position of India as an equal member in every respect of the group of Nations forming the British Commonwealth should be constitutionally recognised, and India should have, by Parliamentary statute, the same status in all respects within the British Empire as has already been acquired by the Self-Governing Colonies, such as the Dominion of Canada.

2. The delegates of British India to the Imperial Conference and to the League of Nations should be selected by the Imperial Legislature, and such delegates should occupy the same position of full membership as is enjoyed by the representatives of the Dominions.

Central Government

1. The great principle that all powers of Government are vested in and derived from the people should be given full effect to in the administration of the country.

2. The Government of India should be mainly run by a Cabinet responsible, at least in the Nation-building departments, to the Indian Legislature.

Relations of the Central Government with the India Office

1. The interference of the Secretary of State in the decisions of the Government of India should be reduced to a minimum and should become an exception and not the rule.

2. The power of intervention should never, as a general rule, be exercised by the Secretary of State when the Government of India and the Indian Legislature are in agreement.

Provincial Administration

1. The principle of Responsibility should be introduced to the full extent in the administration of the Provinces. There should be no Reserved Subjects. The whole administration should be carried on by a Cabinet of Ministers presided over by a Governor (appointed by the Crown) as the head of a Constitutional Government.

2. The Governor should appoint as Chief Minister a person who can be expected to lead the House. The Chief Minister will appoint his own Ministers and constitute a Cabinet.

3. The Ministers should be responsible to the Legislature concerned for the policy they follow and for the administration of their respective portfolios and, in accordance with the well-established Parliamentary practice, all or any of them should retire if not supported by a majority of Members of the Legislative Council on any vital matter.

4. The Provinces should enjoy complete financial independence.

Relations of the Provinces with the Central Government

1. Complete autonomy should be conceded to the Provinces in the matter of internal administration. The interference of the Government of India and of the Secretary of State in the internal administration of the Provinces should be

reduced to a minimum and the power of intervention should as a general rule never be exercised when the Provincial Government and the Provincial Legislature are in agreement.

2. The present system of the levy of contributions from the Provinces by the Government of India for the expenditure of the Central Government should be abolished by gradual degrees within five years.

The Veto

1. The power of Certification vested in the Viceroy or Governor should be abolished and the right of Veto should be hedged in by reasonable restrictions and should become operative not by the Viceroy or Governor alone but by the Viceroy and Governor in Council.

2. Any measure passed by the Legislature in two sessions, with an interval of not less than twelve months, should become effective notwithstanding the opposition of the Executive.

The Finances

1. The Indian Legislative Assembly should have absolute control over the entire Budget of income and expenditure of the Central Government. Similarly, the Provincial Legislative Councils should have absolute control over the Local Government purse.

2. The power of restoration of Budget Grants, once disallowed by the Legislature, should be eliminated except in respect of Army, Foreign Relations, Civil List and the All-India Civil Services subject to agreed maxima.

Law and Justice

1. A Supreme Court of Justice should be established in India, and it should have jurisdiction to decide all questions of the constitutionality of any law.

2. An independent Indian Bar should be built up.

The Legislature

1. Every legislative body in India (including the Council of State) should forthwith exercise its inherent right to elect its own President.

2. The present arrangement whereby the dates of the Assembly and the conclusion of sittings of the different legislative bodies in the country are fixed by the Executive heads of the Government has not worked satisfactorily in practice. A mass of non-official business is left untransacted at the end of every session to the great detriment of public convenience and progress. It is, therefore, essential that the legislative bodies (whether Provincial or Imperial) should have a determining voice in the fixing of the dates of assembly and conclusion of their respective sessions.

3. The strength of the Imperial and Provincial Legislatures should be considerably increased so as to allow for a better and more adequate representation of the diverse interests and claims.

4. The official block in the Legislatures should be removed or, at least, reduced to about ten per cent of the total strength.

5. In view of the demoralising effect of Governmental honors and distinctions on recipients at times, the Government of India ought not, as a matter of policy, to confer any honor or decoration of any description on any non-official Member of the Imperial or any Provincial Legislature, until the expiry of at least one year after retirement of such Member from Legislature.

The Franchise

1. The qualification for voters should be fixed low, say, payment of Rs. 10 in the form of taxes to any Local, Provincial or Imperial Authority. The ideal which we should work up to in the matter of franchise should be framed on the lines of the American Constitutions, namely, Universal Suffrage. Women should have the right to vote at and stand as candidates for elections.

The Civil Services

1. The policy of the Indianisation of all the branches of the All-India Civil Services should be pushed forward with

vigor and zeal. At least 75 percent of recruitment to all branches of the Imperial Services should be made in future from Indians in India.

2. The principle of equal pay for equal work without any distinction of domicile, color, caste or creed in all branches and grades of the Government Services should be fully recognised. Europeans born and brought up in Great Britain and Ireland may, however, continue to receive an over-sea allowance.

3. All branches of the Civil Services, whether recruited in India or abroad, should be within the control of the Government of India.

4. With a view to bring about financial equilibrium and release money for public utility services (such as Education and Sanitation), the emoluments of all appointments carrying a salary of Rs. 500 a month and over should be reduced to two-thirds of their present scale in the case of new entrants.

The Defence

1. The present cost of Military Administration in India is very disquieting and is beyond the capacity of the country to bear. The Military Expenditure should be substantially curtailed by reducing the strength of the Standing Army.

2. The Government of India should have the absolute right to regulate the composition and strength of and expenditure on its Army, Navy and Aerial Force.

3. The manner in which the Government of India is redeeming its pledge to Indianise the commissioned ranks of the Army is most dilatory and unsatisfactory. The process of Indianisation should be considerably accelerated and at least fifty percent of the recruitment to the commissioned ranks of the Army in all branches should be made from Indians in India.

4. The period of service with the colors should be reduced so that a larger portion of the manhood of the country may get opportunities of acquiring military training.

5. A net work of Militia Force should be established in the country on the system in vogue in the United States of America. Volunteering should be actively encouraged among the grown up male population of the country and the conditions of service for the Indian volunteers should in all respects be the same as for the Europeans.

6. Military training should be made a compulsory course of instruction in all Government and State aided schools and colleges.

7. An efficient Indian Navy and an efficient Indian Air Force should be formed and developed under the control of the Government of India.

8. Save in the case of actual invasion of the British Isles by a foreign enemy, the Indian military force should not be committed to active participation in any war outside India without the concurrence of the Government of India and the Indian Legislature, and the expenditure incurred on the employment of Indian Forces outside the frontiers of India should invariably be recovered from the War Office in London, unless determined otherwise by the Legislative Assembly of India in any particular case.

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Notes on Central and Provincial Governments

One suggestion is that India should be carved into a number of co-ordinate States according to language or other affinities, and that the all-India interests like External Defence, Railways, Posts and Telegraphs should be administered on behalf of the States by a central organisation on which they may be represented. It may be called Board, Corporation, anything indicative of its business character. But it is not to be Government, making laws or imposing taxation directly on the people. It will therefore have no Legislature to deal with.

Bright had some such idea. Lord Haldane and Mr. Montagu seem to favor the plan. Neither has developed it. But they visualise a number of comparatively small, homogeneous, completely autonomous Governments dealing for political purposes directly with Britain.

It won't work. What is to be done with Customs, for instance? And the Marine Departments, when these are fully developed? They will bring us into contact, often conflict and collision, with other Powers of the earth. Individual States cannot manage these world relations by themselves. The prestige, authority and resources of our entire continent must be behind the agency that deals with the outside world. War and peace, to put it briefly, are involved in trade rela-

tions. We assume that Britain will be our suzerain; but before she can act for us, we must be in a position to influence her policy. Moreover, India's interests would require to be often protected against the suzerain's encroachment. Consolidated Indian strength could alone secure such protection.

Inter-State competition and rivalry will give rise to many disputes of a semi-political nature. If the arbiter be too far away, these disputes will be many, bitter and prolonged. The outside arbiter too will acquire overpowering importance—even in internal matters.

No, this will not do. We must have a real Government at the Centre, representing all India for all-India purposes, internal and external. So only can the idea of India as a political entity be preserved. It is comparatively new, it is not yet a familiar idea even to the politically-minded classes. Our patriotism, speaking of it in general sense, is still unconsciously communal, Provincial, sectarian, narrow. Patriotism of India will have no chance if there be no visible, imposing, powerful agency, continually rousing and appealing to it. The smaller patriotisms, of which there are too many, and of which more than one operate all the time on the individual, would crowd out and starve the larger and comprehensive patriotism. It would live as a feeble sentiment, an anæmic abstraction—without adequate exercise, without a worthy theatre.

The people all over India must elect representatives to its Legislature directly. Their minds must be brought to dwell, at election at least, on the enormous interests at stake. India, all-India, the problems and controversies concerning the whole country, her collective welfare, her National Honor, must be dinned into their ears. The franchise may well be the same for both Provincial and Central Legislatures. But if the difficulty of the official supervising agency of the polls could be overcome, it might be decidedly advantageous to hold the Provincial and all-India general elections at

different times, so that the separate character, magnitude and sweep of the interests involved may be emphasised and receive full weight.

The Central Legislature must have a Second Chamber in which each Province or State is represented as such and equally, irrespective of its size, wealth or population. Each Provincial Legislature will elect, say, two representatives to this Council or Senate, as soon as it is itself formed. As the general elections for the Provincial Legislatures would probably be held at different times, the Senate would be undergoing partial renewal all the time, and there need be nothing like a general dissolution in its case.

A certain proportion of seats may have to be reserved for nomination to reduce, if not altogether to redress, communal inequalities, but it is a delicate and different question, and a separate Committee of the CONVENTION deals with it.

The need of nomination may be greatly limited, if not wholly obviated, by the device of Proportional Representation. Perhaps then the number of seats for each State may have to be raised to three.

Shall Australia or Canada be our model? In other words, shall the powers of the Centre be limited by express statute, leaving the Provinces to enjoy all the residuary powers? Or, shall the powers of the Provinces be limited by express statute leaving the Centre to enjoy all the residuary powers? Our history and present condition obviously favor the latter alternative—a great argument by itself. There are other arguments besides. Australia, why, America itself, found it necessary to strengthen the Centre as against the constituents. In India, the fissiparous tendency is already powerful. The Mughal Empire and the Maratha Empire are warnings, the latter the more impressive on account of its greater homogeneity. China affords a striking example of the disaster likely to overwhelm an attempt to replace an established Central Government by one more conformable to

theoretical ideas, and China has invaluable unifying forces denied to India in her common culture and common language. The writs of the Chinese Republic do not run beyond the walls of Peking.

There are considerable areas still administered directly by the Government of India. It is a question whether every one of them can be amalgamated with its neighboring Province. Elaborate examination of each case is necessary before an answer can be confidently given. The recent experience of the N.-W. F. P. is not reassuring. Readjustment of Provincial boundaries is apt to arouse bitter disputes that take long to compose.

For like reasons, the application of the linguistic principle to the division of India or rather to the re-division of India into Provinces is a political adventure likely to be attended with great difficulty. It is a common mistake, but not the less serious on that account, to suppose that bonds of religion or race necessarily unite the population that speaks the same language. The "Andhra" Nation, for instance, has no reality. Still a common language is a powerful welding factor and, administratively, it is the best basis for forming Self-Governing Provinces or States. Not all the languages recognised by the Universities are entitled to form criteria for Provincial re-grouping. Malayalam and Assamese could hardly aspire to the distinction. On the other hand, if the state of Indian administration were clean, Telugu and Tamil, Marathi and Gujerati, Bihari and Uriya, to mention only some instances, would never be comprised under one unit. The cases of Sindh and Orissa, rather of the Uriya-speaking population, deserve sympathetic consideration. No defence which will weigh with democratically-minded people can be set up for a system which, by asking a high order of proficiency in English, a practically (though not legally) necessary condition of candidature for the local Legislative Council, shuts out 9-10ths of the population from the chief avenue to

public usefulness and fame. Still no escape from this tangle seems open. Thank heaven, Bengalee, Hindi and Panjabee do not complicate the problem. What about the large area governed by the Central Provinces? Two languages divide the greater part of it. Is it now feasible to obliterate its identity and give part of it to the already overgrown United Provinces and part to Bombay? Imagination staggers at the thought of the situation when the Indian States should come into the system. Areas and populations have been absorbed into an ever-greedy organisation, as circumstances made it possible, without heed to logic, convenience, or the needs of Self-Government. We must be content for long periods of our future to alleviate the more acute symptoms of the disease, of which a radical cure seems beyond the wit of man at present to devise.

Some astute Imperialists in England would have India cut up afresh into a number of more or less compact kingdoms each to be placed under a Raja drawn from the locality or neighboring princely houses. The fantastic notion needs only to be mentioned to be dismissed. The motive is only too apparent. The perpetuation of British suzerainty and the utilisation for Imperial purposes of the resources of the continent that would be freed from the dangers and embarrassments of the day under a plan which is blind and deaf to the conditions of the people. The reception which the Berar question has received at the inception and which it will doubtless receive as it comes more into the region of practical politics will effectually dispose of this political phantasy born of the worst phase of disappointed Imperialism.

The legislative, administrative and financial autonomy of the Provinces will of course be complete. The Legislatures will control the entire range of Governmental functions through Responsible Ministers. Various exceptions and qualifications would doubtless mutilate the integrity of this logical conception. To these the Indian politician must learn

to reconcile himself. Of the imperfection of this world, India inherits more than her share.

In finance, while Provincial contributions have to be quashed and separate sources of revenue have to be assigned to the Central and Local Governments, it is more than doubtful whether income tax could be treated as exclusively belonging to the Provinces. Again, some regulation of powers of borrowing seems unavoidable, to prevent undue competition among the Governments.

It is a vicious habit into which we have got of treating all the Provinces of India as though they were on the same level of progress. Discord is avoided by ignoring differences. But realities must not be lost sight of. If Assam be not reabsorbed by Bengal, should she be allowed complete autonomy? Or, the Central Provinces? Neither Province has a decent newspaper, and the dearth of highly qualified public men is woeful. The point is of especial importance when we consider the necessity of a provision in the Constitution for what is called the re-entry of the Supreme Government. If regular, minute control be eliminated, as no doubt it should be, is it wise to forget that some Provinces may fall from bad to worse until they can no longer be trusted to look after themselves? Shall we refuse to contemplate the possibility of the Hindu-Muslim tension in the Panjab reaching a stage when the intervention of the Government of India might be unavoidable? The intervention may take the form of outside arbitration being imposed, but however inoffensive it may be made to look, it will still be intervention. A clear provision in the Constitution must make it possible. Even so, its use on any given occasion may be attended with the greatest difficulty. Still its existence will be preventive of a great many minor evils.

Perhaps most people will say in reply that, in Self-Governing communities, an evil that runs to excess will find its own remedy. Quite so. Only there is no guarantee that

he remedy may not be one of force ; and then the result will be general conflagration all over India.

Leaving aside this thorny problem, there still remains the certainty of disputes of various kinds between the Provinces and between the Centre and the Provinces. Our present law shuts out the jurisdiction of Courts in such matters and leaves the final decision in the hands of the Government of India. Why not continue the arrangement ? It need not preclude settlement by arbitration where the contending parties agree. But somebody must say the last word. Australia and Canada provide for litigation in the Supreme Courts. Great expense and delay ensue ; but is there a proportionate advantage ? It is doubtful at best.

The position of all-India Services is another matter on which caution would suggest a middle course inconsistent with theory. They should no longer be under the control of the Secretary of State. This arrangement dwarfs the Government of India. The autonomy of the Provinces perhaps would require a complete devolution to them of this control. There are sound reasons, however, why a half-house might be preferable. The Services themselves desire to go backwards, seeking in fact the guarantee of Parliament for their privileges. It is as much as we can get now to have the control transferred to the Government of India. The all-India character of these Services is a strong binding force which brings home the unity of India to the people. It is of the utmost importance to keep them beyond the disturbing influence of local politics. The smaller Services which are now well organised and reach a high standard of efficiency and integrity, thanks to the strong protecting hand of the Imperial Services, would, if once they become the sport of local partisanship, speedily lose their character and react disastrously on the character and public spirit of the people at large.



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The Problem of the Minor Communities

By Dr. JACOB E. SOLOMON, L. M. & S.

I submit this Memorandum expressing my views on this problem of problems, the proper tackling of which alone will ensure harmony and peace in India, when a Dominion, and, consequently, in the Indo-British Commonwealth. I am one of the Secretaries of the National Home Rule League Branch of Ahmedabad, of the CONVENTION Club, of the Sanitary Association, Ahmedabad, of the Ahmedabad Medical Society, and of the Theosophical Society, Ahmedabad Branch, as well as a Councillor of the Ahmedabad Municipality. Above all, I am a member of the Bene-Israelite Community of India, a minor community of Jews, numbering 11,571 in the British District of the Bombay Presidency, having Marathi as their mother-tongue—being settlers in the Konkan District for over a thousand years. The figure 11,571 is according to the 1921 Census, and includes the Basra and Bagdad Jews having Arabic as their mother-tongue, as well as a few European Jews and Cochin Jews, but the bulk consists of the Bene-Israelites.

I was one of the signatories to the Memorandum made by some Bene-Israelites to the Rt. Hon. E. S. Montagu, by which no special rights and privileges were claimed for the community, nor reserving any seats in the

Councils, India being the only country in the world where Jews have not been molested or tortured for their religion. I am of the opinion that reserving seats in the Provincial Councils or the Assembly for the minor communities, or even for Muhammadans alone, is detrimental to the interest of India, even though the reserved seats be filled by a mixed election. No doubt, a mixed election is better than communal election, for then the members elected by a mixed electorate are bound to be more widely popular and the communal narrowness will be overcome by candidates for the reserved seats having to canvass votes from voters of other communities as well. But unless the ideal is straightaway introduced, there is likely to be a percolation of the communal principle through all the lower strata of State life, and it will introduce an element of separativeness instead of promoting the unity of the Indian ideal for all communities in India. Even for Muhammadans alone the separate franchise should not be granted. The eddies of communal separativeness or preference have to be avoided from the first, if the ship of Indian Home Rule is to sail in smooth waters.

It is for the benefit of the vested interests in England to make much of the communal rights and representation to keep up the spirit of "divide and rule." but I trust our Indian leaders and the Britishers interested in the welfare of India and of the Commonwealth will use all their powers to prevent the perpetuation of this element of separativeness in the Commonwealth of India Act, to be shortly framed and introduced into Parliament for sanction. I appeal to my Muslim brethren in India to rise above their communal interests and think foremost what is best for India as a Nation. We are Indians first and Muslims, or Jews, or Parsis afterwards. Unless this mentality is forced on the people by the enlightened sons of India concerned in drafting the Act, India cannot be a peaceful Nation. We expect from our Muslim brethren the practice only of true Brother-

hood which their religion enjoins on them, and the application of it to the members of the sister communities in India. And if all are brothers of equal status, where is the need of making much of one brother and reserving something for him? If any special treatment or attention is needed at the hands of a Nation, it might be for the smallest of the minor communities and not for the largest among them; and even then the special attention should be by way of giving special opportunities for giving primary and higher education rather than any consideration of franchise or preference for filling any post in the Services. Religion should never be taken into consideration for these latter purposes, but capacity and efficiency.

Occasionally, however, certain problems from a religious point of view may be considered, requiring more light on them from a religious point of view. This may be got over by making provision in the Act for one of the following :

- (1) Co-opting in the Council or Committee a fixed number of persons having special knowledge of the particular religion for the consideration of the particular item only.
 - (2) Government nominating instead of Council co-opting as in No. 1 for the same purpose.
- or (3) Members of each religion in each Province to elect at the time of each Council election 5 representatives who may have all the rights as those of other Council Members of debating, amending and voting, but only when the President of the Council certifies that the particular resolution before the Council has a religious bearing on a particular religion, when those 5 Councillors elected by the members of that religion should be authorised to attend the Council meeting on a particular day fixed for the consideration of that resolution. Further, when such a resolution is being considered, the representatives of other religions should also be sent for, so that any bearing on the interrelation between the various religions might also be brought to the notice of the Council. Such religious members of the Council should have no right to propose a separate resolution in the Council, unless it be of the nature of a recommendation to the Council. When considering such a resolution in the Council, all the representatives of the other religions should be asked to be present; or all the religious representatives of

each Province may form a separate Board or Religious Sub-Committee of the Council whose opinion should first be secured on any resolution certified by the President of the Council as having a religious bearing. For after all for what purpose are the communal representatives required but to safeguard the religious interests which can be better done by the Religious Board or Religious Sub-Committee as shown above! For then harmony would be promoted among the various religions by the Board or Sub-Committee considering the problem with regard to the point of view of all religions. If men really knowing their religion are elected, then their recommendations will have more weight than what a large number of ordinary representatives of any community can have. The other civil rights of any one belonging to any religion should be the same for all religions and the Council should decide on them without taking the opinion of the Religious Board or Committee.

I would further urge that it should be made clear that those eligible for the membership of the Religious Board or Religious Committee of the Province should have full knowledge of their respective religions. Perhaps it may even be advisable to put in a religious qualification bar for the candidanship. No special reservations should be made for the sub-sections or castes of each religion, that is, for instance, no Boras or Khojas should have one or two seats out of the 5 seats for Muhammadan religion of the Province reserved for them. The qualification bar, as far as possible, should be to get liberal and broad-minded religious representatives. I say 5 representatives of *each* religion because of the religious equality that ought to be maintained in matters of religion and not the percentage of the followers of each.

For the purpose of the Assembly or the Council of State, the Religious Committees or Boards of all the Provinces of India should together form one All-India Religious Board or Committee, meeting together in Simla or Delhi to consider problems or resolutions, certified by the President of the Assembly or the Council of State as having a religious bearing for all India.

Here are the figures from the Census Report of the total population of each religion in the British District of the Bombay Presidency with the percentage calculated for each item :

**Total Population in Bombay Presidency (British
Dominion) 19,291,719**

RELIGION	POPULATION	P. C. TOTAL POPULATION
Hindus	... 1,48,12,545	... 76'78
Sikhs	.. 8,027	... 00'04
Jains	... 2,14,401	... 01'11
Budhists	... 1,734	... 00'01
Muslims	... 37,75,098	... 19'57
Christians	... 2,62,620	.. 01'36
Zoroastrians	... 82,696	... 00.43
Jews	... 11,571	... 00'06
Animists	... 1,22,937	... 00'64
Others	... 90	... —

Comparing the percentages it will be seen, apart from the need of abolishing communal reservation of seats in the Councils, how utterly impossible it would be to fix the number of seats to be reserved for each community in a just manner without giving more consideration for some than the ratio of population demands.

The consideration of the problem of the minor communities cannot be complete without considering the ways and means of placing the ideal of United Indian Nationhood before the citizens and of promoting the solidarity of the union of all religionists in India in civil matters. Some of my suggestions may seem ridiculous, but when any ideal is to be placed before the masses, if it is to be surely successful, it must appeal to the majority of the following channels : the eye, the ear, the head and the heart. I would therefore make bold to make the following suggestions :

- (a) That by framing rules a particular Indian Uniform should be enforced to be worn by all Government servants on civil duty, or when attending official meetings or Darbars. The uniform should be simple and, if possible, a combination of Hindu and Muhammadan way of dress. The beard may or may not be allowed to grow, that being left to the choice of the individual, but the pattern of the head-dress and the footwear should be prescribed and be uniform. The uniform sanctioned by rules should be enforced on every Government servant to whatever religion he may belong, and without regard as to whether he is an Indian or European.
- (b) That there should be a particular common way of salutation prescribed or recommended to all the civil population of the Dominion of India.
- (c) That the official language of India for inter-Provincial correspondence should be Hindustani in Devnagari characters, the study of which should be made compulsory, as a second language, in all Government schools or Government aided schools all over India.
- (d) That religious tolerance should be inculcated in all schools, as is being done in the National Schools of Dr. Besant, by prayers in common—a small extract from *The Bhagavat Gītā*, *Al Qurān*, *The Bible* etc., etc. before beginning each day's activity, and by religious classes giving a general idea of all religions, thus encouraging respect for them all.
- (d) Hindu-Muslim unity may be symbolised by encouraging the mass of the population, particularly the school-children, to wear a combination of clothes hitherto usually worn by those two different religionists.

I believe that if these suggestions are carried out by rules or circulars through the Government agency, the ideal of the United Indian Nationhood will soon be vividly placed before the people in a form that will appeal to their imagination and rouse their enthusiasm, so that the communal differences will sink into the background, and the youth will truly say: "I am an Indian first; and Hindu (Muhammadan, Christian, Parsi, or Jew, whatever he be) afterwards."

**THE
INDIAN CONSTITUTION**

A NOTE ON ITS WORKING

PARTS I TO III

BY

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NOTE.—All memoranda circulated for information and criticism contain the view of the author at the time of writing. Changed conditions might involve modifications. The considered views of the Committee will not be available until it issues its report.

PREFACE

The object of this note is simply to draw attention to the present Constitution in India. Criticism has been offered at certain places and comparisons instituted at others with similar provisions in the Constitutions of Canada, South Africa and the Australian Commonwealth. It does not profess to be in the nature of a commentary on the Government of India Act, for that is a task which must involve much more labor and time than I could possibly afford consistently with other calls on my time. Nor does it profess to be in the nature of a constructive scheme for the Constitution of India. At the present moment, the question of the revision or the expansion of the Constitution is attracting considerable attention both in India and in England. There are those who think that, notwithstanding its many imperfections, the present Constitution should be given a fair trial at any rate up to 1929. There are others who call for an earlier revision of it. There are yet others again who think that India must frame her own Constitution. Whatever force there may be in any of these views, I am personally of opinion that the arguments which hold good to-day against further advance will hold good equally in 1929. The real question is one of policy and it is obvious that on such a question English and Indian opinion has differed in the past, is differing to-day, and, I am afraid, will continue to differ in the future. Meanwhile, apart from questions of policy, a mere study of the constitutional position cannot be altogether useless. Indeed, it seems to me it should be the basis of all well-informed criticism. It is mainly with a view to elicit criticism by drawing attention to the present constitutional position that I have written this note at the request of some friends. I desire to acknowledge with gratitude the valuable assistance rendered to me by Mr. B. Shiva Rao in the preparation of this note:

ALLAHABAD, }
1st August, 1924 }

T. B. S.

THE INDIAN CONSTITUTION

PART I

Introductory

Roughly speaking, it may be said that the present Constitution of India is contained in the statute of Parliament known as the Government of India Act. The last amending Act was passed in 1919, and its preamble sets forth in detail the "declared policy of Parliament" which is to be followed in relation to India.

Analysis of the Preamble

(1) British India is to remain an integral part of the Empire, (2) Responsible Government in British India is the objective of the declared policy of Parliament, (3) Responsible Government is capable only of progressive realisation, (4) In order to achieve Responsible Government, it is necessary to provide for two things: (a) The increasing association of Indians in every branch of the Indian administration and (b) the gradual development of Self-Governing institutions.

The next clause in the preamble says that progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps should "now" be taken.

The question may, therefore, be asked whether, upon a correct interpretation of the language of the preamble, it can be maintained that the words "declared policy" mean and imply that Parliament was, for the first time in 1919, making a declaration of an absolutely new policy towards India, or whether it was simply reiterating an old policy with a new emphasis and with a new determination to take substantial steps in giving effect to that "declared policy". Confining ourselves to the mere words of the statute, and independently

of any statements or declarations made by any responsible statesman, it would seem that the more legitimate inference would be that the policy was there already and that, in the opinion of Parliament, the time had then arrived when some substantial steps should be taken to give effect to that policy. Historically, it cannot be denied that the process of association of Indians, howsoever slow and unsatisfactory, had already commenced. It is also historically true that the process of developing Self-Governing institutions had already been in operation; extremely limited as the powers and functions of Councils and local bodies might have been before the Act of 1919, it would be impossible to deny that those bodies partook of the character of, or were intended to be, Self-Governing institutions. Their growth might have been arrested, but their existence could not be denied; nor could it be seriously maintained that if they were allowed to grow freely, they would lead to Responsible Government. At this stage it may be useful to recall how the whole question was approached in the message of His Majesty the King-Emperor and by Lord Chelmsford in the memorable speech which he delivered on 9th February, 1921, when he performed the opening ceremony of the Indian Legislature in the presence of H. R. H. the Duke of Connaught. The extracts, though long, will amply repay perusal.

*His Imperial Majesty the King-Emperor's Message
to the Indian Legislature*

Little more than a year has elapsed since I gave my assent to the Act of Parliament which set up a Constitution for British India. The intervening time has been fully occupied in perfecting the necessary machinery, and you are now at the opening of the first Session of the Legislatures which the Act established. On this auspicious occasion I desire to send to you, and to the Members of the various Provincial Councils, my congratulations and my earnest good wishes for success in your labors and theirs.

For years, it may be, for generations, patriotic and loyal Indians have dreamed of Swarāj for their Motherland. To-

day you have the beginnings of Swarāj within my Empire, and widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy.

On you, the first representatives of the people in the new Councils, there rests a very special responsibility. For on you it lies, by the conduct of your business and the justice of your judgments, to convince the world of the wisdom of this great constitutional change. But on you it also lies to remember the many millions of your fellow-countrymen who are not yet qualified for a share in political life, to work for their upliftment and to cherish their interests as your own.

I shall watch your work with unfailing sympathy, and with a resolute faith in your determination to do your duty to India and the Empire.

Lord Chelmsford's Speech

The history of constitutional developments in India under British rule falls into certain fairly well-defined stages. The first of these may be said to have terminated with the Act of 1861. During this period the British Government were engaged in extending and solidifying their Dominions, in evolving order out of the chaos that had supervened on the break-up of the Mughal Empire, and in introducing a number of great organic reforms, such as the improvement of the Police and the Prisons, the codification of the Criminal Law, and the establishment of a hierarchy of Courts of Justice and of a trained Civil Service. The main achievement of administration was in fact the construction and consolidation of the mechanical framework of the Government. The three separate Presidencies were brought under a common system, and the legislative and administrative authority of the Governor-General in Council was asserted over all the Provinces and extended to all the inhabitants; while, at the same time, provision was made for local needs and local knowledge by the creation or recreation of local Councils. And it is significant that in the Act which closed this Chapter, the principle of associating the people of India with the Government of the country was definitely recognised. The Councils set up by this Act were still merely legislative Committees of the Government, but the right of the public to be heard and the duty of the Executive to defend its measures were acknowledged, and Indians were given a share in the work of legislation.

The second stage terminated with the Act of 1892. The intervening period had witnessed substantial and many-sided

progress. Universities had been established, Secondary Education had made great strides; and Municipal and District Boards had been created in the major Provinces. A limited but important section of Indian opinion demanded further advance, and the justice of this demand was recognised by the British Government in the Act of 1892. This Act conferred on the Councils the right of asking questions and of discussing the Budget, and, to this extent, admitted that their functions were to be more than purely legislative or advisory. But its most notable innovation was the adoption of the elective principle. It is true that technically all the non-official members continued to be nominated, and inasmuch as the recommendations of the nominating bodies came to be accepted as a matter of course, the fact of election to an appreciable proportion of the non-official seats was firmly established. The Act of 1861 had recognised the need for including an Indian element in the Legislative Councils. The Act of 1892 went further. It recognised in principle the right of the Indian people to choose its own representatives on the Councils.

The third stage will always be associated with the names of Lord Morley and Lord Minto. The experience of the Reforms of 1892 had been, on the whole, favorable. The association of the leaders of the non-official public in the management of public affairs had afforded an outlet for natural and legitimate aspirations and some degree of education in the art of Government. But the impulses which had led to the Reforms of 1892 continued to operate and they were reinforced by external events, such as the Russo-Japanese War. Important classes were learning to realise their own position, to estimate for themselves their own capacities, and to compare their claims for equality of citizenship with those of the British race. India was in fact developing a National Self-Consciousness. The Morley-Minto Reforms were a courageous and sincere effort to adjust the structure of the Government to these changes. The Legislative Councils were greatly enlarged, the official majority was abandoned in the local Councils, and the principle of election was legally admitted. No less significant were the alterations made in the functions of the Councils. These were now empowered to discuss the Budget at length; to propose resolutions on it and to divide upon them; and not only on the Budget, but in all matters of public importance, resolutions might be moved and divisions taken. It was hoped by the authors that around this Constitution conservative sentiment would crystallise,

and that for many years no further shifting of the balance of power would be necessary. These anticipations have not been fulfilled; and from the vantage point of our later experience we can now see that this was inevitable. The equilibrium temporarily established was of a kind that could not for long be maintained. The forces which had led to the introduction of these Reforms continued to gain in intensity and volume; the demand of educated Indians for a larger share in the Government of their country grew year by year more insistent; and this demand could find no adequate satisfaction within the frame-work of the Morley-Minto Constitution. This Constitution gave Indians much wider opportunities for the expression of their views, and greatly increased their power of influencing the policy of Government and its administration of public business. But the element of Responsibility was entirely lacking. The ultimate decision rested in all cases with the Government, and the Councils were left with no functions save that of criticism. The principle of autocracy, though much qualified, was still maintained, and the attempt to blend it with the Constitutionalism of the West could but postpone for a short period the need for reconstruction on more radical lines.

Such then was the position with which my Government were confronted in the years 1916-17. The conclusion at which we arrived was that British policy must seek a new point of departure, a fresh orientation. On the lines of the Morley-Minto Reforms there could be no further advance. That particular line of development had been carried to the farthest limit of which it admitted, and the only further change of which the system was susceptible would have made the legislative and administrative acts of an irremovable Executive entirely amenable to elected Councils, and would have resulted in a disastrous deadlock. The Executive would have remained responsible for the Government of the country, but would have lacked the power to secure the measures necessary for the discharge of that responsibility. The solution which finally commended itself to us is embodied in principle in the declaration which His Majesty's Government, in full agreement with us, made in August, 1917. By that declaration, the gradual development of Self-Governing institutions with a view to the progressive realisation of Responsible Government was declared to be the goal towards which the policy of His Majesty's Government was to be directed. The increasing association of the people of India with the work of Government had always

been the aim of the British Government. In that sense, a continuous thread of connection links together the Act of 1861 and the declaration of August, 1917. In the last analysis, the latter is only the most recent and most memorable manifestation of a tendency that has been operative throughout British rule. But there are changes of degree so great as to be changes of kind, and this is one of them. For the first time the principle of autocracy, which had not been wholly discarded in all earlier reforms, was definitely abandoned; the conception of the British Government as a benevolent despotism was finally renounced; and in its place was substituted that of a guiding authority whose rôle it would be to assist the steps of India along the road that in the fulness of time would lead to complete Self-Government within the Empire. In the interval required for the accomplishment of this task, certain powers of supervision, and, if need be, of intervention, would be retained, and substantial steps towards redeeming the pledges of the Government were to be taken at the earliest moment possible.

I shall not attempt to recount in detail the processes by which subsequently the new policy was given definite form and expression in the Act of 1919. They are set out in documents all of which have been published.

To quote here only three or four sentences in support of the view which has been taken above :

The increasing association of the people of India with the work of Government had always been the aim of the British Government. In that sense a continuous thread of connection links together the Act of 1861 and the declaration of August, 1917. In the last analysis, the latter is only the most recent and most memorable manifestation of a tendency that has been operative throughout British rule. But there are changes of degree so great as to be changes of kind, and this is one of them.

It will thus be noticed that the expression, "successive stages," as used in the second clause of the preamble, cannot possibly exclude the stages of progress already achieved by India up to the moment when the Act of 1919 was passed; and it would be wholly unwarranted to hold that for the purposes of the realisation of Responsible Government the first stage must be deemed to commence with the passing of the Act of 1919.

The third clause of the preamble provides that the time and manner of each advance can be determined only by Parliament, and it is recognised in it that "the responsibility for the welfare and advancement of the Indian peoples" lies on Parliament. This clause has been severely criticised in certain political quarters in India as excluding by necessary implication the moral right of Indians to determine the time and manner of each advance. Constitutionally, Parliament is sovereign, and until India has got complete Responsible Government, it is correct in that sense to say that the responsibility for its welfare and advancement lies upon Parliament. But this constitutional position is by no means incompatible with the undoubted right of all subjects of the King to say when and how and on what lines further advance should be secured. No doubt, when such a demand is made by the people, Parliament may, constitutionally, claim the right to be satisfied that it is a proper demand and conforms to the tests laid down in the fourth clause.

The tests laid down in the fourth clause for the guidance of Parliament in regard to the time and manner of each advance are two: (a) "The co-operation received from those on whom new opportunities of service are conferred ; and (b) "the extent to which experience shows that confidence can be reposed in their sense of responsibility". These tests necessarily involve questions of fact.

At this stage it may be necessary to supplement the consideration of this clause of the preamble by a reference to S. 84 A(2) of the Government of India Act. The Commission which is to be appointed at the expiration of ten years after the passing of the Government of India Act of 1919 is required to enquire into (1) the working of the system of Government, (2) the growth of education, (3) the development of representative institutions in British India and matters connected therewith. Having enquired into these matters, the Commission is to report: (1) As to whether and to what

extent it is desirable to establish the principle of Responsible Government, (2) or to extend or modify the degree of Responsible Government, then existing in India, including the question whether the establishment of Second Chambers in the Local Legislature is or is not desirable. The Commission may also enquire into and report on any other matter affecting British India and the Provinces which may be referred to the Commission by His Majesty *vide* S. 84 (3).

Can it be said that there is anything in the nature of inconsistency between the preamble and clauses (2) and (3) of S. 84. A? Can it further be urged that S. 84 A, adds to the tests laid down by the preamble? *Prima facie* there does not seem to be any inconsistency between the preamble and S. 84. A (2). The co-operation and [the confidence in the sense of responsibility of the people on whom new opportunities of service are conferred must be judged in the light of the system of Government, the growth of education, the development of representative institutions and matters connected therewith. If the Commission should be satisfied about the growth of education and the development of representative institutions, some of the important tests would have been fulfilled. But in addition to these and cognate matters, it will also have to satisfy itself as to the working of the system of Government. Now, as regards this, if the Commission comes to the conclusion that the system of Government has worked well, and that, in working that system, those who are entrusted with it have shown a due sense of responsibility, there is no reason why there should not be further development. If, on the other hand, the Commission finds that the system of Government has not worked well, then it must make recommendations for a change of that system, so as to achieve the object laid down in the preamble. It is true that the language of S. 84. A (2) is not as precise as it might, and should, have been; but taking a broad view of it and reading it along with the pream-

ble, it is not difficult to have an approximately fair idea as to what the object of Parliament was.

Coming next to the penultimate clause of the preamble, it will be observed that Parliament considered it expedient, concurrently with the gradual development of Self-Governing institutions in the Provinces of India, to give to those Provinces the largest measure of independence of the Government of India compatible with the due discharge by the latter of its own responsibilities. Now, so far as this clause is concerned, there are two observations to be made: First, the largest measure of independence is not synonymous with the largest measure of Responsible Government. A Province may enjoy the largest measure of independence of the Government of India, and yet it may not have an equally large measure of Responsible Government. Secondly, there are two checks imposed on the independence of the Provinces. The first of them is the express check exercised by the Government of India. The second is the implied check of the Secretary of State for India to whom the Government of India is subordinate. The Secretary of State may, in accordance with the Act, relax his control over the Government of India.

General Observations on the Preamble

The preamble practically embodies the announcement of policy made by Mr. Montagu in the House of Commons on 20th August, 1917. It leaves no room for doubt that the ultimate object is the establishment of Responsible Government. But the provision with regard to successive stages and the reservation of the power to determine the time and manner of each advance have caused in this country widespread dissatisfaction. It is true that the Moderates or Liberals, who seceded from the Congress in 1918-19, decided to stand by the Reforms and to work them. But it is not true that at any time they accepted the reservations or restrictions in the preamble. On the contrary, while fully

recognising the supremacy and sovereignty of Parliament, they expressed their dissatisfaction with the provision relating to successive stages and repeatedly urged that India should have a definite voice in the shaping and fashioning of its future. On the other hand, the Non-Co-Operators attacked the preamble and the provisions of the Act as being wholly unsatisfactory and inadequate. In the view that they took five years ago, they decided to boycott the Councils. At the last general election, however, a considerable section, now known as Swarājists, decided to enter the Councils with the avowed policy of obstruction and destruction. And in pursuance of that policy, at the last Delhi session, they rejected the Indian Finance Bill. Within two months of that, at a special session of the Assembly, they appear to have changed their methods and worked in co-operation with the Government, at least in regard to the Steel Protection Bill.

Before proceeding further, it is desirable to notice the scheme and structure of the Government of India Act with a view to consider how far it is possible to make any advance towards Responsible Government without altering or modifying the Act itself, and merely by recourse to the rule-making power under the Act.

PART II

THE CROWN

S. 1 of the Government of India Act vests the territories in India in His Majesty who is the head of the Constitution and in whose name the country is governed. There are certain powers specifically reserved to the Crown.

Powers of the Crown

His Majesty may remove from office any Member of the Council of India on an address of both Houses of Parliament (*vide* S. 7). His Majesty in Council exercises certain powers

with regard to the establishment of the Secretary of State in Council (*vide* S. 17). The Crown appoints an auditor of the accounts of the Secretary of State in Council (*vide* S. 27), a High Commissioner for India (*vide* S. 29 A), the Governor-General (*vide* S. 34), the Members of the Governor-General's Executive Council (*vide* S. 36), Governors (*vide* S. 46), the Members of a Governor's Executive Council (*vide* S. 47). The approval of the Crown is necessary for the constitution of a new Province under a Lieutenant-Governor (*vide* S. 53) and the appointment of a Lieutenant-Governor (*vide* S. 54). The assent of His Majesty is necessary under S. 67 B (2) to enable an Act which has been certified by the Governor-General to have effect. Bills may be reserved for His Majesty's pleasure under S. 68 and vetoed by His Majesty under S. 69. A Bill passed by the Certificate of a Governor cannot have effect without the signification of the assent of His Majesty in Council (*vide* S. 72 B). A Legislative Council for a new Lieutenant-Governorship cannot be created without the sanction of His Majesty (*vide* S. 77). The Governor-General may reserve a Provincial Bill for the signification of His Majesty's pleasure without which it cannot have validity (*vide* S. 81 A 3). The power of Veto is reserved to the Crown in regard to Acts of a local Legislature (*vide* S. 82). The Statutory Commission provided for by S. 84 A requires the approval of His Majesty. Permanent Chief Justices and Judges of High Courts are appointed by His Majesty under S. 101. Additional High Courts can only be established under Letters Patent under S. 113. The Crown may disallow any order of the Governor-General in Council altering the limits of jurisdiction of High Courts (*vide* S. 109). Advocates-General are appointed by His Majesty under S. 114. His Majesty has certain powers in regard to the ecclesiastical establishment (*vide* Ss. 115, 116, 118, 120 and 121). Lastly, His Majesty may annul rules framed under S. 129 A.

The powers vested in the Crown are presumably exercised upon the advice of the constitutional Minister or Ministers in England. Of the powers enumerated above, there are some, which will always have to remain with the Crown, as they do in the case of the Self-Governing Dominions, whatever may be the restrictions imposed by constitutional practice or usage on the exercise of those powers. Such indispensable powers may be illustrated by reference to the appointment of the Governor-General and the Governors and the power of Veto. It is obvious, however, that the powers of the Crown generally cannot be affected or modified by the exercise of any rule-making power vesting either in the Secretary of State or the Governor-General in Council. Those powers can only be dealt with by an Act of Parliament.

PART III

THE SECRETARY OF STATE

Salary of the Secretary of State

The legal and constitutional position of the Secretary of State for India is prescribed by S. 2 of the Government of India Act. By clause 1 of that Section, and subject to the provisions of this Act, the Secretary of State (1) has and performs all such or the like powers and duties relating to the Government or the revenues of India; and (2) has all such or the like powers over all officers appointed or continued under this Act. Before the passing of the Government of India Act of 1858, these powers and duties were exercised or performed by the East India Company, or by the Court of Directors, or the Court of Proprietors of that Company, either alone or by the direction or with the sanction or the approbation of the Commissioners for the Affairs of India. Briefly put, the measure of his powers and duties is that of the powers and duties of the East India Company, or the Court of Directors, or the Court of Proprietors, or the Commissioners

for the Affairs of India before the Act of 1858. Those powers may be exercised over all officers appointed or continued under the Act. Under clause 2, subject to the provisions of this Act or rules made thereunder, the Secretary of State is vested with the general powers of superintendence, direction and control over all acts, operations and concerns which relate to the Government or revenues of India. He exercises control over grants of salaries, gratuities and allowances and all other payments and charges out of, or on, the revenues of India. Now, these two clauses and particularly clause 2, confer on the Secretary of State complete administrative and financial control over the Government of India subject, of course, to the provisions of the Act or the rules made thereunder. When we have examined the other provision of the Act or the rules made under it, we shall have a fair idea of such limitations as exist on the control of the Secretary of State. It may however, be safely said at this stage that making allowance for those limitations, the residuum of control, both administrative and financial, exercised by the Secretary of State in relation to the Government is so enormously large that it is impossible to hold that constitutionally, the Government of India enjoys any large measure of independence. Before examining those limitations, with a view to have some idea of the measure of independence enjoyed by the Government of India, let us examine clause 3 of S. 2 which was inserted by the Act of 1919. By that clause the salary of the Secretary of State is placed on the British estimates.

But the salaries of his Under-Secretaries and any other expenses of his department may be paid out of the revenues of India or out of monies provided by Parliament. Now, it was not as if this was intended to fix the Secretary of State for the first time with responsibility to Parliament. That responsibility has always been there since his creation. This amendment was

a concession to political sentiment widely prevalent in India and to some extent in certain quarters in England, and it was therefore considered desirable to place his salary on the British estimates so as to enable Members of Parliament to discuss Indian affairs in a more pointed and effective manner. It may, therefore, be said that the Secretary of State is constitutionally the agent of Parliament, but an agent with plenary powers excepting where any limitations have been imposed on those powers either by statute or by statutory rules.

Analysis of the Administrative, Financial and Legislative Control of the Secretary of State

By S. 33 of the Act, the Governor-General in Council is required to pay due obedience to such orders as he may receive from the Secretary of State in regard to the civil and military Government of India. Now this Section, read with S. 2 which has already been discussed, completes the subordination of the Government of India to the Secretary of State. But there are certain specific powers which the Secretary of State exercises under the statute or which he exercises as the constitutional adviser of the Crown, which must also be taken into account in judging the extent of the supremacy of the Secretary of State.

He is presumably the adviser of the Crown in regard to the appointment of the Governor-General under S. 34, of Members of the Governor-General's Executive Council under S. 36, of Governors under S. 46, of Members of Governors' Executive Councils under S. 47, of Lieutenant-Governors under S. 54, of the Public Services Commission under S. 96 C, of the Auditor-General in India under S. 96 D, of Chief Justices, Judges and Advocates-General of High Courts under Part IX and of the Bishops of Calcutta, Madras and Bombay under S. 118. It is clear that the Crown's prerogative to appoint the Governor-General or the Governors cannot be affected in any development of the Constitution. But there does not seem

to be any reason why so far as the other appointments enumerated above are concerned, they should continue to be made upon the recommendation or advice of the Secretary of State.

Apart from the question of appointments, the administrative control of the Secretary of State is exercised in many ways. There are some matters which cannot be initiated without his previous approval or assent or sanction. Sometimes such approval, assent or sanction is given *ex-post facto*; yet again, there are some matters which are required by statute or practice or usage to be reported to the Secretary of State. Leaving aside the control over legislation which is vested in him by special provisions of the statute, ordinary matters of administration, involving the taking of some important step or raising questions of policy, are referred to him by despatches or by cablegrams. It is impossible in this Note to refer to all those matters which are referred to the Secretary of State as a matter of practice or usage or by virtue of his directions conveyed in one way or another, though there is every reason to believe that the number of despatches and cablegrams which pass between the Government of India or the Governor-General and the Secretary of State is amazingly large. We may therefore confine ourselves to those instances of the exercise of his control which are provided for by the statute itself.

Under S. 41, if the Governor-General is of opinion that any measure, affecting the safety, tranquillity or interests of British India, which is proposed before the Governor-General in Council, should be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority of those present at the meeting of the Council dissent from that opinion, the Governor-General may, on his own authority and responsibility, adopt, reject or suspend the measure in whole or in part. In such a case, any two Members of the

Council may require that the matter should be reported to the Secretary of State.

Under S. 44, the Governor-General in Council, subject to certain conditions laid down therein, may not, without the express orders of the Secretary of State in Council, make war or treaty; and in the event of commencing any hostilities, or making any treaty, is required to communicate forthwith the same with the reasons therefor to the Secretary of State.

S. 45 A is one of the most important Sections dealing with the classification of Provincial and Central subjects; with the transfer, from among Provincial subjects, of subjects to the administration of the Governor acting with the Ministers; and with the allocation of revenues or moneys for the purposes of such administration. It authorises the power of making rules for the devolution of authority to the local Governments and for the employment of local Governments by the Central Governments as their agents and for the determination of the financial conditions of such agency. It also provides (a) for rules being framed for fixing the contributions payable by local Governments to the Central Government, (b) for the constitution of a Finance Department in any Province and the regulation of the functions of that Department, (c) for regulating the exercise of the authority of local Governments over the Public Services and for the settlement of doubts arising as to whether any matter does or does not relate to a Provincial subject or a Transferred subject, and for the treatment of matters which affect both—a Transferred subject and a subject which is not Transferred. These rules are subject to the proviso that they cannot authorise the revocation or suspension of the transfer of any subject except with the sanction of the Secretary of State in Council. Clause 3 of this Section provides a limitation on the powers of superintendence, direction or control exercised by the Governor-General in Council over the local Governments. That limitation is that those powers

of superintendence can be exercised only for such purposes as may be specified in the rules. Rule 49 of the Devolution Rules which have been framed under this Section shows the limitation of these powers.

The powers of superintendence, direction and control over the local Government of a Governor's Province vested in the Governor-General in Council under the Act shall, in relation to Transferred subjects, be exercised only for the following purposes, namely :

- (1) To safeguard the administration of Central subjects.
- (2) To decide questions arising between two Provinces, in cases where the Provinces concerned fail to arrive at an agreement; and (3) 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 the following provisions of the Act, namely, S 29 A, S. 30 (A), Part VII A, or of any rules made by, or with the sanction of, the Secretary of State.

Now, it must be borne in mind that the present relation of the Government of India to the local Governments and the working of the system of Diarchy depend to a considerable extent on the rules framed under this Section and also other Sections. In the final shaping and determination of these rules, the Secretary of State has had a considerable share, and although apparently he cannot interfere with the working of the Transferred departments to the extent to which he can with the Reserved departments, yet, in actual practice, it would seem that the amount of influence or control which he exercises indirectly is one which cannot be ignored. As regards this indirect influence of the Secretary of State, it makes itself felt mainly in regard to questions affecting the Public Services and the working of the Finance Department. As matters stand at present, Ministers have no power of control over members of the All-India Services, they cannot select their Secretaries from outside the Servi-

ces whose interests are protected; and if sometimes in the exercise of their power, and in the view that they take of certain rules, their choice falls on any member of a Service which does not ordinarily possess a lien on certain appointments, at once there is dissatisfaction with the Ministers, and instances are known in which the Ministers' fairness has been challenged. They have, subject to certain conditions, got the right of appeal, and the Ministers always feel that the Services being the peculiar charge of the Secretary of State, their position is far from being enviable. Rule 27 of the Devolution Rules read with Schedule III lays down the powers of sanctioning expenditure in the Transferred departments :

(1) The local Government of a Governor's Province shall not, without the previous sanction of the Secretary of State in Council or of the Governor-General in Council, as the case may be, include any proposal for expenditure on a Transferred subject in a demand for a grant, if such sanction is required by the provisions of Schedule III to these rules.

(2) Subject to the provisions of sub-rule (1), the local Government of a Governor's Province shall have power to sanction expenditure on Transferred subjects to the extent of any grant voted by the Legislative Council.

(3) The local Government of a Governor's Province shall have power to sanction any expenditure on Transferred subjects which relates to the heads enumerated in S. 72 D (3) of the Act, subject to the approval of the Secretary of State in Council or of the Governor-General in Council, if such approval is required by any rule for the time being in force.

In regard to financial matters, the Secretary of State's control, as already stated, makes itself felt indirectly. Under Rule 36 of the Devolution Rules the Finance Department in a Province must always be under the control of a Member of the Executive Council, and excepting in Bihar, everywhere else the Finance Member is a member of the Civil Service. Under the Finance Member there is the Financial Secretary who also is a member of the Indian Civil Service, but the

Ministers have been given the right to ask for the appointment of a Joint Secretary who is specially charged with the duty of examining and dealing with financial questions arising in relation to Transferred subjects and the proposals for taxation or borrowing put forward by any Minister. A perusal of Rule 37 will give some idea of the degree of dependence of the Transferred half of the Government on the Finance Department and indirectly on the Government of India and the Secretary of State who are the ultimate controlling authorities. The right of proposing an increase or reduction of taxation does not belong to the Ministers. They must submit schemes of new expenditure for which it is proposed to make provision in the estimates to the Finance Department which examines and advises upon them. The Finance Department is bound to decline to provide in the estimates for any scheme which it has not examined. It is somewhat significant that although the statute does not debar a Minister from holding charge of a Finance Department, yet that is the effect of the Devolution Rules.

Financial Control

As regards financial control, S. 21 gives power to the Secretary of State in Council, subject to the provisions of the Act and its rules, of expenditure over the revenues of India. The purposes for which the revenues of India may be applied are indicated in S. 20. By S. 22 those revenues cannot be applied to defraying the expenses of any military operations carried on beyond the external frontiers of India, except with the consent of both Houses of Parliament. It is obvious that such consent must to a very great extent depend on the view that the Secretary of State takes of their necessity or propriety.

Ordinarily, the Secretary of State may, with the concurrence of a majority of votes at a meeting of the Council of India, enter into any contracts for the purposes of the Government of India (*vide* S. 29), though this power has to a certain

extent been qualified by the appointment in recent years of a High Commissioner for India. There are still large powers of control which the Secretary of State exercises over Indian finances, but they will be best appreciated when we discuss, first, the control which he exercises over our legislation; and secondly, the duties which he discharges in relation to the All-India Services.

Legislative Control

Apart from the serious limitations imposed upon the legislative powers of the Indian Legislature and the Provincial Councils, which will be dealt with separately, the number of Sections in the Act which directly vest in the Secretary of State some power of control over the Indian Legislature is extremely small. And yet, it is impossible to realise the vast extent of his control which he exercises in this behalf without some direct knowledge and experience of the actual practice followed in regard to such matters by the Government of India and the local Governments. So far as the Government of India is concerned, there is scarcely a piece of important legislation which is not previously reported to the Secretary of State either by despatch or by cablegram, even when his previous sanction is not sought. So far as the local Legislatures are concerned, the direct control is vested not by statute in the Secretary of State, but in the Governor-General. But as in theory, and also in general practice, the Government of India is subject to the control of the Secretary of State, the latter exercises, though indirectly, to no small extent, control over the local Legislatures also.

Direct Control

S. 65 prescribes the limit of the powers of the Indian Legislature to make laws. But Clause 3 of it places a serious limitation on it. It is so important that it may be reproduced *in extenso*: "The Indian Legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any Court

other than a High Court to sentence to the punishment of death any of His Majesty's subjects born in Europe, of the children of such subjects, or abolishing any High Court."

It was under this clause that, when the Racial Distinctions Bill, giving power to Sessions Judges to pass sentences of death on European British subjects, was introduced in the Assembly in 1923, the Government of India had first to secure the previous approval of the Secretary of State who asserted his right of modifying the original proposals of the Government of India.

The second power which the Secretary of State exercises arises in connection with the Crown's power of Veto exercised under S. 69. Every Act of the Indian Legislature has to be sent by the Governor-General, after he has given his assent to it, to the Secretary of State, and then His Majesty may signify his disallowance of it. It is true that this power of Veto is very seldom exercised; and when one bears in mind that, in theory at any rate, this power exists in relation to the Self-Governing Dominions, no exception can constitutionally be taken to it. It is obvious that the Crown must depend upon the advice of its constitutional advisers

Special Powers of Legislation of the Governor-General in Council and the Governor-General

The Governor-General in Council has a special power of legislation by passing Regulations for the peace and good Government of certain minor administrations, such as the N.-W. Frontier Province, Ajmer-Merwara and Coorg. This power is exercised under S. 71 and is obviously subject to the control of the Secretary of State in Council or the Secretary of State (*vide* clauses 3 and 4).

Then the Governor-General alone, as distinguished from the Governor-General in Council, has power to make Ordinances for a period of not more than six months for the peace and good Government of British India or any part thereof; and this power too is subject to like disallowance a₃

an Act passed by the Indian Legislature. In actual practice, however, even though the Governor-General may issue an ordinance without previous reference to the Secretary of State, he would lose no time in reporting it to the Secretary of State.

Local Legislatures

The powers of the local Legislatures are specified in S. 80 A. Under clause 3 of the Section, a local Legislature has not the power, without the previous sanction of the Governor-General, to make, or take into consideration, any one of the laws specified in the sub-clauses attached thereto. Under S. 82, all Acts of local Legislatures are submitted to the Secretary of State for the purposes of the Veto of the Crown. These provisions have already been commented upon above, and do not call for any fresh remarks.

It is, however, important to bear in mind the rules framed under S. 80 A (3) (h), which are technically known as the local Legislatures' Previous Sanction Rules. A schedule of protected Acts is attached to these rules, and none of those Acts or those contemplated by Rule 2 (1) can be repealed or altered by a local Legislature without the previous sanction of the Governor-General. Equally important are the rules framed under S. 81 A (1) of the Act which are known as the Reservation of Bills Rules. These Rules provide for (1) the compulsory reservation of certain Bills for the consideration of the Governor-General which have not been previously sanctioned by him, and (2) the optional reservation of certain other Bills under similar conditions. One general remark may suffice, and it is this: That though the Secretary of State does not come in anywhere directly, the Governor-General's subordination to him gives him a powerful voice, if not a palpable control, in regard to Provincial legislation.

To sum up: (1) S. 2 of the Government of India Act gives the Secretary of State plenary powers of superintendence, direction and control over the Government of India

and its revenues and over all officers appointed or continued under the Act. (2) Constitutionally, he is not and cannot be responsible to the people of India but to Parliament. Other Sections which have been noticed above give him specific administrative, financial or legislative control over the Government of India or the local Governments and the Indian and the local Legislatures. (3) Such control is in regard to certain matters direct and in regard to other matters indirect. (4) The extent of his direct control is limited. The Sections dealing with it are not many. The extent of his indirect control is not so apparent, but in point of fact is very large. It is impossible to have an accurate idea of the degree and extent of his indirect control without a direct and personal knowledge of the working of the administrative machinery. It is, however, obvious that so long as the Secretary of State owes responsibility to Parliament for this country, he should be competent to exercise his power of superintendence, direction and control in regard to every field of administration, excepting where the exercise of such power is barred by express provisions of the statute or the statutory rules or by convention. As regards conventions, assuming that there is an appreciable number of them in existence, such conventions must be of a very fluid and undefined character, so long as the Constitution remains what it is.

It is obvious, therefore, that complete Responsibility in the Government of India or the autonomy of the Provinces is wholly out of question without this power of the superintendence, direction or control of the Secretary of State being abolished; and the abolition of this power is obviously impossible without the direct intervention of Parliament. In one word, Parliamentary legislation alone can achieve that end.

But, it is urged, it is possible to achieve advance by the exercise of the rule-making power. This position requires

careful examination.

There is provision made for the making of rules for the relaxation of the control of the Secretary of State by S. 19 A. Before examining the provisions of S. 19 A, it is necessary to call attention to the provisions of S. 131 (1): "Nothing in this Act shall derogate from any rights vested in His Majesty or any powers of the Secretary of State in Council in relation to the Government of India." It is true that the authority spoken of here is the Secretary of State in Council and not the Secretary of State. But the Secretary of State in Council is the very authority spoken of in S. 19 A. An interesting question at once arises: How can S. 131 be reconciled with S. 19 A? Assuming that certain rules are framed under S. 19 A, which result in the relaxation of the control of the Secretary of State or the Secretary of State in Council, would it not then be open to the Secretary of State in Council to say that notwithstanding the rules framed under S. 19 A, his powers remain unaffected by virtue of S. 131? If he can take shelter behind S. 131, the relaxation under S. 19 A cannot constitutionally amount to very much. It will be observed that S. 19 A of the Government of India Act provides for a special procedure by which the relaxation of the control of the Secretary of State may be brought about. The rules framed under that Section require the previous approval of both Houses of Parliament. But it is clear that the relaxation contemplated under S. 19 A cannot be construed to mean abandonment or extinction. It is difficult to hold that any rules framed under S. 19 A, howsoever liberal or wide they may be, can override altogether the statutory powers of the Secretary of State (*vide* S. 131). With regard to S. 19 A, the position seems to have been cleared by a speech of Sir Malcolm Hailey, delivered in the Legislative Assembly on 18th July, 1923. In that speech, he said that there were two

processes by which advance could be achieved in the direction of waiving control. The first process was the process of convention, under which, he said, the statutory control of the Secretary of State and therefore of Parliament still remained. The second process was by making rules under S. 19 A, and that amounted to a statutory divestment of control. Sir Malcolm held that this would be wholly inconsistent with the Constitution. For if Parliament were to be asked to divest itself of control over any particular subject, it seemed to him that it could only do so when we had Responsible Government within the Central Government. To use his own words: "I maintain, therefore, that if we are to be correct in the maintenance of constitutional form, the Secretary of State should not divest himself of authority under S. 19 A, until we have made that change in our Constitution, as a consequence of which certain subjects can be handed over to the control of the Indian Legislature; in other words, until they are administered by Ministers." Now this interpretation of S. 19 A was challenged by Mr. Samarth and Dr. Gour and some other Members of the Assembly, but Sir Malcolm vigorously maintained his contention. It may reasonably be assumed that Sir Malcolm was not speaking for himself, but for the entire Government of India of which he was the Home Member, and presumably with the approval of the Secretary of State himself. This interpretation of S. 19 A has not yet been repudiated by the Government of India or by the Secretary of State, and if it still holds the field, it is obvious that any progress by relaxation or waiving of control under S. 19 A is out of the question. On the other hand, independently of Sir Malcolm Hailey's interpretation, let us examine S. 19 A closely, and see how far progress can be achieved by taking action under it.

The first part of the Section gives power to the Secretary of State in Council to regulate and restrict by making rules the exercise of the powers of superintendence, direction and

control vested in the Secretary of State or the¹ Secretary of State in Council. This he must do to give effect to the purposes of the Government of India Act of 1919. The words "regulate and restrict" necessarily exclude the idea of divestment; in other words, howsoever he may relax his control, a certain amount of it must remain in his hands. The words, "in order to give effect to the purposes of the Government of India Act 1919," are in the nature of words of limitation. Now, it is clear that whatever else may have been the purposes of the Government of India Act of 1919, the establishment of Responsibility in the Central Government was not one. The expression "purposes" should not be confused with the distant objective of Responsible Government; for if we study carefully the Government of India Act, we find that there is no provision there by which the Constitution of the Government of India can automatically be affected in the slightest degree. The Government of India must therefore remain responsible to Parliament until Parliament chooses to divest itself of its power to control the Government of India through the Secretary of State and to clothe the Indian Legislature with that power. Assuming, therefore, that the Secretary of State relaxes his control, the utmost that it may lead to is a certain amount of facility in the way of the Government of India doing certain administrative things without the previous or subsequent assent or approval of the Secretary of State. But the Government of India will nevertheless continue to owe responsibility to Parliament, and as Parliament constitutionally deals with subordinate Governments through Ministers of the Crown, it is obvious that the Secretary of State must continue to exercise certain functions *vis à vis* the Government of India and Parliament, and thus instead of his control being direct, his influence, though indirect, will be none the less powerful. It would thus appear that any real *constitutional advance* cannot be achieved by the rule-making

power under S. 19 A. On the contrary, it is more than likely that the removal of the control of the Secretary of State, unaccompanied by the substitution of control of the Indian Legislature, can only lead to a further increase of the *unresponsible* powers of the Government of India.

The second part of S. 19 A provides for rules being made for subjects other than Transferred subjects, and such rules require the approval of Parliament. In respect of the relaxation which this part and the third part of the Section obviously suggest, the dominant if not the sole idea was to provide for the relaxation of control in regard to Provincial subjects. The third part relates to the framing of rules for such relaxation in respect of Transferred subjects and such rules may be annulled by His Majesty in Council if an address is presented to His Majesty by either House within 30 days of the rules being laid before both Houses.

Now, apart from usage, practice or convention, the Secretary of State exercises three kinds of control—administrative, financial and legislative. So far as his administrative and financial control are concerned, much the most important part of such control is exercised in regard to the existing All-India Services, or to certain high appointments, or to the Army. Is it conceivable that in regard to any one of these matters the Secretary of State can lawfully divest himself of his powers of control? Upon a superficial view of this Section, it is possible to build up high hopes of advance, but when the nature and scope of it are carefully borne in mind, and when it is read along with certain specific Sections of the Government of India Act relating to the All-India Services, or to certain statutory powers and duties of the Secretary of State, it becomes clear that to build up hopes of advance on this Section is to build upon a foundation of sand.

The India Council

No account of the Secretary of State would be complete without a reference to the Council of India, "which shall consist of such number of members, not less than eight and not more than twelve, as the Secretary of State may determine" [*vide* S. 3 (1)]. The law requires that half the number of members of the Council 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 ordinary term of office of a member of the Council is five years, though for special reasons it may be extended (*vide* S. 3). The right of filling any vacancy in the Council is vested in the Secretary of State and no member can be removed except by an address from both Houses of Parliament to His Majesty.

The Council of India is required, under the direction of the Secretary of State and subject to the provisions of the Act, to conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India. The Council meets from time to time, but is bound to meet at least once a month (see S. 8), and is presided over by the Secretary of State who has also the power of vote. The Secretary of State may appoint a member as the Vice-President. The Secretary of State has the power to constitute Committees of the Council of India for the more speedy transaction of business (*vide* S. 10). Questions are discussed at meetings of the Council, and if there is a difference of opinion on any question, except a question with respect to which a majority of votes at a meeting is declared to be necessary, the decision of the Secretary of State is final. The President has a casting vote (*vide* S. 9).

The legal powers of the Council are given in greater detail in Part II, Ss. 21, 23, 25, 26, and Part III which deals

with property, contracts and liabilities (*vide* Ss. 28, 29, 30, 31, 32).*

Briefly put, the Council is associated with the Secretary of State for the purposes of control and expenditure over the revenues of India (*vide* S. 21), the disposal of the securities held by, or lodged with, the Bank of England (*vide* S. 25), the disposal of any real or personal estate for the time being

*The East India Company, as is well-known, ceased to be a trading Company in 1833 and thenceforward it held the Government of India in trust for the Crown. By Acts 21 and 22 Vict. C. 106, the East India Company was put an end to, and all the property and assets of the East India Company were vested in the Crown in trust for the Government of India. The Secretary of State for India in Council, *vide* Kinloch *versus* the Secretary of State for India in Council, 1882

The East India Company had a dual capacity. It exercised sovereign power and was in addition a trading organisation. These two functions of the East India Company must be kept distinctly apart in order to appreciate the present position of the Secretary of State. So far as its civil liability arising out of its trading capacity is concerned, the first case which dealt with it was the case of *Moodaly versus Norton*, 1785, 2 Dick, p. 652. In his judgment, Kenyon M: R. put it as follows. "It had been said that the East India Company has a sovereign power: be it so; but they may contract in a civil capacity: and it cannot be denied that in a civil capacity they may be sued." See as to the extent of the liability of the East India Company and a *fortiori* of the Secretary of State, the cases of *P. and O Steam Navigation Company versus the Secretary of State for India*, 1861, 2 Bom H. C. app A; *Seth Dunraj versus Hankin* and the Secretary of State for India 1, N. W. P. Report 118, *Nogin Chander Dey versus Secretary of State*, I. L. R. 1 Cal p 11; *Jehangir versus Secretary of State for India in Council*, I. L. R. 27 Bom. p 189. So far as its liability for its sovereign acts is concerned, the true doctrine seems to be stated in the case of *Secretary of State for India in Council versus Haribhauji*, 1 L.R. 4 Mad. 344, 5 Mad 273. That rule is as follows: "Where an Act complained of is professedly done under the sanction of Municipal Law, and in the exercise of powers conferred by that law, the fact that it is done by the sovereign power, is not an act which could possibly be done by a private individual, does not oust the jurisdiction of the Civil Courts."

It will thus appear that the Secretary of State's legal position in relation to the subjects of the King is very much unlike the position of the Secretary of State for the Colonies. For although S. 20 of the Government of India Act vests the revenues of India in the Crown, their expenditure, both in British India and elsewhere, is subject to the control of the Secretary of State in Council, and inasmuch as the Secretary of State performs many functions and enters into contracts and liabilities in England, it has been considered necessary to constitute him into one legal entity to sue for the enforcement of rights which he may claim under those contracts, and be-sued for such liabilities as he incurs in England or in India. This position would seem to be inevitable, so long as India does not get the status of a Self-Governing Dominion, and it is obvious that no rule-making power can affect the present position.

vested in the Crown for the purpose of the Government of India and the raising of money by way of mortgage (*vide* S. 28), the entering into contracts (*vide* S. 29) and the bringing of suits or the defending of suits (under S. 32).

This Council came into existence by virtue of the legislation of 1858. "The legal powers of the Council" suggest that it is to be regarded as in some sort the successor of the Court of Directors; but the practical *raison d'être* of the Council of India is that its members provide a Parliamentary Minister, who is usually without personal knowledge of India, with experience and advice upon Indian questions. The Joint Parliamentary Committee, in their note on clause 31 of the Government of India Bill, said that they were not in favor of the abolition of the Council of India. They think that, at any rate for some time to come, it will be actually 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 the period of 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.

It will thus be observed: (1) The period of service has been reduced in the present Act from seven years to five years [Ss. 3, 4 (2)]. The number of Indians has been increased to three. (3) So far as is known, the portfolio system has not yet been introduced. Indian opinion has for a long time

past disfavoured the continuance of this Council, as it has appeared to it more in the nature of a bar to progress. The retired Indian officers, generally speaking, who are appointed to the Council, are men who came out to India in different circumstances, and whose entire training and experience disqualify them from entering into the new spirit, or adjusting themselves to the altered conditions of administration, or appreciating the new political forces which have come into operation during the last few years. As regards the Indian members, actual experience has shown that at the age at which they are required to be in residence in England, they find it extremely difficult to stand the rigor of the English winter, with the result that during the last several years, two of them at least have spent considerable portions of the year in India; and there have not been wanting occasions when not a single Indian member has been present in England.

Whatever may have been the value of so many checks on the powers of the Government of India, there seems to be hardly any sound reason for continuing them now, when there is so much demand for the liberation of the Government of India from the control of the Secretary of State and an accompanying increase of the powers of the Indian Legislature. Indian opinion therefore would not only welcome but insist on the abolition of this Council, which is either superfluous or acts as a drag on the progress of India.



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THE
INDIAN CONSTITUTION

A NOTE ON ITS WORKING

PARTS IV—V

BY

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THE INDIAN CONSTITUTION.

PART IV

THE GOVERNMENT OF INDIA

The constitutional position of the Governor-General in Council is laid down in S. 33 which provides: "Subject to the provisions of this 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."

This Section may be taken as providing generally for the civil and military Government of India, which is subject to certain conditions delegated to the Governor-General in Council conditioned by the provisions of this Act, and subject also to the subordination to the Secretary of State. It would be interesting to compare it with the statutes governing some of the Dominions.

CANADA

Section 9 of the British North America Act 1867 (30 Vict. Ch. 3) provides as follows:

"The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen."

Section 15: "The Command-in-Chief of the Land and Naval Militia and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen."

AUSTRALIA

Section 61 the Commonwealth of Australia Constitution Act, 1900, (63 and 64 Vict. Ch. 2) provides: "The Executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's repre-

representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth."

Section 68 (*Ibid*) provides: "The Command-in-Chief of the Naval and Military Forces of the Commonwealth is vested in the Governor-General as the Queen's representative."

SOUTH AFRICA

Section 8 of the South Africa Act, 1909 (9 Ed. VII) provides: "The Executive Government of the Union is vested in the King, and shall be administered by His Majesty in person or by a Governor-General as his representative."

Section 9: "The Governor-General shall be appointed by the King and shall have and may exercise in the Union during the King's pleasure, but subject to this Act, such powers and functions of the King as His Majesty may be pleased to assign to him."

Section 17: "The Command-in-Chief of the Naval and Military Forces within the Union is vested in the King or in the Governor-General as his representative."

Now, it will be noticed from the quotations given above from the Colonial statutes that, according to their Constitution, the Crown is an integral part of the Executive Government in the Dominions. In India, while no doubt S. 1 of the Government of India Act provides "that the territories for the time being vested in His Majesty in India are governed by and in the name of His Majesty the King-Emperor of India," the Crown does not find a place in S. 33. The reason for that is obvious. India not being a Dominion with Responsible Government, it is governed by and in the name of His Majesty, but the Executive Government in India, namely, the Governor-General in Council, has only certain delegated functions of superintendence, direction and control, subject to the superior control of the Secretary of State who, in his turn, may be treated as the agent of Parliament. As is stated in para. 33 of the Report on Indian Constitutional Reforms:

"It is open to Parliament to exercise control either by means of legislation, or by requiring its approval to rules made under delegated powers of legislation; or by controlling the revenues of India; or by exerting its very wide powers of calling the responsible Minister to account for any matter of Indian administration." Some of these things, however, Parliament does not do. The subordinate position of the Government of India is very pointedly brought out in para. 34 of the Report with special reference to the despatches of the Secretary of State in reply to Lord Mayo's and Lord Northbrook's Governments in India. Howsoever annoying the speech of Lord Curzon and the incidents connected with Mr. Montagu's resignation from the Cabinet in 1922 may have been, his description of the Government of India "as a subordinate branch of the British Government 6,000 miles away," was, from the constitutional point of view, perfectly correct.

The Position of the Commander-in-Chief

The second important point which needs to be noticed is that the Command-in-Chief of the Army is vested in the Crown or the Governor-General. All that S. 33 provides is that the military Government of India is vested in the Governor-General in Council. The Act itself recognises the existence, though it does not provide for the appointment of a Commander-in-Chief.

Before the Act of 1919, it was open to the Secretary of State in Council to appoint the Commander-in-Chief to be an extraordinary Member of the Governor-General's Executive Council (*vide* S. 37, Government of India Act, 1915). The old Section has been replaced by the present S. 37 which simply says that if the Commander-in-Chief is a Member of the Governor-General's Executive Council, he shall have rank and precedence in the Council next after the Governor-General. The present Act does not expressly provide for the appointment of the Commander-in-Chief to the Governor-

General's Executive Council. As a matter of policy, it may be urged that the Commander-in-Chief should cease to be a Member of the Executive Council. Assuming that the Executive Council should continue, the Army Department should be in the charge of a civilian Member. Constitutionally, it is not right that even in a semi-developed Constitution like India's the administrative head of the Army should participate in civil administration. The Esher Committee did not approve of the old system of having a Military Member or even a Supply Member. On the other hand, they recommended the appointment of a civilian Surveyor-General of Supply. The arguments for and against the appointment of a civilian Member are very well brought out in the debate on the fifteen resolutions on the Esher Committee's Report, raised by Sir Sivaswami Aiyar in the Legislative Assembly, on 28th March, 1921. Sir Sivaswami Aiyar said:

Now, upon this subject the Esher Committee's Report is singularly meagre and unconvincing. They say that there is no Responsible Government in India as in England, and that the differences of conditions between India and England do not warrant the adoption of the English system. Here I would like to point out how the question of Responsible Government affects the matter at all. Where you have a system of Responsible Government, it is necessary that you should have at the head of the Government Army administration a Minister who is responsible to Parliament; but while Responsible Government requires that the administration of the Army should be entrusted to a Minister responsible to Parliament, the absence of Responsible Government does not preclude the adoption of the same system. It does not follow that where there is no system of Responsible Government, it is wrong to entrust the ultimate control or administration of the Army to a civilian Member of the Government. That is a logical distinction which it is necessary to bear in mind. In fact, in other places, the Committee has often stated that it is desirable to assimilate the system in India to that in England. Both the majority and the minority of the Esher Committee, on questions on which they have differed, have admitted the desirability of assimilating the two systems. But where they do

not like to assimilate the two systems, they rely upon differences of conditions and the presence or absence of Responsible Government. Beyond the *ipse dixit* of the Esher Committee upon this question, I find no reason which satisfies me that the absence of Responsible Government must forbid the vesting of the ultimate control of military administration in a civilian. On the other hand, it would be consistent with the approach of India to a Self-Governing status, and I would also refer you to a passage from the work of an eminent constitutionalist as to the advantage of this system. I refer to Sir William Anson. At page 208, Volume 2, Part 2, this is what he says: "The mode in which the system works may now be considered, and the relations of the Secretary of State to Parliament and to the Army. His relations to Parliament are these. First, he must every year ask Parliament to legalise the Standing Army and the rules necessary for its discipline, and to vote the money required for its efficiency in all branches of the Service. And next, he must answer to Parliament, when called upon to do so, for the exercise by the Crown of its prerogative in respect of the Army. Aided by the Financial Secretary, he considers the demands framed by the Military heads of the departments represented on the Council, and he must endeavor to reconcile the requirements of the Army for money with the requirements of the Treasury for economy. The presence of Military members at the discussions on the questions of supply, for which the whole of the Army Council is responsible, will tend to prevent that sharp antagonism which formerly existed between the representatives of the Service and the Ministers responsible to Parliament for the cost of the Army. But in the end the estimates for the various branches of the Service must depend upon the decision of the Cabinet which, in forming its decision, is sure to keep in view the probable wishes of its majority in the House of Commons and in the country. The Treasury loves economy for its own sake; the Cabinet loves economy because economy is popular, but it is collectively responsible, with the Secretary of State, for the condition of the Army, and therewith for the security of the Empire. In the end, perhaps, the House thinks that the estimates are extravagant, while the Army think they are sufficient. But there can be no doubt that the House is more ready to grant the sums demanded when the demand is made by a civilian after passing the criticism of the Treasury and the Cabinet, than it would be if the demand were made by a military expert who might be supposed to think no money ill-spent which was spent on his department.

Mr. Seshagiri Aiyar, who took the opposite view, expressed himself as follows :

I am not prepared to accept the suggestion that there should be a civilian as the Member of the Executive Council, and that the Commander-in-Chief should be entirely outside this body. On the other hand, the better course would be to give the Commander-in-Chief, as has always been the case, a voice, a predominant voice, in matters of peace and war and in all matters relating to military policy. He is not likely to trouble the Executive Council often, and I think he would be content to come here only whenever these important questions are discussed.

There is one passage in the quotation which Sir Sivaswami Aiyar read, which struck me as being important; the passage was from Sir W. Anson. Sir W. Anson said that if you have a military man to come for money, it is likely that he will not get it; but if he is a civilian, he is sure to get the money. I think that should certainly be a recommendation to this Assembly to have in the Executive Council only a Commander-in-Chief to whom we might refuse money, and not a civilian Member whom we might find it difficult to refuse.

There is one other matter which must be taken into account, and that is this. As matters at present stand, the Commander-in-Chief will have his pay, his full pay, and he will have his staff; and if you get a civilian Member in addition, the country will have to bear additional expense; whereas if you have a Commander-in-Chief who is also a Member of the Council, the country will be spared that expense. That is an argument which ought, I think, to commend itself to Mr. Hailey and to this Assembly as well.

Hitherto, the Commander-in-Chief has been a Member of the Executive Council, responsible for peace and war and responsible for military policy. Has Sir Sivaswami Aiyar assigned sufficient reasons for initiating a departure from the existing rule? In my opinion, Sir, the reasons which he has given are not sufficient for making a departure. He has said that the organisation of the Army in India should approximate as far as possible to that in England. But is it possible to make such an approximation so long as we have a Commander-in-Chief in India? There is no Commander-in-Chief in England; there is only the Secretary of State for War at the head of the Army Department assisted by an Army Council. Here we have a Commander-in-Chief who is an

experienced and superior officer; and he is assisted, I think, by an Advisory Board consisting of his subordinates. Now, Sir, let us look at the question more closely. Supposing there is to be an Army Council, who is to be the President of it, the civilian Member or the Commander-in-Chief? Supposing we say that the Commander-in-Chief is not to be a Member of the Executive Council, and that a civilian Member should be appointed: will the Commander-in-Chief be content to remain in the Army Council under the civilian President? It is altogether unthinkable. If that is unthinkable, if you have a civilian Member in the Executive Council, and if you have a Commander-in-Chief who is head of the Army Council, there will constantly be differences of opinion, and I think that this arrangement will not lead to harmony; it will lead to considerable friction between the two representatives. Under these circumstances, so long as there is a Commander-in-Chief who occupies the peculiar position he does in this country, there is no use in saying that there should be approximation between the position of the Army in India and of the Army in England. It may be said, Sir, that so far as the Council is concerned, if it is put on a statutory basis, for example, if Letters Patent are issued for the constitution of the Army, or if, by legislation in this Assembly, an Army Council is constituted with a civilian Member at its head, the position would become better. I do not share in this optimism. At present the position is that the Advisory Board, which I take it would ultimately become the Army Council, consists of persons who are entirely subordinate to the Commander-in-Chief.

It is somewhat significant that Sir Godfrey Fell, who spoke for the Government, was silent on this point.

The Governor-General appoints a Member of the Executive Council as Vice-President (S. 38) and the Executive Council meets at such places as he appoints. Reference has already been made to the procedure in case of difference of opinion between the majority of the Executive Council and the Governor-General. But excepting where the Governor-General overrides the Executive Council in respect of any measure affecting the safety, tranquillity or interests of British India, he is ordinarily bound by the opinion

and decision of the majority of those present, and if they are equally divided, the Governor-General, or the person presiding over the Executive Council, has a second or casting vote (*vide* S. 41). The Governor-General has been given power to make rules and orders for the more convenient transaction of business in his Executive Council. These rules are of a confidential character and are only supplied to the Members of the Executive Council and to the Secretariat.

As already pointed out, originally the Council worked together as a Board, but Lord Canning introduced the portfolio system, (*vide* para. 38 of *The Report on Constitutional Reforms*). The result of the system is that certain departments are grouped together and placed in charge of every Member. It must, however, be borne in mind that the Secretaries have a direct access to the Governor-General, and if a Secretary so chooses, he can take any file to the Governor-General and obtain his orders without the intervention of the Member. If there is a difference of opinion between the Member and the Secretary, the Secretary has the right to lay the matter before the Governor-General. It is important to bear in mind the constitutional position of the Secretary. The Secretary is not a Secretary to the Member but to the entire Government of India. And it is his duty to keep the Governor-General, who is the head of the Government, well acquainted with the progress of work and the nature of questions that are engaging the attention of the department concerned.

What is the constitutional relation between the Governor General and his Executive Council? Is it exactly that of a Prime Minister and his colleagues? Or, is it that of a Chief of the Government and colleagues who, in actual working, are his subordinates? Or, is it a mixture of both? The answers to these questions depend not merely on the words of the statute in S. 41, because that relates only to matters which come up before the Executive Council, but also on the entire

course of the conduct of business under the portfolio system, the personal relations that prevail between the Governor-General and the Members of the Executive Council, on the one hand, and between him and the Secretary of State, on the other.

The Governor-General's Executive Council differs from a Cabinet in one essential respect. In a Cabinet, ordinarily the Members composing it, including the Prime Minister, are members of the same political party with a common policy and common political ideas and ideals. Even in the case of a coalition, there is a working agreement on certain matters in regard to which persons of different political parties agree to work together. Besides, in a Cabinet, though the selection of the Prime Minister rests with the Crown, the selection of the other Ministers rests with the Prime Minister. In the case of the Governor-General's Executive Council, the Governor-General may be a Conservative, one Member may hold advanced views on internal politics, another Member may hold views of just the opposite character. Besides, it may very well happen that the Governor-General may have to deal with Members in the selection and appointment of whom he has had no hand. Theoretically it is true that the responsibility of the Governor-General's Executive Council is collective, and it must act as a united whole in relation to the outside world. But in point of fact, it may very frequently happen that the decision of the Governor-General in Council represents the views of only a section of it. It is true that even in a Cabinet consisting of Ministers consisting of the same political school, a spirit of compromise is necessary to ensure the success of the Cabinet. It may be assumed that the same spirit is generally prevalent in the Executive Council of the Governor-General. But there are two essential differences. In the case of a Cabinet, there can be no question, generally speaking, of

a compromise on a question of principle. Questions of compromise arise only with respect to the degree and extent of the application of a well-understood principle of the party to the circumstances of a particular case. Again, a compromise in the case of a real Cabinet may be necessitated by a consideration of the effect which a particular measure of the Cabinet may produce on its very existence, either on the floor of Parliament or in the country at large. In the case of the Executive Council of the Governor-General, it is impossible to postulate a community of political principle or political opinion, and the compromise arrived at in the Executive Council does not necessarily imply that the principle underlying a particular measure is accepted by all the Members composing the Council. It may not unoften mean that the principle underlying it is the principle only of some Members, and the extent to which it has been applied is the result of a necessary compromise. Besides, where the existence of a Cabinet cannot be imperilled by an adverse vote of the Assembly or Parliament, the compromise adopted need not necessarily have any relation, though sometimes it may have, to the views of the Legislature. Of course as in the case of a Cabinet, so in the case of an Executive Council, it is open to a Member to tender his resignation of office. But here again the resignation of a Member of the Executive Council has not the same political effect as the resignation of a Member of the Cabinet. Even assuming that a Member of the Executive Council on resigning his office on a question of policy may be allowed the indulgence of explaining the reasons of the step to the Legislature, he has, unlike a Member of the Cabinet, no electorate to go to, to obtain its verdict. It is conceivable that when Sir Sankaran Nair resigned on the Panjab issue, his policy and not the policy of his colleagues would have been endorsed by a popular House, or by his electorate, if that were possible in his case. But as it

was, it was open to the Government here and to the Government in England to treat his resignation as merely indicative of the strength of his own feelings on the question. Again, we must not lose sight of the fact that the decisions of the Executive Council do not always embody the independent conclusions of the Members composing it. They may be and are at times influenced by the expression of opinion of the Secretary of State.

The Governor-General

S. 34 provides for the appointment of the Governor-General of India by warrant under the Royal Sign Manual. Since 1858, he has also been called and treated as Viceroy of India. Although the statute does not appoint a time-limit for his tenure, yet in actual practice he holds office for five years, unless the term is extended, as was done in the case of Lord Curzon.

The powers of the Governor-General are mainly derived from the statute. But there are certain powers and prerogatives which, as the representative of the Crown, he exercises. Some of these powers are laid down in his warrant of appointment which has a statutory basis (*vide* S. 34), and should be distinguished from the Instrument of Instructions. The most important of these functions is the exercise of the Royal Prerogative to grant pardons, free or conditional, to offenders convicted by Courts of Justice. This power was expressly granted to Lord Chelmsford in the Royal Warrant appointing him, and has also been granted to Lord Reading.

The Governor-General's statutory powers are administrative, financial and legislative.

His administrative powers either relate (1) to the appointment of persons to certain offices, or (2) to the maintenance of peace and order in the country, or (3) to certain other administrative acts. He has power to appoint (a) the Vice-President of his Executive Council (S. 38); (b) Council Secretaries (S. 43 A); (c) Lieutenant-Governors (S. 54); (d)

the President of the Council of State (S. 63 A 2); (e) the President of the Legislative Assembly (S. 63 C 1). Among other administrative powers which he exercises are the power (1) to call meetings of the Executive Council at such places as he may appoint (S. 39-1); (2) to override his Executive Council in respect of any measure affecting the safety, tranquillity or interests of British India where the majority of the Members present at a meeting of the Council are of a different opinion; (3) to summon meetings of the Legislature; (4) prorogue the sessions (S. 63 D), and to dissolve either Chamber of the Legislature, or to extend its ordinary term (S. 63. D); and (5) after such dissolution to call for a General Election.

His principal power in regard to financial matters is prescribed by S. 67 A (2), which says that no proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General. It is somewhat significant that the preceding clause speaks of the Governor-General in Council and not of the Governor-General alone. That clause is as follows: "The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both Chambers of the Indian Legislature in each year." Whether this difference between the two clauses is by accident or by design it is difficult to say; but there does not seem to be any appreciable reason why proposals for appropriation should require the recommendation of the Governor-General alone.

As regards the legislative powers of the Governor-General, they are mainly of the following description: (1) His previous sanction is necessary for the introduction, at any meeting of the Indian Legislature, of any measure affecting

(a) the public debt or revenues of India or imposing any charge on the revenues of India; or

(b) the religion or religious sites and usages of any class of British subjects in India; or

(c) the discipline or maintenance of any part of His Majesty's Military (Naval or Air) Forces ; or

(d) the relations of the Government with foreign princes or States ;

or any measure

(i) regulating any Provincial subject, or any part of a Provincial subject, which has not been declared by rules under this Act to be subject to legislation by the Indian Legislature, or

(ii) repealing or amending any Act of a local Legislature; or

(iii) repealing or amending any Act or Ordinance made by the Governor-General" [S. 67 (2)].

He has the power to certify, when either Chamber of the Indian Legislature refuses leave to introduce, or fails to pass in a form recommended by him, any Bill, that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof (S. 67 B). It was under this section that the Princes' Protection Bill was certified by the Governor-General in 1922 and the Finance Bill raising the Salt Duty in 1923.

He exercises his Veto over Bills passed by the Indian Legislature under S. 68.

He can promulgate Ordinances for the peace and good Government of India for a space of not more than six months (S. 72).

His previous sanction is necessary to the making or taking into consideration by a local Legislature of a certain class of Bills which are specified by S. 80 A 3. He exercises his Veto with regard to Bills passed by a local Legislature under S. 81.

When a Bill passed by a local Legislature is reserved by the Governor for the consideration of the Governor-General, he may within six months either give assent to that Bill or withhold assent (*vide* S. 81 A).

He may also reserve any Bill passed by a local Legislature for the signification of His Majesty's pleasure.

It will be noticed that, excepting the power of Veto, and probably also the power exercised in regard to reserved Bills, the other powers of the Governor-General are much wider than those exercised by the Governor-General in the Dominions who is bound to follow the advice of his Ministers. On the contrary, in India, the Governor-General has got the power, in certain circumstances, of overriding his Executive Council. There are historical as well as other reasons for this. To quote from the Report on Indian Constitutional Reforms :

Originally the Council of the Governor-General worked together as a Board and decided all questions by a majority vote. The difficulties which Warren Hastings encountered from this arrangement are notorious. Lord Cornwallis insisted on being given enlarged powers, and to meet his views the provision which now enables the Governor-General to override his Council and to act on his own responsibility in matters of grave importance was inserted. The power has rarely been exercised, though Lord Lytton used it in 1879 to abolish partially the import duty on English cotton goods.

The vesting of some of the powers mentioned above in the Governor-General exclusively, for instance, the power of stopping legislation of certain kinds such as mentioned in S. 67, is clearly due to the fact that by reason of his eminent position as the first servant of the Crown in India, he is the best person qualified to carry out the policy of religious neutrality. Similarly, it may be held that there are certain other reasons of State for such exclusive power in regard to the public debt or public revenues or the Military Forces or questions of Foreign Policy. The changes effected in the system of Government in the Provinces also account for his special powers under S. 80 A with regard to Provincial legislation.

In any system of Responsible Government all these powers, excepting the power of Veto and the power with regard to reserved Bills, will have to go.

The Governor-General in Council

The Members of the Governor-General's Executive Council are also appointed by His Majesty by warrant. There is no number fixed, but it is open to the Crown to prescribe the number of Members, which can presumably be done on the constitutional advice of his Ministers. Three at least of the Members must be persons who have been for at least ten years in the service of the Crown in India. This is a most important provision, and unless it is changed or modified by an Act of Parliament, it would be impossible to convert the present Council into a body of Responsible Ministers. Not only does it give a security to the servants of the Crown in India in that it provides for their substantial representation in the Executive Council, but it also seeks in a pre-eminent degree to provide for the representation of the point of view of the Permanent Services in India. It must be borne in mind that it does not say that these three Members must be Members of the Indian Civil Service! all that it does provide for is that they should have put in ten years' service under the Crown of India. Service under the Crown in England will not count at all for the purpose of eligibility under this clause. In actual practice, in the vast majority of cases, these appointments go to the members of the Indian Civil Service, inasmuch as they bring with them the special experience and knowledge of administration which may be taken to be the main reason for this provision. In addition to such three Members of the Council, there must be one who is a barrister of England or Ireland or an advocate of Scotland or a pleader of a High Court in India of not less than ten years' standing. The disqualification of pleaders to hold this appointment was removed by the Act of 1919. The Lawyer Member has always been in charge of the legal portfolio, though he need not be, according to the letter of the law.

If any Member of the Council other than the Commander-in-Chief is at the time of the 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.

An important clause was added by the Act of 1919 by which "provision may be made by rules under this Act as to the qualifications to be required in respect to the Members of the Governor-General's Executive Council in any case where such provision is not made by the foregoing clauses of this Section". It is quite clear that this new clause can apply only to Members other than those who have served the Crown for ten years in India and to the Law Member. What exactly is the meaning of the word "qualifications" in this clause? The same word has been used with reference to electors and candidates seeking election to the Council of State or the Legislative Assembly in S. 64 (1). It is not difficult to understand the meaning of this word in this Section in regard to election matters. It is a word of well-understood meaning (*vide* Stroud's *Judicial Dictionary*, 2nd Ed. p. 1243). But having regard to the context of S. 36, it does not seem to be fair to interpret this word in a sense more or less similar to that in which it has been used in the other Section. For instance, would it be constitutional to lay down a rule that one of the necessary qualifications under this clause to an appointment to a membership of the Executive Council should be the possession of 3,000 acres of land or payment of land revenue or incometax to the extent of Rs. 50,000? Even if such a rule could be legal, it would do violence to the spirit of the Constitution, as it would deprive the State and the tax-payer of the services of many persons of proved ability and character who might otherwise be eligible. It is open to very serious doubt as to whether a rule could be framed under this clause prescribing the number of Indians. The whole structure of the Government of India Act is inconsistent with the prescribing of any racial or religious qualification for the holding of

any office. It has been suggested that it is legally possible under this clause to make a rule prescribing that a certain number of Members of the Executive Council shall be appointed from amongst the elected Members of the Legislature. The report of the Joint Parliamentary Committee does not throw any light on the meaning to be attached to this word "qualifications". But assuming that such a rule would be valid it is open to some serious objections. If some Members of the Executive Council are appointed from the elected Members of the legislature, they cannot be responsible to the Legislature, as that would be inconsistent with the entire Constitution of the Government of India. They must be responsible to the Crown. The Executive Council should act as a single unit in relation to the Legislature. There cannot be such a thing as divided responsibility in the case of a Cabinet. The position of the Members selected from the Legislature will be extremely onerous, for though constitutionally they may not owe responsibility to the legislature, yet they will always be overborne by the consciousness that they owe their appointment to the Executive Council to the circumstance that they were Members of the Legislature. This is likely to lead to friction between them and their colleagues in the Government. On the other hand, if and when they support the views of their colleagues which may be in conflict with the views of the Legislature, they are sure to antagonise the Legislature and lose their influence. The suggestion under consideration is not and cannot possibly be treated as an advance towards responsibility. It is not even a half-way house between responsibility and irresponsibility, and it is impossible to conceive how members so appointed can, in popular estimation be treated as responsible when their functions are not divided off from the rest. In the case of the Provincial Ministers there is no doubt about their constitutional responsibility for the subjects under their control. But even this extent of responsibility will be wanting in the case of Members of the Execu-

tive Council appointed in accordance with rules which may be framed under clause 5 of S. 36. The last and the most serious objection to a certain number of Members of the Executive Council being appointed from among the elected Members is that it will tend to lower the standards of public life by presenting a temptation to office.

As regards the personal relations between the Governor-General and the Members of the Executive Council, making allowance for the personal equation of both, and assuming that there is a readiness on both sides to understand each other's point of view and meet it as far as possible, the great political patronage which the Governor-General enjoys should not be lost sight of even in the case of such high dignitaries. There is a considerable body of opinion which has in the past disfavoured, and still disfavors, the appointment of Members of the Executive Council to Governorships. Under the statute itself, the Governors of the United Provinces, the Panjab, Bihar and Orissa, the Central Provinces and Assam are appointed after consultation with the Governor-General. On principle, it is not right and proper that the preferment of Members of the Executive Council should depend upon the recommendation of the Governor-General. As regards the relations of the Governor-General to the Secretary of State, it has not unoften happened that the two have belonged absolutely to two different parties in England. Lord Chelmsford, a Unionist, served under Mr. Montagu. Lord Reading, a Liberal, has served under Mr. Montagu, a Liberal, Lord Peel, a Conservative, and Lord Olivier, a Labourite. Dealing with this subject generally in the Report on Indian Constitutional Reforms, Mr. Montagu and Lord Chelmsford expressed themselves as follows :

The relations between Simla and Whitehall vary also with the personal equation. If resentment has been felt in India that there has been a tendency on occasion to treat Viceroy's of India as "agents" of the British Government, it

is fair to add that there have been periods when Viceröys have almost regarded Secretaries of State as the convenient mouth-piece of their policy in Parliament. Certainly there have been times when the power of the Government of India rested actually far less upon the support of the Cabinet and Parliament than on the respect which its reputation for efficiency inspired. The hands of the Government of India were strong: and there was little disposition to question the quality of their work, so long as it was concerned chiefly with material things, and the subtler springs of action which lie in the mental development of a people were not aroused.

The question of the relations of the Governor-General to the Secretary of State may be said to have assumed importance so far back as the time of Lord Northbrook and Lord Salisbury. Lord Salisbury carried on a large amount of private correspondence with Lord Northbrook and was disposed to treat the Governor-General more or less as the Secretary of State for Foreign Affairs treats an Ambassador. On the other hand, Lord Northbrook's view was that Parliament having conferred certain specific powers on the Governor-General, he could not be treated by the Secretary of State on the footing of an Ambassador. Again, Mr. Montagu, in the course of a speech, described the relations between the Viceroy and the Secretary of State as "intimate," and spoke of Lord Morley and his Council as working through the *agency* of Lord Minto, thereby suggesting that the Viceroy's position was that of an agent. This view of the agency of the Viceroy, or of the power of the mandate of the Secretary of State, has been challenged in certain quarters. On the other hand, the full implication of the theory of "the man on the spot" requires to be appreciated. The advocates of that theory in the olden days were of the opinion that the Governor-General, being directly cognisant of the situation in India, and having an intimate appreciation of the nature of the issues which arise from day to day in the governance of a big country like India, should not be dictated to or interfered with frequently, by the Secretary of

State. In olden days it was customary in this country to turn from the man on the spot, who was supposed to share local prejudices and generally to be opposed to political progress, to the Secretary of State who was supposed to live in a free atmosphere, and to be, on the whole, more progressive. In actual fact, however, it would be impossible to maintain that all Secretaries of State have been progressive and all Governors-General reactionary. Sir Valentine Chirol has strongly contested the theory of the agency on the ground that the Governor-General is the direct and personal representative of the King-Emperor and that with his Council he forms in regard to administrative matters a corporate body.

Lord Morley, in an article in *The Nineteenth Century and After*, said that he was not prepared to accept this criticism, and was distinctly inclined to the view that the Governor-General was really subordinate to the Secretary of State. He relied on the proclamation of 1858, in which Queen Victoria directed the Governor-General "in Her name and on Her behalf to be subject to such orders and regulations, as he shall from time to time receive through one of Her principal Secretaries of State". He also relied on the terms of the warrant of appointment and upon the statute of 1858. Leaving aside the political aspect of the question, and confining ourselves to the strictly constitutional point of view, it is somewhat difficult to challenge the position of Lord Morely. As has already been pointed out, the Governor-General is also the Viceroy, but the two positions are absolutely distinct. Indeed, the statute does not at all speak of him as Viceroy. In his administrative capacity, he is only Governor-General. The fact that he is also the Viceroy does not make him any the less amenable to the control of the Secretary of State as Governor-General. Under S. 33, he is required to pay due obedience to all orders of the Secretary of State. This being so, to claim for him a higher position

than that of an agent is to shut one's eyes to the realities of the situation. The fact that in conjunction with his Council he forms a corporate body does not make him any the freer of the control of the Secretary of State. For that corporate body itself must receive its orders from the Secretary of State.

The control of the Secretary of State is open and insidious, visible and invisible. The system of private correspondence between the two has not received any substantial check or control since it received encouragement at the hands of Lord Salisbury in the seventies of the last century. The outside world knows little of the amount or nature of that correspondence. Only Lord Morley has permitted the public to have some idea of the nature of that correspondence by publishing his letters to Lord Minto. Pointed attention was drawn to it by the Mesopotamia Commission who adverted to the circumstance that in the statute "no mention whatever is made of private communications, nor is authority given either to the Secretary of State or the Governor-General to substitute private telegrams for the prescribed methods of communication laid down by the statute.....It is usually the practice of the Secretary of State and the Governor-General to take away their private telegrams at the close of their tenure of office... There is, therefore, no public record of the purport of the vast majority of these private communications. The substitution of private for public telegrams in recent years has apparently so developed as to become almost the regular channel of official inter-communication." The Secretary of State is not bound to take the advice of his Council with regard to what are known as secret communications, which are limited to certain subjects. He may send "urgent communications" on his own authority, but with regard to them he has got to explain the causes for his so acting to his Council. What is, however, more remarkable than this is that these communications which the Governor-General receives from the

Secretary of State and the replies he sends, are not ordinarily available to the Members of his Council, though he may show them to all or to any of the Members. It would thus appear that the relation of the Secretary of State to the Governor-General is one of special confidence which is not shared by the Members of the Governor-General's Council. Considering the heterogeneous composition of the Executive Council, there should be little room for surprise if the Governor-General should observe a special degree of caution in the disclosure of these confidential communications to the Members of his Council.

The above considerations only tend to establish the following conclusions :

- (1) The control of the Secretary of State over the Governor-General and over the Governor-General in Council is of a very real and living character. (2) The relations between the Secretary of State and the Governor-General are of a specially confidential nature and not altogether consistent with the unity which characterises a Cabinet form of Government. (3) The methods of control open to the Secretary of State are many and not always easily understood by the outside world.

It is true that on occasions some Governors-General have asserted their independence. Lord Hardinge's speeches on the Indian position in South Africa and on the rejection by the House of Lords of the proposal to create an Executive Council for the United Provinces may be cited as recent examples. Another and more recent instance is the resolution moved at the last Imperial Conference for the appointment of the Colonies Committee consisting of representatives appointed independently by the Governor-General in Council. It is conceivable, however, that if the Secretary of State had taken his stand on his right to have a determining voice in the appointment of those representatives, the Government of India could not have constitutionally resisted that claim.

Stress has been laid above on the fact that an examina--

tion of the constitutional position leads to the conclusion that the Secretary of State is, in a pre-eminent degree, supreme, and that the Government of India and the Governor-General, notwithstanding their specific statutory rights and duties, are in a much more dependent and subordinate position than would seem to be the case upon a superficial examination. Now, whatever may have been the justification at one time, the present position of the Government of India is extremely anomalous. It has now got to deal with a Legislative Assembly with an overwhelmingly large majority of non-official and elected members. The Government of India is represented in that Assembly usually by three or four of their Members and a certain number of Secretaries. It is true that there are certain subjects on which the Assembly cannot move resolutions or interpellate the Government. It is equally true that, in regard to the Budget, certain subjects, such as Defence, salaries and pensions of the Imperial Services, are not open to discussion by either Chamber, are not submitted to the vote of the Legislative Assembly, 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 (*vide* S. 67 A). But making allowance for all these protected subjects, the area open to the Assembly is large enough to make the position of the Government of India at times extremely difficult. Indeed, if there is need for taxation and a Finance Bill is introduced, the Assembly may reject it altogether, leaving it to the Viceroy to certify that Bill. This is actually what happened in March last. Now, the present position is wholly incompatible with the existence of proper relations between the Government of India and the Assembly. Even during the first three years, actual experience showed that the Government of India, apart from sustaining defeat on certain important questions, found itself compelled to adopt compromises which conceivably it would not have accepted, if it

was a Responsible Government. Again, the Government of India cannot possibly speak on certain important questions without reference to the Secretary of State, whatever may be its convictions thereon. And this must necessarily bring it at times into acute conflict with the Legislative Assembly. The whole theory of the subordination of the Government of India to the Secretary of State and Parliament was consistent with the state of things which prevailed when the Legislative Councils were merely advisory bodies and contained clear official majorities. That position, so far as the Legislatures are concerned, has been changed, and the obvious incongruity between the present position of the Assembly and an irresponsible and irremovable Executive is in the nature of a constitutional anomaly not free from dangers to the smooth working of the administration and the growth and development of healthy relations between the Legislature and the Executive. To maintain the control of the Secretary of State under the present circumstances must appreciably affect the prestige of the Government of India, the respect that it should command, and its utility in the eyes of the Legislature and the general public. To take away the control of the Secretary of State can only lead to an increase in the irresponsibility and autocracy of the Government of India and, as a result, to collisions between it and the Legislature, which are bound seriously to affect the working of the machinery.

Subject to such exceptions and modifications as may be prescribed in the notification, S. 60 provides for the alteration of the boundaries of Provinces, and S. 59 gives power to the Governor-General to take, with the approval of the Secretary of State, any part of British India under his immediate authority and management and to provide for its administration by placing it under a Chief Commissioner or in some other manner. S. 58 provides for the administration of the N.-W. F. Province, British Beluchistan, Delhi, Ajmer-

Merwara, Coorg, and the Andaman and Nicobar Islands by Chief Commissioners. It is a question for the future to decide as to how many of these small Provinces can be conveniently amalgamated with the neighboring big Provinces. The question as to Ajmer-Merwara being handed over to the U. P. Government has been mooted in recent years, and it is understood that it is still under consideration. Opinion is sharply divided as to the desirability of amalgamating the N.-W. F. Province with the Panjab and restoring the position which existed before its separation from the Panjab in the time of Lord Curzon. Roughly speaking, it may be stated that official and Muhamadan opinion favors the continuation of this Province as it is. The general Hindu opinion, on the other hand, favors its amalgamation with the Panjab; and, in any case, insists on the extension of the jurisdiction of the Lahore High Court to the N.-W. F. Province. As a result of a debate raised in the Legislative Assembly in 1921, the Government of India appointed a Committee presided over by Mr. Denys Bray, and its report has recently been published together with the dissenting minutes of Messrs. Rangachariar and Samarth.

PART V

THE INDIAN LEGISLATURE

The first fact to note about the Indian Legislature is that it is Bi-cameral, consisting of a Council of State and a Legislative Assembly. Ordinarily speaking, no Bill can be deemed to have been passed unless it has been agreed to by both Chambers either without amendment or with such amendments only as may be agreed to by both Chambers. The maximum number of Members for the Council of State is sixty. It consists partly of nominated and partly of elected Members. The number of official Members cannot exceed twenty. As at present constituted, it consists of 34 elected, 6 nominated non-officials and 20 officials. The Legislative Assembly consists partly of elected and partly of nominated Members. The total number of Members as provided by the Section is 140, of whom non-elected Members are 40; and out of the latter, 26 are official Members, leaving the number of elected Members at 100. In point of fact, under the rules framed, there can be 103 elected Members and 41 nominated Members, of whom 26 are officials, and one a person nominated as the result of an election held in Berar. But power is reserved under the Act to increase the number of Members in the Assembly and to vary the proportion which the classes of Members bear one to another, subject to the condition that at least five-sevenths of the Members of the Assembly shall be elected Members and at least one-third of the other Members shall be non-official Members.

The Governor-General is not a Member of the Assembly or the Council of State, but he has the right to summon, address and to prorogue the session.

Each of the two Houses has a President; in this respect,

however, the statute makes a difference between the two Houses. In the case of the Assembly, it is provided that "there shall be a President of the Legislative Assembly who shall, until the expiration of four years from the first meeting thereof, be a person appointed by the Governor-General, and shall thereafter be a Member of the Assembly elected by the Assembly and approved by the Governor-General". What is to happen if the elected President is not approved by the Governor-General? On this question the statute is silent. It is conceivable that this may lead to friction. The Deputy President of the Assembly has from the very beginning been elected from among the Members of the Assembly. His appointment too is subject to the approval of the Governor-General. All the appointments are salaried appointments: the appointed President of the Council of State gets a fixed salary, whereas the elected President and Deputy President get the salaries determined by the Assembly.

In the case of the Council of State, the statute provides that "the Governor-General shall have power to appoint from among Members of the Council of State a President and other persons to preside in such circumstances as he may direct". There is no provision for an elected President in the future. The last two Presidents have been officials, and though under the statute, there is nothing to prevent the Governor-General from appointing a non-official, yet it may be doubted as to what the constitutional position of the non-official Member of the Council of State will be if he is so appointed by the Governor-General. If he owes his appointment to the Governor-General and not to the Council of State, it is fair to suggest that upon his appointment he becomes an official, and he must vacate his seat in the Council (*vide* S. 63 E). If he vacates his seat in the Council, it is at least open to doubt whether he can continue to be in the Council as President. Having regard to this difficulty, it may be safe to assume that what was intended by the statute was that the President of the Council

should be an official Member; and this will probably be the case in future.

The ordinary term prescribed for the Council of State is five years, and for the Legislative Assembly three years. The Governor-General, however, has the power to dissolve either Chamber at any time before the expiry of its term. This power of dissolution is a recognised constitutional power which is exercised in Self-Governing countries like England and the Dominions under well-understood conditions. The responsibility for that step generally rests with the Prime Minister, but in the Indian statute the discretion is vested absolutely in the Governor-General.

The Governor-General has also the power to extend the term of either Chamber, if in special circumstances he thinks fit. There, again, the discretion is his and he is not responsible to either House for taking that step.

After the dissolution of either Chamber the Governor-General is bound to appoint a date not more than six months, or with the sanction of the Secretary of State not more than nine months, after the date of dissolution for the next session of that Chamber. This provision, as also the provision relating to dissolution, is similar to the provisions applicable to local Councils under S. 72 B. In Madras, recently, in connection with the Hindu Religious Endowments' Bill, difficulty has arisen as to the interpretation of the words, "next session of the Council". Legal opinion is sharply divided. The legal advisers of the Madras Government would interpret these words to imply, on the analogy of a corporation, that notwithstanding a dissolution, the new Council is really a continued session of the old. This opinion has been strongly dissented from by other lawyers in the country. Without dogmatising as to the soundness of either opinion, it may be said that this is a case for the removal of doubt.

Officials are not qualified for election to either Chamber, and a non-official Member of either Chamber loses his seat on

his accepting office in the service of the Crown. A person cannot be a Member of both the Chambers. If he is elected to both, he must elect as to which Chamber he desires to belong to. The statute also provides that every Member of the Governor-General's Executive Council shall be nominated as a member of one Chamber of the Indian Legislature. But without being a Member of the other Chamber, he has also the right of addressing it. S. 64 provides for the framing of rules for the term of office of nominated Members, the conditions under which they may be nominated, the qualifications of electors, the constitution of constituencies, the number of Members to be elected by communal and other electorates, the qualifications of candidates and the decision of election disputes. It also provides that any ruler or subject of any State in India may be nominated as a Member of either Chamber. The proviso to Rule 5 runs as follows:

Provided that, if a Ruler of a State in India, or any subject of such a State, is not ineligible for election to the Legislative Council of a Province, such Ruler or subject shall not by reason of not being a British subject, be ineligible for election to the Legislative Assembly or Council of State, by any constituency in that Province and [no subject of such a State shall for that reason be ineligible for election by the Delhi Constituency].

A number of rules with regard to the franchise and matters relating to election have been framed.

Reference may be made here to some of the important provisions. Women are not eligible for election. The demand has already been put forward on their behalf, and educated public opinion in its favor may be said to be growing. In certain Provinces, such as the U. P., the Panjab, and to a certain extent in Bihar and Bengal, one cannot hope in the near future to get a fair number of women to stand for election, though it is hoped that better results may be expected in this respect in Bombay, and possibly in Madras. If a person has been convicted by a criminal Court of an offence involving a sentence of transportation or imprisonment

for a period of more than six months, then, in the absence of pardon, he is not eligible for election for five years from the date of expiration of the sentence. The effect of this rule was felt by a number of persons at the last election who found themselves disqualified by reason of their conviction for certain political offences.

Similar disabilities attach to persons who are found guilty of corrupt practices at the elections.

The constituencies are divided into two classes: A general constituency means a Non-Muhammadan, Muhammadan, European, Non-European, Sikh constituency or the Delhi constituency. A special constituency means a Landholder's or an Indian Commerce constituency.

Those who are not British subjects, or who are females, or are lunatics so found, and persons under 21 years of age are disqualified from being put on the electoral roll of a constituency. The age limit, however, prescribed for candidates is 25 (*vide* Rule 5). The franchise is based on (1) community, (2) residence, and (3) (a) occupation or ownership of a building, (b) assessment to, or payment of, Municipal or cantonment rates or taxes or local cesses, or (4) the holding of land or membership of a local body. This applies to general constituencies. For a special constituency, special qualifications are required, and they are set out in detail in Schedule II attached to the Rules. There is provision also made for the decision of election disputes. Election cases relating to the Indian Legislature in India are disposed of by Commissioners appointed by the Governor-General. They must be persons eligible to be appointed Judges of the High Court within the meaning of S. 101 (3) of the Government of India Act. In England, the Act of 1868 made over these election cases to the Court of Common Pleas and now the jurisdiction is exercised by the High Court of Justice. Experience has shown that the number of such cases is by no means small, and it is not always easy to secure among pri-

vate practising lawyers or District Judges qualified to become Judges of the High Court an extensive knowledge of the law relating to elections. The jurisdiction of the High Court has apparently been excluded on administrative grounds. They are already, it is said, overworked, and this addition to their jurisdiction will put a heavy strain on them. The subject, however, is of such vital importance to the growth of representative institutions that it seems desirable that in the infancy of the law such cases should be tried by Judges of the High Court.

The Rules also provide for an oath of allegiance being made by the Members of the Legislature upon their taking office.

Powers of the Indian Legislature

The powers of the Indian Legislature are defined in S. 65, clauses (a) to (f). It cannot, however, without being expressly authorised by an Act of Parliament, make any law repealing or affecting any Act of Parliament passed after 1860 or any Act of Parliament enabling the Secretary of State to raise money in the United Kingdom for India. Nor can it make any law affecting the authority of Parliament or any laws affecting the written Constitution of Great Britain whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or affecting the sovereignty or the dominion of the Crown over any part of British India. Nor has the Indian Legislature power, without the previous approval of the Secretary of State in Council, to make any law empowering any Court other than a High Court to pass a sentence of death on any of His Majesty's subjects born in Europe or the children of such subjects, or abolishing any High Court.

It will be noticed that the limitations imposed on the power of the Indian Legislature make it difficult to hold that it is supreme in the same sense in which the Dominion Legislatures are. As the Secretary of State in Council has,

in a special measure, control over the Indian finances, he alone can raise a loan in England. And the Indian Legislature is debarred from passing any law or repealing or affecting any Act of Parliament which gives the Secretary of State in Council the power to raise such loans. It is obvious that if the present powers of the Secretary of State are transferred to the Government of India, and it is authorised to operate in the English market, this limitation will have to go. The portion of the Section imposing a limitation on the power of the Legislature to pass any law affecting the written laws or the Constitution of Great Britain, on which depends the allegiance of the subject to the Crown, has in recent years come in for judicial discussion in several cases. In Mrs. Besant's case (L. R. 46, I. A. 176-191), the point was raised before the Privy Council that under this clause the Indian Press Act was *ultra vires*. The Privy Council did not sustain this argument. Similarly unsuccessful attempts have been made to challenge the validity of certain portions of the Indian Defence Act. Ordinance No. 4 passed by the Governor-General as an emergency measure during the Martial Law administration in the Panjab was directly challenged before the Privy Council as being *ultra vires*, inasmuch as Special Martial Law Courts were established under that Ordinance, and it was contended that that tended to affect the allegiance of the subject to the Crown. The Privy Council said: "The sub-section does not prevent the Indian Government from passing a law which may modify or affect a rule of the Constitution, or of the common law upon the observance of which some person may conceive or allege that his allegiance depends. It refers only to laws which directly affect the allegiance of the subject to the Crown, as by a transfer or qualification of the allegiance or modification of the obligations thereby imposed (See *Bugga vs. King-Emperor*, 47, I. A. 128-138) Coming now to the affirmative part of the Section which specifies the powers of the Indian Legislature, there

are important judicial pronouncements which must be borne in mind. In the case of *Empress vs. Burah* (3 Appeal Cases : 889 S.C. I.L.R. 4 Cal. pp. 172), the Privy Council stated the law to be as follows :

The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it; and it can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has and was intended to have plenary powers of legislation as large and of the same nature as Parliament itself. The established Court, when a question arises as to when the prescribed limits have been exceeded, must of necessity determine that question, and the only way in which it can properly do so is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created and by which, negatively, they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to enquire further, or to enlarge constructively those conditions and restrictions.

Compare with this the following statement in Moore's *Commonwealth of Australia*, p. 285 :

The Colonial Legislatures are bodies with plenary powers, possessing a general and undefined power of Government in their territory over all persons and things therein, and this power extends to the creation of such executive and judicial machinery as well as such subordinate legislative authorities as appear necessary to the Colonial Legislature.

Reference also may be made to the judgment in *Secretary of State vs. Moment*, 40, I. A. p. 48, in which Lord Haldane discussed the effect of S. 65 of the Act of 1858 and held that the effect of it was to debar the Government of India from passing any Act which could prevent a subject from suing the Secretary of State in Council in a civil Court in any case in which he could have similarly sued the East India Company. The

scope of the decision has sometimes been taken to be larger than is justified by the facts. But its importance here is that it affords another illustration of the limitations imposed on the powers of the Indian Legislature. It will be noticed that under S. 65 (1) A, the Indian Legislature has power to make laws for all persons, for all Courts and for all places and things within British India. Dealing with S. 22 of the Act of 1861, which was in substance the same as S. 65, it was recently held in the case of *Keyes vs. Keyes*, in opposition to the views of Prof. Dicey expressed in his *Conflict of Laws*, that the words of the Section could not be deemed to warrant the making of laws by the Indian Government to interfere with the status of subjects of the Crown domiciled in India. The laws to be made are to be of local operation. The status of a citizen domiciled elsewhere is not a condition having local effect in India or local limitations. This was a case in which A, an Englishman domiciled in England, brought a suit in the Panjab Chief Court praying for the dissolution of his marriage on the ground of the adultery of his wife, the marriage and the adultery both having taken place in India. The Indian Court gave a decree of dissolution. Subsequently, the husband presented a divorce petition in the English Court on the same facts. The Divorce Court in England held that the Indian decree was not of any authority. This decision, if correct, imposes a further limitation on the powers of the Indian Legislature. It was not followed, however, by the Panjab High Court in the full Bench decision in *Lee vs. Lee* (*vide* I. L. R. 5, Lahore, p. 147). Sir Shadi Lal C. J. said that he was not prepared to accept the dictum in *Keyes vs. Keyes* that the Indian Legislature was not competent to found jurisdiction in divorce on residence and that the statute laying down the rule is *pro tanto ultra vires*. On the other hand, Macleod C. J. and Marten J. in Bombay agreed with the decision in the English Court, though Crump J. differed from

them (See Wilkinson and Wilkinson, I. L. R. 47, Bom p 843).

The Imperial Parliament had to pass a statute in 1921 (11 and 12 Geo. 5, Ch. 18), by which they validated the divorces granted by Indian Courts prior to the passing of the statute. It will thus appear that though the decision in Keyes and Keyes affects mainly European British subjects, it does substantially detract from the affirmative powers of the Indian Legislature specified in S. 65 (1) A.

It may be useful here to compare the powers of our Legislature with those of the Dominion Legislatures. The legislative authority of the Parliament of Canada and that of the Provincial Legislatures is set out in Ss. 91 and 92 respectively of the British North America Act. It will be observed that under the Canadian Constitution, certain classes of subjects are mentioned in S. 91 as being within the legislative domain of Parliament. Similarly, certain other classes of subjects are mentioned in S. 92 as being within the exclusive jurisdiction of the Provincial Legislatures for the purposes of legislation. At the same time, S. 91 of the British North America Act reserves to the Parliament of Canada very large residuary powers. The Indian Act appears to follow the Canadian model in this respect with the necessary variations in regard to the classes of subjects. The Commonwealth of Australia Constitution Act (1900, 63, 64, Vict.) classifies in detail the subjects with regard to which it can legislate, the residuary powers resting with the States. The South Africa Act of 1909 provides that "Parliament (which means the Parliament of the Union) shall have full power to make laws for the peace, order and good Government of the Union".

The Canadian Constitution has formed the subject of judicial interpretation by the Privy Council in a large number of cases. One of the most important of them is the case popularly known "The Liquor Prohibition Case" (reported in

1896, A. C., p. 348). The Privy Council held that "the general power of legislation conferred upon the Dominion Parliament by S. 91 of the British North America Act, 1865, in supplement to its enumerated powers must be strictly confined to such matters as are unquestionably of National interest and importance, and must not trench on any of the subjects enumerated in S. 92 as within the scope of Provincial legislation, unless they have attained such dimensions as to affect the body politic of the Dominion". (See also 1902 A. C., p. 73.) This principle of interpretation of the relative functions of the Central and Provincial Legislatures may be postulated as being more or less true of the actual relations which in practice prevail in India, though, in recent years, there have been some notable departures from it. As an illustration, a reference may be made to the Musalman Waqf Act of 1923 which, coming under the head of religious endowments, was essentially a matter for Provincial Legislatures and not the Supreme Legislature. Speaking of such matters, Moore, in his *Constitution of the Commonwealth of Australia*, says on p. 285: "It may be expected that in the Commonwealth the Courts will be guided by the analogy of the meeting of the general residuary power of the Parliament of Canada, and the power over matters "of a local or private nature" in the Legislatures of the Provinces, with this difference only, that the broader powers of State Parliaments in Australia will narrow the field open to the local legislation of the Commonwealth Parliament."

No measure affecting (a) the public debt or revenues of India; or (b) the religion, rites or usages of any class of British subjects in India; or (c) the discipline or maintenance of any part of His Majesty's Military, Naval or Air Forces; or (d) the relations of the Government with foreign princes or States; or (e) any Provincial subject which has been declared by rules to be subject to legislation by the Indian Legislature; or (f) any act of a local Legislature; or (g) any Act or Ordi-

nance made by the Governor-General, can be introduced at any meeting of either Chamber without the previous sanction of the Governor-General [*vide* S. 67 (21)].

Under S. 67 (3), the Governor-General has the power to refer any Bill which has been passed by one Chamber, but not passed by the other Chamber within six months after the passage of the Bill in the former, for decision to a joint sitting of both Chambers. And standing orders may be made under this Section for providing for meetings of Members of both the Chambers to discuss the points of difference. The Governor-General has, further, power to return a Bill for reconsideration by either Chamber. His powers in regard to the Budget call for a special notice. The annual estimates of expenditure are laid before both Chambers of the Indian Legislature in the form of a statement. But no proposals of any revenue or moneys for any purpose can be made except on the recommendation of the Governor-General [*vide* S. 67 A (1) and (2)]. This seems to be inevitable in the absence of Responsible Government. Such proposals, if there were Responsible Government, would be made at the instance of the Cabinet. There are, however, certain heads of expenditure which cannot be submitted to the vote of the Legislative Assembly, nor can they be discussed by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs.

In case of any doubt, the Governor-General has the final authority to decide whether any proposal relates to any of the protected heads. The proposals are usually made in the form of demands for grants. The Assembly may assent or refuse assent to any demand, or reduce its amount. If any demand is refused altogether, or the amount of such demand is refused, the Governor-General *in Council* may restore it, provided he is satisfied that it is essential to the discharge of his responsibility. In point of fact, some such demands have been restored, while others have not been. Lastly, 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 part thereof.

Considerable discussion has taken place in the Assembly and outside as to the protected heads. So far as the salaries and pensions are concerned, they can be protected by appointments being made with the approval of His Majesty or the Secretary of State in Council. The word salary has a very elastic meaning; ordinarily, the salaries are fixed by the Executive Government and in any case the salaries of the superior Services have been fixed independently of the concurrence of the Legislature. The increases given as a result of the Islington Commission were not given with the consent or the approval of the Legislature. And although the Government of India has declared that it will allow the Legislature to discuss the recommendations of the Lee Commission, yet the resolutions of the Assembly are not binding on the Government. It is therefore obvious that a very large head of expenditure is free of the control of the Legislature. Besides, it would be interesting to know whether any special allowances have been included in the salaries. It would be quite a different thing if the Legislature were a party to legislation prescribing the salaries and giving guarantees of security to the Services. Similarly, under the head, "Political and Defence," the expenditure incurred on the Army and the Foreign Department is protected. The Governor-General has, however, allowed the Legislature to discuss the Army Budget. But it is not put to the vote of the Assembly. Two questions arise: (i) Has the Governor-General the power to remove the embargo? (2) Is it desirable that he should do so? As regards the first question, the answer to it depends upon the construction of clause 3 of S. 67 A. The Law Officers of the Crown in England, it was stated in the Assembly, were of the opinion that the Governor-

General had no power to remove the embargo, as the words, ' unless the Governor-General otherwise directs,' did not control, according to them, the first half of clause 3 of S. 67 A. They were probably influenced by the punctuation, as also by considerations of public policy underlying the principle of protection embodied in the Section. On the other hand, it is understood that other lawyers have taken a different view, and in their opinion the words " unless the Governor-General otherwise directs," control both parts of clause 3. If it were merely a question of construction of a statute, perhaps a good deal could be said against the opinion of the Law Officers of the Crown in England. But the real question is one of policy. So far as the Army is concerned, it is a huge and, at the same time, a delicate machinery which, it is held, should be protected from inexperienced hands. An adverse vote of the Assembly, it is argued, may paralyse the Government and affect the *morale* and efficiency of the Army and imperil the safety of the country. On the other hand, it is argued that a mere discussion of the Army Budget leads to no substantial results, and that the Assembly, chafing as it does under a sense of limitation of its powers, can never deal with the problems of Defence with a proper sense of responsibility. Whatever may be the value of the two arguments, it is certain that the present position is likely to lead in the future more frequently to deadlocks such as the one which arose over the last Budget when the Finance Bill was thrown out by the Assembly, and which can only be solved by a resort to the power of Certification. It has, therefore, been suggested in certain quarters that the Army should be reserved to the control of the Governor-General, and that so far as supply is concerned, a minimum item of expenditure for the Army, revisable after a certain period, should be laid down as a charge on the revenues, so that it may automatically be forthcoming. This would obviate the necessity of the power of Certification and remove a recurring

cause of friction. The details of this proposal can only be examined by a competent Committee. If the necessity of the situation calls for a larger sum of money, the Assembly should be asked to vote on it. Should an unforeseen emergency, imperilling the safety or tranquillity of British India, require any special expenditure, power should be reserved to the Governor-General, as is the case now, to authorise such expenditure.

Power of Certification

The power of Certification of Bills has been conferred upon the Governor-General by two Sections, S. 67 A and S. 67 B. Under the former Section, where in either Chamber of the Legislature a Bill has been introduced or proposed to be introduced, or any amendment to it is moved or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, and he can stop all further proceedings in regard to it. Under this Section, he exercises by Certification a preventive power. It will, however, be noticed that this is strictly limited to the safety or tranquillity of British India. S. 67 B gives him a positive or affirmative power; that is to say, where either Chamber of the Legislature has refused leave to introduce, or has failed to pass a Bill in a form recommended by the Governor-General, any Bill, he can certify that the Bill is essential for the safety, tranquillity or interests of British India. The word "interests" is a very vague and indefinite word. The provision relating to the Salt Tax in the Finance Bill last year and the Princes' Protection Bill in 1922 were certified under this Section, and the constitutionality of the action of the Governor-General has been challenged both in India and in England. When the Government of India Bill was under discussion in Parliament, in the course of debate, Mr. Montagu said, with reference to criticism of the word "interests": "It is not any measure which affects the interests, it is a measure which the

Viceroy can say is essential. He does not now, as he used to, pass that legislation by means of what used to be the official *bloc*. He passes it frankly as an executive order of his Government." Similarly, reference may be made to the Report of the Joint Parliamentary Committee on clause 26 of the amending Bill of 1919, in which, however, no reference is made to the word "interests". In para. 279 of the Montagu-Chelmsford Report, the power of Certification suggested was with reference to "the interests of peace, order or good Government". The fact is that the word, "interests," standing as it does in that Section, has far too wide an interpretation. And in the event of this power of Certification remaining on the statute-book as an indispensable safeguard against a perverse attitude of the Legislature, it seems necessary that the original intention expressed in para. 279 of the Montagu-Chelmsford Report should be given effect to. Considering that the Government of India is irresponsible, the word "interests" in this Section could enable the Governor-General to certify any Bill which he thought was essential to the interests of India in regard to any department of Governmental activity. Such a large measure of the power of Certification, though consistent with the present Constitution of the Government of India, is altogether incompatible, even in the present stage of transition, with the progress of the Legislature towards Responsible Government. The Section provides rather a complicated procedure in sub-clauses (a) and (b) of clause (1). Rules have been framed in accordance with it giving the Governor-General power to recommend a Bill at any stage without certifying it at the very beginning. The object of these apparently was to provide for negotiation with the Legislature between the stage of Recommendation and that of Certification, for after Certification there can be no negotiation, and the Bill must be passed as certified. It is somewhat curious that under sub-clauses (a) and (b), the Bill becomes an Act of the Indian Legislature. In point of

fact, this is fiction of the worst possible description. The Legislature has no voice or vote after Certification and the Governor-General is not a Member of the Legislature. If a certified Bill is to become a part of the statute-book, it should profess to be what in truth it is, namely, an Act passed by the Governor-General. Under clause 2 of S. 67 B, every such Act is expressly made by the Governor-General—which is perfectly true; but this is inconsistent with the Bill becoming an Act of the Indian Legislature. Clause 2 of the Section provides that such an Act shall be laid before both Houses of Parliament and shall not have effect until it has received His Majesty's assent, but it shall not be presented for His Majesty's assent until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat. When it has received the assent of His Majesty in Council and such assent has been notified by the Governor-General, the Act has the same force and effect as an Act passed by the Indian Legislature.

THE
INDIAN CONSTITUTION

A NOTE ON ITS WORKING

PARTS VI—VII

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THE INDIAN CONSTITUTION

PART VI

LOCAL GOVERNMENTS

The expression "Local Government" means, in the case of a Governor's Province, the Governor in Council, or the Governor acting with Ministers (as the case may require), and in the case of a Province, other than a Governor's Province, a Lieutenant-Governor in Council, Lieutenant-Governor or Chief Commissioner (*vide* S. 134).

Part V of the Government of India Act deals with local Governments.

S. 46 provides that the Presidencies of Fort William in Bengal, Fort S. George and Bombay, and the Provinces known as the United Provinces, the Panjab, Bihar and Orissa, the Central Provinces and Assam shall each be governed by a Governor in Council, and in relation to Transferred subjects (save as otherwise provided by this Act), by the Governor acting with Ministers appointed under this Act.

These Presidencies and Provinces are known as Governors' Provinces, to distinguish them from Provinces which are governed by Chief Commissioners, *e. g.*, Delhi, Ajmer-Merwara, Coorg, N.-W. F. Province and Baluchistan. The Presidency Governors and the Governors of the other Provinces are alike appointed by the Crown; with this difference only, that in the case of the latter the Governor-General is consulted. In point of fact, the Governors of the Presidencies cost the tax-payer much more than those of the other Provinces.

The maximum annual salary of the Governors of Bengal, Madras, Bombay and the United Provinces is Rs. 1,28,000; but the personal staff of the Governors of Bengal, Madras and Bombay is much larger than that of the last named. They have a Military Secretary, a Surgeon, a Private Secretary, and a larger number of A. D. C.'s. The Governors of the U.P., the

Panjab, Bihar, the C. P. and Assam have no Military Secretary, no Surgeon attached to their staff, and they have a smaller number of A. D. C.'s. The maximum annual salary of the Governors of the Panjab and Bihar and Orissa is Rs. 1,00,000, of the C. P. Rs. 72,000 and of Assam, Rs. 66,000.

Constitutional Position of the Provincial Executive

The outstanding feature of the Provincial Governments is that they are divided now into two halves. Under S 45 A (1) d, certain subjects have been, in accordance with rules made under the Act, transferred to the administration of the Governor acting with Ministers appointed under this Act, and revenues or moneys for the purpose of such administration are also allocated.

The Transferred subjects, therefore, are administered by Ministers and the Reserved subjects by Members of the Executive Council. The Members of the Executive Council are appointed under S. 47 by the Crown. The maximum number prescribed is four, but it is for the Secretary of State in Council to prescribe the precise number for any Executive Council. One at least of the Members of the Executive Council must be a person who, at the time of his appointment, has been for at least twelve years in the service of the Crown in India. This provision has the effect of reserving at least one appointment for the members of the Indian Civil Service. Clause 3 of S. 47 may be compared with clause 5 of S. 36. It lays down that provision may be made by rules as to the qualifications to be required in respect of Members of the Executive Council of the Governor of a Province in any case where such provision has not been made by the foregoing provisions of this Section. The same remarks apply to this clause as to clause 5 of S. 36.

One result of the present system has been that Executive Governments in the Provinces have become very top-heavy. For instance, in Bengal, Bombay and Madras, there are four Members of the Executive Council, two of them belong-

ing to the Indian Civil Service and two taken from non-official public life. In the U.P., the Panjab, Bihar and Orissa, the C.P. and Assam, there are two Members in each Council. In Bihar, the number of Members of the Executive Council was originally three, but it has been reduced to two. The Members of the Executive Council have to administer only the Réerved subjects. Their salaries are prescribed by the second Schedule; in Bengal, Madras, Bombay and the U.P., the maximum annual salary prescribed is Rs, 64,000; in the Panjab and Bihar and Orissa, it is Rs, 60,000; in the C.P., it is Rs. 48,000; in Assam, it is Rs. 40,000. It is true that even before this Act came into force, Bombay, Madras and Bengal had Executive Councils, but the number of Members was smaller, and they were responsible for the administration of all subjects. Leaving aside the increase in the cost of the Secretariat and the staff, the increase in the number of Members of the Executive Council alone means so much more expenditure. It is sometimes urged that the democratic form of Government is more expensive. But that seems to be hardly the proper explanation for all the increased expenditure. The real fact of the matter seems to be that it was considered necessary that with the introduction of non-official Indians into the Government, there should be a counterpoise provided by an increase in the number of the European Service Members.

S. 52 vests the power of appointing Ministers in the Governor. He may appoint a Minister who is not an elected Member of the local Legislature, but such Minister cannot hold office for a longer period than six months without becoming an elected Member of the local Legislature. The effect of this is that the Ministers must be Members of the local Legislature. Being Members of the local Legislature, they must depend upon its support, or the support of the majority and hold themselves responsible to it. The provisions of this Section may be compared with Ss. 62 and 64 of the Commonwealth of Australia Constitution

Act, 1900; Ss. 12 and 14 of the South Africa Act, 1909; S. 11 of the British North America Act, 1865. It will be observed that both the Australian and South African Acts provide for the establishment of Executive Councils and the Members of those Executive Councils are the King's Ministers in those Dominions. Similarly, in Canada, the Members of the Council, styled the King's Privy Council for Canada, perform the functions of Ministers. In India, however, there is a distinction made between the Executive Council and the Ministers. The Executive Council has a corporate existence of its own and in its dealings with the outside world must act on the principle of collective responsibility. In the case of Ministers, they are not spoken of as constituting a Council or a Ministry, with the result that the element of collective responsibility in their dealings with the Governor or with the outside world is wanting. Each Minister counts for a single unit, and it is also not necessary that a decision of the Reserved half of the Government should be the result of joint deliberation with all the Ministers. Nor is it necessary that all the Ministers should belong to the same political party. In actual practice, it cannot be said that everywhere Ministers have belonged to the same political party. In Bombay, the Panjab and Bihar to-day, the Ministers do not belong to the same political party; on the other hand, in Madras, they do. It is difficult to postulate anything with regard to the Ministers in Bengal. In the U. P., it is possible to hold that the common link which binds the two Ministers is the fact that they belong to the landed classes. The present unsatisfactory position in this respect can, to a certain extent, be explained by the fact that political parties are still in a state of vagueness. So far as collective responsibility is concerned, attempts have in certain Provinces been made by some Ministers to create conventions for themselves. But they have not always succeeded, and so far as is known to the outside world, in many Provinces, Governors have dealt with the Minister

individually. The most notable instance of the attempt to create a convention of joint responsibility is that of the Ministers in the U. P. (Mr. C. Y. Chintamani and Pandit Jagat Narain) who tendered their resignations upon a difference arising between one of them and the Governor

Salaries of Ministers

With regard to the question of salaries of Ministers, the Act provides as follows: "There may be paid to any Minister so appointed in any Province the same salary as is payable to a Member of the Executive Council in that Province, unless a smaller salary is provided by a vote of the Legislative Council of the Province." S. 66 of the Australia Act provides £ 12,000 a year for all the Ministers out of the consolidated revenue fund of the Commonwealth, "until the Parliament otherwise provides". The South Africa Act makes no such provision and does not create a charge on the consolidated revenue fund for the salary of the Ministers. The British North America Act provides for the creation of a consolidated revenue fund and for a charge on it in respect of the salary of the Governor-General, but is silent in respect of the salary of the Ministers.

Coming back to S. 52 of the Government of India Act, it is clear that the idea of Parliament was that ordinarily, in respect of salaries, the Ministers should stand on the same footing as Members of the Executive Council. This was in part due to the desire expressed at that time that the status of the Ministers should not be lower than that of Members of the Executive Council. On the other hand, it was felt that the Ministers being responsible to the Legislatures, the latter should have a voice in determining their salaries. It was probably out of deference to this feeling that the words, "unless a smaller salary is provided by vote of the Legislative Council of the Province," were introduced. Thus this clause in S. 52 appears to be in the nature of a compromise between

two different views. But the words just quoted have given rise to no inconsiderable difficulty in the interpretation of the Section. It has recently engaged the attention of the Calcutta High Court, and it remains to be seen whether the view taken by Mr. Justice Ghose will be upheld on appeal.* In the C. P. at the last Budget, the Legislature reduced the salary of the Ministers to Rs. 2. In Bengal, the entire demand in respect of the salary of the Ministers was refused. Taking an extreme view of the law, it is difficult to hold that either of the two Councils exceeded the limits of its legal powers. On the other hand, upon a broad view of constitutional practice, it does not seem to be quite consistent with it to reject the entire demand for such grants. The usual practice of expressing dissatisfaction with a particular Minister is to move for the reduction of his salary by £ 100, and if such a motion is carried, the Minister goes out of office. The natural meaning of the clause under consideration would seem to be that if a particular Council is of opinion that a Minister should get something less than a Member of the Executive Council, it is open to it to reduce the salary; and such a motion, if carried, need not necessarily amount to a vote of censure. Indeed, this has been done in some Provinces purely as a financial measure, and Ministers have continued to hold office on reduced salaries. The legitimate exercise of power under this clause must be distinguished from a reduction in the salary of a Minister, which is intended to be in the nature of a censure on him or on the Government. In the C. P., the Swarā-

*Since this was written, a rule to the following effect has been made:

As regards the Legislative Assembly, an estimate may be presented to the Assembly for an additional or supplementary grant in respect of any demand to which the Assembly had previously refused its assent or the amount of which the Assembly has reduced. The rule relating to a Provincial Legislature says an estimate may be presented to the Council for an additional or supplementary grant in respect of any demand to which the Council had previously refused its assent or the amount of which the Council has reduced either by reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed.

jists who were in a majority distinctly said that the reduction which they were effecting in the salary of Ministers was not intended by them to be in the nature of a personal reflection or censure upon them, but to mark their dissatisfaction with the system of Diarchy. It may be assumed that the Bengal Council wanted as much to express dissatisfaction with the system of Government as with the personnel of the Ministry. Both in Bengal and in the C. P., the resolutions carried were part of a programme of obstruction, but there can be no doubt as to the result. It is difficult to hold that a demand for a supplementary grant for the Ministers' salary to which the Council has refused its assent is consistent with the spirit of S. 72 D, or that it is a legitimate exercise of the right to put forward a demand for a supplementary grant within the meaning of Rule 94 in the Bengal Council. It is true that the result of this may be the success of obstructive tactics, but taking the statute itself into consideration, there seems to be hardly anything in it to meet a situation of this character. It is clear that the Governor has not felt himself justified in acting under proviso b to S. 72 D, and it is difficult to see how he could have authorised any expenditure on the salary of the Ministers as being in his opinion necessary for the safety or the tranquillity of the Province, or for the carrying on of any department.

Ordinarily, the Governor is bound by the advice of his Ministers in relation to Transferred subjects, but he can for sufficient cause overrule them. It is clear that if the Ministers are overruled on a question of principle or importance, the only thing that they can do is to resign.

In relation to his Executive Council the Governor is bound by the opinion and decision of the Members present, and if they are equally divided, he has a casting vote. But in regard to measures affecting the safety, tranquillity or interests of his Province or any part thereof, he can override his Council.

Joint Deliberations

It will be noticed that in the Act itself there is no provision for joint deliberation between the two halves of the Government. The Joint Parliamentary Committee, however, laid considerable stress on the desirability of fostering a habit of joint deliberation in regard to "a large category of business of the character which would naturally be the subject of Cabinet consultation". In regard to this category, said the Committee, 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 attached the highest importance to the principle that when once opinions have been freely exchanged and the last word has been said, there ought to be then no doubt whatever as to where the responsibility for the decision lies. Therefore, in the opinion of the Committee, after such consultation, when it is clear that the decision should lie within the jurisdiction of one or the 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. The Committee visualised to themselves the Governor acting as an informal arbitrator between the two halves of the Government. They considered that it would be the duty of the Governor 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. Lastly, they laid down that 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.

Mr. Montagu, in his speech on 5th June, 1919, supporting the motion for the second reading of the Government of India Bill in Parliament, put the position more briefly as follows:

If Reserved subjects are to become Transferred subjects one day, it is absolutely essential that during the transitional period, although there is no direct responsibility for them, there should be opportunities of influence and consultation. Therefore, although it seems necessary to separate the responsibility, there ought to be every room that you can possibly have for consultation and joint deliberation on the same policy, and for acting together for the purposes of consultation and deliberation, as the Bill provides, in one Government.

Now, it may be asked, how far has this principle of joint deliberation been carried out in practice in the various Provincial Governments in India? It is difficult to speak with any degree of certainty about this matter, as the internal proceedings of the Government are not open to the public gaze. There have, however, been complaints heard in various quarters that, excepting, perhaps, in Madras, the principle of joint deliberation has not been followed by most of the Provincial Governments and by some it was followed only for a limited time. More than one Minister in Madras has said in his public speeches that Lord Willingdon treated his entire Government as a unified Government. The observation has been made that Diarchy succeeded in Madras because it was ignored. The two principal arguments in support of the system of Diarchy were; First, that in regard to certain subjects, that is to say, Transferred subjects, Ministers would have direct responsibility to the Legislature fixed on them;

and secondly, they would have opportunities of influencing the other half of the Government in regard to the Reserved subjects. It does not seem to have been the case that opportunities of influencing the Reserved half of the Government have been generally afforded to the Ministers everywhere. As regards their responsibility to the Legislatures and the administration of the subjects under their control, some interesting questions arise :

(1) Have they been generally supported by non-official Members of the Councils ?

(2) Have they been able to develop the services under their control ?

(3) Have they carried on any programme of educating the electorates ?

So far as the general support of the Councils is concerned, notwithstanding the fact that during the first three years of the Reforms the party system as represented in the Councils left much to be desired, the Ministers, speaking generally, appear to have received a sufficient amount of support nearly everywhere. In Madras, the Ministry had a clear majority of their own to fall back upon and was invariably supported. In Bihar and the C. P., too, the Ministers generally succeeded in receiving the support of the Councils. In the United Provinces, the position was somewhat peculiar, and such opposition as the Ministers encountered was from the Zamindars. But the Liberal section of the Council was generally loyal to the Ministers. It was, however, said in official quarters that the Ministry would have been thrown out of office on the District Boards Bill but for the support and influence of the official half of the Government. That, however, is not accepted by Mr. Chintamani. In Bengal and Bombay, the task of the Ministry does not appear to have been so easy. It is impossible in this Note to go into those local conditions with any degree of minuteness or precision. But there are two facts which must be borne in

mind in this connection : (1) In the first Councils everywhere the Members belonged either to the Liberal Party or to the landed classes, or were Independents. There were practically no Swarājists. The opposition was weak, and altogether the parties on either side were not well organised. (2) In some Provinces, the Ministers were attacked because they were held to be responsible in certain quarters for the policy which was adopted by the Reserved half of the Government for the maintenance of law and order. In order to appreciate the full force of criticism of this character, it is necessary to sift the facts, but unfortunately those facts are not known to the public and can only be given authoritatively by the Ministers and the official Members of the Government.

To answer the second question would again require a very detailed examination of the facts relating to each department under the control of the Ministers, and also a comparative statement of the conditions of those departments before and after the Ministers took charge of them. It would also be necessary to find out how far the Ministers were supported by the Governors when they differed from their Secretaries, or important officers of the Government. In order to form a correct judgment on this question, it would perhaps be necessary to examine the Ministers themselves and their official colleagues. The data for such examination are not wholly available. But some idea of the nature of the resolutions moved in the Councils and of the character of the debates can be formed from a perusal of the synopsis published last year, *The Work of the Indian Legislatures*, by the National Conference.

As regards the education of the electorates, in some Provinces the Ministers have, during their terms, addressed a number of meetings and explained their policy. It has generally been the case in Madras. In Bombay and the Panjab, Dr. Paranjpyé and Lala Harkishen Lal addressed

several such meetings. In the U. P., Mr. Chintaman was most active, and although it is true that the educative work might and should have been, carried on more actively, yet it is not true to say that everywhere it has altogether been neglected. In many Provinces at least some elected Members have also gone to their constituencies and addressed meetings.

The spheres of functions of the local and the Central Governments are defined by rules made under S. 45 A. Under the same Section, rules have been framed known as the Devolution Rules which also provide for the transfer of subjects to popular control. The revocation or suspension or transfer of any subjects cannot be brought about except with the sanction of the Secretary of State in Council (*vide* proviso to Rule 45). In regard to the Transferred subjects, the power of superintendence, direction and control vested in the Government of India can be exercised only for such purposes as may be specified in rules made under this Act. But the Governor-General in Council "is the sole judge as to whether the purpose of the exercise of such powers in any particular case comes under the purposes so specified". The most important rule on the subject is Rule 49 of the Devolution Rules :

The powers of superintendence, direction and control over the local Government of a Governor's Province vested in the Governor-General in Council under the Act shall, in relation to Transferred subjects, be exercised only for the following purposes, namely :

- (1) To safeguard the administration of Central subjects.
- (2) To decide questions arising between two Provinces, in cases where the Provinces concerned fail to arrive at an agreement.
- (3) 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 the following provisions of the Act, namely, S. 29 A, S. 39 (1A), Part VII A, or of any rules made by, or with the sanction of the Secretary of State.

Here again it would be necessary to investigate facts as to how far in actual practice the limits of this Rule 49 have

been exceeded, if at all. There is reason to believe that dissatisfaction has been felt with the manner in which this rule has been worked in relation to certain matters. This again will call for an enquiry into facts which can only be in the possession of the Ministers and the official Members of the Government.

Provision is also made in this chapter for the appointment of non-official Council Secretaries. How far the experiment has been tried or has succeeded is another matter calling for enquiry. It seems that the experiment was quite successful in Madras, and the Council Secretaries were found to be of great service to the Ministers. On the other hand, in the United Provinces, Council Secretaries were appointed for a short period, after which they resigned their offices. Official opinion in the United Provinces is understood to be dissatisfied with the results.

This chapter provides also for the constitution of new Provinces and the appointment of Deputy Governors to be appointed by the Governor-General and the declaration of territories "as backward tracts," and the application of this Act to such territories as may be.

The Power of Veto

S. 68 gives the Governor-General the power to exercise his power of Veto in respect of a Bill. He may also reserve it for the signification of His Majesty's pleasure thereon, in which case it does not become an Act until the assent of His Majesty in Council has been signified to and notified by the Governor-General. S. 69 requires that every Act of the Indian Legislature is to be sent by the Governor-General to the Secretary of State, and the power of His Majesty in Council to signify his disallowance of any such Act is reserved. This power of Veto in the Indian Act may be compared with the power of Veto in some of the Dominion Acts. By S. 59 of the Commonwealth of Australia Constitution Act of 1900, and S. 65 of the Union of South Africa Act of 1909,

the Crown has the power of disallowing any law within one year of the Governor-General's assent. S. 58 of the Australia Act gives the Governor-General the power to reserve a law for the Crown's pleasure, and S. 60 provides that a law so reserved shall not have force unless and until within two years from the day on which it was presented to the Governor-General for the King's assent, the Governor-General makes known by speech or message to each of the Houses of Parliament or by proclamation that it has received the King's assent (*Vide*. S. 66 of the South Africa Act which provides only one year).

The Australia Act (S. 58) gives the Governor-General power to return to the originating House any Bill with his recommendations. This power of return is in the nature of a moral persuasion exercised constitutionally. And it is obvious that it is very different from the power of Certification provided in the Indian Act. Such power of return is provided in the case of local Legislatures (*vide* S. 81A).

This power of veto Resting in the Crown should not be treated as a mere constitutional symbol of the supremacy of the Crown, but as a power of great value enabling the Crown to protect Imperial interests. In Australia, it has assumed "unexpected importance as a means of preventing either State or Commonwealth from embarrassing the activity of the other" (*vide* Moore's *Australian Constitution*, p. 91). In India, however, having regard to the entire relations of the Central and Provincial Governments, as embodied in the Act, it seems hardly likely that the Veto will assume, or can assume, the same importance as between the Central Government and a local Government (*vide* Webb *versus* Outtrim, 1907, A.C.p.81).

The Governor-General in Council has got certain legislative functions to discharge in regard to certain Provinces by passing regulations for the peace and good Government upon a requisition made by their local Governments (*vide* S. 71).

By S. 72 the Governor-General alone has, in cases of emergency, the power of making and promulgating ordinances for the peace and good Government of British India or any part thereof. Such ordinances cannot remain in force for more than six months. This power is subject to the like restrictions as the power of the Indian Legislature to make laws, and "any ordinance made under this Section is subject to the like disallowance as an Act passed by the Indian Legislature and may be controlled or suspended by any such Act". In ordinary practice, ordinances made under this Section are as soon as possible reported to the Secretary of State, and it seems to be the practice that ordinarily no resort is had to this power when the Legislature is sitting. This power was very much used during the Panjab troubles and the rising of the Moplahs. The last few words, "and may be controlled or suspended by any such Act," would seem to indicate the superior power of the Indian Legislature; but considering the extensive powers of the Governor-General which come into operation before and after the introduction of a Bill, it seems hardly likely that in the event of a conflict between the Legislature and the Governor-General in respect of an ordinance, the former could in fact establish its supremacy.

PART VII

LOCAL LEGISLATURES

In every Governor's Province, there is a Legislative Council. The Governor is not a Member of that Council, but the Members of the Executive Council are. The Governor may summon a Council and address it. The numerical strength of the Legislative Councils varies in the different Provinces. Bengal leads with the number of 125; Madras and the U. P. have each 118 members. Bombay has 111, Bihar and Orissa have 98, the Panjab 83, the C. P. 70, and Assam 53 Members. The statute provides that there cannot be more than 20 per cent official Members in a Council and at least

70 per cent must be elected. Officials are not eligible for election, but Ministers are not officials for the purposes of S. 80 B. Rules may be made for increasing the number of Members of any Council subject to the maintenance of the above proportion. The Governor has the right of nominating a certain number of Members; and for the purpose of any Bill, in the case of Assam, one person, and in the case of other Provinces, not more than two persons, being experts, may be nominated in addition to the numbers in the Council given above. In Berar, the election of Members takes place, though technically they are nominated Members of the Legislative Council of the G. P. The Act provides for rules being made as to (a) the term of nominated Members and the manner of filling vacancies; (b) the conditions under which nominations may be made; (c) the qualification of electors, the constitution of constituencies, the method of election, including the number of Members elected by communal and other electorates; (d) the qualifications for being nominated or elected; (e) the settlement of election disputes and the manner of enforcing these rules.

Power may be delegated to the local Governments for making subsidiary regulations affecting these matters.

In point of fact, a large number of rules and regulations have been framed in regard to these matters. The qualifications for eligibility for election are practically the same as in the case of the Assembly. Similar is the case with regard to eligibility for inclusion in the electoral roll. Only in certain Provinces, such as Madras, Bombay and the United Provinces, the franchise has been extended to women.

Constituencies are divided into general constituencies and special constituencies such as those of Landholders, University, Commerce and Industry. The former include Muhammadan and European constituencies. In Madras, five nominated seats are reserved for the backward communities and one is reserved for inhabitants of the backward tracts.

The qualifications for electors for general constituencies are not altogether uniform everywhere, though, broadly speaking, the principles underlying such qualifications are more or less similar: with this difference that the standards vary between urban and rural constituencies in each Province. It is not, however, necessary for the purpose of this Note to go minutely into these rules.

The general feeling is that the numerical strength of the Councils everywhere requires to be increased. This will necessarily involve an extension of franchise, but the extent to which it may be brought about will vary from Province to Province, having regard to local conditions.

The normal length of term of a Legislative Council is three years (*vide* S. 72 B). In regard to dissolution before the expiry of its term, and the summoning of the next Council and adjournment, the powers are similar to those of the Governor-General in relation to the Indian Legislature (*vide* S. 63). The only difference is that the period of a Governor's Council cannot be extended for more than one year [*vide* S. 72 B (b)]. In the case of the Indian Legislature, there is no such limitation with regard to the period by the Governor-General (*vide* S. 63 D). The first Presidents of the Provincial Councils were appointed by the Governors. On the expiry of four years, the office is to become elective, subject to the approval of the Governor. The Deputy President's office has been elective from the very beginning.'

The procedure for laying the estimated annual expenditure and revenue of the Province before the Council is similar to that in the Legislative Assembly. The Councils have the same power of assenting to or refusing assent to a demand, or reducing the amount thereof as is possessed by the Assembly. This power is, however, subject to certain important provisos. In the case of a demand relating to a Reserved subject, the Governor has the power of overruling the decision of the Council if he certifies that the expenditure provided for in

the demand is essential to the discharge of his responsibility for the subject. It is under this power that, in several Provinces, certain demands for grants in relation to Reserved subjects have been restored by Governors. It should be noticed that this power is limited to Reserved subjects.

In cases of emergency the Governor has the power of authorising such expenditure as may, in his opinion, be necessary for the safety or tranquillity of the Province *or for the carrying on of any departments*. Except for the italicised words, this power is similar to that of the Governor-General under S. 67 A (8). But it is precisely these italicised words which are a source of trouble. Could a Governor authorise expenditure in regard to a Transferred subject which had been disallowed by the Council but which he considered necessary for the carrying on of any department? In Bengal, Lord Lytton refused to restore demands in regard to the educational and medical heads in the Budget. The procedure adopted seems to be perfectly constitutional and quite consonant with the spirit of the Act; but the words quoted above are so wide and unqualified that upon a strict legal interpretation, another course might have been taken.

Proposals for appropriation in the local Councils can only be made on the recommendation of the Governor.

There are certain subjects which are protected from the vote of the Councils and even discussion. They are: (1) Provincial Contributions to the Central Government, (2) interest and sinking fund charges on loans, (3) expenditure of which the amount is prescribed by or under any law, (4) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council, and (5) salaries of the Judges of the High Court of the Province and of the Advocate-General. As regards (4) the same remarks apply to this clause as to S. 67 A 3 (ii). As regards (5) it should be noticed that Judges of the High Court and the

Advocate-General are appointed by Letters Patent issued by the Crown.

Power of Certification of the Governor

The Governor has got the same perventive power of Certification in regard to Bills under S. 72 D (5) affecting the safety or tranquillity of his Province as the Governor-General has under S. 72 A in regard to Bills affecting the safety or tranquillity of British India or any part thereof. Under S. 72 E, the Governor has got the power of certifying Bills affirmatively. This power can be exercised only if the 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, if he certifies that the passage of the Bill is essential for the discharge of his responsibility for the subject. On such Certificate being given and on signature by the Governor, the Bill as originally introduced becomes an Act of the local Legislature. It will be noticed that this power is much more limited than the power of the Governor-General under S. 67 B. The words, "essential for the discharge of his responsibility" in regard to Reserved subjects, are far more limited and more definite than the expression "interests" in S. 67 B.

An Act so passed is required to be sent forthwith to the Governor-General who reserves it for the signification of His Majesty's pleasure. Upon the signification of such assent by His Majesty in Council and notification thereof by the Governor-General, the Act has the same force as an Act passed by the local Legislature. The Governor-General has, in cases of emergency, the power of giving his assent to such an Act without reserving it for the assent of the Crown, though in such a case too the Crown may subsequently disallow it. A certified Act must be laid on the table of each House of Parliament for not less than eight days on which that House has sat before it can be presented for His Majesty's assent.

It is obvious that in regard to the Transferred subjects

this power of Certification does not exist; and to that extent, subject to the right of the Veto, it may be said that the local Councils enjoy a measure of responsibility. Ss. 73, 76, 78, 80 deal with Legislative Councils of Lieutenant-Governors and Chief Commissioners. It is not necessary to examine the provisions of these Sections at length, for, in the first place, there are no Provinces governed by Lieutenant-Governors, and, in the next place, the Councils contemplated by these Sections are very different in their composition and the scope of their powers. In Coorg, which is administered by a Chief Commissioner, a Legislative Council, mainly of an advisory character, has been established. The proposal for the establishment of such a Council in the N.-W. F. Province has not yet materialised.

Powers of Local Legislatures

The powers of the local Legislature are specified in S. 80 A. It can make laws for the peace and good Government of the territories for the time being constituting that Province. It can, subject to certain conditions, repeal or alter in that Province any law made before or after the commencement of the Government of India Act by any authority in British India other than that local Legislature. It has not, however, the power to make any law affecting any Act of Parliament. The real limitations of its powers are those indicated by clause 3 which provides that it cannot, without the previous sanction of the Governor-General, make or take into consideration any law affecting certain subjects.

“The local Legislature of any Province may not—without the previous sanction of the Governor-General, make or take into consideration any law :

(a) Imposing or authorising the imposition of any new tax, unless the tax is a tax scheduled as exempted from this provision by rules made under this 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 general purposes of the Government of India, provided that the

imposition or alteration of a tax scheduled as aforesaid 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" [Vide S. 80 A (3)].

This division of legislative powers between the Central and local Legislature is not, by any means very scientific. One can understand the local Legislature having no power to pass a law affecting the discipline or maintenance of the Army or the Foreign Relations of the Government, but the limitation with regard to Central subjects or laws protected by rules from interference by the local Legislature under clauses (h) and (i) narrow down the legislative scope of the Councils. The previous sanction of the Governor-General, though a personal privilege of the Governor-General, is in practice given or withheld upon the advice of the Legislative Department, and very often at some stage or other the administrative department concerned has a great deal to say about it. The local Councils are thus, in the matter of previous sanction, subordinated to an "irresponsible" Executive authority. This check on the power of the initiative which is further reinforced by the Reservation of Bills Rules seems hardly consistent with the smoothness of relations that should prevail between the Central and local Governments*.

*Where a Bill is reserved for the consideration of the Governor-General the following provisions shall apply:

(a) The Governor, Lieutenant-Governor, or Chief Commissioner may, at any time within six months from the date of the reservation of the Bill, with the consent of the Governor-General, return the Bill for further consideration by the Council with a recommendation that the Council shall consider amendments therefor;

(b) After any Bill as returned has been further considered by the Council, together with any recommendations made by the Governor, Lieutenant-Governor or Chief Commissioner relating thereto, the Bill, if reaffirmed with or without amendment, may be again presented to the Governor, Lieutenant-Governor or Chief Commissioner;

(c) Any Bill reserved for the consideration of the Governor-General shall, if assented to by the Governor-General within a period of six months from the date of such reservation, become law on due publication of such assent, in the same way as a Bill assented to by the Governor, Lieutenant-Governor, or Chief Commissioner, but if not assented to by the Governor-

In this respect, reference may be made to Ss. 91 and 92 of the British North America Act. S. 91 specifies twenty-nine subjects as falling within the legislative jurisdiction of the Parliament of Canada. But it also reserves residuary powers to it. S. 92 specifies sixteen subjects as falling within the exclusive jurisdiction of Provincial Legislatures.

S. 91 of the British North America Act provides :

Powers of the Parliament: It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and Good Government of *Canada*, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces and for greater certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of *Canada* extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say :

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The Raising of Money by any Mode or System of Taxation.
4. The Borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses and *Sable Island*.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.

General within such period of six months, shall lapse and be of no effect, unless before the expiration of that period either

(i) the Bill has been returned by the Governor, Lieutenant-Governor, or Chief Commissioner for further consideration by the Council; or

(ii) in the case of the Council not being in session, a notification has been published of an intention so to return the Bill at the next session *Vide* S 81A (2).

12. Sea-coast and Inland Fisheries.
13. Ferries between a Province and any *British* or Foreign Country or between two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promisory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. *Indians* and Lands Reserved for the *Indians*.
25. Naturalisation and Aliens.
26. Marriage and Divorce.
27. The Criminal Law except the constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28. The Establishment, Maintenance and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

S. 92 provides :

In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say :

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

3. The Borrowing of Money on the sole Credit of the Province.

4. The Establishment and Tenure of Provincial Officers and the Appointment and Payment of Provincial Officers.

5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.

8. Municipal Institutions in the Province.

9. Shops, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local or Municipal Purposes.

10. Local Works and Undertakings other than such as are of the following Classes :

a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province or extending beyond the Limits of the Province.

b. Lines of Steam Ships between the Province and any *British* or Foreign Country.

c. Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of *Canada* to be for the general Advantage of *Canada* or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.

12. The Solemnisation of Marriage in the Province.

13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance and Organisation of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely Local and private Nature in the Province.

Necessarily the classification of subjects cannot be the

same in India as in Canada. But it is suggested that the same model may be followed, and this power of previous sanction of the Governor-General, which is a relic of the old days of centralisation and the imposition of checks upon the powers of local Governments and local Legislatures, should be done away with. There would not seem to be any great risk in following this course when it is remembered that there is always the power of Veto available to the Governor-General and to the Crown.

There is a further limitation placed by S. 80 C, under which no Member of any local Council can introduce, without the previous sanction of the Governor, any measure affecting the public revenues of a Province or imposing any charge on those revenues. For instance, if a Member wants to introduce a Bill providing a statutory limitation of increase in the land revenue, or a Bill bringing under any closer limitation by statute the process of revising land revenue assessments, he cannot do so without the previous sanction of the Governor which, in the circumstances existing, may not be very easy to secure. The Joint Select Committee thought "that the imposition of new burdens should be gradually brought within the purview of the Legislature" and in particular they advised "that the process of revising the land revenue assessments 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 the 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 valua-

tion, 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 would probably 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."

The fact remains that very little, if at all, has been done to carry out the recommendations of the Committee. It may be said that inasmuch as the electorate does not include a satisfactory representation of rural interests, that is, those of the tenantry as well as of the landlords, nothing can be done at present in this direction. It is true that the tenantry is not directly represented in many of the Councils. It may be hoped that in another ten years' time it will be so represented. Meanwhile the fact remains that the landlords are nearly everywhere very well represented, and in some Provinces, *e.g.*, the United Provinces, they enjoy considerable political power and constitute the Ministry. But so far as the middle classes are concerned, their representatives have generally supported the cause of the tenants. There is no reason why action should not have been taken hitherto to give effect to these recommendations, and it may be hoped that if action is proposed to be taken even now with the support of the reasonable section of the zamindars and the general representatives in the Councils, the result of such action will go far to fulfil the expectations of the Joint Select Committee and to meet the growing demand for bringing the land revenue assessments under closer regulation by statute.

So far as local Bills are concerned, the Governor has got the right of Veto to begin with, but where he gives his assent it has to be followed by the assent of the Governor-General, and until that assent is given, an Act does not become an Act. The Governor-General may withhold his assent, but must

give his reasons in writing for his Veto (S. 81). There is further the direct Veto of the Crown provided by S. 82.

In the case of Bills passed by local Legislatures, the Governor has got the right to return the Bill to the Council for reconsideration either in whole or in part, together with any amendments which he may recommend. Or, in cases prescribed by rules under this Act, he may, and, if the rules so require, shall, reserve the Bill for the consideration of the Governor-General. Action was once taken under this Section in the U. P., when a Bill was returned to the Council, and probably in Madras, the Hindu Religious Endowments Bill was reserved for the consideration of the Governor-General. The provisions of S. 81 A should be read with the Reservation of Bills Rules already quoted.

When a Bill has been reserved, the Governor may, within six months from the date of the reservation, with the consent of the Governor-General, return the Bill for further consideration by the Council with a recommendation. After such consideration, the Bill, if re-affirmed with or without amendment, is again presented to the Governor. A reserved Bill becomes law if the Governor-General gives assent within six months of its reservation. But if he does not give his consent within six months, it lapses, unless, before the expiry of six months, the Governor has returned the Bill for further consideration, or, if the Council is not in session, the Governor publishes his intention to return the Bill at the commencement of the next session. Attention has already been drawn to similar powers of return in the Australian and South African Constitutions which are very much simpler, probably because the Central Government there does not exercise such strict control over the Provincial Legislatures. In the case of Bills not reserved the Governor-General has the further power of reserving them without assenting to or withholding his assent for signification of His Majesty's pleasure. And in such a case

the Act shall not have validity until the pleasure of the Crown is known. S. 84 also removes doubts as to the validity of certain Indian laws.*

S. 67, clause 7, and S. 78, clause 4 provide for immunity of the Members of the Indian Legislature from any proceedings by any Court by reason of their speeches or votes in those bodies, or by reason of anything contained in any official report of the proceedings, it being laid down that there shall be freedom of speech in the Indian Legislature and the Councils.

Judicial authorities have already laid down that the *lex et consuetudo parliamenti* has no application to Colonial Legislatures. In an opinion given by the Attorney-General and the Solicitor-General so far back as 1856, they said that the law and practice of Parliament, as established in the United Kingdom, are not applicable to Colonial legislative assemblies, nor does the rule of the one body furnish any legal analogy for the conduct of the other. Such claim was disallowed in the case of Newfoundland (See *Kielley vs. Carson*, 4 Moore's P. C. 63; of *Barton vs. Taylor*, U. A. C. p. 197, a case from N. S. Wales; further, *Fielding vs. Thomas*, a case from Nova Scotia). The Canadian Constitution, however, expressly provides that the privileges, immunities and powers of the Canadian Parliament shall be such as are from time to time defined by an Act of the Parliament of Canada, but they shall not exceed those exercised by the House of Commons in England (S. 18, British North America

*A law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons:

(a) In the case of an Act of the Indian Legislature or a local Legislature, because it affects the prerogative of the Crown; or

(b) in the case of any law, because the requisite proportion of non-official Members was not complete at the date of its introduction into the Council or its enactment; or

(c) in the case of an Act of a local Legislature, because it confers on magistrates, being Justices of the Peace, the same jurisdiction over European British subjects as that Legislature, by Acts duly made, could lawfully confer on magistrates in the exercise of authority over other British subjects in the like cases [*vide* S. 84 (1)].

Act). Similar powers have been taken in other Constitutions such as the Victoria Constitution Act, 1855, S. 35, and the South Australia Constitution 1855-6. There is no good reason why powers should not be reserved to the Indian Legislature and the Provincial Councils to provide in the manner of the Canadian Parliament for their own Parliamentary privileges and immunities.



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THE
INDIAN CONSTITUTION

A NOTE ON ITS WORKING

PARTS VIII TO XII

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THE INDIAN CONSTITUTION

PART VIII

SALARIES, LEAVE, PENSIONS

The salaries of the Governor-General and other persons mentioned in the second Schedule to the Act are guaranteed to come out of the revenues of India. The maximum in the case of each is prescribed by the second Schedule. These "other persons" are the Governors, the Commander-in-Chief and the Members of the Executive Council of the Governor-General and of the Executive Councils of the Governors. So far as the salary of the Governor-General is concerned, the position in the Dominions is as follows: In Canada, Australia and South Africa, the salary is £ 10,000, and it is a charge on the consolidated revenue fund, in Canada it being the third charge (*vide* S. 105 of the British North America Act which gives the Parliament of Canada the power to alter the salary; S. 3 of the Commonwealth of Australia Constitution Act which gives the Commonwealth Parliament power to modify it, but not during the continuance in office of a Governor-General; S. 10 of the South Africa Act which is also similar to the Canadian and Australian provisions). This difference between the powers of the Colonial Legislatures and the Indian Legislature is easily intelligible. But there is also another difference. The Colonial statutes referred to above do not provide for any allowance in addition to the salary; the Indian statute does. Under S. 85, equipment and voyage allowances may be allowed by the Secretary of State in Council.

The remuneration payable to a person under this Section is declared to be "the whole profit or advantage which he shall enjoy from his office during his continuance therein". But this does not affect the allowances or other forms of profit or advantages which may be sanctioned by the Secretary of State in Council for such persons. The second

part of S. 85 also provides that an order affecting the salaries of Members of the Governor-General's Executive Council may not be made without the concurrence of a majority of the votes at a meeting of the Council of India*. Does that imply that the Secretary of State himself may pass orders affecting the salaries of other persons than those who are mentioned in S. 85 (1)? Such an implication would hardly be consistent with the spirit of the Section; and yet there does not seem to be any good reason why proviso (a) should have been limited to Members of the Governor-General's Executive Council. The Governor-General in Council may grant leave of absence to any Member of the Council other than the Commander-in-Chief; and so also a Governor in Council and a Lieutenant-Governor in Council may grant leave of absence, but it must be under a medical certificate and for a period not exceeding six months. Absence exceeding six months has the effect of making the office vacant. If the Governor-General, or a Governor, or the Commander-in-Chief, and save in the case of absence on special duty or on leave under a medical certificate, if any Member of the Executive Council of the Governor-General (other than the Commander-in-Chief) or any Member of the Executive Council of a Governor, or a Lieutenant-Governor, departs from India, intending to return to Europe, his office thereupon becomes vacant. Provision is made in the statute for the filling of temporary vacancies in the case of the Governor-General and Governors and Members of the Executive Council. Only Governors of the Presidencies in their order of priority of appointment as Governors can hold the office of the Governor-General, Governors of the other Provinces not being eligible. Until such a Governor assumes office, the Vice-President, or, in his absence, the senior Member of the

* Compare with this S. 69 of the South Africa Act, 1909: "The salaries of the administrator shall be fixed and provided by Parliament and shall not be reduced during their respective terms of office."

Executive Council holds and executes the office of Governor-General.

In the case of a vacancy of a Governor, when there is no successor on the spot, the Vice-President, or, if he is absent, the senior Member of his Executive Council, or, if there is no Council, the Chief Secretary to the Local Government temporarily holds the office. This is the Section which incidentally provides a statutory recognition of the office of Chief Secretary. In the case of a vacancy in the office of a Member of the Governor-General's Council, (other than the Commander-in-Chief), or a Member of the Executive Council of a Governor, there being no successor on the spot, the Governor-General or the Governor, as the case may be, may appoint a temporary Member. The temporary Member receives half the salary of the Member of Council whose place he fills and also half the salary of any other office which he may hold, if he holds any such office, the remaining half of such last-named salary being at the disposal of the Governor-General in Council or Governor in Council, as the case may be. The temporary Member must be possessed of qualifications required in the case of a permanent Member.

Nominated or elected Members of the local Council are at liberty to resign their offices. In the event of such a Member being absent for two consecutive months from India, or from the duties of his office, his seat may be declared to be vacant. S. 94 of the Government of India Act gives power to the Secretary of State in Council to make rules as to leave, pay, salary and allowances during the period of leave. The concurrence of a majority of the votes of the Members of the India Council is necessary.

As regards military appointments, the Secretary of State with the concurrence of the majority of the Council of India, has the power of making rules for distributing between the several authorities in India the power of making appointments

to and promotions in the military appointments under the Crown in India. He may also reinstate military officers and servants suspended or removed by any of those authorities. This Section only shows that constitutionally even the Secretary of State's power in regard to such appointments is at best very limited by reason of the peculiar position of the Army in India.

S. 96 is an important constitutional Section. It provides that no native of British India, nor any subject of His Majesty resident therein, shall by reason only of his religion, place, birth, descent, color, or any of them, be disabled from holding any office under the Crown in India. Under S. 96 A, rulers and subjects of Indian States are also declared eligible for appointment to civil and military offices under the Crown in India, subject to any conditions or restrictions imposed by the Governor-General in Council with the approval of the Secretary of State in Council.

PART IX THE CIVIL SERVICES IN INDIA

Part VII A of the Government of India Act consists of four Sections of which two, namely, 96 B and 96 C, relate to the civil services in India. S. 96 C provides for the appointment of a Public Services Commission consisting of not more than five members of whom one shall be Chairman appointed by the Secretary of State in Council. Their qualifications, pay and pensions may be prescribed by rules made by the Secretary of State in Council. The statute requires that this Commission shall discharge, in regard to the recruitment and control of the public services in India, such functions as may be assigned thereto by rules made by the Secretary of State in Council. The Public Services Commission, if appointed, will not be independent of the Secretary of State; on the contrary, it will derive its powers from him. In point of fact, no such Commission has yet been appointed.

The Lee Commission say, in their Report, that the statutory Public Service Commission contemplated by the Government of India Act should be established without delay, but they expressly say that so far as the duty of recruitment for the All-India Services is concerned, it shall be discharged as by the agent of the Secretary of State. In respect of the Central Services and the Provincial Services the Commission should act as the agent of the Secretary of State, the Government of India or the Local Governments, as the case may be. Their entire recommendations in regard to this matter require careful consideration. Of course, the basis of those recommendations is that the final responsibility for the All-India Services rests with the Secretary of State. Public Service Commissions have been appointed in the Dominions; for instance, in Australia, where the Commonwealth Public Service Act was passed in 1902, putting the regulation of its servants on a statutory basis, a Public Service Commissioner has been appointed. Speaking of him, Moore says :

It remains to speak of the Public Service Commissioner, upon whom lies the burden of administering the Act and upon whose integrity, judgment and courage depends, in the main, the reconciliation of the various aims and interests which meet in the organisation and working of the Service. He is at once administrator, adviser and critic, responsible not merely or mainly to his political chief, but also to Parliament. For these reasons, security of tenure and of salary are granted. But so much depends on the efficient performance of his duties, and this again depends so much on the personal qualities of the officer, which can only be tested by experience, that his appointment is for a fixed term of seven years and not for life. He is required to present an annual report for submission to Parliament on the condition and efficiency of the Service, on his own proceedings and those of his inspectors, with suggestions for "improving the method of the working of the Public Service and especially for ensuring efficiency and economy therein in any Department or subdivision thereof." In this report he is charged, like the Auditor-General, with the duty of calling attention to any breaches or evasions of the law which may have come under his notice. His duties in relation to appointments and promotions have been considered. He has a staff of inspectors who enjoy the same tenure as himself and through them he ascertains the nature, value and quality of the work of all officers. By this means he is able to classify the work and the officers, and to learn enough of the personal qualities of the individual servant to guide him in dealing with appointments and promotions. He is not, however, dependent solely on his own staff; he may call on the Departments for reports and may hold enquiries. In relation to the classification of officers and the arrangement of work in the Department, the Duty of the Commissioner is to present recommendations and proposals to the Government, and upon these a special procedure is established. The Government may proceed to give effect to them, or may reject them. If they are rejected, the Commissioner proceeds to a reconsideration of the matter with a view to further recommendations or proposals, and a statement of the reasons for rejection must be laid before Parliament (Moore; *The Commonwealth of Australia*, pp. 194-6).

S. 141 of the South Africa Act says:

(1) As soon as possible after the establishment of the Union, the Governor-General in Council shall appoint a Public Services Commission to make recommendations for such reorganisation and

readjustment of the departments of the Public Service as may be necessary. The Commission shall also make recommendations in regard to the assignment of officers to the several provinces.

(2) The Governor-General in Council may, after such Commission has reported, assign from time to time to each province such officers as may be necessary for the proper discharge of the services reserved or delegated to it, and such officers on being so assigned shall become officers of the province. Pending the assignment of such officers, the Governor-General in Council may place at the disposal of the provinces the services of such officers of the Union as may be necessary.

(3) The provisions of this Section shall not apply to any service or department under the control of the Railway and Harbor Board, or to any person holding office under the Board.

S. 142. After the establishment of the Union, the Governor-General in Council shall appoint a permanent Public Service Commission with such powers and duties relating to the appointment, discipline, retirement and superannuation of public officers as Parliament shall determine.

In Australia, the Commonwealth Parliament has just passed the Commonwealth Public Service Act No. 21 by which a Board of three Commissioners instead of a single Public Service Commissioner has been appointed (See the discussion in *The Journal of Comparative Legislation* III Series, 1924, Vol. 6., Part II, pp. 59-61). The analogy perhaps between the Dominion Public Services and the Indian Services is not altogether true, inasmuch as the powers and the functions of the All-India Services at any rate are in some respects very different from those in the Dominions. But the essential fact remains that by reason of there being Responsible Government there, the Public Services Commissions derive their powers from and hold themselves responsible to their respective Governments. In India, it will be, if such a Commission is appointed, under the present Constitution, quite the contrary. Indian opinion, however, is emphatic that the functions which the Secretary of State discharges in relation to the All-India Services should be discharged in future by the Government of India. It may be that later on the Provincial Governments may claim to hold themselves responsible independently for the organisation and control of their Services.

Meanwhile, these powers of the Secretary of State, should be transferred to the Government of India. This no doubt raises the question as to whether the Services are prepared to accept this change. That they are not so prepared is clear. Under the present system the Services may look up to the Secretary of State for the protection of their rights, but it is obvious that such a claim on the part of the Services is wholly inconsistent with the idea of Responsible Government in India. If and when the idea of conferring on India Dominion Status is seriously entertained, the question of the Services will have to be solved consistently with that Status.

What, then, is the present constitutional position? Public servants hold their office during the pleasure of the Crown (*vide* S. 96 B). But no person holding an appointment in the civil services in India can be dismissed by any authority subordinate to that by which he was appointed; and a dismissed person has a right of appeal to the Secretary of State. If any officer appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a Governor's Province, he has a right of complaint to the Governor, and the Governor is bound to enquire and pass such order as may appear to him to be just and equitable. The Instrument of Instructions to the Governor charges him to safeguard all the members of the services in the legitimate exercise of their functions and in the enjoyment of all recognised rights and privileges. This provision should make it difficult for any Minister to deal effectively with an erring Member of an All-India Service; and howsoever a provision like this may be put up with now, it is clear that in any scheme of real and full Responsible Government it will be wholly out of place.

The second clause of S. 96 B gives the Secretary of State in Council power to make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and

discipline and conduct. The Secretary of State has framed a certain number of rules. He may also delegate the power of making rules to the Government of India, or to the local Government, or authorise the Indian Legislature or the local Legislatures to make laws regulating the Public Services. This power of making rules has not been delegated to the Government of India, or to the local Governments. In any case, reading this Section with S. 97, which deals specifically with the Indian Civil Service, it seems difficult to hold that the Governor-General in Council or the local Governments could make rules, or the Indian Legislature or the local Legislatures could make laws affecting the matters dealt with by S. 97.

The proviso to S. 96 (2) has given rise to a considerable amount of controversy. Every person appointed before the commencement of the Government of India Act of 1919 by the Secretary of State to the Civil Service shall retain, so the Act provides, all his existing or accruing rights, or shall receive such compensation for the loss of them as the Secretary of State in Council may consider just and equitable. In paragraph 81 of the Lee Commission Report is quoted the despatch of the Secretary of State dated 26th April, 1923. It seems that the Law Officers of the Crown are of opinion that the words "accruing rights" in S. 96 B (2)

mean all rights to which members of the Civil Service are entitled, whether by statute, or by rule having statutory force, or by regulation in force at the time of their entry into service. They do not, however, include prospects of promotion, except in cases where the promotion is no more than advancement by seniority to increased pay, as in the case of the various appointments borne upon the ordinary lists of time-scales of pay. In particular, they do not apply to general expectations of possible appointment to offices, such as those of Commissioner of a Division, which are not included in the ordinary time-scale lists, and the filling of which involves selection by merit. . . The abolition of such appointments would give rise to no claims to compensation except to persons who were

actually holding them at the time of their abolition. . No method of filling such appointments which is not inconsistent with the statute, even though it reduced the expectations of members of a particular service, would give rise to any claim to compensation on the part of any person whose actual tenure of an appointment was not thereby affected. . . The proviso to S. 96 B (2) applies not only to loss of rights (as defined above) resulting from the provision of rules framed by the Secretary of State in Council in pursuance of the provisions of that sub-section, but also to a loss of rights resulting from rules or laws made by other authorities in exercise of powers delegated to them under the provisions of the same sub-section by the Secretary of State in Council.

It may here be pointed out that the expression, existing and accruing rights, also occurs in S. 144 of the South Africa Act, 1909.

The civil services, on the other hand, as appears from para. 82, claim that the intention of the proviso was to secure to them their prospects of promotion to all higher posts existing at the time that the Act was passed, or, alternatively, to secure for them compensation for the loss of such prospects through the abolition of these appointments. The question of intention is at best a matter of speculation. But the claim of the services seems to be hardly reasonable. For, if that were well-founded, no single higher post existing at the time the Act was passed could be abolished howsoever strong the justification for such abolition might be; and that would be scarcely consistent with an intention to give real Responsible Government.

From para. 83 of the Lee Commission's Report, it appears that the services expressed to the Commission "their anxiety with regard to the future security of their pensions" and "their grave concern at the prospect of future constitutional developments." The Commissioners say: "We do not share this apprehension under existing circumstances; and we assume that if any statutory change is made hereafter, involving the transfer of the financial control in this regard,

now exercised by the Secretary of State in Council, adequate provision would at the same time be made for safeguarding service pensions." They also suggest that as regards emoluments generally, the most practical form of safeguard would be a mutually binding legal covenant, enforceable in the civil courts between the officer and the authority which has appointed him.

In any scheme of Responsible Government, it would be necessary to safeguard the interests of the services; that is to say, to provide that their salaries and pensions at the date of any constitutional change shall not be adversely affected. It is suggested that in addition to the legal covenant there should be a statute passed or provisions made in the Constitution Act similar to those in the South Africa Act, 1909.

S 143 of the South Africa Act says :

Any officer of the public service of any of the Colonies at the establishment of the Union who is not retained in the service of the Union, or assigned to that of a province shall be entitled to receive such pension, gratuity, or other compensation as he would have received in like circumstances if the Union had not been established.

S. 144.—Any officer of the public service of any of the Colonies at the establishment of the Union, who is retained in the service of the Union or assigned to that of a province, shall retain all his existing or accruing rights and shall be entitled to retire from the service at the time at which he would have been entitled by law to retire, and on the pension or retiring allowance to which he would have been entitled by law in like circumstances if the Union had not been established.

S. 146.—Any permanent officer of the Legislature of any of the Colonies who not retained in the service of the Union, or assigned to that of any province, and for whom no provision shall have been made by such Legislature, shall be entitled to such pension, gratuity, or compensation as Parliament may determine.

The Indian Civil Service occupies a peculiar position in India. In a sense it corresponds to the Permanent Civil Service in England, but in point of fact, until the present Act came into force, it was the repository of actual political power in India; and even now, notwithstanding Diarchy in

the Provinces and elected majorities in the Indian Legislature and the Legislative Councils, it still continues to enjoy a very large measure of political power. In the Dominions, the position of the civil service has been very different from that in India. There they have had to struggle against political influences and intrigue (see Chapter 8 on the Civil Service in Keith's *Responsible Government in the Dominions* Vol. I., where after reviewing the position in each Dominion, he sums up the position as follows: "It is as yet impossible to attribute to the Dominion Civil Services the importance which attaches to the Imperial Civil Service, but the trend of events and the growth of the Dominions will, it may be presumed, ultimately render the Civil Service more and more worth the attention of the best educated classes of the community."). In the well-known Tilak case (1916, 19, Bom. L. R. p. 211) Batchelor J. expressed himself as follows: "The Government established by law acts through human agency, and admittedly the Civil Service is its principal agency for the administration of the country in times of peace." Though this statement was made in relation to the law of sedition, yet it seems to represent the true political position excepting so far that in certain departments in local Governments, constitutionally, Ministers now have got the shaping of policy in their hands. Being the premier Service, there is a special part of the Act devoted to it. Entrance into the Civil Service lies ordinarily through the open door of competitive examination, though in recent years some nominations also have been made. The Secretary of State in Council makes rules with the assistance of Civil Service Commissioners for the examination which is conducted under their superintendence. Rules also prescribe the age and qualifications of candidates and the subjects of examination, and all rules made under this Section (97) are laid before Parliament within fourteen days of their being made, or if Parliament is not sitting, then within fourteen days after the

next meeting of Parliament. There are certain appointments which are reserved for the Indian Civil Service and they are indicated in the third Schedule to the Act. The offices of Secretary, Joint Secretary, Deputy Secretary in every department, except the Army, Marine, Education, Foreign, Political and Public Works Departments of the Government of India must be filled by members of the Indian Civil Service. In the case of the Legislative Department, if the office of Secretary or Deputy Secretary is filled from among the members of the Indian Civil Service, then the office of Deputy Secretary or Secretary in that Department, as the case may be, need not be so filled. Three offices of the Accountant General are reserved for the Indian Civil Service. In the Provinces which were known as "Regulation Provinces" in 1861, the Schedule reserves the following offices for the Indian Civil Service: (1) Member of the Board of Revenue, (2) Financial Commissioner, (3) Commissioner of Revenue, (4) Commissioner of Customs, (5) Opium Agent, (6) Secretary in every Department except the Public Works or the Marine Departments, (7) Secretary to the Board of Revenue, (8) District or Sessions Judge, (9) Additional District or Sessions Judge, (10) District Magistrate, (11) Collector of Revenue or Chief Revenue Officer of a District. The Act further provides that all such officers as may be created hereafter shall be filled from amongst the members of the same Service. The next two Sections (99 and 100) allow of persons not belonging to this Service being, subject to certain rules, appointed to certain offices reserved for the Indian Civil Service. Under S. 99, persons of proved merit and ability domiciled in British India and born of parents habitually resident in India may be appointed to such offices. The rules may be made by the Governor-General in Council and sanctioned by the Secretary of State. The Governor-General in Council may pass a resolution defining the qualifications of such persons, but such a resolution must receive the sanction

of the Secretary of State in Council and cannot have force until it has been laid for thirty days before both Houses of Parliament. Similarly, such reserved appointments may be given to any other person as a special case who has before his appointment fulfilled all the tests, if any, which could be imposed in the like case on a member of that Service and who has resided for at least seven years in India. But such appointments are provisional and are subject to the sanction of the Secretary of State being given within twelve months. There are now what are known as Listed Appointments in the Provinces the number of which vary from province to province, and these appointments though reserved for the Indian Civil Service are thrown open to the Provincial Services. In the Government of India too, just a few Secretariat appointments have been held in recent years by persons not belonging to the Indian Civil Service.

The future of the Services is intimately connected and associated with constitutional development in this country. And it is generally feared that any decisions with regard to the future of the Services arrived at in advance and independently of decisions relating to constitutional advance are bound to prejudice the latter.

NOTE:—An Auditor-General in India is appointed by the Secretary of State in Council and holds office during the pleasure of the Crown. The Secretary of State makes by rules provision for his pay, powers, duties and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence. In England, an Auditor-General and an Assistant Auditor hold their offices during good behavior (29. 30 Vict. Chap. 39, S. 3.)

PART X THE JUDICIARY

It is not intended in this note to trace the history of the Judiciary in India or to refer to the subordinate Judiciary. The present constitution of the High Courts is contained in Part IX of the Government of India Act. The High Courts in the Presidencies combine in themselves the functions of the old Supreme Courts and the Sadar Courts. They all have Original Jurisdiction: that is to say, they try civil and criminal cases arising within the Presidency towns as Courts of first instance or Sessions Courts. The High Court at Allahabad, which was established in 1865, has always been an Appellate Court excepting that it has original jurisdiction to try matrimonial or probate cases. The Patna High Court, which was established in 1916, is also similar to the Allahabad High Court. Another High Court established on the same model is the Lahore High Court which was established in 1919. The Burma High Court is the latest; it has an Original Side and like the Presidency High Court, it also exercises Admiralty jurisdiction.

Each High Court has got Letters Patent broadly defining its jurisdiction. The Letters Patent may be amended from time to time by the Crown by further Letters Patent. The High Courts have no Original jurisdiction in any matter concerning revenue or concerning any act ordered or done in the collection thereof, according to the usage and practice of the country or the law for the time being in force [*vide* S. 106 (2)]. The original Act establishing the High Court was an Act of Parliament (24, 25 Vict. Chap. 104). The High Courts are Courts of record and exercise powers of superintendence over all Courts subject to their Appellate jurisdiction, and have certain specific powers given to them under S. 107 under which is the power of making rules, forms and tables of fees with the previous approval, in the case of the High Court at Calcutta, of the Governor-General in Council, and, in other

cases, of the local Government concerned. The Governor-General in Council has got the power to alter the local limits of jurisdiction of High Courts subject to such order being disallowed by the Crown (S. 109). By S. 113, the Crown has got the power of establishing by Letters Patent any additional High Court and conferring the ordinary jurisdiction, powers and authority vested in any High Court, existing at the commencement of the Act. The Benches are constituted by the Chief Justice. High Courts have got the power to make rules providing for the exercise, by a single judge or more judges, or by division Courts constituted by two or more judges, of the Original or Appellate jurisdiction vested in them.

The High Courts everywhere are Courts of equity and law and exercise a mixed jurisdiction. In regard to the High Courts at Calcutta, Madras and Bombay, S. 112 provides that in the exercise of their Original jurisdiction in suits against inhabitants of Calcutta, Madras and Bombay in matters relating to succession of lands, or goods, and in matters of contract, and in dealing with party and party when both parties are subject to the same personal law and custom, the High Court shall decide according to the personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the custom or law to which the defendant is subject.

Composition of High Courts

Each High Court consists of a Chief Justice and a certain number of Judges who are appointed by the Crown. The maximum number of Judges of a High Court, including the Chief Justice and additional Judges, is twenty, though that number exists nowhere. For Judges certain qualifications are necessary. A Judge of the High Court must be (a) a barrister of England or Ireland or an advocate of 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 judicial officer of the standing of a Subordinate Judge or a Judge of the Small Cause Court having held that office for not less than five years; or (d) a pleader of a chartered High Court or any other Court exercising the powers of a High Court within the meaning of S. 3, clause 24 of the General Clauses' Act provided he is a pleader of not less than ten years' standing. There are certain proportions too prescribed for different classes of judges; not less than one-third of the judges of a High Court, including the Chief Justice but excluding additional Judges, must be such barristers or advocates as aforesaid, and not less than one-third must be Members of the Indian Civil Service.

It will be noticed that this proviso guarantees certain proportions to barristers of England or Ireland and advocates of Scotland and members of the Indian Civil Service, but affords no such guarantee to pleaders of High Courts or to Subordinate Judges or Judges of a Small Cause Court. There is a considerable amount of opinion now that the time has come when the reservation in favor of members of the Indian Civil Service should be done away with, and the High Court should in future, as in England, consist of trained lawyers. It is true that in the past the Indian Civil Service has supplied some very eminent Judges to the High Courts, but they have been exceptions. The present experience is that the average Civilian judge's knowledge of the personal laws of the country and some branches of civil law leaves much to be desired. Besides, the early training of a Civilian gives a bent to his mind which at times seriously affects his utility on the Bench. It is true that the Civilian judge brings with him on the Bench an intimate knowledge of the rent and revenue laws of the country and a certain amount of the knowledge of the customs and habits of

the people which is totally lacking in the case of a lawyer-judge fresh from England. But this knowledge can be furnished by competent and experienced Indian lawyers as well. Again, whatever justification there might have been at one time to import judges from England, there seems to be hardly any now. Most of our law has been codified. The rules of practice and procedure in the High Courts are well settled. The standard of knowledge of the Bar is, generally speaking, much higher than it was thirty years ago. It is true that an English barrister brings direct knowledge of English equity, law and procedure. But this direct knowledge is by no means so indispensable that merely for the sake of it, this statutory lien in favor of English and Irish barristers and Scottish advocates should be maintained. Roughly speaking, the salary of a High Court Judge, deducting income-tax, comes to about £ 3,000 a year. It is obvious that a man in good practice in England making an income of £ 2,000 to 3,000 would not ordinarily feel attracted to an Indian judicial career on those terms when it is admitted that the cost of living in India in the case of Europeans has considerably gone up. At times we get a good judge from England to a High Court; but there are also bad bargains. In any case, the superiority of the judge from England to indigenous talent is by no means now an admitted fact. And after all it is far better that a judge of an Indian High Court should know more of his Indian codes and Hindu and Muhammadan law than the rules of the Chancery Court or the practice of the King's Bench Division. In the Presidency towns, a number of Indian barristers have achieved distinction in commercial cases, and it is by no means uncommon to see them representing European clients. It is, therefore, suggested that these statutory guarantees should disappear, and the High Court should, in course of time, be composed of trained and experienced lawyers. This does not by any means mean that English

barristers practising in India should be excluded, though it must be borne in mind that their number everywhere has been steadily going down.

Again, the proviso under consideration has been taken to imply that the Chief Justice must always be a barrister. That is an interpretation which is at least open to doubt. The Government of India have been several times invited to remove this disability. Resolutions have been moved and questions have been put; on the last occasion it was stated that when action is taken on the recommendations of the Indian Bar Committee, this would be borne in mind. The position is that an Indian vakil judge may officiate as Chief Justice, but he cannot be confirmed. Some of the most eminent Indian judges, like the late Sir Ashutosh Mukerjee, Sir Subramania Aiyar, Sir Narayan Chandavarkar, Sir Pramoda Charan Bannerjee have officiated as Chief Justices, but under this interpretation they could not be confirmed. In addition to the permanent judges, there are additional judges. But such judges can be appointed only by the Governor-General for a period not exceeding two years. When the Chief Justice is absent on leave, one of the Judges of the same High Court is appointed to act as Chief Justice by the Governor-General in Council, in the case of the Calcutta High Court, and by the local Government in the case of any other High Court. If there is a vacancy in the office of a Judge of the High Court, the Governor-General appoints a duly qualified person in the case of the Calcutta, and a local Government in the case of any other, High Court. The salaries of the Judges of High Courts are not votable, and the power of fixing the salaries and allowances, furlough, pensions and expenses for equipment and voyage of judges rests with the Secretary of State in Council. If a judge dies during his voyage to India or six months after his arrival in India, the Secretary of State is bound to pay to his legal personal representatives, out of the revenues of India, such sum of money as will, with the

amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary. Similarly, if he dies *after* the expiration of six months of his arrival in India, the Secretary of State is bound to pay to his legal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary. These rules obviously cannot apply to Indian judges or Civilian judges appointed in India. They are meant exclusively for the benefit of English lawyers sent out to High Courts from England.

The judges in India do not hold their office during good behavior, but during the pleasure of the Crown. "Since 1700, it has been the general policy of the Legislature," says Maitland in his *Constitutional History of England*, p. 429, "to secure the independence of the judges by making their tenure of office tenure during good behavior. The judges of the superior Courts hold office during good behavior, but can be dismissed on an address presented by both Houses of Parliament."

In the Dominions, judges are appointed by the Governor-General and the judges of the provincial Courts in Canada are selected from the respective Bars of those provinces. They hold their office during good behavior, but are removable by the Governor-General on an address of the Legislature (*vide* Ss. 96,97,98,99, British North America Act, 1865; S. 72 Commonwealth of Australia Constitution Act, 1900; Ss. 100, 101, of the South Africa Act, 1909). —

The Privy Council

The Privy Council is not a Court of Criminal Appeal from India or the Colonies. It has, since the decision in Dillet's case, refused to admit criminal appeals excepting when something has been done which is opposed to natural justice. In civil matters where the value of the subject-matter is above Rs. 10,000, and the High Court differs from the lower Court,

or where the High Court affirms the decision of the lower Court, but a substantial question of law arises in the case, an appeal lies to the Privy Council. Apart from these conditions, the High Court may certify in any special case that in its opinion it is a fit case for appeal to the Privy Council, and the Privy Council, as exercising the prerogative of the Crown, has always the right of admitting any appeal. The Judicial Committee of the Privy Council was constituted in 1833. It consists of the President of the Council, the Lord Keeper or the First Lord Commissioner of the Great Seal of England, and all Privy Councillors who have held these offices or hold or have held a high judicial office such as Lords of Appeal in Ordinary, Judges of the Supreme Court of England or Ireland, or the Court of Session in Scotland. The King has the power to appoint to the Judicial Committee Privy Councillors who are or have been judges of the Supreme Court of Canada, or of a Superior Court of the Dominion, or of New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, Western Australia, the Cape of Good Hope or Natal, or of any other British possession fixed by order in Council, or the Chief Justice or Justices of the High Court of Australia or the Chief Justice or Judges of the Supreme Court of Newfoundland, or Judges of the Superior Court of Transvaal or of the Orange River Colony. Any member of the Privy Council, being or having been the Chief Justice or a Judge of any High Court in British India, can, by direction of His Majesty, be made a member of the Judicial Committee, but there must not be more than two such members at the same time (See Halsbury's *Laws of England* Vol. IX pp. 27-28). In point of fact, there are three such Judges in the Privy Council, Mr. Ameer Ali, Sir John Edge and Sir Lawrence Jenkins. There have been proposals before the Government of India and the Secretary of State as well as before the Lord Chancellor in recent years for a better representation on the Board

of Indian judicial experience. But such proposals have not borne any fruit. Meanwhile it must be said that during the last ten years dissatisfaction has been growing in this country with the manner in which certain questions of personal law in particular have been disposed of by the Privy Council. Reference may here be made particularly to the present state of uncertainty with regard to the law relating to impartible estates and the liability of a Hindu son to pay the antecedent debts of his father. The proposal to appoint more Indian judges and to ask them at an advanced stage of their life to stay in England for a number of years is as unpromising as the proposal to invite English judges of the Privy Council to come out to India. For this reason, as also because it is felt that a country marching towards Responsible Government should have a Supreme Court of Appeal of its own, the feeling has in recent years been expressed more than once in the Indian Legislature that India should have a Supreme Court of its own. The arguments for and against it may be summarised as follows: (1) The Privy Council is a truly Imperial body and one of the most important connecting links between the Crown and India. The answer to that is that it is not proposed to break the link. The King's supreme prerogative of appeal shall remain unaffected, and instead of every appeal on facts which can go to the Privy Council now going up there, only certain classes of appeal, involving substantial questions of general interest in suits of certain pecuniary value, which must be higher than the present pecuniary limit, should in future go to the Privy Council. Similarly, with the growing Constitution of India, questions of great constitutional importance such as that disposed of recently by Mr. Justice Ghose in regard to the Bengal Legislature, should be allowed to go to the Privy Council. (2) It is said that it would be difficult to secure the necessary legal talent in India. So far as this objection is concerned, the answer to it is furnished by the records

of some of the most eminent Indian judges and Indian lawyers. It is impossible seriously to contend that six competent well-read and independent judges for that Court cannot be secured in India. (3) It is urged that the question of location would be a very serious one. It cannot be located in Delhi for the reason *inter alia* that it does not possess a local Bar of the standing required for cases going before an ultimate Court of Appeal, and it is also urged that if it is located at Delhi, the cost of bringing counsel from High Courts will not be less heavy, and may be heavier, than the cost now incurred by litigants in engaging solicitors and counsel in England. This no doubt is a serious difficulty, but it does not seem to be insoluble. There is no reason why this Court should not in its entirety or divisions sit at different centres in certain terms to try local appeals. (4) It is further said that it may mean an additional expenditure to the taxpayer. But the additional expenditure will be more than met by the satisfaction that it will accord to the public and by the facility which will be available for getting the differences of judicial opinion among the various High Courts authoritatively settled with greater ease than is possible under the present system. (5) The scale of fees in the Privy Council both of counsel and solicitors is usually higher than in appeals in High Courts in India. And in recent years there has been an upward tendency. It is always a disadvantage to a litigant to send his appeal 6,000 miles away when he has no chance of coming into personal contact with his counsel or solicitor.

The reorganisation of the Bar and the establishment of the Supreme Court in India should be an integral part of any further constitutional development. Dr. Gour has been the main protagonist of the idea of a Supreme Court, and some time ago he asked for leave to introduce a Bill which was disallowed on the ground that the Indian Legislature had no power to establish such a Court. In the Dominions, such a Court has been established as part of

the Constitution. Reference may here be made to Australia and South Africa in particular. S. 73 of the Commonwealth of Australia Constitution Act gives power to the Federal Supreme Court, otherwise called the High Court of Australia, to hear and determine appeals from all judgments, decrees, orders, and sentences (1) of any Justice or Justices exercising the original jurisdiction of the High Court; (2) of any other Federal Court, or Court exercising Federal jurisdiction; or of the Supreme Court of any State, or of any other Court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council; (3) of the Inter-State Commission, but as to questions of law only; and the judgment of the High Court in all such cases shall be final and conclusive. But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

And it provides that the judgment of the High Court in all such cases shall be final.

In South Africa, S. 106 of the South Africa Act, 1909 makes the following provisions as to appeals to the King in Council :

There shall be no appeal from the Supreme Court of South Africa or from any division thereof to the King in Council, but nothing herein contained shall be construed to impair any right which the King in Council may be pleased to exercise to grant special leave to appeal from the Appellate Division to the King in Council. Parliament may make laws limiting the matter in respect of which such special leave may be asked, but Bills containing any such limitation shall be reserved by the Governor-General for the signification of His Majesty's pleasure: Provided that nothing in this Section shall affect any right of appeal to His Majesty in Council from any judgment given by the Appellate Division of the Supreme Court under or in virtue of the Colonial Courts of Admiralty Act, 1890.

Apart from these provisions, the Judicial Committee Act of 1844 gives a right to admit appeals from any Court in the Dominion whatsoever.

With regard to Canada, it must be observed that the British North America Act did not create a Court for the whole of Canada. Only S. 101 of the Act allowed the Parliament of the Dominion to create a general Court of Appeal for Canada. The provinces have power to provide for the constitution of provincial Courts. The Supreme Court of Canada was constituted in 1875 as a general Court of Appeal. Appeals to the Privy Council lie by special leave in every case. Appeals also lie directly to the Privy Council from the Supreme Courts of the several provinces. The Governor-General in Council can invoke the Original jurisdiction of the Supreme Court by referring to it important questions relating to the interpretation of the British North America Acts, 1867-1886, the constitutionality of any Dominion or any provincial Act, the powers of the Parliament of Canada and the Legislatures of the provinces or their Governments in any particular matter. This is purely an advisory jurisdiction, but the judgments of the Supreme Courts can be taken in appeal to the Privy Council.

The question of judicial appeals to the Privy Council has been several times taken up by the Imperial Conference. In 1907, General Botha moved that when Colonies were federated, or a Court of Appeal was established for a group of Colonies, it should be competent for the Legislatures of those Colonies to abolish any existing right of appeal from the Supreme Courts to the Judicial Committee of the Privy Council; that the decision of such a Court of Appeal should be subject to the right of the Court to grant right of appeal in such cases as might be laid down by the statutes under which it was established, but that the right to appeal by special leave from the Privy Council should not be curtailed (See Keith's *Responsible Government in the Dominions* Vol. III, p. 1481). In subsequent years the question of an Imperial Court of Appeal has been mooted, and the present Lord Chancellor is supposed to be a strong advocate of it, but the

idea has not materialised. It may, however, be apprehended that in the event of such an idea taking concrete shape, the position of India will not be very much better than it is in its relation to the Privy Council.

Lastly, the chapter relating to High Courts in the Government of India Act also provides for the appointment by Letters Patent of the Advocates-General for Bengal, Madras, and Bombay, who may take for the Crown such proceedings as are taken in England by the Attorney-General. The Advocate-General of Bengal is the Law Officer of the Government of India. In the other Governors' Provinces, there are Government advocates appointed by the local Government. In England and the Self-Governing Dominions, the Law Officers are appointed by the Government of the day, and there is no reason why the same practice should not be followed in India in the event of Responsible Government being established.

The suggestions therefore are as follows: (1) A Supreme Court, consisting of not less than six judges and one President, should be constituted in India. (2) It should have the power of hearing appeals in civil matters, both on facts and law, from the High Courts in all suits or proceedings of the value of Rs. 10,000 or upwards. (3) No further appeal to the Privy Council should be provided from the judgment or order of the Supreme Court on facts, but an appeal may be allowed in any case of the value of a lakh of rupees or upwards only on a question of law, provided the Supreme Court certifies that it raises an important question of law of general interest, or that irrespective of the value of the suit or appeal the case involves a substantial question of constitutional law or public interest. (4) The Supreme Court should consist exclusively of judges selected from High Courts who, before their appointment as judges of the High Court, were members of the legal profession, or of judges selected direct from the legal profession. (5) The Chief Justice of each High

Court shall, in addition to those indicated above, be an ex-officio member of the Supreme Court; but he shall not sit in appeal from a judgment of the High Court to which he was a party (6) Such judges of the Supreme Court should hold office during good behavior and their salaries should be laid down by statute.

PART XI SECOND CHAMBERS

It is to be noticed that in the Central Legislature Parliament has provided a Second Chamber. But in the local Legislatures, there are no Second Chambers. In the Central Legislature, there is no doubt that the more powerful chamber is and has been the Assembly. The franchise relating to the Second Chamber would seem to need broadening, so that it may be possible for a larger number of enlightened representatives of the conservative elements in society and of knowledge and administrative experience to enter that Chamber. As matters stand, the chances for such men, as against landed magnates or mere representatives of wealth, are not favorable. The real political power is wielded by the Assembly. Some minor Bills are at times introduced for the sake of convenience in the Council of State. But Money Bills are always introduced in the lower House. The Budget is laid before the Second Chamber, and it is invited to discuss it, but it has not the power of vote. The Finance Bill, however, goes to the Second Chamber, and it can make amendments and has, in point of fact, done so. To this exception has been taken. On the other hand, it is argued that as the Council of State also consists of elected Members there is no reason why it should not have an equal measure of power over Money Bills. It is, however, constitutionally wrong to make it the equal of the first Chamber, notwithstanding the fact that it contains an elective element. The more generally accepted view seems to be that "it should be subordinated in financial legislation to the popular House..... but should, for other kinds of legislation, be on the same footing. According to this theory, it will be entitled not only to initiate Bills but also to amend and possibly reject Bills sent up from the latter, though it will recognise that in a trial of strength it may prove the weaker." (See Bryce, *Modern Democracies*, Vol. II. p. 448.) The present position

of the Council of State corresponds to the one contained in this extract from Bryce. As regards the question, what is a Money Bill, reference may be made to its definition in the Parliament Act of 1911 :

A Money Bill means a public Bill which, in the opinion of the Speaker of the House of Commons, contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to these subjects or any of them. In this sub-section, the expressions "taxation", "public money" and "loan" respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes.

Coming to the local Legislatures, it may be pointed out that one of the questions which the Statutory Commission under S. 84 A will have to consider is whether the establishment of Second Chambers is or is not desirable. In support of the establishment of Second Chambers, what Lord Bryce has said may be quoted here :

Those modern thinkers and statesmen who have held that every well-framed Constitution should contain some check upon the power of the popular Assembly have usually found it in the creation of a Second Assembly capable of criticising, amending, and, if need be, rejecting measures passed by the other Chamber" (*Modern Democracies*, Vol. II).

As regards the constitution of Second Chambers, the following passages from the same book may be found useful :

Unitary countries have adopted one or the other of the following methods: Some have assigned to the head of the Executive the right of nominating to sit in the Second Chamber any person he thinks fit. Others, while giving nominations to the Executive, have restricted its choice to persons above a certain age or belonging to specified categories, *e. g.*,

men who have filled certain high offices, or who possess a certain amount of property, or who come from a titled aristocracy, or who occupy positions which qualify them to express the wishes of important professions. Thus the Italian Senators are nominated for life by the Crown, *i. e.*, by the Ministry. Spain, and Hungary before the destruction of the Austro-Hungarian Monarchy, had Chambers with some hereditary peers and other persons chosen by electorates composed of persons holding property of a prescribed value. The Legislative Councils in four of the Australian States are elected by voters possessing a (low) property qualification. Another method is to vest the election in the members of various local bodies, or persons selected from them, such as are the "Electoral Colleges," created from the Councils of the *Departements* and of the *Arrondissements* and from the *Communes* in France. This plan, adopted also in Sweden and Portugal, has been termed "indirect election," or "popular election in the second degree," because the electors have been themselves elected by bodies chosen by the citizens.

Finally, in many countries, the Members of the Second Chamber are directly elected by the people on the same suffrage as Members of the other or "more popular" House, but in and by larger constituencies, so as to provide a Second Chamber less numerous than the first. This is the method used in all the States of the North American Union, in each of the States Senate, a body much smaller than the State Assembly or House of Representatives, is elected on manhood (or universal) suffrage, but in larger electoral districts, Federal Senators are also now (since 1914) elected by the people on a general vote taken over each State, and so are the Members of the Senate in the Australian Federation. Direct popular election has also been adopted by the Czecho-Slovak Republic for its Senate, the electors being over twenty-six and the candidates required to be over forty-five years of age, and the term of office eight years.

The Dominion of Canada, a Federal State, has a Senate filled by the nominees of the Dominion Government selected in certain proportions from the nine provinces which make up the Federation and, in so far, representing those component communities, though not chosen by them. Only two of the provinces (Quebec and Nova Scotia) have a Second Chamber, and Members of these are nominated for life by the Provincial Ministries (Bryce, *Modern Democracies*, Vol. II pp. 439-40).

What exactly will be the basis of Second Chambers in the

Provinces in future, is a matter which requires to be carefully considered in the light of the circumstances of each Province. It is clear, however, that on considerations of prudence, Second Chambers will on the whole be found useful as checks upon the undue haste of popular Houses.

PART XII

AMENDMENT OF THE CONSTITUTION

In conclusion, it may be urged that there should be provision for the alteration of the Constitution. Similar provisions have been made in the Commonwealth of Australia and the Union of South Africa.

S. 128 of the Commonwealth of Australia Constitution Act says :

This constitution shall not be altered except in the following manner :

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of Members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors, the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of Members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in

relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

S. 152 of the South Africa Act says :

Parliament may by law repeal or alter any of the provisions of this Act. Provided that no provision thereof, for the operation of which a definite period of time is prescribed, shall during such period be repealed or altered. And provided further that no repeal or alteration of the provisions contained in this Section, or in Sections thirty-three and thirty-four (until the number of members of the House of Assembly has reached the limit therein prescribed, or until a period of ten years has elapsed after the establishment of the Union, whichever is the longer period), or in Sections thirty-five and one hundred and thirty-seven, shall be valid unless the Bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of Members of both Houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

It is suggested that provision may be made in the Indian Constitution for alteration of the Act similar to that in the South Africa Act, as it is more consistent with Indian conditions than that contained in the Commonwealth of Australia Constitution Act.



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MADRAS

The Constitution
OF THE
United States

THE NATIONAL SECRETARY'S OFFICE,
Adyar, Madras, S.

THE CONSTITUTION

OF THE

UNITED STATES

We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of Liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECT. I.—All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECT. II.—1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of the State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and

excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; Georgia, three.

4. When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

SECT. III.—1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have

attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.

SECT. IV.—1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECT. V.—1. Each House shall be judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members in

such manner and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECT. VI.—1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to or returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECT. VII.—1. All Bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other Bills.

2. Every Bill which shall have passed the House of Representatives and the Senate shall, before it becomes a

law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the objections, to the other House; and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for and against the Bill shall be entered on the journals of each House respectively. If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless Congress, by their adjournment, prevent its return; in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States, and before the same shall take effect shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a Bill.

SECT. VIII.—The Congress shall have power :

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

2. To borrow money on the credit of the United States.

3. To regulate commerce with foreign Nations, and among the several States, and with the Indian tribes.

4. To establish a uniform rule of Naturalisation, and

uniform laws on the subject of bankruptcies, throughout the United States.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

7. To establish post offices and post roads.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries.

9. To constitute Tribunals inferior to the Supreme Court.

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of Nations.

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

12. To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years.

13. To provide and maintain a navy.

14. To make rules for the government and regulation of the land and naval forces.

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

16. To provide for organising, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress.

17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the

same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. And

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers, vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SECT. IX.—1. The migration or importation of such persons as any of the States, now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the Writ of Habeas Corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No Bill of Attainder, or *ex post facto* law, shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign State.

SECT. X.—1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any Bill of Attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign Power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

SECT. I.—1. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. [Annulled. See Amendments, Art. 12.]

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECT. II.—1. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual service of the United States: he may require the opinion, in writing, of the principal officer in each of the Executive departments upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate shall appoint ambassadors, other public Ministers, and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the Courts of Law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SECT. III.—He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment he may adjourn them to such time as he shall think proper; he shall receive Ambassadors, and other public Ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECT.—IV.—The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECT. I.—The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may, from time to time, ordain and establish. The Judges, both of the Supreme and inferior Courts, shall

hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office.

SECT. II.—1. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, and other public Ministers, and Consuls; to all cases of Admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

2. In all cases affecting Ambassadors, other public Ministers, and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such a place or places as the Congress may by law have directed.

SECT. III.—1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or confessions in open Court.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work

corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECT. I.—Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECT. II.—1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECT. III.—1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislature of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECT. IV.—The United States shall guarantee to every State of this Union a republican form of Government and

shall protect each of them against invasion, and, on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby; any thing in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all Executive and Judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to

support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convénition, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and Deputy from Virginia.

NEW HAMPSHIRE

John Langdon,
Nicholas Gilman.

CONNECTICUT

Wm. Samuel Johnson,
Roger Sherman.

NEW YORK

Alexander Hamilton

NEW JERSEY

William Livingston,
David Brearley,
William Patterson,
Jonathan Dayton.

PENNSYLVANIA

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,

MASSACHUSETTS

Nathaniel Gorham.
Rufus King.

DELAWARE

George Read,
Gunning Bedford, Jr.,
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND

James M'Henry,
Dan'l of St. Tho. Jenifer,
Daniel Carroll

NORTH CAROLINA

William Blount,
Rich. Dobbs Spaight,
Hugh Williamson.

SOUTH CAROLINA

John Rutledge,
Charles C. Pinckney,

James Wilson,
Gouverneur Morris.

VIRGINIA

John Blair,
James Madison, Jr.

Charles Pinckney,
Pierce Butler.

GEORGIA

William Few,
Abraham Baldwin.

Attest. WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION

ART. I.—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

ART. II.—A well-regulated Militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ART. III.—No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

ART. IV.—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ART. V.—No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ART. VI.—In all criminal prosecutions, the accused

shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ART. VII.—In suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any Court of the United States than according to the rules of the common law.

ART. VIII.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ART. IX.—The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ART. X.—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ART. XI.—The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ART. XII--1. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of

votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest number, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the Representative from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ART. XIII.—1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall

have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

2 The Congress shall have power to enforce this article by appropriate legislation.

ART. XIV.—SECT. I.—All persons born or naturalised in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SECT. II.—Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever the right to vote at any election for electors of President and Vice-President, or for United States Representatives in Congress, Executive and Judicial officers, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECT. III.—No person shall be a Senator or Representative in Congress, elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an Executive or Judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion

against the same, or given aid or comfort to the enemies thereof; but Congress may, by a vote of two-thirds of each House, remove such disability.

SECT. IV.—The validity of the public debt of the United States, authorised by law, including debts incurred for the payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned; but neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

ART. XV.—1. The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous conditions or servitude.

2. The Congress shall have power to enforce this Article by appropriate legislation.

ART. XVI.—The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ART. XVII.—1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures.

2. When vacancies happen in the representation of any State in the Senate, the Executive authority of such State shall issue writs of election to fill such vacancies; provided, that the Legislature of any State may empower the Executive thereof to make temporary appointment until the people fill the vacancies by election as the Legislature may direct.

3. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

ART. XVIII.—1. After one year from the ratification of this Article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes, is hereby prohibited.

2. The Congress and the several States shall have concurrent power to enforce this Article by appropriate legislation.

3. This Article shall be inoperative unless it shall have been ratified as an Amendment of the Constitution by the Legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

ARTICLE XIX

SECT. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

SECT. 2. Congress shall have power to enforce this Article by appropriate legislation.



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The Indian Constitutional Reform

THE WORKING OF THE GOVERNMENT OF INDIA
ACT OF 1919

A MEMORANDUM SUBMITTED TO THE
REFORMS ENQUIRY COMMITTEE OF 1924

By C. Y. CHINTAMANI,

*Minster of Education and Industries, United Provinces,
1921—1923*

PART I

THE NATIONAL SECRETARY'S OFFICE,
Adyar, Madras, S. "

The Working of the Reforms

Memorandum for the Reforms Enquiry Committee

As I understand that it is chiefly because I was a Minister that I have been honored with the Committee's invitation to place before them my views on the working of the present system of Government, I shall at the outset relate how it worked or was worked in the United Provinces between the January of 1921 and the May of 1923, the period during which I was Minister for Education and Industries (and several other subjects), first to His Excellency Sir Harcourt Butler and next to His Excellency Sir William Marris. Pandit Jagat Narain was my colleague as Minister throughout this period, the Hon. the Raja of Mahmudabad was Home Member in the Executive Council and Sir Ludovic Porter, Mr. S. H. Fremantle and the Hon. Mr. S. P. O'Donnell held the office of Finance Member.

2. *Rules of Executive Business.*—The first business that was considered by the Governor (Sir Harcourt Butler) at a meeting of the whole Government was the adoption of what were called "Rules of Executive Business". "Model Rules" had been received from Delhi with liberty to the Governor to accept them as they were or with modifications. My colleague and I were at once struck by a few features of them. They contemplated for the Ministers a position different from and, as we thought, inferior to that of Members of the Executive Council. And they throughout provided that the Governor would act with each Minister separately, not with both jointly. My colleague and I succeeded in getting the "Model Rules" amended to this extent, that the position of all the Members of the Government would be equal and similar in their relations with the Governor, on the one side, and Secretaries to

Government and heads of departments and officers generally, on the other, and in the matter of obtaining papers and information relating to departments other than their own, and secondly, that the Ministers would be jointly responsible for all acts done in the Transferred departments. In respect of the latter, we were first met by the Governor with the objection that this was not contemplated by the Government of India Act, but His Excellency was satisfied on a perusal of the Joint Select Committee's Report that their joint responsibility should be recognised. The Rules as amended were still defective from the point of view of Ministers and also, in my opinion, not wholly in conformity with the Act or, perhaps, even the Instrument of Instructions to the Governor. The present Governor thought to modify them to the greater prejudice of Ministers, but listened to a protest and did not carry out the suggestion, at least while he acted with his late Ministers.

DIARCHY

3. At the very outset, Sir Harcourt Butler avowed publicly and privately his intention to conduct his Government as a unitary Government. He had been most strongly opposed to the Diarchical system, and held the firm conviction that it would not and could not work smoothly and satisfactorily. His view not having prevailed, he said he would, in actual working, act to the farthest extent the Act permitted as if there were not a Government divided into two parts but a unitary Government, that he would observe no distinction between one set of colleagues and subjects and the other. It was due to this that Ministers did not press beyond a certain point their suggestions of larger amendments in the Rules of Executive Business, as they would have emphasised the Diarchical nature of the Government. The good-will of the Governor was of supreme importance to them every moment of their existence as his colleagues, in view of the large discretionary powers with which he

was endowed and of the amount of business they had with Reserved departments. Besides, the power rested with the Governor himself to settle those Rules finally. The same intentions and determination which the Governor avowed, were stated with equal heartiness and emphasis by his principal colleague, Sir Ludovic Porter, Finance Member and Vice-President of the Executive Council. Nothing was left that could be desired in their openness and cordiality and their spirit of helpfulness, and as I stated publicly at the time, the Ministers felt that they had an ideal chief and an ideal colleague to act with, and that it required an effort of the mind to remember that they were part of a Diarchical Government.

4. It was a little later that they discovered that while meetings of the whole Government were being held on the Mondays, supplemented not infrequently by one or more additional meetings on other days of the week, and while no separate meetings of the Governor with his Ministers were provided for, meetings of the Executive Council were being held on the Thursdays. I then asked the Governor about this and suggested that either these might be abandoned, or he might also meet his two Ministers together every week, but was met by the reply that as long as the Act stood as it did he had no option but to hold meetings of the Executive Council, and that he saw no necessity for weekly meetings of the Governor and the two Ministers: he would call them together whenever the need was apparent. It was some time later still that the Ministers found that, contrary to the expectation created in their mind, they were *not* being taken into confidence on *all* subjects. The first important matter kept from them, according to their information, was a reference from and a memorandum prepared for and evidence given before the Military Requirements Committee of 1921. In the same year, differences arose between the Governor in Council and the Ministers over the Oudh Rent Bill, the latter's view-

not prevailing, and over the prosecutions instituted under the Criminal Law Amendment Act, Part II. In the following year, they were neither consulted nor informed about the reference from the Government of India on the question of the Arms Rules. They first read of it when the newspapers reported the evidence given on behalf of the Governor in Council by a Deputy Secretary to the local Government.

5. The Ministers discovered, too, that decisions reached at meetings of the whole Government were not carried into effect in all cases, that sometimes they were modified or rescinded either by the Governor in Council or by the Governor alone without the knowledge of the Ministers, that they were taken into confidence and consulted at certain stages of a subject but dropped out (again, without their knowledge) at later stages, that sometimes they were neither consulted nor informed. They were reminded, too, on occasions, that the Government was not unitary but Diarchical, that however the Governor might be anxious to conduct the Government as one whole, it was not in his power to override the provisions of the Act. While in the beginning and for some considerable time Ministers could rely upon the Governor supporting them in cases of disagreement between themselves and the officers of their departments, they had not that assurance in their second year of office, and on several occasions resignation as a protest came well within the range of probabilities.

6. In a word, the whole spirit of the Government underwent a disagreeable transformation. The system had worked well just in the measure in which "Diarchy" was departed from, while misunderstandings, differences and friction became only too frequent after "Diarchy" came to be a fixed idea in the Governor's mind and to be observed. My colleague and I could not resist the feeling on several occasions in 1922, that if we had been cordially welcomed into the Government in the first year we were in the second year only being

tolerated. If still we stayed on and endeavored to do our duty to the best of our ability and opportunities, we did so only in the conviction that we ought not to desert our posts as long as we retained the confidence of the Legislative Council and were not finally overruled by the Governor in our own departments on any material question of principle and policy. Besides, Pandit Jagaṅ Narain had on hand the District Boards Bill, to which both he and I and our supporters in the Council attached great importance, as a measure which for the first time would make Local Self-Government a reality in the rural areas of the United Provinces, and we were desirous of seeing it placed on the statute book. The varying attitude of the Governor towards this very measure—which in reality we inherited from himself as Lieutenant-Governor—at successive stages of its progress through the Legislative Council and the difficulties we had to surmount on this account, illustrated quite well the embarrassing and thankless position of the Ministers in the present system if they had not the genuine and unqualified support of the Governor, who is not a constitutional Governor but has an abundance of power reserved to him by the Act.

7. I have said that there were weekly meetings of the whole Government and not infrequently, more meetings than one in the space of one week. I should add that this was how we began. Such meetings gradually became less frequent until at times we had not more than one in a month or even one in a couple of months or more. "We began this Government with a profusion of *weekly* Cabinets: it has ended in *quarterly* meetings," said Sir William Harcourt of Lord Rosebery's Government. Very much the same can be said of the Government of the United Provinces. With the advent of a new Governor another change came over the situation. Sir William Marris stated at his first meeting that he had held meetings of the whole Government

in Assam because he had inherited the system from his predecessor and that he would hold them in the United Provinces because he found himself in a similar position here. During the four months and a half that Pandit Jagat Narain and I had the honor of being his colleagues we saw that no subject of any great consequence was or was to be considered at such meetings; that it was and was to be "Diarchy" all over and much more than the Joint Select Committee's Report showed that they had in mind. His Excellency also expressed surprise at the employment of the formula "the Governor acting with his Ministers" and at the recognition of the joint responsibility of Ministers, as well as at the circulation to them of papers relating to the sphere of the Governor in Council. It is as well to quote here from the Joint Select Committee's (second) Report to make it clear that it was their firm intention that the responsibility of Ministers should be collective. They said :

The Committee think it important that when the decision is left to the Ministerial portion of the Government the corporate responsibility of Ministers should not be obscured. They do not intend to imply that, in their opinion, in every case in which an order is passed in a Transferred department the order should receive the approval of all the Ministers; such a procedure would obviously militate against the expeditious disposal of business, and against the accepted canons of departmental responsibility. But in cases which are of sufficient importance to have called for discussion by the whole Government, they are clearly of opinion that the final decision should be that of one or the other portion of the Government as a whole.

But it should be added that in the Act itself I have not been able to find anything on this point.

8. *Governor and Ministers.*—S. 52 (3) of the Government of India Act lays down that "in relation to Transferred subjects the Governor *shall* 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". (My italics.

The reservation may be said to have been annotated, but in fact has also been enlarged, by the Instrument of Instructions to the Governor [*vide* paras. 6, 7(3) and (4)]. The language of these Instructions is on the face of it unexceptionable, but is very general, and this very generality may be used as a Governor's justification for such interference with Ministers as may go beyond what was contemplated by S. 52 (3) of the Act and may in fact be embarrassing to them, in their relations with the Legislative Council, to which they are responsible for all their acts and omissions. It is fair to assume that the provision that Ministers shall be so responsible was not made for nothing. It is only persons who have succeeded (or will succeed within six months) in getting themselves elected to the Legislative Council who can be appointed Ministers, their salaries are votable by the Council, and they cannot hold office if they are not able to get their Budgets passed by and to receive general support from the Council. In the circumstances it follows to my mind that in the day-to-day administration they should be more independent of the Governor's authority than Members of the Executive Council who hold office on a different tenure. It is significant that there is no provision in the Act regarding the latter similar to that which has been quoted above relating to Ministers. The Joint Select Committee said in their Report on the Government of India Bill :

It will also be for him (the Governor) to help with sympathy and courage the popular side of his Government in their new responsibilities. He should never hesitate to point out to the 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.

Where in the opinion of the Governor a Minister acts unreasonably and to the detriment of the interests specially committed to His Excellency's charge by the Instrument of Instructions, where according to the information in his possession a Minister acts contrary to the views and wishes of his master, the Legislative Council, and where he is not amenable to the Governor's good advice, he can be asked to resign or even dismissed, as he holds office during the Governor's pleasure. But he should, while he is deemed fit to hold office, be master in his own household jointly with his colleague or colleagues in the administration of the Transferred subjects. This rightful position of his has not been secured to him.

9. From all that I have observed and experienced I cannot resist the conclusion that the present Act and Rules have endowed the Governors of Provinces with quite excessive power and discretion. They are not constitutional Governors as in the Dominions, and yet the Legislative Councils are forbidden to criticise them and their acts and omissions as if they were such, as if they had no personal responsibility for what their Governments do or fail to do, as if they always acted upon the advice of responsible Ministers. It is my conviction that under the present dispensation the manner in which the system works in a Province is almost entirely what its Governor makes it. In saying this I am not oblivious of the situation in two of the Provinces. But there the Governors' position is quite clear and every one can tell whether and to what extent they are responsible for the situation. I am persuaded that those cases do not affect the correctness of my statement.

10. *Ministers and the Government of India*.—S. 45 A (3) of the Act states that the Governor-General in Council may not exercise his powers of superintendence, direction and control in respect of Transferred subjects except as provided by rules made under the Act in this behalf, but it also states that he "shall be the sole judge as to whether the

purpose of the exercise of such powers in any particular case comes within the purposes so specified". The distinction between the Reserved and Transferred subjects in the matter of the Government of India's control is also emphasised in para. 3 of the Instrument of Instructions to the Governor. I do believe that the amount of control exercised or sought to be exercised by the Government of India and the Secretary of State—here and now it is immaterial for my purpose which of the two outside authorities exercises it—has been less in the Transferred than in the Reserved departments, whether in matters of legislation or administration. But my complaint is against the existence of that power or its exercise at all except where a Governor acting with his Ministers has exceeded his own legal powers or so clearly abused them as to necessitate the intervention of higher authority to prevent grave injustice. I can, if called upon to do so, cite instances within my knowledge of interference or attempted interference by Delhi and Simla or by Whitehall, where I was and am convinced there should have been none.

The Rules under this head appear to me to call for revision, and I think, too, the language of the relevant Sections of the Act itself.

THE FINANCE DEPARTMENT

11. S. 45A (2) 3 provides for the constitution, by rules under the Act, of a Finance Department in any Province and for the regulation, also by rules, of the functions of that department. It is noteworthy that hereby this one department is distinguished from all other departments of the local Governments. The Joint Select Committee did not accept the Government of India's proposal in behalf of "a divided purse" in the Provinces. This means that finance was to be treated as a subject common to both sides of the Government. But the rules made under the Act have converted it into a Reserved department in fact, though it may or may not be in name. Rule 36 (1) of the Devolution Rules

lays down that the Finance Department "shall be controlled by a Member of the Executive Council". I have throughout contended that as the department is common to the whole Government it should have been left to the discretion of the Governor which of his colleagues he would place in charge of the department. I have never been able to convince myself of the justification of Rule 36 (1) as it stands. It is a reflection on Ministers and it gives an unfair initial advantage to the Governor in Council and Reserved subjects over the Ministers and Transferred subjects. Nor is the objection only theoretical and sentimental. Experience inside the Government on the Transferred side satisfied me that the rule operated to the disadvantage of Ministers.

12. Rule 36 (2) and (3) may be cited as showing that the authors of the rules were apparently struck by the possibility of the need of special relief to Ministers against the effects of Rule 36 (1). "If the Ministers so desire, a joint Secretary appointed by the Governor after consultation with the Ministers" "shall be associated" with the Finance Secretary. [The appointment even of such an officer in such circumstances is to be by the Governor, not by the Ministers themselves. They are only to be consulted.] The joint Secretary's duty is defined in Rule 36 (3). But what is to be his relation to the Secretary? Was it intended that his authority should be co-ordinate with that of the latter, each having to do with a different side of the Government and the joint Secretary noting direct to the Finance Member and the Ministers? Can friction be avoided between the Secretary and his (in all probability unwanted) "joint" in such an arrangement? If, on the other hand, the Secretary is to be the chief of the "joint," what special advantage will accrue to the Ministers from his existence? It is indisputable that the Finance Member would be the chief of both. But he is a part of the Governor in Council and has charge of several Reserved subjects and a

joint responsibility for all Reserved subjects and none for the Transferred. Once there is a joint Secretary the Secretary will also feel a special responsibility for the Reserved subjects. The "joint Secretary" is in the circumstances unlikely to be a real utility while the friction referred to above is more than likely. It is no wonder, therefore, that in no Province is there a joint Secretary.

13. My colleague and I were asked in January, 1921, whether we wanted such an one; the enquiry, which was made orally and informally by the Finance Member, being accompanied by an assurance that both he and His Excellency the Governor were in reality interested much more in the Transferred or development subjects than in the Reserved, and we might be certain that they would willingly let us have every available rupee for our purposes. The Hon. Mr. L. C. (as he then was) Porter added that it was a pity that subjects should have been divided into Reserved and Transferred groups; that neither he nor His Excellency was a believer in Diarchy and that the interests of each would be the interests of all. As a member of the Finance Committee of the old Legislative Council I had opposed this Rule 36 in conjunction with one or more of my non-official colleagues, and Pandit Jagat Narain and I had no difficulty in agreeing to do without the doubtful blessing of this "joint Secretary," particularly in view of the statement of Sir Ludovic Porter. At least we wanted to gain experience before asking for one. A little later the Finance Member and the Finance Secretary showed an anxiety to create the post, provided a particular non-official M. L. C. could be induced to accept it. As he declined the invitation the matter was dropped. When, still later, they asked for a deputy Secretary in view of heavy work and I suggested that instead of a deputy a joint Secretary might be appointed, as contemplated by Rule 36 (2), both of them took my proposal with ill-grace and showed by their language and attitude that they intensely disliked it. I did

not care to press the proposal as, in fact, I was never enamored of this provision and the attitude of the two persons upon whose support and good-will any joint Secretary must necessarily depend for the success of his work was positively discouraging. It should not be thought that our omission to press for the appointment was an expression of complete satisfaction with the Finance Department from the point of view of the interests of Transferred subjects.

14. Rules 38 to 45 may be read as showing the wide scope and vast powers of the Finance Department. I point this out not as an objection but to emphasise its importance and all-pervading nature. I understand that, broadly speaking, it performs here the function of what in England is known as "Treasury Control" and, without committing myself to details, agree that such control is wholesome and necessary. But the matter assumes a different significance when the Government is not unitary and one-half of its Members are by rule declared ineligible for charge of the subject. In actual administration, the drawback of this arrangement was felt by the Ministers in the United Provinces, and I for one must reiterate my strong protest against Rule 36.

15. There are a few more points to urge before I pass from this part of the subject. During a period of financial stringency such as nearly every Government in India has been passing through, it is natural that a vigilant eye is kept upon expenditure, and it is right that new expenditure should be restricted to the irreducible minimum compatible with the interests of the Province. I do not complain that my colleague and I were so restricted. Our ready willingness to appreciate the requirements of the financial situation and to co-operate with the Finance Department was acknowledged by both Sir Ludovic Porter and the Hon. Mr. O'Donnell. I could wish it were in my power heartily to reciprocate the compliment without qualification except for a part of the first year. If my colleague and I ultimately gained our points in part, it was

more than once at the point of resignation. "The growth of education" has been laid down as one of the matters of investigation for the statutory Commission provided for by S. 84 A—see (2) of that Section—and yet we had considerable difficulty in averting a large reduction of the allotment for Primary Education, first in 1922 and still more in 1923. I was not in charge of the subject, but I understand that a substantial reduction *was* made in the former year. The cut that was proposed in the latter year was to be in addition to that already made. A plausible case may be attempted to be made out for the Governor in Council that it is upon the Transferred departments that more new expenditure has been incurred than upon the Reserved. But it should be remembered that the latter are fully developed and, speaking in general terms and not excluding the necessity that would occur from time to time of new expenditure even upon them, I am prepared to say, in respect of those departments, that there is greater scope for economy and retrenchment than need for increase of expenditure. Therefore there does not appear to be any very great merit in a local Government having allowed more new expenditure upon the imperfectly developed beneficial services under the pressure of the Ministers inside and the Legislative Councils outside. Even in the pre-Reform years there had latterly to be more increase of expenditure on some of the latter than on some of the present Reserved subjects and it would have had to go on even if there had been no Reforms and no Ministers.

16. Not a pie of new expenditure can be incurred by the Ministers without the approval of the Finance Member. Have they been afforded adequate opportunities of satisfying themselves that no avoidable new expenditure has been sanctioned in the Reserved half of the Government? The answer is in the negative. I ventured to suggest to Sir Harcourt Butler in 1922 that every proposal of new expenditure in any department exceeding amounts that His Excellency might

fix for recurring and non-recurring expenditure, might be circulated to all the four Members of the Government and, where there was disagreement of opinion, might be considered at a meeting of the whole Government. He did not agree even to the supply of information to the Ministers! And oftener than not, the first time we knew of the new financial proposals and decisions of the Governor in Council during the financial year was when supplementary estimates were actually presented to the Legislative Council. Even in a department for which I was responsible to that body it happened once that the Secretary of State made a payment to a retired officer without any reference to the local Government and asked the latter to make good the amount to him. It happened to be a case in which the self-same claim submitted by that officer before leaving India had been disallowed by the local Government, the Minister, the Finance Member and the Governor concurring in the decision. The Secretary of State's communication was received by the Finance Department and the first time I, as the Minister concerned, got to know anything of it was when I saw a supplementary estimate placed before the Council and then made enquiry of that department. [The Council rejected the demand and the matter was still the subject of animated correspondence between the Secretary of State and the local Government at the time of my resignation in May, 1923.]

16. Another incongruity—amounting in my opinion to an absurdity and an insult to the Ministers. A few days before my resignation I received “for information” a printed copy of a circular letter already issued to *all* heads of departments—*i.e.*, including those relating to the Transferred subjects—by the *Governor in Council* directing them not to send up proposals of new expenditure in view of the financial position of the Government. In the Transferred departments such proposals would be addressed to the Ministers for administrative sanction, and if the latter accorded it

they would then ask the Secretary seized of the subject to submit the case to the Finance Department. Therefore, the order of the Governor in Council amounted to this, that the Reserved side of the Government forbade the officers serving in the Transferred departments to submit proposals to their chiefs the Ministers. And the Governor in Council issued that order without a word of consultation with the Ministers and without so much as the courtesy of informing them of his intention to do so. We were only favored with *post facto* information just in the nature of a press communiqué that an editor is used to. As our resignations had already been accepted on another matter which itself illustrated the position of Ministers under the present dispensation, all that had to be and was done, was to protest against the unwarranted action of the Governor in Council.

17. One effect of the transfer to Ministers of responsibility for some of the subjects administered by a local Government, has been a new disinclination to spend upon matters which previously were probably, and were certainly believed by non-officials to be, objects of special solicitude on the part of the Government. I have *roads* particularly in mind. In 1922, a cut of Rs. 2 lakhs was made in the provision for Provincial roads. On the urgent representation of the Finance Member I acquiesced in the cut on the understanding, firstly, that it would be restored in the following year, and secondly, that he would agree during the year to additional provision by means of a supplementary estimate if the need arose therefor. It should here be stated that the cost of construction as well as maintenance has risen in the last few years, that the department had fallen behind with repairs owing to insufficiency of funds, and that more not less money was required even for repairs, not to speak of the construction of new metalled roads. Later in the year the President of the Board of Communications—Mr. A. W. Pim, C. I. E., I. C. S., Commissioner of Allahabad, and

a former Finance Secretary—urged upon the Government either the provision of funds or the abolition of the Board, and at the same time suggested the imposition of a tax on motor vehicles, the proceeds of which might be made over to the Board for allotment for roads. The suggestion was readily accepted and a bill was drafted. The Finance Member, however, argued that he would not by law earmark the proceeds for a specific purpose as that would be unsound in principle, but the Government would decide administratively to apply an amount equivalent to the net proceeds of the tax to the construction and maintenance of roads, both Provincial and local. On this distinct understanding Pandit Jagat Narain and I agreed to the measure, he being in charge of Local Self-Government and I of Public Works. Soon after, a new Governor and a new Finance Member took charge, and they were unwilling to implement the undertaking. Pandit Jagat Narain had to insist upon it as a pledge had been given to the Legislative Council with the approval of the late Finance Member that District Boards would have a part of the proceeds of such a tax and the Governor and the Finance Member reluctantly yielded, the former on the ground that the pledge must be respected although he was of opinion that it ought never to have been given, and the latter under pressure of the Governor. And they agreed as to my share of the affair, after more difficult persuasion and with greater unwillingness still, only after I declined to vote for the Bill in the Legislative Council if they did not carry out the undertaking given by their predecessors, which was the prime consideration with me in having consented to the Bill. But after my resignation, the latter part of the understanding was not respected to the best of my knowledge and belief and according to my reading of a statement made by the Finance Member in the Legislative Council. Neither was the reduction of Rs. 2 lakhs made in 1922 restored in the following year. Nor are District Boards receiving as

much financial assistance as they used to do for communications. Yet we are being told in certain quarters that roads have deteriorated since Ministers took charge of them at headquarters and District Boards were placed under non-official chairmen, the latter having been done for the first time less than a year and a half ago!

18. Many proposals of Ministers necessarily go before the Finance Committee. But neither of them was nominated a member of the Committee in 1921. Nor were they consulted about the nominations. A complaint having been made, the Finance Member undertook that one of them should be nominated in the following year, and that both of them should be consulted about the other nomination. Neither of these things was, however, done in 1922. And the Ministers were equally ignored in 1923 by the new Governor and the new Finance Member. But Finance is a department common to the whole Government. Worse still. No officer serving in the Transferred departments was in the beginning informed of the meetings of the Committee before which proposals relating to them were to be placed for consideration, and the Finance Member or the Finance Secretary or both actually joined non-official critics in the Committee (after they had previously approved of the proposals, which was an antecedent condition of their inclusion in the agenda) in turning them down. This was only known to the Ministers subsequently when the Finance Department informed them of the fate of some of those proposals. It was thereafter, and in compliance with request, that the printed minutes of the proceedings were made available and from them that the attitude adopted by the Finance Member and the Finance Secretary could be gathered. A protest had to be made and it was considered at a meeting of the Government, and there followed the concession that Secretaries and heads of departments would be informed and allowed to attend meetings and plead for their proposals.

I have no hesitation in saying that a system with such features as I have attempted faithfully to describe in the foregoing paragraphs, which is capable of being and liable to be worked as it has been, which so prejudices one-half of the Government and the important causes for which it stands, stands self-condemned, and needs radically to be altered without avoidable delay.

LEGISLATIVE

19. *The Legislative Department and the Legislative Council.*—I do not find these included in the list of Reserved or of Transferred subjects as I do not find Finance in either. Whether the omission was intentional or accidental, it is right that they should be treated as being common to the whole Government, as Finance was intended to be. In practice, however, they have been "Reserved". The Department has been entrusted to the control of the Finance Member, and he has been the leader of the Council ever since he ceased to be the Senior Member and Vice-President of the Executive Council. It is the Governor's prerogative to decide when and where he would summon the Council to meet. But he takes the decision in consultation with the Finance Member. I do not know whether the other Member of the Executive Council is admitted into confidence and consultation. I know that the Ministers were not after the first year. As in other matters so here they were treated as equal Members of one whole in the beginning and for some time after. But for no known reason they were afterwards kept or left in the outer courtyard and they could only gather knowledge along with non-official Members when summonses to meetings were issued or an announcement appeared in the press. With this difference, that as regards the days allotted to official business they had to be asked by the deputy Secretary whether there was any business of theirs for which time had to be given. Representations and remonstrances

against the departure from earlier practice equally proved unavailing both in the time of the late and the present Governor.

20. During nearly the whole of the first year, it was the practice for cases relating to Council business to be circulated and the attitude to be taken by the Government towards non-official Bills and Resolutions to be considered and decided by the whole Government at joint meetings. And as often as not, it used also to be decided there which, if any, Member of the Government other than the Member in charge should speak in support of the Government position and occasionally a Member other than the Member in charge was actually constituted the spokesman of the Government. No Diarchical distinction was ever observed during that period of confidence and good-will. All which has since been changed for reasons not known to Pandit Jagat Narain or me. The change went so far on one occasion—so important as to be critical to the Ministers—the Finance Member sprung a surprise upon them by actually speaking in open Council against the position taken up by them—a position to which the Governor and he had both assented earlier. And in connection with the same measure, to which reference was made in an earlier part of this Memorandum, there was active canvassing against the position taken by the Ministers, with the approval of both the Governor and the Finance Member, by the other Member of the Executive Council and the Secretary to Government, who was and is acting as the Government whip, who was, too, and is still, a Secretary in departments under the control of the Ministers themselves. The canvassing was active and all but technically public, and, I cannot think, could have been unknown to the Governor and the Finance Member. It was a measure on which it was known that the Ministers staked their official existence and to ensure the passage of which they remained in office notwithstanding several provocations to

quit. If they succeeded, in the end, it was by dint of negotiation and of compromise effected in the face of the exertion of effort and influence to the contrary by the said Member of the Executive Council and the said Secretary to the Government. It was possibly due to the encouragement afforded by a knowledge of the real attitude of the Governor in Council that another Secretary to Government—this time the Secretary in charge of the very department to which the Bill related—moved an amendment which the Minister in charge had instantly to repudiate and disown and which, subsequently, the said Secretary withdrew “*at the request of the Hon. Minister,*” as he took care to tell the Council.

21. Before leaving this part of the subject I should like to bring a few more points to the notice of the Committee. The Governor, or the Governor in Council, or the Executive Officers of Divisions and Districts serving under him, ought scrupulously to refrain from any intervention, howsoever indirect, in elections to the Council. No official ought to exert any influence in favor of or against any candidate. Such influence is a “corrupt practice” in election terminology. While it is objectionable on general grounds it may also be unfair to the Ministers. Some landlords—I am glad to acknowledge, not all—were not pleased with the late Ministers in the United Provinces. But the Governor in Council was pro-landlord, including in this term those who were hostile to the Ministers. That in elections landlord candidates can reckon upon indirect official support, is a common belief among the people. In one case I had unexpected written evidence in support of this belief and took up the matter with the Governor. It is intolerable that certain persons having been selected as Ministers, officers on the Reserved side should afterwards be asked or encouraged or permitted to exert influence in favor of anti-Ministerial candidates.

22. The Governor should not have the power to disallow questions* or resolutions or motions of adjournment. What categories of cases are beyond the province of the Council having been laid down by rule, it should be entirely the business of the President to admit or disallow questions† or motions. In exercising his power in this regard the Governor, as the head of the Executive Government, is liable to be influenced by extraneous considerations which ought not to be a factor in determining their admissibility. Besides, no authority external to the Legislature should have power to intervene in its business.

23. Either the Governor should be a "constitutional Governor" or he should not by Rule be protected from criticism in the Council. At present, his position in relation to the Council is one of power unaccompanied by responsibility and untempered by the knowledge that the manner of its exercise can form the subject of Council criticism. It is a position more privileged than that of any Dominion Governor and of the King himself in Britain.

24. *Council Secretaries.*—Council Secretaries would undoubtedly have proved highly useful and even necessary to the Members of the Government, if the Permanent Secretaries and the heads of important departments were not also in the Legislative Council. The latter's work should be in their offices and, in the case of heads of departments, in visits of inspection as well. This work has suffered from the obligation imposed upon them of constant attendance at Council meetings. Even when the Member in charge of a subject is ready to dispense with it except when it may be essential, the Leader of the Council is not, as he requires their votes. It is true that the nominated

It was pointed out by Sir H. Moncrieff Smith—a member of the Committee—in oral examination that the Governor might disallow resolutions but not questions.—C. Y. C.

† So it is now as regards questions.—C. Y. C.

official Members form a small minority of the whole Council, but as non-official Members are rarely present in full strength the official votes not infrequently determine the result of a division. This ought not to be. The freedom of vote which, according to the Joint Select Committee's Report should be theirs, is seldom accorded to them in fact, and the voting is ordinarily by mandate. Even on a question on which the Governor made a public declaration that the Council would be a free agent in determining it, the Government whip was more than ordinarily active—among other things he addressed a questionable communication to Members believed to be of a docile class, and the Governor in Council supported it when questioned in the Legislative Council—and official Members were forbidden even to abstain from voting. If the Ministers were of one opinion and the Governor in Council of another, the nominated official Members had all to vote with the latter including those serving in the Ministers' departments; yes, once even when the subject happened to be a Transferred one. I hope it is superfluous to say that such things do not promote discipline and do not enhance the position of Ministers. At least a majority of the nominated official Members would be glad to be excused from being Members of the Council as this interferes with their own work and necessitates late hours night after night to get through those files to which there is never an end, as Lord Carmichael plaintively said. Nor will the loss to the Members of the Government be appreciable—assuming that care is taken to appoint at least moderately competent men—as permanent officials as a class do not show a ready aptitude for public speech and debate and generally say either too much or too little to win the support of the Council. The Leader of the Council having complained that one or more Government defeats were due to the speeches of heads of departments, Sir Harcourt Butler once ordered that no head of a department should speak in the Council except

when expressly asked by his H. M. to do so. When required by a Member of the Government the head of a department can be asked to be within reach for consultation and advice. If I am not misinformed, I believe some such arrangement exists in Parliament. My conclusion is that there should be no nominated official Members with the exception of the Government Advocate (the legal adviser should be he, not the Legal Remembrancer), and there should be as many Council Secretaries as there are Members of Government, selected from among the elected Members to assist and relieve them in the Legislative Council. This will carry with it the further advantage of providing a supply of trained men to be later selected as Members of the Government.

25. *Standing Committees.*—I have been opposed, and so were the other Members of the late Government, except Pandit Jagat Narain partially, to Standing Committees of the Legislative Council except for the Finance, Public Accounts and Publicity Committees. We have had in the United Provinces for years before the new Constitution came into force, a number of Boards to advise and assist the Government in important matters. Their personnel is made up in part of official and non-official Members nominated by the Government and in part of non-official Members elected by the Legislative Council and by appropriate outside bodies such as Chambers of Commerce and Landholders Associations. The utility of these Boards has been amply proved, and there did not appear to be a case for doing away with them in favor of Committees whose personnel would have to be limited to M. L. C.'s and which, when their opinion is not accepted, are sure to come into conflict with the Government or the individual Member of the Government immediately concerned. It is highly improbable that Standing Committees of the Council with a majority of elected Members will be content with the position of advisory bodies strictly so called. In

nominating Members to the Finance, Public Accounts and Publicity Committees it is fair that the Governor should consult not only his "Reserved" (as he does at present) but also his "Transferred" colleagues as the latter are equally concerned in their work.

26. *Nomination of Members to the Legislative Council* -- In nominating Members to the Legislative Council the Governor should consult not only one or both of the Members of the Executive Council, as he is in the habit of doing, but his Ministers as well. I would emphasise a point, previously adverted to, that the point of view and the opinion of the two are not necessarily, and, in fact, not always, identical or similar, and as Ministers are the Members of the Government vastly more dependent upon the Legislative Council than the others are or need be, it is not fair that they should be ignored and that sometimes the voting strength against them increased by the manner in which the Governor exercises his right of nomination. This in fact is what has happened in the United Provinces,

27. *Representation in the Legislative Council*.—Rural constituencies return landlords to the Council much more than any other class of people. But in existing circumstances they cannot be accepted as the spokesmen or guardians of the interests of their tenants and of their cultivators generally. The law of landlord and tenant is still defective to a degree, and there is no proper legislative recognition of the legitimate rights of tenants. The discussions and divisions on the Oudh Rent Bill of 1921 showed that it was to the educated middle class that the tenants had to look for the assertion of their rights more than to the landlords or even to the Government. The revision of the Agra Tenancy Act—a question that the Government have had under consideration during the last fourteen years—having once more been referred to a Committee, the beginnings of landlord agitation against amendments calculated to improve the legal position of

tenants are already visible. The experience of 1921 and of other occasions when agrarian questions came before the Council was that until the position of the tenants was secured by law against unfair enhancements and evictions, and until by the wider diffusion of education and a fuller understanding of the power of the vote by repeated exercise of the right they could intelligently and adequately safeguard their own interests, these would be best served and promoted by a certain increase of the urban representation now in force. It is not with the motive of securing that the towns shall prosper at the expense of the villages that this is proposed. On the contrary, I have repeatedly protested against the interests of the many from whom the bulk of Government revenue is derived being subordinated to those of the minority of town-dwellers. My proposal is put forward chiefly in the interests of the rural millions. The ratio of urban to rural representation need not be permanently fixed. It can be varied from time to time so as to increase the latter as the masses are better fitted to benefit by the exercise of the right. This was my contention before the Franchise Committee of 1918. What I have observed since then has strengthened that opinion in me. And I therefore submit the proposal again. I would somewhat increase the number of seats for urban areas in the non-Muslim and Muslim electorates without curtailing the number allotted to rural areas.

28. While the landlords have secured the majority of seats allotted to rural areas, as they were expected to do and as they will continue to do at least for years to come, they have further been accorded special representation by means of four members elected by the British Indian Association of Oudh and two by Zamindars of the Province of Agra who pay land revenue of Rs. 5,000 or more. I do not now suggest that this special representation should be withdrawn. My immediate point is that it requires readjustment in fairness to

the Zamindars of the thirty-six Districts of the Province of Agra who are far more numerous than the members of the British Indian Association of Oudh and also to those Zamindars of Oudh who, not being Talukdars, are not eligible to be members of the said Association. All things considered, it strikes me that it will be eminently fair to redistribute the six seats by giving three to the Zamindars of Agra, two to the British Indian Association and one to Oudh Zamindars who are not Talukdars.

29. I would increase the number of Members for the depressed classes from one to three and allot a seat to factory laborers. I would secure this as well as the additional urban representation by an increase of the numerical strength of the Council and not by taking away from the representation of the community generally or of any special interest. In point of fact, no such increase will be necessary if my earlier proposal to do away with nominated official Members as a body should be accepted.

30. As regards the powers of Provincial Legislative Councils, I consider the provision requiring the previous sanction of the Governor-General—S. 80 A (3)—to the consideration of certain classes of legislation to be a survival that should be done without, and the new provision relating to the reservation of Bills for the assent of the Governor-General—S. 81 A—to be unnecessary. I would retain only so much of it as empowers the Governor or the Governor-General to return a Bill for further consideration in whole or in part. This will be useful, as it is conceivable that in its absence the entire labor bestowed upon the consideration of an important and useful measure of legislation may prove to have been wasted and the whole Bill destroyed by its Veto by the Governor or the Governor-General. For the rest, the power of Veto is adequate to all purposes.

MINISTERS AND SERVICES

31. Under S. 45A (2) (iv) rules may be made under the Act to "provide for regulating the exercise of the authority vested in the local Government of a Province over members of the public services therein". As "no special provision is made as to the authority by whom the rules are to be made"—S. 129A (1)—it must follow that "the rules shall be made by the Governor-General in Council, with the sanction of the Secretary of State in Council, and shall not be subject to repeal or alteration by the Indian Legislature or by any Local Legislature". Sub-Section (3) of the same Section provides for Parliamentary sanction for the rules. Local Governments themselves may be consulted or informed, but they have no power in respect of the rules. Actually, I believe the Government of the United Provinces was only informed and not consulted. Rule 10 of the Devolution Rules says that "the authority vested in the Local Government over officers of the public services employed in a Governor's Province shall be exercised.....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" subject to two provisos. In the first place, the contrast between "Governor in Council" and "Governor acting with the Minister in charge" will be noted; the Rule does not speak of the "Governor acting with Ministers". In the second place, I have to bring to the notice of this Committee that there is another rule which lays down that any change in the conditions of recruitment and service of officers of Provincial Services can only be made by the Governor in Council and not by the Governor and Ministers even when those Services relate to Transferred subjects. This rule was first shown to us in the summer of 1921 at a meeting of the Government, as a rule drawn up by the Government of India and submitted for the sanction of the Secretary of State and Parliament. Local Governments were informed that the

draft rule should be considered to be in force as if it had already received sanction. My colleague and I immediately protested against it, and I am glad to say that the Governor in Council endorsed our opinion. And a telegram was forthwith sent to the Government of India requesting them to cable to the Secretary of State our protest supported by the Governor in Council. Nothing more was heard of the rule for a long time, and we were under the impression that it had been modified. The impression was strengthened by the circumstance that the Fundamental Rules, which were received by the Local Government about six months later, stated the position correctly from our point of view. But towards the end of 1922 I was again confronted with it. The question arose whether officers of the United Provinces Women's Educational Service should not be required to pass an examination in the vernacular. The rules then in force did not require this of them. But the Director of Public Instruction and I were of opinion that they should. At this stage, the Secretary objected that the rule could only be amended by the Governor in Council as power was not given to Ministers in this behalf even in the case of Services working in the Transferred departments. Further enquiry elicited the fact that the rule as originally framed had not been altered. That is to say, our protest, supported as it was by the Governor in Council, had been unavailing. Sir William Marris agreed a couple of months later to communicate a fresh protest from us to the Government of India. Up to the date of our resignation we had no information as to the fate of that protest. This single illustration brings into striking relief the inferior position decreed to the unfortunate Ministers. Responsible to the Legislative Council as they are, equal Members of the Government as they are supposed to be, they are to submit to the control, not only of the Governor, but, in certain matters, of the Governor in Council, in other words, of their colleagues the Members of the Executive Council. A careful perusal of

Ss. III and IV of the Functions Committee's Report has failed to bring to my knowledge any justification of this invidious rule. It does not appear to me that such an arrangement can be easily defended.

32. The two provisos to Rule 10 of the Devolution Rules place the responsible Ministers on the same footing as the non-responsible Members of the Executive Council notwithstanding the considerations urged by me in para. 8 above. The first proviso extends to officers of both the All-India and Provincial Services; the second is limited to the former. The provisos may work without producing friction; but they may not. It depends. We have had both experiences in the United Provinces, particularly in respect of proviso (a). I can conceive of no justification for proviso (b). The Functions Committee in para. 70 of their Report urge such restriction of the powers of a Minister only in the case of officers of the I. M. S., "because, owing to variations in the value of private practice in different appointments, an order of transfer may seriously affect emoluments". I do not approve of this. It is the Civil Assistant Surgeons promoted to the position of Civil Surgeons who have most to complain of on this score, and actually several of the abler among them have declined the promotion offered to them because they could only get Districts which did not offer much scope for private practice. However this may be, the Devolution Rules of 1920 have gone far behind the Functions Committee of 1918. If Ministers cannot be trusted even in the matter of transfers and postings, it would be simpler, more logical and more intelligible to dispense with them altogether.

33. "A local Government shall employ such number of Indian Medical Service officers in such appointments and on such terms and conditions as may be prescribed by the Secretary of State in Council." (Devolution Rule 12) The officers belong to a military service; and medical administra-

tion is a Transferred subject. Unlike other heads of departments the Inspector-General of Civil Hospitals may not be appointed by the Governor except with the concurrence of the Government of India. Sir John Hewett protested against this arrangement as long ago as 1907 in the Memorandum he communicated to the Royal Commission on Decentralisation. This "previous sanction" subsists even after a Minister has been made responsible for medical administration. A certain amount of authority was claimed by the Government of India in 1921 even in respect of I. M. D. officers in civil employ, officers whose salaries are votable. A lengthy correspondence ensued and when, on Budget day in 1922, the Minister (Pandit Jagat Narain) went before the Council with proposals pressed upon him by Delhi and Simla they were sharply attacked by the non-official Members and defeated without a division after an elaborate *apologia* by the Inspector-General.

34. Rule 27 (1) of the Devolution Rules and Schedule III may next receive attention. I do not think that either the Rule or the Schedule is necessary. I do not think that the Secretary of State in Council or, acting on his behalf, the Governor-General in Council, should reserve the powers specified therein. The control of the Legislative Council over the Ministers is an adequate and will always almost be an effective safeguard against excessive spending propensities in a Minister. In fact, the Council is more watchful than either the Secretary of State or the Government of India of expenditure upon establishments, and is particularly jealous of the creation of posts on high salaries.

35. I was satisfied as Minister that there were several superfluous posts ordinarily held by members of all-India Services and a larger number the duties of which can be, and in temporary vacancies have efficiently been, discharged by the more moderately-paid officers of Provincial Services. But the local Government have no power to abolish any post or

transfer it to the cadre of a Provincial Service, while it was never easy to get the sanction of higher authority to either proceeding. The utmost that could be done was to let a post remain in abeyance or to let an officer of the Provincial Service concerned officiate for a lengthened period. But I am given to understand that when it extends beyond a fixed number of months, higher sanction has to be obtained. I knew that this was so in respect of the I. C. S. and P. C. S. I have since learnt that a like rule is in force for the benefit of other All-India Services including those serving in Transferred departments. Acute financial stringency necessitated a regrettable restriction of beneficial expenditure in the very departments where there were costly offices to be paid for though superfluous, or when they could otherwise be staffed at a smaller cost to the taxpayer. The Governor acting with his Ministers should have the power to deal with such cases, care being taken or provision being made by law that no individual officer of an All-India Service, now in service, shall be deprived of his rights. It should be in his power to reduce cadres, again subject to this same reservation, and the Secretary of State should not retain or use powers to prevent or discourage measures of economy in the Provinces.

36. After some experience was gained I reached the two conclusions, that the Chief Engineer should not also be Secretary to Government in his department, and that the posts of Superintending Engineers were not necessary. I proposed that one of the Civilian Secretaries to the Government—preferably the Secretary in the Industries Department—should take over Buildings and Roads; that the Chief Engineer should be *ex-officio* deputy Secretary and that he should be assisted by a deputy Chief Engineer who will be of the status and receive the emoluments of a Superintending Engineer. The abolition of the posts of Superintending Engineers was to take effect after the officers who were holding them substantively had retired. The Legislative Council resolved *nem. con.*,

official Members not voting, that the posts of Superintending Engineers should be abolished. The whole Government virtually agreed to the aforesaid proposals. But knowing that we had not the power to give effect to them, I accepted the advice to set up a Committee in the first instance. Since then many things have happened except the effectuation of my proposals which, in all probability, would have been a *fait accompli* in 1922, if the local Government had had the power.

37. There are certain posts in departments dealing with Transferred subjects which are reserved for officers serving in departments dealing with Reserved subjects. For example, there is the office of Excise Commissioner. It must be filled by an officer of the I.C.S. It is regarded as being the perquisite of a Senior Magistrate and Collector and oftener than not, an officer is selected who is not thought fit for promotion to the more coveted position of Commissioner of a Division (although, as one officer remarked, while it is easy to understand that a person may not have the qualities essential for a successful Collector, it is difficult to make out why any one should be deemed unfit to be a Commissioner), but who may be too senior to remain a mere District Officer. In other words, the convenience of the Government and not the public interest is (or was) the determining factor in the selection of the head of the department. With the concurrence of the Finance Member—the able officer who is Secretary both for Finance and Excise fully agreed with us—and His Excellency the Governor it was decided towards the close of 1921 to appoint as Excise Commissioner the then Deputy Excise Commissioner, who was both an expert (having put in many years of service in the corresponding department in Britain) and a man of administrative capacity and was, besides, a temperance reformer. He was appointed to officiate and a despatch was prepared asking for the sanction of the Secretary of State to remove the post from the cadre of the I.C.S.

and give liberty to the Governor acting with his Ministers to select which officer—I.C.S. or other—he might from time to time deem to be the best fitted therefor. At this stage, the Finance Member and the Secretary both went on leave and the new Secretary, instead of submitting to the Governor the draft despatch approved both by Sir Ludovic Porter and me, took it upon himself to send the case to the Chief Secretary on the ground that the proposal affected an All-India Service. This he did although the Chief Secretary's Chief, the Finance Member, who was in charge of General Administration as well as Appointments, had already given his consent. The Chief Secretary interposed every obstacle he could. The case had to go before more than one subsequent meeting of the Government. When at last the despatch was sent in a truncated form it was returned by the Government of India with discouraging advice. In the interval, the Governor moved in sympathy away from me and in the direction of the Chief Secretary, and the final result is that we have the *status quo ante*.

38. The Co-operative Department requires in its officers for the success of the movement a missionary zeal combined, of course, with knowledge and ability. But it has been bureaucratised like any other, and it is obligatory on the Minister to select as Registrar and Deputy Registrar two officers "listed" or to be "listed" and as Assistant Registrars two Deputy Collectors. No officer of the Department of Agriculture or of Industries, no junior Assistant Registrar, no non-official of proved capacity is eligible. And the Department cannot be reorganised without the Minister running his head against both the I.C.S. (indirectly) and the U. P. C. S. (directly). A scheme of reorganisation, drawn up by me after consultation with an English friend who had been himself Registrar and subsequently rose to be officiating Finance Member and in large part in agreement with his ideas, and submitted to the Governor, never left Government House

until the date of my resignation. Registration is a Transferred subject, but the Inspector-General of Registration and District Registrars are "Reserved" officers. "Public Health is another Transferred subject, similarly situated, and my colleague did not always succeed in getting the officer he wanted to be in charge of it.

39. Commissioners and District Officers have many opportunities of making themselves felt in the administration of Transferred subjects. They have specific powers and are a factor to reckon with in the administration of Local Bodies, and no proposal of the former can be rejected by the Minister "in any important matter" without the concurrence of the Governor. What is and what is not an "important matter" is decided, not of course by the Minister, but, in the first instance, by the Secretary to Government and, in the last, by the Governor himself. *Village Panchâyats* are or are not as the District Officer may decide. Because they are endowed with petty judicial powers an attempt was made in the beginning to treat them as "Reserved," but it was not pursued. A similar attempt was made to remove *Improvement Trusts* from the control of the Minister of Local Self-Government and for a time they were actually made over to the Finance Member. When it was pointed out that this could not be, we were told that legal opinion was being or would be obtained. It was not until after a couple of months of their administration as a Reserved subject that the Governor could be persuaded that the list of Transferred subjects in the Devolution Rules left him no option but to restore the Trusts to the control of the Minister. At that time the Chairman of the Lucknow and Cawnpur Trusts were senior I. C. S. officers and there was reason for our thinking that they expressed dissatisfaction that some of their schemes and proposals had not received instant acceptance or acceptance without modification, and that this was why the resumption was made. In my departments, I had to deal with—that is to say, to bring to the

notice of the Governor—cases of attempts at interference by a Commissioner and a Collector in a matter pertaining to Excise (they wrote to the Chief Secretary against the intended transfer of an Excise Inspector, one of them describing it as “immoral”); by another Collector in one pertaining to Co-operation, and by a third, to the P. W. D. The last was interesting: the Collector ordered the District Engineer (not an Indian) not to leave headquarters even on duty. There was, on another occasion a matter relating to a school in which the Deputy Commissioner took a strong line of his own, because teachers did not attend an Aman Sabha meeting called by him and were seen clad in Khaddar, and was supported by the Commissioner on the ground that the District Officer’s authority must be upheld, but the four Members of the Government were unanimous that the Deputy Commissioner was wrong. The Governor disagreed with all his colleagues and said he scented “intrigue,” but concluded that the case was not a suitable one for the exercise of his power of Veto. Demi-official correspondence between Commissioners and the Chief Secretary affecting Indian Officers of the Transferred Departments was not a very rare occurrence. In one C. I. D. report I was amused to find myself described as the founder of a Non-Co-Operation League about six weeks before I got into office.

40. I will not multiply instances. And I should further like to record that it should not be thought that they were very frequent. On the other hand, there were many officers whose attitude towards the Ministers was correct and some who were cordial and helpful. And Pandit Jagat Narain and I look back upon our association with them—and they included officers in our own as well as in the Reserved Departments—with pleasure and in some instances with a feeling of gratefulness. The point I set out to make is that the Diarchical Constitution—including in the term both the Act and the Rules—which nobody ever regarded as ideal and

which some of us supported only because it was the best we could hope for in the circumstances and as a stepping-stone to something better and higher, could only be carried on if worked "by reasonable men in a reasonable spirit" (Mr. Montagu and Lord Chelmsford), and that the experience of the last three years and a half has indubitably demonstrated that it is not always that this difficult condition is satisfied, that it has not worked well, that for its success we have perhaps to expect more of human nature than human nature is capable of yielding, and that it would be wise and prudent to replace it by unitary autonomous or Responsible Governments in the Provinces. The preamble to the Act of 1919 stated that "the time and manner of each advance" to the "realisation of Responsible Government" must depend upon "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". I affirm with confidence that Ministers have abundantly fulfilled this test, and Legislative Councils, too, except in the last few months in two of the Provinces, that even there, the situation that exists for the time being is only a forcible though unwise demonstration of dissatisfaction with the present very defective Constitution and of an eager desire for rapid progress towards Self-Government, and that the effectual remedy lies neither in retrogression nor in stagnation but in unflinching and courageous progress onward and upward.

41. To resume my narrative. The Rules of Executive Business impose upon the Secretary the duty and confer upon him the right of submitting to the Governor cases which in his opinion were of such importance that he should see them. He should do so when in any important matter a Member of the Government did not accept the opinion of a member of the Board of Revenue, the Commissioner of a Division or the head of a department, and he could also do so when he him-

self was not satisfied with the decision of an H. M. The Secretary has his weekly interview with the Governor; the head of a department is seen by H. E. when requested for an interview. Both Secretaries and heads of departments are appointed by the Governor after consultation with the colleague concerned. Appointments to the more important of other offices are made by the Member of the Government concerned, but are subject to the Governor's approval. Every matter relating to all subordinate services except variations of cadres and scales of salaries is in the hands of heads of departments. Either decisions are specifically reserved to the Governor, or they are subject to his approval, or they have to be submitted to the Governor because there is a difference between the head of a department and a Member of the Government, or they are so submitted because the Secretary elects to do so. It will be seen that the margin of discretion left to the Minister responsible to the Council is not dangerously wide. The system can work notwithstanding its inherent imperfections as long as the Governor is sympathetic and helpful and when the atmosphere is one of mutual trust and goodwill. Perhaps it can work, too, when a strong Governor selects a weak Minister. But do these conditions invariably exist? My experience was that it very much depended upon a Secretary's good humor, whether ten or ninety per cent of cases were submitted for the Governor's approval, and upon the Governor's general attitude or personal feeling towards a Minister at a given time whether he ordinarily supported or overruled him. I passed through every stage from a habitual "the Hon. Minister is responsible and his view must prevail" and "I must support the Hon. Minister" to being overruled in matters of varying degrees of importance and unimportance down to nominations to a library Committee; ultimately prevailing, in matters in which I was not prepared to be overruled, only by making it clear that I would have to consider my position. A Governor and one or more

colleagues not of their political persuasion and Secretaries and heads of departments and other superior officers to whom every act of Indianisation or Provincialisation or political advance means something that reduces their own opportunities, are the chief under whom, the colleagues with whom, and the agency through which, Ministers have to act, at the same time fulfilling their responsibility to the Legislative Council and satisfying their constituents and countrymen. The system has not worked well; it must break down. A constitutional Governor not belonging to the permanent services, a responsible Cabinet of M. L. C.'s of identical ideals and sympathies with collective responsibility, and a rapid Indianisation and also Provincialisation of the superior civil services, the rights of officers now in service being secured, can in my judgment be the only proper substitute for the present hybrid system.

42. *The Chief Secretary.*—I respectfully suggest that there is no necessity for the post of Chief Secretary to a Local Government. There is no such functionary in the Central Government. And there should no longer be in the Provinces, which have advanced from single-man rule to Government by Council, bear at present a partial responsibility to their respective Legislatures, and are sooner or later to be fully responsible. The Chief Secretary's functions are similar to those of any other Secretary and are in the main, and ought to be completely, restricted to his own departments. The adjective, however, gives him a sort of superior importance and enables him on occasion to seek to intervene and assert his authority in affairs not his own but his colleagues', who have their own H. M.'s to deal with. The Chief Secretary is a survival and has no place in the present system. If his position is assimilated to that of the other Secretaries, there will be the subsidiary advantage of a financial gain to the Provinces.

CONTRIBUTION TO THE CENTRAL GOVERNMENT

43. The United Provinces has never been fairly treated by the Government of India in the matter of the financial contribution, or the Provincial settlement or contract as it used to be called before, ever since the system was inaugurated by Lord Mayo's Government in 1871. The excessive economy practised by successive Lieutenant-Governors was rewarded by the resumption of their accumulated surpluses at the time of the quinquennial revision of the contract. The standard of expenditure was very low and the progress of the people very slow. The requirements of the local Government were calculated on the basis of that standard and consequently progress could not be accelerated during the next following quinquennium. Sir Antony Macdonnell, Sir John Hewett and Sir Harcourt Butler put up a sturdy fight for better treatment, and Sir James Meston, too, pleaded for it during the latter half of his régime. Very partial success attended the efforts of the first three. The award of the Meston Committee in 1920 gave no satisfaction either to the public men or the Government of the Province. Our standard of expenditure on beneficial services is lower than in almost any other Province and much lower than in some. Our progress has in consequence been lamentably retarded. Our needs are many but our means are narrow. A revision of the Meston award is urgently called for. Both the Government and the people are at one in urging this; at least they were in the time of Sir Harcourt Butler and Sir Ludovic Porter. I shall be both sorry and surprised if the present Government are of a different opinion. Personally I am of opinion that Madras and the United Provinces have fared the worst in the Meston award. But I am aware that this is not the view of Bombay and Bengal. After much thought I am compelled to the conclusion that no revised award would

bring equal satisfaction to all the Provinces or convince all of them that the contributions have been fixed on an equitable basis, and that if constant bickerings are to be avoided, if there are not to be inter-Provincial jealousies, if a sense of invidiousness is to be avoided, there is only one way, and it is for the Central Government to do away with Provincial contributions altogether seeking other means of balancing its own Budget and meeting its obligations. The still stronger reason for this course is that the relief here advocated is badly needed by all the Provinces. I would urge an amendment of the Devolution Rules in this behalf.

44. *The Capital of the Province.*—A question that caused some trouble is whether the fixing of the capital of the Province is a Provincial or a Central subject. If a particular city has been fixed by higher authority as the capital of the Province, is it open to the head of a Local Government or to the Local Government to change it, openly or insidiously, with or without the support of the Legislative Council in that behalf? What are the inseparable incidents of a capital, and is it open to a Governor to deprive it of them one after another, while paying homage to the decision of superior authority by nominally calling it the capital and sanctioning the payment of daily allowances to three Secretaries and sundry other officials for being in camp, as it were, the "camp" being the city to which the business of the Government has been transferred, and the headquarters being rarely visited by them? These things have been done in my Province, the protests of the citizens of the capital have proved useless, and more moves to complete the process are in the air. The Government of India Act having so anxiously safeguarded the authority of the Secretary of State and the Secretary of State in Council, the Governor-General and the Governor-General in Council, even in matters which in the judgment of many should be under the full control of Local Governments, here is a point to which importance is attached in my Province,

and which I therefore submit for the consideration of the Committee.

45. *Indian States in the United Provinces.*—There are three Indian States with which the Government of the United Provinces have political relations. In my opinion, they should be brought into direct relations with the Government of India and freed from dependence upon the Local Government and their officers. It is good for neither of the parties that the present relationship should subsist. My suggestion is in harmony with the accepted policy of the present. It has been carried into effect in Southern India and partially in Western India. It should be in other parts of the country as well. I am here concerned immediately with the United Provinces. A political agent appointed by, representing, and responsible to, the Governor-General may take the place of the three Commissioners of Divisions who now function as agents to the Governor.

DIVISION OF SUBJECTS

I shall begin with the division into Central and Provincial subjects.

46. *Railways and Tramways.*—Provincial Governments should have more voice in matters of Railway administration affecting the convenience of passengers and goods rates. They should not have to disallow questions and resolutions relating to even small matters, but should be in a position to afford relief. The interests in matters of trade and commerce of inland Provinces are not identical with those Provinces with a seaboard, and thriving ports and industries established in such Provinces suffer from railway rates being fixed by Railway administrations with headquarters at ports situated in other Provinces and looking at questions more from their view-point. For the East Indian Railway, the United Provinces are no more than a corridor between Bengal and the Panjab. The Great Indian Peninsula, Bombay,

Baroda and Central India and North-Western Railways are other instances of railway systems working in the United Provinces with headquarters in other Provinces. Whenever the management of the E. I., G. I. P., and B. B. C. I. Railways may be taken over by the State I hope the interests of the United Provinces will not be neglected in any redistribution that may be considered of territorial areas under separate managements. What will be the least objectionable and most convenient means of securing for the Provinces a voice in the determination of Railway questions I am not now in a position to affirm. Possibly some means may be found of giving Local Governments an effective opportunity of influencing the deliberations of the Railway Board. I do not here commit myself to a particular method. I am only desirous of bringing the question to the notice of the Committee for such consideration as they may see fit to give to it.

47. I am not so very sure that in respect of *light railways*, which is rightly in the list of Provincial subjects, there should be the reservation that "any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line" is "subject to legislation by the Indian Legislature". I believe that in Madras, which has set a commendable example of District Board enterprise in the construction of light railways, there is some soreness on this account, as it has been felt for years that this form of enterprise is being depressed by what is felt to be an undue regard for the interests or the views and wishes of the South Indian Railway. The question has not assumed similar prominence in the United Provinces, but it may any day, and I hope it will at an early date, and I think it right that Provincial Governments should be freer of control than is indicated by the reservation quoted above. These observations apply equally to extra-municipal (I am not here referring to cantonments) tramways. I do not think they should be subject to legislation by the Central Legislature.

48. *Inland waterways* should be a Provincial subject except in so far as they may be inter-Provincial or of military importance. The formula that they are a Central subject "to an extent to be declared by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature" is not very satisfactory. "*Shipping and Navigation*" is rightly a Central subject, but not so the inclusion therein of "shipping and navigation on inland waterways in so far as declared to be a Central subject in accordance with entry 5 (c)". I should say the same here as I have suggested above as regards inland waterways.

49. In item 19 of the list of Central subjects, "*Control of Production*" etc., the phrase "in the public interest," is too general and should in my opinion be replaced by "for National safety". Only to this extent should it be a Central subject. I would say the same of the phrase "expedient in the public interest" in item 20, "*Development of Industries*". The language actually employed is even wider than in the foregoing entry for it is "expedient" and not merely "essential," whereas there is the greater reason for its being made more restrictive as the "development of industries" is a Transferred subject. In saying this I have not overlooked the phrase, "made after consultation with the Local Government or Local Governments". In item 25, "*Control of Mineral Development*," I would replace the present formula "under rules made or sanctioned by the Secretary of State" by "Legislation by the Central Legislature" as being more in accord with constitutional propriety.

50. "*Emigration from and immigration into British India and inter-Provincial migration*" should, of course, be a Central subject. But I would add to this entry (No. 29) words to convey that a Local Government should have power to prohibit emigration from its Province if in concurrence with its Legislature it reaches such a conclusion.

51. I would make no further recruitment to "All-India Services" (item 40) for purposes of service under Provincial Governments, and I would request the Committee to consider whether, without in any wise disturbing the guaranteed rights of present incumbents, the Local Governments' powers in respect of the services under them cannot be increased.

52. *Entry 41.*—As a rule, there should be no legislation by the Central Legislature in regard to any Provincial subject. To the extent that the interests of the whole country or of more Provinces than one may be concerned, the Governor-General's right to veto legislation and to send it back for further consideration should suffice to prevent any wrong being done.

53. *Entry 44.*—I wonder if "immovable property acquired by or at "the cost of the Governor-General in Council" includes property acquired at the cost of Provincial revenues and maintained and controlled by Local Governments. If, as I hope and believe, it does not, I cannot understand why a Local Government even in a Transferred Department should be denied the right to deal with such property in such manner as it may deem fit. I have in mind the case of a house in disrepair at Saharanpur which H. E. the Governor and I, as Minister in charge of Public Works, agreed, on the recommendation of the Collector, to allow to be used free of rent by a local Anglo-Indian club on condition that it would meet the whole cost of repairs in the beginning as well as during the whole period of occupation, but which we were prevented from doing as both our own Finance Department and the Accountant-General held that the Local Government had no power to allow any house belonging to the Government to be used free of rent by anybody. Higher sanction was required, I forget whether of the Governor-General in Council or of the Secretary of State in Council. I may be pardoned to say that the maintenance of such rules in force is a *reductio ad absurdum* of the Reforms.

The Indian Constitutional Reform

THE WORKING OF THE GOVERNMENT OF INDIA
ACT OF 1919

A MEMORANDUM SUBMITTED TO THE
REFORMS ENQUIRY COMMITTEE OF 1924

By C. Y. CHINTAMANI,

*Minister of Education and Industries, United Provinces,
1921—1923*

PART II

THE NATIONAL SECRETARY'S OFFICE,
Adyar, Madras, S.

The Working of the Reforms

PUBLIC SERVICES COMMISSION

54. I am not in favor of the constitution of a Statutory Public Services Commission under the control of the Central Government (entry 45). In taking up this position, which I may say I have done consistently ever since the proposal was first made in 1918, I am anxious not to be misunderstood. In 1921, when a reference from the Government of India was laid before the United Provinces Government for consideration, H. E. the Governor and all the four Members of the Government were of one mind in returning a reply in the negative. We came to the conclusion that such a body for the whole of India would not be consistent with Autonomous and Responsible Government in the Provinces, while in the Province itself we preferred the constitution of Selection Committees *ad hoc* when appointments had to be made, as the same body of men would not be equally competent to judge the fitness of candidates for different departments and as further canvassing could be reduced appreciably if different persons were set up as the Selection Committee on different occasions. *My motive of opposition is not that Ministers should have patronage at their disposal. I do not want them to have it.* Wherever possible, I myself avoided making any appointment except in accordance with the recommendations of Selection Committees composed generally of seven members and sometimes of five, who included British officials and Hindu and Muhammadan non-officials. To avoid as far as might be a misunderstanding of motive I invariably submitted the names of members as well as of the candidates finally selected for the Governor's approval. I am for competitive examinations as the normal method of recruitment and for the employment of the expedient adopted in the United Provinces in the examination for the recruitment of Deputy Collectors to ensure that a fixed proportion of Muhammadans do always get in. For example, if nine places

were to be filled, we decided that the first six Hindus and the first three Muhammadans would be appointed. Before I resigned the decision was taken to introduce a competitive examination for the recruitment of Excise Inspectors. I am in favor of an extension of the system to as great an extent as possible. Where owing to the small number of appointments to be made—sometimes it may be only one—this method is unsuitable, I would resort to Selection Committees. I would have no objection to a statutory provision that appointments should be made by one of these two methods. I would not, however, give to the executive Government a voice in the judicial appointments that High Courts fill. And I think nobody would say that ordinary promotions of officials already in service, appointments to fill temporary vacancies, and postings and transfers should be entrusted to a body outside the Government. My opposition to a Commission such as has been proposed is based upon the conviction that such a statutory body for the whole of India is incompatible with Responsible Government in the Provinces, and upon the further conviction that All-India Services in the Provinces should disappear after the term of active service of the present incumbents is over. I am of opinion that the qualifications of candidates for admission to the competitive examinations in the Provinces should be prescribed by the Local Government concerned. (If any Province does not want this power the Government of India may relieve it of the embarrassment for such period as may be decided.) If a statutory Public Services Commission be preferred by a Local Government let it have it by all means, provided its Legislative Council agrees. In any case, I must steadfastly oppose a statutory Public Services Commission for all India for as long as the Central Government in respect of all matters of internal administration and Local Governments completely are not responsible to their respective Legislatures. I would accordingly cut out all reference to the Commission from the

Act and the Rules and delete entry 45 from Schedule I, Part I, Central Subjects.

PROVINCIAL SUBJECTS

55. I would do away to the greatest possible extent with the reservations in favor of legislation by the Indian Legislature except where matters are of inter-Provincial concern and where the safeguard of the Governor-General's right of Veto will have proved to be insufficient. I would also except High Courts.

56. *Education.*—“...Such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be Central subjects” are declared to be a Central subject. This indefinite power should be taken out of the hands of the Government of India. All Universities in British India should be Provincial except only the all-India Hindu and Muslim Universities of Benares and Aligarh.

57. *Stores and Stationery.*—From the language of entry 27, Part II of Schedule II, the reservation in respect of imported stores and stationery should be done away with. The Secretary of State in Council cannot possibly be more regardful of economy in the interests of a Local Government than that Government itself, which besides has to satisfy a critical Legislative Council that there has been no extravagance or carelessness. In both the Reserved and Transferred Departments the Local Governments acting with the support of the Legislature should have complete freedom to make their own arrangements for the purchase of all the stores they may require—wherever possible, in India; where necessary, abroad. I have reasons for saying that this is a subject that calls for vigilance from the Legislative Council.

58. “Railway contributions to cost of maintenance” of the Railway Police should not merely be a matter for determination by the Central Government. Local Governments should have an effective voice in the settlement. I remember

more occasions than one in the old Legislative Council when we were not at all satisfied that the decisions of the Government of India were equitable, and we had indications that the Lieutenant-Governor was not satisfied either. I cannot urge in reason that if no agreement is reached between the two Governments the inferior Government's view should prevail. But I am justified in suggesting that there should be some arrangement for a tribunal of arbitration whose decision, reached after hearing both parties, should be binding upon both.

TRANSFERRED SUBJECTS

59. Some observations are offered here without prejudice to my opinion that all Provincial subjects should be transferred to the control of Ministers acting as a Cabinet responsible to the Legislative Council of the Province, the Governor acting in relation to them as a constitutional Governor. Also, as previously stated, I would, in respect of all Provincial subjects, do away with Indian legislation, retaining it only to the irreducible extent of absolute necessity. And I shall not repeat what I have already said regarding provisos and reservations, such, for instance, as that relating to new Universities.

60. While I follow the reservation, in head 6 (b), justified by military "necessity," I have a greater difficulty in making out why the Governor-General in Council should also prescribe the "incidence of special expenditure connected therewith". This can easily be a matter of the actual amount spent, or, where a certain work is of utility both to the Local Government and the Army, of settlement by consent. A work may be undertaken by a Local Government not of absolute inutility to the civilian population but of comparatively small advantage, which it would not have cared to take in hand if it had not been suggested by the military or if the military had not promised a certain contribution. Half-way through, the military change their mind. The Local Govern-

ment should not in consequence be bound to find the whole amount or be under the necessity of leaving it half-finished. This is not a mere hypothetical contingency. I had a case of this description which caused trouble. As I have said in para. 58 above, there should be reference to a tribunal of arbitration, where a settlement by consent cannot be reached.

61. If I did not agree to the reservation in respect of *stores and stationery* required for Reserved Departments, much less can I agree to it in the case of Transferred Departments. (See entry 17 of the "List of Provincial Subjects for Transfer".) The freedom of action of the Governor acting with his Ministers should be limited only by his ability to carry the Legislative Council with him.

62. Difficulties have been experienced in administration owing to the division of subjects into "Reserved" and "Transferred" when as a matter of fact they cannot be divided into watertight compartments. I shall give a few illustrations. There is *Local Self-Government*. Mention has already been made of the functions assigned to the Commissioner and the Collector in relation to District and Municipal Boards and of the difficult and delicate position in which the Minister finds himself on this account. Here is a specific case of a different nature. In the elections of March, 1923, a majority of Non-Co-Operators were returned to the Allahabad Municipal Board. It was bruited about that they would, as soon as they got into possession, hoist a flag of their own over the Municipal buildings. The Magistrate and the Commissioner believed this was going to happen and addressed, not the Minister but the Governor in Council through the Chief Secretary. This officer noted to his Chief the Finance Member (or the Home Member, more probably the former), and the case was sent up to the Governor. A certain course of action was decided and then the Minister of Local Self-Government was informed. No doubt he noted his opinion at that stage. But every-

thing had been decided, as if it was all a matter of law and order and no Local Self-Government. By mistake of a peon the file came to me too, but when I saw that H. E. the Governor only wanted to know if "H. M., L. S. G.," had any observations to make I had to refrain from expressing an opinion. The identical subject had been treated as a matter for the Minister in the Central Provinces, and on an earlier occasion in the United Provinces, too. The action that the Governor in Council decided to take was not in accord with suggestions made by the Government of India in a letter signed by our Finance Member when he had been Home Secretary here. In the end, nothing happened as neither the Allahabad nor any other Municipal Board did what it was suspected and feared it might do.

63. *Medical Administration and Education.*—There is a large amount of interference with the Minister chiefly on account of the I. M. S., but to a smaller extent also in behalf of the I. M. D.—due to the General Medical Council of the United Kingdom, and to the special claims and demands of the I. M. S. I do not see why the General Medical Council should interfere. I have never been convinced of the necessity of the registration of our medical practitioners by that body. There are wheels within wheels and it is not always that all I. M. S.'s get equal justice or that Ministers can prevail. The story of the appointment of Lieut.-Col. M. N. Chaudhuri, I. M. S., as officiating Principal of the Madras Medical College, and its subsequent cancellation in favor of a Major, has been told in the press almost categorically and not been contradicted or corrected so far on behalf either of the late Governor or the Chief Minister of Madras.

64. *Public Health.*—I have mentioned that the late Minister of Public Health in my Province was not allowed to have an officiating Director of Public Health who he thought was entitled to the place, as he was overruled in the selection of the Inspector-General of Civil Hospitals (neither did his opinion

prevail as to who should be Under-Secretary to Government in the Department). There is another important point. The Minister is responsible for sanitary arrangements at fairs and festivals, such as the big annual Magh Mela at Allahabad. But his staff have to work under orders of the Magistrate and Collector. And for a reason that neither I nor any one else could comprehend, the Mela was made a sub-head of Agriculture and I was told it was my business, therefore, to defend the arrangements and the expenditure in the Legislative Council, when Agriculture was under discussion. Our Finance Department pleaded ignorance of the why or wherefore of this and had to move the Accountant-General or someone higher in the hierarchy to remove the item from my budget.

65. *Education.*—This is a much divided subject. It is partly Central and partly Provincial; partly Reserved and partly Transferred. It is under an Hon. Member of the Governor-General's Executive Council; it is under all the Members of the Provincial Government. The Education Member of the Government of India had (I do not know if he has it still) the Central Advisory Board and has his Educational Commissioner and the Universities Conference. Our Director of Public Instruction used to be addressed direct and we had to stop the practice except where only statistical and other information was wanted. Benares and Aligarh Universities is a Central and hence an agency subject, and European and Anglo-Indian education, because probably an Indian Minister cannot be trusted, are under the Finance Member. A Primary School attached to the Government Press is under the Home Member because the Government Press being "reserved" and under him its Primary School had also to be under the same control. Primary and all vernacular education was under the Minister of Local Self-Government while I was responsible for English Secondary and Collegiate education. I was also responsible to the Council for the Universities of Allahabad and Lucknow. It was decided by

Sir Harcourt Butler in 1921 that as he was Chancellor *ex officio* in his capacity of Governor, as both Universities were almost entirely dependent for their existence upon financial aid from the Government which had to be voted by the Legislative Council on my motion, as my failure to get the demand voted might have to be followed by resignation, in short, as I was the man responsible to the Council, all communications from the University including those intended for him as Chancellor should be addressed to the Education Secretary to the Government and submitted to him after I noted thereon. This, however, he reversed in 1922 and directed that the latter class of letters should be addressed to his Private Secretary. His Excellency would send them direct to the Education Secretary (though neither was the Chancellor's Secretary), and if ordinarily the latter sent the papers to me before submitting them to the Chancellor (or the Governor, I could not be sure which), this was not done invariably. My representation in favor of a return to the first year's practice was not successful. What happened in the third year under the present Governor-Chancellor has been a matter of public knowledge for fifteen months. There was a redistribution of business between the two Ministers after the first two left and now all three branches of Education are under one Minister. Before, the two Medical Schools at Agra were under Pandit Jagat Narain while I was answerable for the Medical College at Lucknow as a University Institution. So was I, too, for the College and the School of Agriculture, the College of Engineering and Technical and Industrial Schools. They are now separated from the Minister of Education as he is not in charge of Industries and Agriculture. The Reformatory at Chunar has a story of its own. It used to be under the Inspector-General of prisons, but many years ago it was transferred to the Department of Public Instruction as an act of reform in respect of the treatment of juvenile offenders.

As such it was under my control. After sixteen months of this arrangement, the Education Secretary discovered that under the Devolution Rules reformatories were included in Gaols, a Reserved subject in charge of the Home Member. During the discussion that ensued almost everybody agreed that it would be a retrograde step to transfer the institution from the Director of Public Instruction to the Inspector-General of Prisons. The finale of the story was that the Devolution Rules were disregarded in this particular and the *status quo* was left undisturbed. "Welfare of labor" and "factories" being "Reserved," I dare say that schools for factory laborers or their children would also have to be a "Reserved" affair. That Education is a Transferred subject has not, I regret to add, deterred Commissioners and Collectors from reporting to the Chief Secretary against institutions and teachers on political grounds. It did not occur to them, neither was it put to them, that they should address such communications to the Education Secretary. I happened to see some such; I cannot tell whether they were all. In another connection I have adverted to the case of a school which incurred the displeasure of the Deputy Commissioner.

66. *Public Works.*—In the exercise of the power conferred upon him by the saving in 6 (a) of the schedule of Transferred subjects and having got my assent the Governor assigned the construction of the Council Chamber at Lucknow to the General Administration Department. The latter however took away an officer of the P. W. D. in active service from the post he held for work in connection with the Council Chamber, and I could only obtain information about this when I enquired if rumor in that behalf was true. It is needless to say that it is not possible for a Minister to act in this manner if he wanted the services of a Reserved officer. There had earlier been a misunderstanding on account of another proceeding of the same Hon. Member in charge of General Administration about the purchase of a

residence at Nainital to oblige a secretary contrary to a promise made to the Legislative Council by me on the suggestion, of the Finance Secretary and with the approval of the Finance Member. Through the Governor's action the intended transaction was not proceeded with, but it was only abandoned after a prolonged controversy. The P. W. D. gave easily more trouble than all other departments put together, as Medical did to Pandit Jagat Narain. None called for greater vigilance, and none was more difficult to deal with owing to the attitude of the I. S. E. officers in the administrative grades. The corresponding officers of the Irrigation Branch were not more easy to negotiate in the only matter in which I had to do with them, viz., the purchase of stores. In common with most other heads of departments but perhaps more than the rest they made a dead set at the store purchase branch of the Department of Industries. There was attempted interference by the Government of India in the selection of a Superintending Engineer. The Secretary of State reserved in his own hands the decision relating to temporary engineers; not only were the Governor and the Ministers not given the authority which in my humble opinion should be theirs, but their considered recommendation regarding an individual officer was promptly rejected by the Government of India. The Secretary of State also laid down the law for us with respect to specialist officers in the engineering branch of the Public Health Department--a branch that continues to occupy an anomalous position. There was, too, in this department an interesting case of an application for retirement on proportionate pension, which brought out that the conditions laid down by the Secretary of State were not being strictly and uniformly observed by the Government of the United Provinces in the Reserved Departments and which led to a difference of opinion between the Governor and me. In the end I was not overruled. The P. W. D., Buildings and Roads, demand for grant as presented by the Minister,

includes the cost of works for Reserved Departments. This is not right. He is not responsible for the latter's policy and is often not in a position to defend it against criticisms. A motion of reduction or omission carried in the face of Government's opposition should not affect him and he ignores it. But in a Diarchical system he should not be placed in this anomalous position. Is it only to be Diarchy to the prejudice of Ministers? I raised the issue inside the Government. But I was assured that the Finance Department was powerless as the form of the Budget was prescribed by an authority not under the control of the Local Government.

67. *Agriculture*.—The fragmentation and minute subdivision of holdings has long been recognised as an economic evil that effectually retarded agricultural progress and increased the difficulties in the way of the introduction of improved methods. In the Department of Agriculture an enquiry was instituted in 1921 with the approval of H. E. the Governor. When however the officer who had conducted the enquiry submitted his report in 1922 and a certain amount of noting had been done by the officiating Secretary for Agriculture, it began to be doubted whether after all the question should not have been dealt with in the Revenue Department—a Reserved subject in charge of the Finance Member. H. E. the Governor decided that the case should be transferred to him. I raised no objection. It was only the other day—two years later—that the Governor in Council issued his resolution on the report of 1922. And his decision is that some work should be done in the Co-operative Department—a Transferred Department, again! This case may be cited as one of many illustrations of the impracticability of making or maintaining a clear-cut division of subjects into "Reserved" and "Transferred".

68. The College of Agriculture at Cawnpur had to go for several years without a professor of Agriculture because the post was in the I. A. S. and the Secretary of State could

not make an appointment in England and would not allow the Government that maintained and was responsible for the institution to make an appointment in India. At last the problem was only solved by an exchange of officers between the United and the Central Provinces, which, however, after the two Governments as well as the two officers concerned had agreed, could only be put through with the consent of the Governor-General in Council. There is an officer in the United Provinces who was anxious to get into the College of Agriculture to fill a vacant post. The Director of Agriculture formed a good opinion of the fitness of that officer and the Government were desirous of appointing him. As the post was in the I. A. S., they addressed the Government of India and were told in reply that he must first be approved by a Selection Committee they would set up some time later. This body recommended to the Government of India to appoint this particular officer to the College at Coimbatore and send to us someone else. We were so informed by the Government of India. The officer did not want Coimbatore. We did not want the officer presented to us. The officer continues where he was in another department. Until the time of my departure I believe the said post in our College remained vacant. Yet, all the time, the Legislative Council could, if it chose, dismiss me if it was gravely dissatisfied with the affairs of the College.

69. Agricultural farms and the agricultural engineering section gave considerable trouble. The Council as well as many landlords had a plentiful lack of confidence in either, and yet they wanted useful work to be done. It was not found an easy matter to give a new turn to the ideas of officers and yet there was little that the Local Government could do to deal with them effectively. It had to be a work of persuasion and if moderate or qualified success attended the effort it was due partly to persistence and largely to the willing and tireless co-operation of an exceptional officer, my

friend the officiating Director, Mr. G. Clarke. It was not the same atmosphere for me after Mr. Clarke reverted to his substantive post. Mr. Clarke and I satisfied ourselves by joint inspections and very frequent consultations that while much good work had been and was being done undoubtedly, while some of the non-official criticisms were unjust and grossly exaggerated, there had been any amount of useless and wasteful expenditure and there was abundant scope and need for economy and retrenchment and more useful work. The Director of Agriculture recorded his opinion that on more occasions than one we had to go without the officers we wanted and to accept others whom we did not want, because that was the pleasure of the authority who decided these matters. We have several competent officers in the Provincial agricultural service who creditably officiated in I. A. S. posts, and sent up a proposal to reduce the I. A. S. cadre and convert one-half (three at the time; eventually it was hoped the number might be five) of the posts of Deputy Directors of Agriculture to U. P. A. S. posts. I cannot tell what was the fate of this proposal as no decision was conveyed to the Local Government by the time I relinquished office. The Legal Remembrancer advised that a case had been made out for the prosecution for embezzlement of an officer of this department. He was suspended but the Local Government had to wait long to get the Government of India's sanction as the officer was appointed by the Secretary of State. I have heard a rumor that the sanction was eventually given and the officer convicted. But there were several months of uncertainty for the officer as well as the Government.

70. Gardens are under the Director and the Minister of Agriculture. Until last year they were under the former only for budget purposes and in respect of transfers and postings. The controlling officer was actually the Commissioner, who of course is under the control of no Minister. But there

was the Minister's responsibility to the Council, and it was not easy to satisfy as the expenditure was very heavy and the income much smaller. It was agreed that parks could not be paying propositions, but there were big gardens from which any private individual or firm might have made a fortune. Much demand had to be made upon the patience of the Council and a severe strain put upon its confidence, and at the other end a considerable effort made to introduce unitary and expert control. The results of the new system were very encouraging last year. The gardens budget, which was "Transferred," included very substantial sums of Reserved expenditure, of which probably the chief item was Government and Circuit House Gardens. I was in the middle of the effort to relieve my budget of these items not under my control when I ceased to be responsible therefor. I found that the popular impression that there was much corruption among the Gardens staff, though naturally exaggerated, was in reality founded on fact. In the effort to bring to book those against whom a strong case was made out, I had the full co-operation of the Director and the support of H. E. the Governor, though I had occasion to regret casual attempts at intervention by a few others. At the time the scheme of reorganisation was introduced it was decided that one officer sent out by the Secretary of State was not required and an arrangement by consent was made for that officer to leave on payment of the cost of passage and compensation. But the Secretary of State's sanction was required and this was not forthcoming. We would probably have had to go on paying him if fortunately the officer had not been taken over by Delhi. It was decided that at the College of Agriculture and the Government Botanical Gardens at Saharanpur, arrangements should be made for the training of gardeners to serve as Superintendents and Overseers. The Government had naturally to depend upon the experts of the Department for a practical scheme. Thirteen months after

the decision was taken no definite scheme was still forthcoming. And to-day, twenty-eight months later, I do not think anything has yet been done; I believe a beginning has not been made.

71. I do not know why it was only in Bombay that *Forests* was included in the list of Transferred subjects. As a non-official member of the Council as well as later as a Minister I took a certain interest in the subject and have no hesitation in saying that it should have been transferred in other Provinces as well—certainly in mine. Year after year the proceedings of the Legislative Council have borne witness to the wasteful expenditure in this department. Agriculture and Industries being Transferred subjects, *Irrigation* and *Forests*, too, should be. That the other branch of the P. W. D. is transferred, is an additional reason for the transfer of *Irrigation*.

72. I have referred to the staffing of the *Co-operative* Department by "Reserved" officers and to the rule relating to the *Excise* Commissioner. Collectors, and, acting under their orders, Deputy Collectors, have more to do with *Excise* than they ought to have under a Diarchical system when they are reserved and the Department is transferred. I have likewise referred to *Registration*.

73. Industries, like Education, is a much divided subject. Heads 17 to 20 of the Schedule of Central subjects and heads 14, 24, 26, 27, 31 and 43 of the Schedule of Provincial subjects reveal the extent to which matters pertaining to Industries are excluded from the purview of the Ministers in charge of "Development of Industries". It may possibly be held that not all the excluded heads have a necessary connection with "Development of Industries," but I think my contention will generally be admitted with regard to the majority of them. And the non-Provincialisation or the non-transfer of some of them has the effect of hampering the work of Ministers of Industries. The Provincial Directors of Indus-

tries have to be under two or, it may be, three Members of the Government. Factories established by the United Provinces Government in the Forest Department were disposed of last year without any reference to the Minister of Industries. A Carpentry School established at Bareilly in the Industries Department had been transferred to the Forest Department before the new system of Government came into being, and re-christened Wood Working Institute and was re-transferred to Industries only last year after nearly two years of effort. The latter was immediately able to make a substantial reduction of expenditure. The Minister of Industries can afford no relief to owners and managers of factories (boiler and factory inspectors are "Reserved"), or to the laboring population. He does not know and cannot touch applications for prospecting licenses or mining leases. He can do very little, if anything, to facilitate the development and utilisation of water power. His powerlessness to improve the position in respect of Gaol Industries was effectively demonstrated in the United Provinces, where such small voice as was given to him in the first year when Diarchy was at a discount was practically withdrawn before anything tangible could be done because Gaols is a reserved subject and Diarchy became operative. Great were the difficulties encountered in maintaining the first year's policy of stores purchase and it has gradually been watered down contrary to the expectation created in the mind of the Legislative Council. A Minister may be able to accomplish something tangible in spite of the system if he is strong and if he has the Governor's support. This last is the indispensable condition of everything. There is nothing to be said for the system itself. In this department as in others, an officer appointed in England has got to be put up with as a rule because he was appointed by the Secretary of State. I have never been able to understand why a Local Government should not be free to make its own arrangements and settle

its own terms even in the case of appointments in England. This may have to be done through the High Commissioner, but the right of decision should be its own.

74. Fiscal policy has, I suppose, more to do with the development of industries than with anything else. Yet when the Indian Fiscal Commission was appointed it was the opinion of the Governor in Council that was wanted by the Government of India (as on so many other matters, sometimes when they related to Transferred subjects). It was the Director of Industries and Industries Secretary who had to prepare the case, but it had to go to the Finance Member, I having pointed out that it would be officiousness were I to presume to deal with the case or even to give an opinion that was not wanted. (Yet I had earlier been thought fit to be honored with the flattering invitation to act as President of the Commission.) But the Hon. the Finance Member declined to touch the case saying it was no business of his. The Secretary in his helplessness had to appeal to the Governor and His Excellency had to ask me to overcome my objection and take charge of this Reserved case. I seem to remember that on one occasion His Excellency or his Government took the liberty of bringing to the notice of the Government of India the incongruity of asking for the opinion of the Governor in Council and ignoring the Ministers in subjects which were the latter's concern exclusively or partially. Early in the life of the Government a question had to be answered that related to mineral springs. It was remitted by the Industries Department to the Revenue (or some other) Department under the Home Member on the ground that "mineral springs" had nothing to do with "development of Industries," and "development of Mineral Resources" was a Reserved subject under that Hon. Member. The latter refused to deal with it on the ground that "mineral springs" were not "mineral resources". The Governor was appealed to and His Excellency decided that it was Medical.

“Burma dry meat trade” was another matter that was kicked like a football from one department to another. It was first said that it came under “development of Industries”. When I firmly pleaded “not guilty,” it was presented to the Home Member as being a trade matter. He declined the present and it was eventually forced upon the Minister of Local Self-Government on the plea that slaughter-houses were a Municipal concern. But no one was free from doubt until or even at the last moment whether it was within the competence of the Governor acting with his Ministers to introduce and carry legislation to stop the trade or impose restrictions upon it. I may here mention perhaps that after a decision was taken that as a measure of economy a Government Press attached to Roorkee College should be amalgamated with the Government Press at Allahabad, the Education Secretary supported by the Home Member (he was the authority as regards the Government Press) stopped the innocent transaction at the eleventh hour by getting the Governor’s support to the constitutional plea that as Roorkee College was part of a Transferred subject the Press attached to it was a Transferred subject and its amalgamation with the reserved subject of the Government Press would be tantamount to the revocation of a Transferred subject which it was not competent to the Governor to make without the previous sanction of the Secretary of State in Council. I hope I was not less keen to guard my own sphere than the Education Secretary and the Home Member and the Governor, but I confess I was not impressed by this profound constitutional objection. Not impossibly there might have been other reasons. Assuming there was substance in the objection, what a Commentary does it not furnish on the Diarchical constitution, under which apparently camels can be swallowed but gnats must be strained at.

DIARCHY UNWORKABLE

75. The fact is that a clean cut is a practical impossibility. As the Government of Bombay observed in their dispatch to the Government of India of the 11th November, 1918:

A reference to the records of Government will show that there is scarcely a question of importance which comes up for discussion and settlement in any one of the departments of Government which does not require to be weighed carefully in the light of considerations which form the province of another department of Government. The primary duty of the Government as a whole is to preserve peace and order, to protect the weak against the strong, and to see that in the disposal of all questions coming before them the conflicting interests of the many different classes affected receive due attention. And it follows from this that practically all proposals of importance put forward by the Minister in charge of any of the departments suggested for transfer...will involve a reference to the authorities in charge of the Reserved departments...there are few, if any, subjects on which they (the functions of the portions of the Government) do not overlap. Consequently the theory that, in the case of a Transferred subject in charge of a Minister, it will be possible to dispense with references to departments of Government concerned with the control of Reserved subjects is largely without foundation.

The extent to which this prediction has been realised in actual administration is remarkable. In the light of my experience, I must endorse every word of the above passage. The observations of the Government of Bombay on the question of Financial Control leading up to the conclusion that Ministers alone cannot be responsible to the Legislature because of the very real control that the Finance Department must exercise over "all expenditure up to the time when it is made," have been demonstrated to be not a whit less true.

CONCLUSIONS AND PROPOSALS

76. My conclusions and proposals with regard to Provincial Governments will, I expect, have been gathered from the foregoing statement of my experiences and opinions. It will be convenient if I attempt to re-state them categorically:

- (1) The present Constitution, designed as it was as a temporary expedient, admitted by its authors to be

full of anomalies and imperfections, has not worked even tolerably satisfactorily as was hoped by its advocates or by those Indians like myself who gave their support to it because they recognised that it did mark a substantial advance over the system then in existence and even more because they saw that in 1918-19 no better or more liberal Scheme had any chance of being accepted by his Majesty's Government and by Parliament.

- (2) As the system is admittedly transitory and has proved to be unworkable without grave misunderstandings and frequent friction and unpleasantness which are detrimental to efficient administration and good Government, there is no point in leaving it wholly or very much as it is because ten years have not elapsed since it was brought into being. It is feasible to remedy it. That it is desirable cannot be gainsaid by anyone who admits the evil and recognises that it can be remedied. I hold it to be essential.
- (3) That will be no real or effective remedy which merely seeks to patch up a defect here and a defect there. The real matter of the trouble should be grappled with and cured. I will not presume to say whether such a remedy will be consistent with "the structure, purpose and policy" of the Act of 1919. Legislative enactments may be good servants but bad masters. They are meant to be instruments of good Government for the benefit of the people, not fetishes to be worshipped. To me it is enough that the present Act has been tried and found wanting, that it has failed of its purpose of bringing a degree of satisfaction to the National consciousness of educated India, not only to justify but to necessitate its amendment or the substitu-

tion for it of a new and better Act, I do not care which. To say that at all costs and in all circumstances the structure and policy of the Act and the ten-year limit must be respected, savors to my mind of superstition more than statesmanship.

- (4) The old autocratic or bureaucratic system of Government having yielded place in the Provinces to a system of partially Responsible Government, and the latter not having worked according to plan, there is in my judgment only one path that is open to those who are committed—practically the whole British people are so committed—to a steady advance towards Responsible Government and Dominion Status for India. *Provincial Governments should be transformed into fully Responsible Governments.* The inclusion of more subjects in the Transferred group, (assuming this to be in the mind of some, and the amendment of some of the rules, will be no solution. I am unalterably convinced by my experience and observation that so long as Finance, Law and Justice, and Police, are reserved, no amount of transfer of other subjects will assure to Ministers their rightful position in the Government or will induce any strong and capable body of private Members of the Legislative Council to organise themselves as a party of supporters of the Ministers. To this I must add that the Governor's excessive discretionary powers must be curtailed, that ordinarily he should not be selected from among permanent officials, and that his position should be as it is in the Dominions, that of a constitutional Governor in relation to Ministers who should form a Cabinet with Collective Responsibility. The exception to this

will be in the case of "agency" subjects, in the administration of which no responsibility will be owed to the Legislative Council.

- (5) The agency subjects may be administered direct by the Governor with the assistance of a Secretary. Or, the Government of India may make what other arrangement may better commend itself to their judgment.
- (6) The guaranteed rights of present officers of All-India Services ought to be respected and their proved grievances redressed, with a due regard to the financial position of the Central and Provincial Governments and the interests of the taxpayer; but there should be no more recruitment to such services working in any department under the control of Provincial Governments. Future recruitment should be on a Provincial basis by means of competitive examinations. I am opposed to a statutory Public Services Commission, certainly until the Government is made responsible to the Legislature. Even afterwards I have not been able to satisfy myself of the wisdom of such a Commission for all India.
- (7) I would make a few deductions from or alterations in the list of Central subjects on the lines indicated in paras. 46-53 of this Memorandum. To the greatest possible extent I would do away with legislation by the Central Legislature in relation to a Provincial subject. And I would free Provincial Governments of the obligation of obtaining the previous sanction of the Government of India to the introduction of legislation.
- (8) Provincial Governments should be relieved of their contributions to the Government of India.

A FEW CRITICISMS ANSWERED

77. I should like to say a word or two more before concluding my observations on Provincial Governments. I have seen and heard it said that Members of Legislative Councils do nothing to keep in touch with their electorates. This condemnation has to be substantially qualified before it can be accepted as true. My own idea is that many Members have taken care to retain contact with the electorate, although only some have made it a point of addressing public meetings. I can cite several names, the most notable among them being my friends Pandits Gokaran Nath Misra and Hirday Nath Kunzru. If I may mention my own case, I visited during two years and eight months no fewer than forty-seven Districts out of the forty-eight of the United Provinces, several Districts more than once, and more places than one in several Districts, habitually got into touch with nearly all classes of the people, and delivered more speeches on all kinds of subjects, the working of the new system of Government included of course, than any newspaper would report and certainly more than was good for myself. Not only the two friends named above and myself but others did much to combat the Non-Co-Operation movement. I attached such importance to this, my sense of its injury to the public weal was so deep, that, notwithstanding the disapproval of some of my own political and personal friends, I supported the Aman Sabhas in the commendable and unobjectionable portion of their activities. If it be said that much more should have been done by the Liberal Party, the Party to which it is my honor to give my loyalty in the service of the country, I would not dissent from the suggestion, but would ask critics to bear in mind how difficult our position has been during the last six years and specially the last four years and, still more, the last two years and a half. Deservedly or not, the Government has become thoroughly unpopular, and the movement of Non-Co-Operation initiated and led by the most powerful man

in the country was the people's answer to what they believed to be the wrongs done by the Government. And during a considerable period they passionately believed that it was the right answer and would achieve their supreme object of attaining Swarāj. To counteract such a force inspired by such a man as Mr. Gandhi, whose rare selflessness is only surpassed by his absolute fearlessness, would nowhere and at no time have been easy. Actually, the difficulty of the task was tremendously increased by the belief sedulously fostered by the preachers of that cult, that the Liberals were supporters of the measures of repression to which the Government thought it necessary to resort in the interests of law and order. The changed mentality of the Government, which I have endeavored to prove in this Memorandum and elsewhere, completed the difficulties of the Liberals. So much has been said of the failure of my countrymen to co-operate with the Government that I suspect it has come to be thought that political co-operation so far at least as India is concerned, need only be one-sided and it must be offered in all circumstances by the weaker party. I am constrained to say that so far as the progressive political parties go the British Government and their officers as a class have during the past nearly two years and a half signally failed to co-operate with Indian public men in the spirit of the Montagu-Chelmsford Reforms.

78. Neither in the Government nor in the Legislative Council nor in the general public life of the United Provinces has there been an exacerbation of Hindu-Muslim feelings since the introduction of the new system of Government. This is not to say that there has been or is complete accord between them on all questions, or that there have been no riots on the occasions of Bakr-Id and Muharrum. I do not think, however, that any purpose is served by an exaggeration of this difficulty. Better relations will be induced not by our dwelling upon the differences in season and

out of season, but by giving their proper importance to common interests, to common wants and requirements, and to the many points of agreement which exist. I can say one thing with confidence. Neither Hindus nor Muhammadans are unaware of the motive and purpose of those who have almost specialised in this subject and are never tired of opposing the National aspirations and resisting the political efforts of both now on this plea and now on that. I am among those who are confident of a constantly improving understanding between them as both find more of responsible public work to do in conjunction with each other in the Governments and the Legislatures and the Local Bodies of the country. Here as in other spheres responsibility is the most effective antidote of extremism and proneness to mischief.

79. The interests of the masses of the population are best served by their own educated and enlightened countrymen. I am not insensible of the great good work done over a long series of years by many British officers and am neither desirous of nor interested in detracting from its value. But never have I been able to agree to their claim that they alone are the friends of the masses of my countrymen and that there is a conflict between the interests of the classes and the masses. There is no more of it here than in any other land, nor can the claim be sustained that the British in India have always been regardful of the interests of the masses and never done anything to prejudice them. May I suggest one test? Catalogue all proposals made by non-official Indian Members of our legislative bodies in the three years 1921-1923 in the interests of the masses and in a parallel column the answers by which they were met on behalf of the British Government. Dr. Annie Besant's National Conference Organisation has published a most informing and suggestive compilation on the work of the Indian Legislatures and I take leave respectfully to commend it to the Committee as a volume that throws much needed dry light upon the subject.

80. The disabilities of the depressed classes are urged as another formidable difficulty in the path of constitutional reform. I venture to ask without meaning any disrespect, what is the British Government's record of service for their uplift except that they have been placed on an equality with their fellow-beings in the eye of the law? More has been accomplished for the amelioration of their condition by private bodies than by the State. If I gratefully acknowledge the honorable place held among them by missionaries of the Christian faith, I hope everybody will give their due meed of recognition to indigenous agencies of social service and philanthropy of which of late years there have been not a few. The Government has rather lagged behind in the provision of funds. In the pre-Reformed Council of the United Provinces my own and other non-official Members' efforts to obtain even moderately adequate grants for the education of those classes were very partially successful. More was done in the desired direction by the late Minister of Local Self-Government, who had charge of Primary Education, than by the previous Government. In the new District Boards there are representatives of the depressed classes and they are, on the whole, more alive to their needs than the old Boards were. The social conscience of the Hindu community has been quickened and it is a sign of the times that orthodox bodies like the Hindu Mahasabha and the Sanatana Dharma Sabha meeting at Benares should have seriously considered this problem, and that the Pandits of Kashi should have given their assent to a certain relaxation of the restrictions to which the higher castes have become accustomed. The criticism can be uttered that this is a very small step where there is such vast distance to travel. I am the first to admit that it is so. But I would point out that I am not aware of any society in any country which is very forward in the abandonment or the modification of customs amid which it has grown. Why, even the effort to secure suitable and even moderate

changes in political Constitutions achieves only a belated and partial success, although religion is not mixed up with them as it unfortunately is with institutions and customs social, because it is not in human nature for the "haves" to surrender too readily to the "have nots". The conservative-minded oppose an innovation when proposed but become its defenders when it has become a fact and resist any change in it oblivious of their own earlier attitude. This has been the way of the world all along and the latest illustration of it is furnished in the political sphere in our own country by the defence of Diarchy by some of those who fought hard against it in 1918-19 and by their resistance of attempts to replace it by a Constitution that will at once be more workable in practice and more acceptable to the people. At all events the future of the depressed classes lies with their own countrymen and cannot be improved substantially or permanently by persons who are not permanent inhabitants of the country and are outside the socio-religious organisation of the community to which those classes belong.*

II

THE CENTRAL GOVERNMENT

81. I must preface my observations by the admission that they are not the result of experience or personal knowledge of the working of either the Government or the Legislature at Delhi and Simla. They are the opinions of a man who has bestowed a little study and attention upon the subject from outside, and in respect of the relations borne by that Government to the Local Governments in the present system, from inside one of the latter for a comparatively brief period. My treatment of this part of the subject will therefore be different from and briefer than it has been in respect of Provincial Governments.

82. For a just criticism of the existing position in the

* See addendum at the end.—C. Y. C.

Central Government and its relation to its Legislature (principally the Legislative Assembly, which after all is what matters) I do not know where to look for a better reasoned statement than to the Montagu-Chelmsford Report, particularly in chapter IV ("The Morley-Minto Councils") and still more in chapter VII ("The Congress-League Scheme") of Part I. I quote the following passages :

167. We find then in these proposals (the Congress-League Scheme) no connecting rod between the executive and legislative wheels of the machine, which will ensure that they will work in unison. There are powerful factors working the other way in the differences of race and of political ideas. We must anticipate divergence, and the only question is whether that divergence will be fatal to good Government. Upon this point we defer to the experience of history, and we draw from it the plain conclusion that, if the Government is to be carried on, Legislature and Executive must in essentials be in harmony. Legislation is a necessary attribute of Government, because it is the means by which Government secures fresh powers when it feels the need of them for attaining its ends. But in the hands of the Assembly it may become a weapon to paralyse the Government. Whenever the Legislature distrusts the Executive it can always restrain or control its activities by specific provisions inserted in an Act. There is no clear line between administrative and executive functions, and it would be perfectly open to an Assembly which distrusted its Executive practically to assume charge of the administration and, as Lord Bryce says, to reduce its Government to the position of a bank staff *vis-à-vis* with the directors. That is a position into which no Parliamentary Government allows itself to be forced ; and it would be an impossible position for a nominated Government of India. An Executive which is independent of its Legislature, as the Indian Executives have hitherto been, can carry on the Government in virtue of authority derived from without : a party Executive can govern because it interprets the will of the people, as represented by the Assembly : but wherever, as in Canada or Malta, attempts have been made to set up an irremovable Executive and a popular Assembly, acute conflict has ensued and has resulted in either an advance to popular Government or a return to autocracy. "But a Legislature elected by the people, coupled with a Governor appointed by a distant power, is a contrivance for fomenting dissensions and making them perpetual." We believe that in India, where the two sides are divided by race, and also by differences of standpoint, the discord would be much more serious than it has ever been in the Empire's History. We can see no prospect whatever ahead, along the road which we are invited by the Congress-League to take, but embittered and dangerous deadlock ; to be resolved, when it arose, only by a plunge forward into Parliamentary Government at once, or by reversion to autocratic methods.

173.As we have shown, the essence of the project is an Executive, theoretically responsible to the Secretary of State but practically divided, a Legislature responsible to the electorate, and a distribution of power which enables the Legislature to paralyse the Executive without having power to remove it.....

174.If the Executive attempted to overcome the Legislature there would be conflict and agitation: if it gave way then it would become merely the agent of the Legislature and might as well be chosen from, and by, the Legislature at once...

177. ... But, granted that the Government does its utmost, granted that the Indian politicians have a sincere desire to make the engine work, we still cannot see how they could do so, because success itself would be the negation of their ultimate aim, and ours, which is Responsible Government. They could not remain content with an alien Executive, and therefore their policy naturally, and from their standpoint justifiably, must be to weaken and discredit it. There is evidence indeed that some of the advocates of the scheme are impressed by the force of these arguments, and look forward to producing a deadlock as a means of bringing the executive under the control of the Legislature. We have no desire to produce deadlocks. We have no wish to advance only by first making Government impossible. On the contrary we believe that the path of progress lies in another direction. We believe in the possibility of "smooth and harmonious progress" pursued in a spirit of mutual goodwill and devotion to common interests. Our own proposals will show how we hope to start India on the road leading to Responsible Government with the prospect of winning her way to the ultimate goal, her progress hindered, it may be at times by hills and rough places, but finding the road nowhere swept away by floods or landslides.

83. Reading the passages quoted above, one is led to wonder that statesmen who raised these objections to the Congress-League Scheme should themselves have fathered another scheme which laid itself open to the self-same objections. And it almost appears as if our present Swarājya Party with a programme of obstruction and an attempt at paralyzing the Government borrowed their ideas from the illustrious ex-Secretary of State and ex-Viceroy! "Hills and rough places" have already been encountered. Is it necessary, and is it wise, that those in whom resides the power to act should remain without the will to do so until they actually find the road "swept away by floods or landslides"? "However this be, events have proved too strong. The Councils have

done much better work than might appear to some of their critics. But they have ceased to satisfy Indian opinion and their continuance can only lead to a further cleavage between the Indian Members and the Government and a further cultivation of criticism unchecked by responsibility." If one did not know who uttered these words, and when and of what, one would have no difficulty in thinking that some Indian publicist was describing the situation in the present year. Actually, this was the criticism of the Morley-Minto Councils uttered six years ago by the then Secretary of State and the then Viceroy. (*Report on Indian Constitutional Reforms, Part I, Ch. IV, Para. 100.*) It is my conviction, and I lay it earnestly before the Committee, that the present Constitution of the Central Government is defective and that its present position in relation to the Legislative Assembly is untenable and may any day become impossible. Change is required, early change, and change of a radical nature. I do not think it can be effected without a revision of the Constitution by amendment of the Act.

THE SECRETARY OF STATE AND HIS COUNCIL

84. S. 2 (2) of the Act vests in the Secretary of State the superintendence, direction and control of "all acts, operations and concerns which relate to the Government or Revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges out of or on the revenues of India". S. 3 (8) leaves it an open question whether the salaries and allowances of members of the Secretary of State's Council will be paid out of the revenues of Britain or India. Under S. 5, the Council of India acting under the directions of the Secretary of State, is to do the Government of India's business in England. S. 9 (1) shows that in some matters the Secretary of State is bound by the opinion of a majority of his Council, while in certain others he is not. S. 9 (3) also confers a special power upon

him. The Committees of the India Council constituted under S. 10 do most of the business of the Council, and it is believed (1) that the Indian members, where more than one are appointed, are always in a minority in those Committees, and (2) that to a few of the Committees—*e.g.*, political and military—an Indian is ordinarily not appointed. Another general belief is that in the India Office more than in Governments in India the Secretaries are the powers behind the throne and are of much greater practical consequence than the Members of the Council. Ss. 17 and 18 make it clear that the Government of India has no voice in the determination of the emoluments of, or of any other question concerning, the officials of the India Office; yet Sec. 2 (3) empowers the Secretary of State or His Majesty's Government to direct that they should be paid out of the revenues of India. S. 21 vests in the Secretary of State in Council the expenditure of the revenues of India. Section 19A empowers the Secretary of State in Council to delegate by rule to the Government of India any of his powers of superintendence, direction and control, and the third paragraph of this Section shows that in respect of Provincial Transferred subjects, too, some at least of the powers that may be exercised by the Government of India are only delegated powers. I confess I am ignorant of what substantial powers have been actually surrendered by the Secretary of State to the Governor-General in Council. But I am aware of, and share, the general belief in India that at least during the last two years and a half, there has been anything but "a relaxation of control of Secretary of State". It is possible there may have been a slight improvement in the present year, I do not know. I should add that I share the other popular impression that to a very considerable extent important matters are apt to be settled by means of correspondence between the Viceroy and the Secretary of State and that their respective Councils need

not necessarily be knowing what matters are so settled, or why, or how. I shall stand corrected if I am wrong. While I should have been glad if the Secretary of State in Council had liberally exercised the opportunity of self-sacrifice bestowed upon him by S. 19A, I cannot pretend that that would have carried matters far, as there is S. 131 (1) which declares roundly: "Nothing in this Act shall derogate from any right vested in his Majesty, or any powers of the Secretary of State in Council, in relation to the Government of India." And S. 131 (2) similarly affirms the supreme and unqualified power of Parliament in matters both executive and legislative. This Section may almost be said to be the finishing stroke. It is my deliberate conviction that in all matters of civil or internal administration of British India the Governor-General in Council acting with responsibility to the Legislative Assembly should be supreme and should be altogether free of the control of the Secretary of State. As it is not a part of my present proposals that he should bear a like relation to the Assembly in matters Foreign (and Political) and Military—subject in the case of the latter to reservations which will presently be stated—the Secretary of State should retain his power of control in respect thereof.

85. The vesting of the control of *Foreign (and Political) and Military* in the Governor-General and the Secretary of State should in the first instance be for ten years and the position should be reviewed on the expiry of that period by a Commission on which Indian opinion should be adequately represented. I would make the following further reservations in respect of *Military*:

- (i) The King's Indian subjects (including in this term the subjects of Indian States) should be eligible for service in all arms of defence, and adequate facilities for their training should be provided in India as may be decided by the Government of India.
- (ii) A certain amount of annual Military expenditure should be fixed which will be non-votable by the Legislative Assembly but over and above that, any moneys that in the

opinion of the Governor-General may be required for the defence of the country should be submitted to the vote of the Assembly in the usual form of a demand for grant. I would further suggest that if the Assembly refuse the demand it shall be within the power of the Governor-General, if he deemed it necessary to do so, to make the same or a smaller demand for a grant in the Council of State and such sum as that body may vote may be spent by him in addition to the non-votable amount.

- (iii) Where there may be a dispute between the Government of India and the British War Office or Treasury in the apportionment of expenditure between the revenues of Britain and India or in respect of the chargeability of any item of expenditure to the latter, the dispute should be submitted to arbitration and the award should be binding, but it shall not be in the power of His Majesty's Government to veto the Government of India.
- (iv) S. 22 of the Act should be amended so as to transfer to the Indian Legislature the power now vested in Parliament of sanctioning the expenditure out of the revenues of India of the expenses of military operations carried on beyond the external frontiers of His Majesty's Indian possessions.

86. The Council of the Secretary of State should be abolished. Notwithstanding changes made in its constitution more than once in recent years, there is nothing to show that it performs functions particularly useful or indispensable. Its Indian members have never been in a position of special utility to their country. The Crewe Committee Report of 1919 produced a hope of its probable disappearance in the near future, but the Joint Select Committee's Report frustrated it a few months later. Opinion may vary about its necessity or usefulness under the present constitution; although Indian opinion has been nearly of one mind against it. I do not think any one can in reason urge that it should be kept up when, as is here advocated, the Government of India become mostly a Responsible Government. To discharge his duties in relation to the two subjects which will still be under the joint control of the Governor-General and the Secretary of State, no India Council should be required by the latter.

87. Ss. 23 to 32 of the Act will require amendment but as perhaps the amendments will chiefly be consequential I need not detain the Committee over them.

88. *The Joint Select Committee of the two Houses of Parliament* may be abolished, too, for all it could do or has done for India during the past four years. The conviction has been steadily driven home to Indian public men that the check on the autocracy of the Government in India can only be provided effectively by the Legislatures on the spot and not by the Secretary of State or his Council, or by His Majesty's Government, or by Committees of Parliament or Parliament itself, or by British public opinion.

THE GOVERNOR-GENERAL IN COUNCIL

89. Autonomous and Responsible Provincial Governments cannot co-exist with a supreme Central Government not representative of Indian opinion, and responsible to a distant Government and Parliament, and function without friction arising. This responsibility is, in the opinion of my knowing and thinking countrymen, only real so far as British and Imperial interests are in question. Where Indian interests are affected, where we may feel a sense of grievance against the Government in India and appeal to the authorities in England for redress, it is a very exceptional circumstance that we get a sympathetic hearing accompanied by relief. The truth is, as J. S. Mill said, that "the Government of a people by itself has a meaning and a reality; but such a thing as the Government of one people by another does not and cannot exist" except as "one people may keep another for its own use" etc. The circumstances of the past reaching into the present render it impracticable for the transfer of control of the defensive forces until, after a time, but no such argument can be put forward against a transformation of the constitution and character of the Government of India in all civil departments so as to make

it representative of and responsible to Indian opinion as expressed by the Legislative Assembly. It is sometimes argued by the upholders of the *status quo* that a people who cannot defend themselves are not a people entitled to the rights of Self-Government, and foreign bayonets will decline to defend the country or maintain order at home in obedience to a National Civil Government. There is no force in this contention as it is due to British policy that Indians are at present incapable of taking charge of the Army and other forces. And if the past is a guide to the future, the prolongation of the existing system of Government will also mean a prolongation of the period of Indians' unpreparedness to assume that responsibility. Mr. Montagu himself remarked in the House of Commons, from his place on the Treasury Bench, on the incongruity of telling the people of India that they should have no political rights for as long as they could not defend their country at the same time that British policy did not enable them or afford facilities for their training to undertake that responsibility. And during the further period of transition the Army will be under the control not of a Minister responsible to the Assembly but of the Governor-General. Provincial Governments responsible to their Legislatures, the Central Government virtually autocratic and answerable to an authority neither in nor of the country, a Secretary of State who is a Member of the British Cabinet and responsible to the British Parliament which is equally ignorant of and indifferent to Indian affairs: this will be a strange combination which in the nature of things cannot make for good Government and cannot endure. Nor am I for one prepared to admit that there will be such a deterioration of the standard of efficiency, if an Indian is substituted for a British Government, as to overwhelm the country with disaster. I am not prepared to assent to the claim that a very high standard of efficiency has been attained by the present system and that it cannot be

fairly maintained by Indian Ministers and Indian officials. If mistakes must be expected in the future, plenty of them are made now as the files in any Secretariat or departmental office will testify. To me, the relevant consideration is that efficiency of administration has no value apart from the prosperity, happiness and contentment of the people whose affairs are administered, and this vital test the present system has not stood and cannot stand. It is with no animus against the British Government and it is in no irresponsible spirit but fortified by such humble knowledge as I have been able to acquire during a busy public life of twenty-six years, and by such thinking as I am capable of, with a certain amount of confidence about the probable results, and with a genuine and deep-seated regard for the honor of England, the interests of India and the stability and peaceful development of the International Commonwealth into which we all wish to see the Empire transformed, that I advocate with all the strenuousness of an unalterable conviction such a revision of the present Constitution as will convert the Government of India into a National Government.

90. My proposals are :

- (i) The Governor-General of India assisted by the Commander-in-Chief and a secretariat shall have control over and be responsible to the British Parliament through the Secretary of State for India for the Foreign (and Political) and Military departments, subject to the reservations specified in para. 85 of this Memorandum.
- (ii) The civil government of the country shall be in charge of a Cabinet of six (or more) Ministers enjoying the confidence of and responsible to the Legislative Assembly. The relation of the Governor-General to his Ministers will be that of the head of a Constitutional or Parliamentary State to Ministers.
- (iii) In general terms, the Legislative Assembly and the Council of State shall, in relation to the Government, respectively occupy a position and have powers similar to those of the British House of Commons and House of Lords.
- (iv) The position of the Legislature *vis-à-vis* with the Governor-General as regards the two Departments under his con-

trol shall, during the next stage of the transitory period, be as indicated in para. 85.

91. *The Central Legislature.*—I would increase the numerical strength of the *Legislative Assembly* by about fifty per cent, so as to secure a larger amount of representation for the Provinces but keeping up the present proportions of Members representing different Provinces, communities and interests, providing that the proportions may be varied at the time, to the extent and in the manner that agreed proposals are formally proposed by them through their representative public organisations or representatives in the Assembly. I would not have nominated Official Members, but replace them by such and so many Council Secretaries as the Cabinet may decide to be necessary, and I would restrict the number of nominated non-officials to such number not exceeding five per cent of the total number of elected Members and to represent such classes of the population and such interests failing to secure what the Governor-General may consider to be adequate representation, as he may deem fit. The right of selection I would vest in the Governor-General who shall consult but shall not be bound by the advice of the head of his Cabinet in making his nominations. The only important change which I would urge in regard to the *Council of State* is that indirect should be substituted for direct election, the electorates being the Provincial Legislative Councils. The principle of proportional representation should be adopted in the case of these elections.

92. *Privy Council of India.*—I am in favor of the constitution of a Privy Council of India such as was proposed by Mr. Montagu and Lord Chelmsford in paragraph 287 of their Report and for the purposes indicated by them. With this addition, that there should be a Judicial Committee of that body composed of retired judges of High Courts and leaders of the Bar who have retired from practice, to perform the double function of a Court of Appeal and the Tribunal to

which should be submitted for decision any constitutional disputes as to jurisdiction and cognate matters, which may arise between one Government and another in India.

CONCLUSION

93. I have stated freely and frankly, though I regret at perhaps too great a length, my honest and considered views on the working of the system of Government introduced by the Government of India Act of 1919, on the defects that should be remedied and on the manner in which the remedy should be applied. I do not mind re-stating the conviction that is in me, that no steps smaller than those indicated here will in my judgment be adequate to the peaceful progress of India, to her constitutional development, to her attainment of the coveted and needed position of an equal member of the Commonwealth, self-respecting and respected, or, I will also say, to England's realisation of her own position as the mistress of Free Nations. England's whole policy in India, at least since Parliament passed the Charter Act of 1833, has been set to the education of India out of a position of dependence and tutelage into one of Self-Government. Long has been the time taken to achieve this result; it has still to be accomplished in large part. Many have been the mistakes of policy and administration which have been made; the straight high road of progress has not always been taken "with firm step and intrepid courage"; there have at times been signs of doubt and hesitancy and a weakness to look backwards. On the whole, however, England has kept to the right track. I am here to plead that in the present strenuous years it is not enough that rulers of men should contentedly look upon their own performances and cry halt to "impatient idealists" or "pestilential agitators". Nor even that they advance at the pace of our country bullock cart when the motor car has become the fashionable conveyance. It is necessary, if strife between them and the people with whom they have to get on

is not to become the normal feature of Indian political life, that they should revise their notions and adapt themselves to the situation and the requirements of to-day and tomorrow. I hope I shall not be misunderstood when I say that there will be and can be no party of the *intelligentsia* of the country among the supporters of the Government unless and until the present system with all its proved faults is replaced by a sounder and more progressive: in a word, by Responsible Government with the only reservations that I in common with my educated countrymen in general have been advocating.

94. I conclude this Memorandum with a few passages which I place before the Committee with great respect as embodying truth and wisdom, very apposite at the present moment, which the rulers of India may be pleased to reflect upon.

When the object is to raise the permanent condition of a people, small means do not merely produce small effects, they produce no effect at all.—JOHN STUART MILL

It is one of the uniform and unailing rules that guide human judgment, if not at the moment yet of history, that when a long relation has existed between a Nation of superior strength and one of inferior strength and when that relation has gone wrong, the responsibility and the guilt rests in the main upon the strong rather than upon the weak.—GLADSTONE

I hold that the capital agent in determining finally the question whether our power in India is or is not to continue, will be the will of the two hundred and forty millions of people who inhabit India. The question who shall have supreme rule in India is, by the laws of right, an Indian question; and those laws of right are from day to day growing into laws of fact. Our title to be there depends on a first condition, that our being there is profitable to the Indian Nation; and on a second condition, that we can make them see and understand it to be profitable.—GLADSTONE

Constitutional Government is the sole eternal truth in politics, the rare but the only guardian of freedom.—LORD ACTON

India is a going concern, a problem in organic politics. Its needs cannot be met by an adjustment here and an adjustment there; they have to be viewed in their wide sweep. This spirit will have to be maintained after the Montagu-Chelmsford Report has produced its first harvest of Legislation.—MR. J. RAMSAY MACDONALD

C. Y. CHINTAMANI

Allahabad, 10th August, 1924

ADDENDUM

I regret that the points treated in the following paragraphs were overlooked in the Memorandum.—C. Y. C.

Between Paragraphs 29 and 30

29A.—The franchise has been extended to women in the United Provinces as in (I believe) two other Provinces. I would give them the franchise in all the Governors' Provinces, for both houses of the central Legislature and for the respective Provincial Councils as well as for all statutory Local Bodies. And I would further declare them eligible for seats in all these bodies on the same terms as apply to men. I am not unaware of the extreme backwardness of education among women but, firstly, I do not believe in penalising those who are educated and willing or eager to exercise the rights or to perform the duties of citizens because of the unpreparedness of others; secondly, large numbers of uneducated men have been given the franchise, and thirdly, the admission of women to legislative and local bodies will itself be a powerful means of accelerating the wider diffusion of education among women generally as well as of facilitating measures of social reform.

Between Paragraphs 80 and 81

80A.—A great deal has been said of the backwardness of the electorate, of their consequent unfitness for the exercise of the franchise, and of the circumstance that they are hopelessly inadequate in numbers to be representative of the people at large. It is argued that an extension of the franchise will be wholly premature while the transference of more power to Legislatures so little representative will be to transfer it to an oligarchy. My replies are: (1) It is the bureaucratic Government which has left the mass of people uneducated, it is still interposing such obstacles as it can in the way of the more rapid diffusion of education among them, and there is not likely to be appreciable improvement for as

long as power continues to reside in it. The transference of real power from the irresponsible bureaucracy to a Government responsible to the people themselves is, I am convinced, an essential condition of National progress in this as well as other directions. (2) The only function of the electors is to understand broad issues and to choose the candidate who in their opinion will serve them best. This the Indian electorates have shown themselves quite capable of doing. The large majority of electors in no country, however advanced, Britain not excepted, are, or are required to be, competent to form an informed and intelligent appreciation of all the aspects of difficult and complex questions. (3) The so-called "oligarchy" of Indian Members of Legislatures, representative it may be of a very small section of the populace, are and will be at least partially representative of the people whereas the bureaucracy now in possession is wholly unrepresentative. To object to them on the ground that they are not or will not be completely representative is a plea that reminds one of the truth that not unoften the best is the enemy of good. In Japan, the electorate in the first instance comprised a little over one per cent of the population. Other countries too have made gradual progress in the widening of the franchise, and Britain has been no exception. Yet Parliament exercised independent powers even when it represented only a small percentage of the population. I am now for an enlargement of the electorate by the widening of the franchise and for providing specially for the representation of the depressed classes and the laboring population of urban areas. I cite the three following passages as being of interest in this connection:

Previous to 1832 there were less than 500,000 persons who had the right to vote in the election of Members of Parliament. The Reform Act of that year increased the number to nearly 1,000,000; the Act of 1867 increased it to 2,500,000; the Act of 1884 increased it again to 5,500,000; and last of all the Act of 1918 increased the number of the electors to over 20,000,000. There are several millions of women to whom the vote is still denied.....Liberal Publica-

tion Department Booklets, No. 2, entitled *Principles of Liberalism*, 1924.

Most of the English boroughs may be roughly divided into those which were sold by their patrons, the great territorial magnates, and those which sold themselves to the highest bidder! "The county constituencies of forty-shilling freeholders, although limited and unequal, were less corrupt and more independent than the voters in boroughs, but they were practically at the disposal of the great nobles and local landowners." In 1793, when the Members of the House of Commons numbered 558, no fewer than 354 were nominally returned by less than 15,000 electors, but, in reality, on the nomination of the Government and 197 private patrons. The Union with Ireland in 1801 added 100 Members to the House, of whom 71 were nominated by 56 individuals. In 1816, of 658 Members of the House, 487 were returned by the nomination of the Government and 267 private patrons. Of these patrons, 144 were peers. "The glaring defects of the representative system—the decayed and rotten boroughs, the private property of noblemen, the close corporations openly selling the seats at their disposal to members who, in turn, sold their own Parliamentary votes, and the existence of great manufacturing cities distinguished by their wealth, industry, and intelligence, and yet possessing no right of sending representatives to Parliament....(Taswell-Longmead's *Constitutional History*.) *Liberalism and the House of Lords* by Harry Jones, 1912

The mass of the people have no serious interests. Their votes decide all political issues, but they know nothing of politics. It is a disquieting but too well-founded reflection that the decisive word about tariff reform or taxation or foreign policy is now said by men and women who have never read a dozen columns of serious politics in their lives. Of the old narrow electorate of eighty years ago, probably at least two-thirds eagerly studied political speeches on the questions of the day. To-day not five per cent of the voters read either debates or leading articles. The remnant, however remarkable, is small. Democracy as a whole is as content with gross amusements as Bottles was with vulgar ones, and like him it leaves its mind to its newspaper which makes its Sundays much more degrading than those which he spent under his Baptist Minister. Thus is the atmosphere against whose poisonous gases the schools provide in vain the helmet of their culture.—*The Times Literary Supplement* of the 21st August, 1924.

C. Y. C.

NOTE.—All Memoranda circulated for information and criticism contain the view of the author at the time of writing. Changed conditions might involve modifications. The considered views of the Committee will not be available until it issues its report.

A Memorandum on the Indian Legislature

By A. RANGASWAMI AIYAR, Madura

1. The Central Legislature shall consist of the Governor-General representing His Majesty, and the two Legislative Chambers, *viz.*, the Legislative Assembly and the Council of State. The Indian Legislative Assembly shall consist of 200 Members and the Council, of State, of 60 Members. The strength may be increased from time to time by rules framed under the Act.

2. Of the 200 Members of the Assembly, 190 shall be elected by constituencies constituted for the different Provinces under rules framed under the Act. Their term of office shall be 3 years. The remaining 10 Members shall be nominated by the Governor-General in Council to represent the backward communities in the different Provinces, recognised as "backward" under rules framed under the Act during the next 9 years or such further period as may be resolved upon by the Indian Legislative Assembly before the expiry of the said 9 years. After the expiry of the said 9 years or further period, the said 10 members shall be elected by constituencies formed for the purpose under rules to be framed under the Act.

3. There shall be no communal representation except for the Musalman community, and such communal representation shall exist only during the next 9 years or such period

as may be resolved upon by the Indian Legislature. The communal representation should be in the proportions fixed in what is known as the "Lucknow Compact," entered into between the Hindu and Musalman communities in 1916 and given effect to since in the constitution of Central and Provincial Legislatures. But the elections shall take place only in General Electorates with seats reserved for the Musalman community. The principle of communal representation is an evil from the standpoint of the whole Nation and would retard the Nation-building process. Where it has been in operation, it has increasingly intensified communal bitterness and estrangement. If it cannot be avoided it must be minimised.

4. There shall be an elected President for the Legislative Assembly, and also an elected Deputy President presiding in the absence of the President. Similarly there shall be an elected President and Deputy President for the Council of State.

5. The Council of State shall consist of 60 Members out of which say, 40, may be elected by the Provincial Legislatures or by electorates constituted in the Provinces in proportion to the population of the several Provinces, 15 elected by the Indian Legislative Assembly, and 5 nominated by the Governor-General in Council, *i.e.*, on the advice of the Ministry. Each Member shall sit for 6 years; but one-third of the Members shall retire in every two years.

6. The Governor-General shall be entitled to address either Chamber or both of them together.

7. The Cabinet or the Supreme Executive Council shall be responsible to the Indian Legislative Assembly for the advice tendered by it to the Governor-General in the carrying on of the Government of India. At least one-half of the Members of the Supreme Executive Council shall be elected Members of the Indian Legislative Assembly or should become such within six months of their appointment.

(In my Memorandum on Executive Government I stated that the Governor-General should summon after a General Election that Member of the Legislature who commands the confidence of the majority of the Members of the Legislative Assembly to form the Supreme Executive Council. But on further consideration I think that the Governor-General should appoint Ministers to hold office during pleasure. But they would be responsible to the Indian Legislative Assembly and would resign when they lose that confidence. The alteration would not make any practical difference.)

8. All questions in either Chamber shall be determined by a majority of votes of Members present, other than the Presiding Member who shall have a casting vote in case of equality of votes except in regard to any measure affecting the Religion or Religious Rites or Usages of any class of British subjects in India, which can only be introduced into either Chamber of the Indian Legislature after being approved either unanimously or by a majority of a panel consisting of seven representatives of that Religion, whether Members of the Indian Legislative Assembly or not, elected by the Indian Legislative Assembly, and which must be passed by the votes of two-thirds majority in each Chamber.

9. There shall be freedom of speech in both Chambers of the Indian Legislature. No person shall be liable to any proceedings in any Court by reason of his speech or vote in either Chamber, or by reason of anything contained in any official report of the proceedings of either Chamber.

10. The Indian Legislature shall have power to make laws or repeal or alter existing laws relating to

1. Peace, Order and Good Government of India.
2. All places, things, persons and Courts in British India.
3. All Officers of the Government of India.
4. All subjects of His Majesty and servants of the Government of India within other parts of India.

5. All subjects of the Government both without and beyond as well as within British India, but shall not have power to make any law affecting the authority of the Imperial Parliament without the consent of the latter.

11. The Governor-General in Council may summon, prorogue or dissolve either Chamber of the Indian Legislature or extend the term of either Chamber or fix a date not more than six months after the dissolution of either Chamber for the meeting of the next session of that Chamber or accelerate the date of meeting of either Chamber before the date fixed.

12. The franchise and functions of the Indian Legislature have been indicated by me in the Memorandum on Franchise and Functions.

13. A bill in order to become law must be passed in both the Chambers of Indian Legislature except in regard to what are called "Money Bills".

Such "Money Bills" or Bills appropriating revenues or moneys or imposing taxation shall originate in the Indian Legislative Assembly and not in the Council of State. But a Bill does not become "Money Bill" merely because it contains a provision for the imposition or the appropriation of fines or other pecuniary penalties or for the demand of payment or appropriation of fees for licences or fees for services referred to in the Bill. The Council of State may not amend "Money Bills," but may return such Bill to the Indian Legislative Assembly requesting by message that any amendment or alteration may be made therein. And the Indian Legislative Assembly may accept such amendment or alteration with or without modifications, or may decline to do so.

14. If a Bill which has been passed by one Chamber is not within six months after the passage of the Bill by that Chamber passed by the other Chamber, either without amendments or with such amendments as may be agreed to by both Chambers, the Governor-General in Council shall refer the

matter for decision to a joint sitting of both the Chambers, and the Bill shall be deemed to have been passed if affirmed by an absolute majority of the total number of Members of both Chambers.

15. The annual Budget of receipts and expenditure of the Government of India shall be laid before both the Chambers of the Indian Legislature in each year. The heads of expenditure in the form of demands for grants shall be submitted to the vote of the Indian Legislative Assembly subject to the proviso

1. That the Indian Legislative Assembly shall not be entitled to reduce the Military expenditure below a sum of 40 crores until the time arrives when the Indian Legislature becomes responsible for the defence of India, and
2. That the Governor-General in Council shall have power in case of emergency to authorise such expenditure as may be necessary for the peace and tranquillity of India in anticipation of the sanction of the Indian Legislative Assembly.

16. When a Bill has been passed by both Chambers of the Indian Legislature, the Governor-General may assent to the Bill or may refuse to give his assent or may reserve it for His Majesty's Pleasure; and the Bill shall not become law until the Governor-General gives his assent or His Majesty in Council specifies his assent to the Bill.

17. The Governor-General may where a Bill has been passed by both the Chambers return the Bill to the Legislature for reconsideration with amendments.

18. No proposal for the appropriation of revenues or moneys for any purpose can be made except on the recommendation of the Governor-General in Council.

19. The subsidiary matters will come under the rule-making powers of the Indian Legislature or be established by conventions.

PROVINCIAL LEGISLATURE

20. Each Province shall have a single Chamber called the Provincial Legislative Council. Its strength may vary from 100 to 150 according to the population of the Province. The strength may be increased by the Provincial Legislative Council with the approval of the Indian Legislature. The term of office of a Member shall be three years.

21. Of the total strength, all Members shall be elected except a certain number, say ten, to be nominated by the Governor in Council for the representation of the backward classes and other interests during the next nine years or such further period as may be resolved upon by the Provincial Legislative Council before the expiry of the said nine years. After the expiry of the said nine years or further period the said ten members shall be elected by the constituencies formed for the purpose under rules framed under the Act.

22. There shall be no communal representation in the Provincial Legislative Council except for Musalmans and such communal representation shall exist only during the next nine years or such further period as may be resolved upon by the Provincial Legislative Council. But the elections shall take place in General Electorates with seats reserved for the Musalman community in the proportions fixed in what is known as the "Lucknow Compact".

23. There shall be an elected President and an elected Deputy President for the Provincial Legislative Council.

24. The Governor shall be entitled to address the Provincial Legislative Council.

25. The Provincial Executive Council consisting of the Ministers shall be responsible to the Provincial Legislative Council for the advice tendered by it to the Governor in the carrying on of the Government of the Province. The Ministers or Members of the Provincial Executive Council shall be appointed by the Governor to hold office during pleasure. At least one-half of the Members of the Executive

Council shall be elected Members of the Provincial Legislative Council or should become such within six months after their appointment.

26. All questions in the Provincial Legislative Council shall be determined by a majority of votes of Members present, other than the presiding Member who shall have a casting vote in case of an equality of votes.

27. There shall be freedom of speech in the Provincial Legislative Council.

28. The Provincial Legislative Council shall have power to make laws or repeal or alter existing laws relating to what are called Provincial subjects.

29. The Governor may summon, prorogue or dissolve the Provincial Legislative Council or extend its term or fix a date not more than six months after its dissolution for the meeting of its next session or accelerate its date of meeting before the date fixed.

30. The franchise and functions of the Provincial Legislative Council have been indicated by me in a separate Memorandum.

31. Any Bill in order to become law must be passed in the Provincial Legislative Council.

32. When a Bill has been passed by the Provincial Legislative Council, the Governor may give his assent or refuse to give his assent. If he gives his assent, it shall be sent to the Governor-General who may give his assent or withhold his assent to the Bill or reserve it for His Majesty's Pleasure. The Bill shall not become law until the Governor and Governor-General give their assent to the Bill or until His Majesty in Council specifies his assent to the Bill.

33. The Governor may where a Bill has been passed by the Provincial Legislative Council return the Bill for reconsideration of the Bill with amendments.

34. No proposal for the appropriation of revenues or moneys for any purpose can be made except on the recommendation of the Governor in Council.

35. All other subsidiary matters shall come under the rule-making powers of the Provincial Legislative Council or be established by conventions.

NOTE.—All Memoranda circulated for information and criticism contain the view of the author at the time of writing. Changed conditions might involve modifications. The considered views of the Committee will not be available until it issues its report.

A Memorandum on “Judicial and Legal”

By A. RANGASWAMI AIYAR, Madura

INTRODUCTORY

A Supreme Court of Appeal is one of the institutions which a self-respecting and Self-Governing India should have. Canada, Australia and the Union of South Africa have each such an institution. The advantages are many. It is a symbol of Swarāj. The legal talent and learning available in India are sufficient to man it and will be stimulated by its institution and maintenance. The cost of taking Appeals to it from the High Courts of the Provinces will be much less than the cost of taking Appeals to the Privy Council. In a Self-Ruling India there will be many questions which could be advantageously referred to it for its opinion, decision or adjudication as is the case in the Dominion of Canada and the Commonwealth of Australia. The last but not the least consideration is that it will be a unifying force for all India.

The High Courts of the Provinces will have their present powers and functions, as the Highest Courts in the Provinces.

The present Judicial Commissioners will merge in the High Courts of the Provinces in which they have jurisdiction.

Until that time arrives, appeals from them will lie to the Supreme Court of India.

It may be necessary to invest High Courts of the Provinces and perhaps some of the Subordinate Courts of the Provinces also with the powers and functions of a Court of the Commonwealth for making adjudication in cases arising in the Provinces which are exclusively triable by such a Court and to avoid unnecessary duplication of Courts. It is desirable to bring the designations and general functions of Subordinate Courts in all Provinces to a common standard with due elasticity for variation in local conditions. The Criminal Courts are so standardised and regulated by the Code of Criminal Procedure.

At present the Civil Courts are governed by the several Civil Court Acts of the different Provinces, but remain to be brought to a general standard. The Small Cause Courts are governed by the Imperial, Provincial and Presidency Small Cause Courts' Acts.

The Village Courts are guided by Local Acts.

As I pointed out in my Memorandum on Franchise and Functions, the administration of Justice, Civil and Criminal, in villages, up to a certain extent, should be left to Village Councils or Panchâyats, while the administration of Civil and Criminal Justice in larger areas should be in the hands of a well-trained hierarchy of Judges and Magistrates under the control and superintendence of the High Court. There must be separation of Judicial from Executive functions. It must be left to the Provincial Legislative Councils to enact suitable laws for the establishment of these Subordinate Tribunals.

There must be a Bar of India to control and superintend the legal profession with Provincial Bars invested with considerable autonomous powers. The question whether there should be double agency, like Solicitors and Counsels, should also be considered in framing a scheme for the same.

An attempt has been made to bring out the salient points under the head of "Judicial and Legal" in the following articles :

ARTICLES

1 There shall be a "Supreme Court of India" which shall be the highest Court of Judicature established in British India and in which the judicial power of the Commonwealth shall be vested. The Supreme Court shall consist of a Chief Justice and other Judges not exceeding in number, as may be fixed by the Indian Legislature.

2. There shall be a High Court constituted by the Indian Legislature for each Province or for two or more Provinces ; until they are so constituted the present High Courts established by Letters Patent shall be deemed to have been so constituted.

3. The Chief Justice and the Judges of the Supreme Court of India shall be appointed by the Governor-General in Council. The Chief Justice and Judges of the High Court of a Province shall be appointed by the Governor-General in Council on the nomination of the Governor in Council of the Province concerned.

4. The qualifications of the Chief Justice or a Judge of the Supreme Court of India and of the High Courts of the Provinces shall be fixed by the Indian Legislature. One of the qualifications should be that they either should be Pleaders of the Supreme Court of India or of a High Court in a Province or a Barrister of England or Ireland or a member of the Faculty of Advocates in Scotland of not less than certain years' standing, or a District Judge of not less than certain years' standing. Until the qualifications are so fixed by law, the present qualifications for a High Court Judge shall be deemed to be the qualifications for a Judge of the Supreme Court of India.

5. Every Judge of the Supreme Court of India or of a High Court shall hold office during good behavior or until he

completes his sixtieth year. But he can only be suspended or removed from office by the Governor-General in Council on an address from both Houses of the Indian Legislature, and passed in the same session if he is a Judge of the Supreme Court or on an address from the Provincial Legislative Council supported by the Governor in Council of the Province in case of a Judge of the High Court of that Province on the ground of misbehavior or incapacity.

6. The salaries, allowances, furloughs, retiring pensions and (where necessary) expenses for equipment and voyage of the Chief Justice and other Judges of the Supreme Court of India shall be fixed by the Indian Legislature; but those of the Chief Justices and other Judges of the High Court of a Province shall be fixed by the Legislative Council of the Province. The salaries so fixed may be altered by the Legislatures concerned, but such alteration shall not affect the salary of any Judge appointed before the date of such alteration.

7. The Chief Justice or a Judge of the Supreme Court of India may resign his office to the Governor-General in Council and the Chief Justice or a Judge of the High Court in a Province may resign his office to the Governor in Council of the Province.

8. The Supreme Court of India and the High Courts in the Provinces shall have superintendence over all Courts for the time being subject to their Appellate Jurisdiction and may do any of the following things:—

- a. Call for returns.
- b. Direct the transfer of any Suit or Appeal from any such Court to any other Court of equal or superior Jurisdiction.
- c. Make and issue general rules and prescribe forms for regulating the Practice and Proceedings of such 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 the Sheriff, Pleaders, Attorneys, and all classes and Officers of Courts,

provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require in the case of those prescribed by the Supreme Court or the High Court of two or more Provinces the previous approval of the Governor-General in Council, and in the case of those prescribed by the High Court of a Province the approval of the Governor in Council of that Province.

9. The several High Courts shall have such jurisdictions, original and appellate, including admiralty jurisdiction in respect of offences committed on the High Seas, and all such powers and authority over the administration of justice in each Province including power to appoint clerks and other ministerial officers of the Court and power to make rules for regulating the practice of the Court, and all such jurisdictions, powers and authority as are vested in those Courts at the present time or may be granted to them hereafter by Indian Legislature or the Legislatures of the Provinces to which they respectively relate.

10. The Supreme Court of India or the High Court of a Province may by its own rules provide as it thinks fit for the exercise, by one or more judges, or by Division Courts constituted by two or more Judges of such Court of the original and appellate jurisdictions vested in it.

The Chief Justice of each such Court shall determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts.

11. The Governor-General in Council may by order add to the local limits of the jurisdiction of any High Court any

part of British India not previously included within its limits, or transfer any territory or place from the jurisdiction of another High Court.

12. The Indian Legislature shall have authority to establish a High Court in any territory in British India, whether or not included within the limits of the local jurisdiction of another High Court, and confer on any High Court so established any such jurisdiction, powers and authority as are vested in or may be conferred on any High Court now existing. And where a High Court is so established in any area included within the limits of the local jurisdiction of another High Court, the Indian Legislature may alter those limits and make such incidental, consequential, and supplemental provisions as may appear to be necessary by reason of the alteration.

13. The Legislature of each Province shall have power to establish such Courts subordinate to the High Court for exercising Civil and Criminal jurisdiction, clothed with such powers and functions as it may deem fit, provided the establishment of such Courts and their powers are not inconsistent with any Act of the Indian Legislature

Until such Courts are so established the Subordinate Courts now in existence shall be deemed to have been so established.

14. The Supreme Court of India shall have original and appellate jurisdiction.

15. It shall have original jurisdiction in the following cases :

1. The Governor-General may refer to the decision of the Supreme Court.
- a. Any important question affecting the interpretation of the Constitution and any law of the Commonwealth of India, or
- b. any question relating to the constitutionality of any Act of the Indian or Provincial Legislatures, or

- c. any matter relating to the power of the Indian Legislature and the Legislatures of the Provinces or their Governments, or
 - d. any question arising under any treaty including treaties with Native States,
 - e. any other important matter whether or not *ejusdem generis* with the above which the Governor-General in Council may deem fit to submit.
2. Cases affecting Consuls.
 3. Cases in which the Commonwealth sues or is sued.
 4. Suits between different Provinces and between one Province and a resident of another Province.
 5. Cases in which a writ of *mandamus* or injunction is sought against an officer of the Commonwealth or against a Court of the Commonwealth.

16. The Supreme Court of India shall have appellate jurisdiction in the following cases :

1. From all judgments of the High Courts in Provinces, and other tribunals like Judicial Commissioners, etc., as long as the latter tribunals exist, from which appeals lie at present to His Majesty in Council.
2. From judgments of the High Courts and Judicial Commissioner which the Supreme Court grants special leave to appeal from.
3. From judgments passed by any High Court invested with powers as a Court of the Commonwealth and in exercise of such jurisdiction.

17. Appeals may lie to the King in Council in the following cases :

1. From all appellate judgments of the Supreme Court of India in which the King in Council grants special leave to appeal.
2. From all judgments of the Supreme Court of India in exercise of its original jurisdiction.

18. The Indian Legislature may invest any High Court or any Subordinate Court in any Province with the powers and functions of a Court of the Commonwealth and define such powers and functions.

19 A Bar for the whole of India should be created with a Bar for each Province or set of Provinces in which a High Court is established with considerable autonomous powers for each Provincial Bar. This should be worked out separately with details.

20 The Governor-General in Council shall appoint the Advocate-General of India and shall appoint the Advocate-General for a Province on the nomination of the Governor in Council of that Province.