

**Parliamentary financial control
under
the New Constitution.**

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BY

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Parliamentary financial control under the New Constitution.

The Constituent Assembly now in session is engaged in considering the draft of the Constitution prepared by the Drafting Committee. It is understood that a large number of amendments will come up for consideration, but, so far as is known, there is no amendment bearing on the provisions relating to parliamentary financial control. The financial provisions in the draft are practically a verbatim reproduction of the relevant sections of the Government of India Act 1935, as passed by the British Parliament. These provisions were suited to the political and constitutional provisions then considered appropriate. It seems a little strange that with the great changes that have been made in the political and constitutional provisions practically no change has been made in the financial provisions. Apart from the fact that with the growth of political responsibility there must be a corresponding growth in financial responsibility, there are strong grounds for tightening up parliamentary financial control which did not exist before. There has recently been a tremendous expansion in the activities of Government in the administrative as well as the economic field and this has resulted in a heavy growth of financial transactions. Another reason is that budgets, both central and provincial, are unbalanced and the public tax-payer has to bear burdens for which he is ill-equipped. A third reason is the absence of any effective oppositor

in the Legislature. This renders it even more imperative that there should be an independent agency for the scrutiny of all the financial transactions of the Government.

Treasury Control.

Financial control is of a two-fold character : internal and external. Internal or treasury control is exercised primarily by the Finance Department, which is charged with the duty of seeing that economy is observed by the administrative departments. -In practice, this control is limited by the following factors :—

(i) The personality of the Finance Minister. In Great Britain, the Chancellor of the Exchequer is generally regarded as next in importance only to the Prime Minister and is always a leading member of the party in power. For this reason when he say no to a proposal, it is final. This is unfortunately not the case in this country. When provincial autonomy was inaugurated in 1937, Chief Ministers of several provinces were in charge of finance, but latterly this has not been the case and Finance Ministers at the Centre and in the provinces have not even been members of the party enjoying a majority in the Legislature. The consequence is that the Finance Department's no to a proposal is not regarded as final and its control is, therefore, not as strict as of the British Treasury.

(ii) Finance does not constitute a whole time charge for a Minister in the provinces and so he is also placed in charge of spending departments, like police, jails, law courts, education, etc. As such the Finance Minister becomes a party to the expenditure which he is ultimately to sanction as the head of the Finance-Department, and the question arises, who is to keep in custody the custodain himself.

(iii) No Finance Department, however strong it may be can dictate or veto policy. In the last resort, administrative considerations must prevail. If Government, for instance decides on a policy of prohibition, the Finance Department has to accept it, inspite of the resulting loss of revenue and, increase of expenditure on preventive staff.

(iv) The Finance Department itself has become a big spending department. In 1888 its gazetted strength consisted of one Secretary, one Under Secretary, and one Assistant Secretary. To-day, it is understood that the gazetted strength of the Ministry of Finance is 187, and the budget provision for the Ministry for the current year runs to Rs. 80. 76 lakhs. A stage has been reached where it is necessary to provide that proposals for new expenditure in the Ministry of Finance should be subject to the sanction of some other Minister, preferably the Prime Minister himself.

Parliamentary Control.

External control over public finance is exercised by the following agencies :—

- (i) The Legislature ;
- (ii) Committees of the Legislature ; and
- (iii) The Audit Department.

The main function of the Legislature in connection with finance is to vote supply. Supply includes voting of expenditure as well as provision of funds by taxation or otherwise to meet the expenditure.

Control over expenditure—So far as the control over expenditure is concerned, the position contemplated in the new constitution is satisfactory. Many items of expenditure previously classed as non-votable (about 80 per cent of the total expenditure) will now be votable, such as defence, politi-

cal, salaries and pensions of superior civil services, external affairs, etc. The items now classed as non-votable are also non-votable in Great Britain and other advanced countries, such as debt charges, salaries and pensions of High Court Judges, allowances and emoluments of the head of the State, etc. In another respect also, there is an improvement over the Government of India Act, 1935. A vote once passed by the Legislature is final, in the sense that it cannot be modified by the Executive. There will be no restoration by the Governor-General of grants rejected or reduced by the Legislature. This is only natural considering that the Executive is entirely responsible to the Legislature, which is the sovereign authority in the financials in the political field.

There is, however, one omission to which attention must be drawn. There is no provision for emergent expenditure. It frequently happens that expenditure not provided for in the budget has to be incurred immediately, without waiting for a parliamentary session. Under Section 94 (3) of the draft constitution, however, no expenditure from the revenues of India can be deemed to be duly authorised unless it is specified in the schedule of authenticated expenditure. This will mean that the expenditure will, in the first instance, be illegal and will be legalised some months later when the Legislature approves a supplementary demand placed before it. The position was the same under the Constitution Act of 1935, under which the Law Officers declared this procedure as incorrect and the Audit Department shut its eye to the irregularity, as it could not be helped. It is necessary to wipe out this lacuna in the financial provisions now. Some provision in the Constitution Act on the lines of Section 72D of the

Government of India Act, 1919, is suggested for consideration.

It is sometimes stated that the so-called control of the British Parliament over the estimates is really illusory and ineffective, as in practice the House of Commons has never made the slightest change in any estimate presented to it by the Government. The House of Commons does not (by a self-denying ordinance) increase expenditure as proposed by the Executive. It can theoretically effect a cut in the estimates, but a cut motion is invariably treated as a motion of no confidence, with the result that the House of Commons passes the estimates in the form presented by the Government. The same procedure has been adopted in India, which has rendered parliamentary control practically nugatory. In the United States of America, where the Executive has no seat in the Legislature, the House of Representatives frequently makes big cuts in the items proposed by the Executive, which are accepted as final. To make parliamentary control real, it is suggested that American practice should be adopted and the Government should adopt a convention that ordinarily it will not treat a cut motion as involving a question of confidence. Cut motions at present can be moved only by the Opposition and not by members of the party in power. This reduces the scope of criticism and constructive suggestions, and should be done away with. The vote of the House on the estimates should ordinarily be free and uncontrolled by party whips.

Control over Taxation.—It is a fundamental rule in parliamentary systems that no tax or impost should be levied on the people except with the consent of the representatives of the

people. This rule is now followed by Government but there are still relics of the old autocratic regime in the fiscal system and, as pointed out by the British Joint Parliamentary Committee on the Government of India Bill, 1919 in their report, there are certain classes of taxation which can be levied upon the people of India by executive action without, in some cases, any statutory limitation of the rates and, in other cases, any adequate prescription by statute of the methods of assessment. Land revenue was at the time one of the instances which the Parliamentary Committee had in mind, but since then in several provinces Land Revenue Acts have been passed embodying in the law the main principles by which land revenue is determined. Excise, another main source of provincial revenue, is still imposed by the executive without any reference to the Legislature. In the central field, taxes on income, customs duties and excise duties are subject to the approval of the Legislature, but in the matter of railway rates and fares, which bring in revenue to the tune of very nearly Rs. 200 crores, the Legislature has no voice. For purposes of charge, commodities are grouped into 16 classes. The maximum and minimum permissible charge under each class is fixed by the Railway Board, which is entirely an official body. Within these maxima and minima railway administrations have full power to vary charges and these powers are freely exercised. As long as there were private companies working State lines under long-term contracts with the Secretary of State, there was some room for doubt whether the Legislature could interfere with their discretion in this matter. But now that railways have been nationalised and are subject to State management, there is no reason why

railway rates and fares should not be subject to statutory regulation, as in Great Britain.

Control over price regulation.—During the war, State control was established over various essential commodities, such as food grains, cloth, iron and steel, cement, etc. In some cases the State took over the responsibility of making purchases and distributing the stocks purchased through approved dealers. In food schemes particularly, the Executive Government determined the price to be charged to the public and these prices contained various items of the nature of levies and surcharges which were not always determined by the service rendered, but contained an element of taxation. No legislative approval was (or is) sought to these levies. It seems desirable, in view of the magnitude of these charges in the aggregate, to bring this power of the executives under some kind of parliamentary regulation.

Control over borrowings.—According to strict theory, the Executive should not be in a position to obtain supplies, whether by taxation or by loans from the people, without the approval of the Legislature to the purpose and the amount of each tax or loan. This is the practice in Great Britain, so much so that the Secretary of State for India could not raise sterling loans in Great Britain for the purposes of the Government of India without an Act of Parliament. A whole series of East India Loan Acts will be found on the British Statute Book. But for raising rupee loans in India, the specific sanction of the Legislature for some unknown reason has never been sought. Sections 162 and 163 of the Government of India Act, 1935, provide that the executive authority of the Federal Government or a Province extends to borrowing upon the security of the revenues of the Federation

or a Province, and these provisions have been reproduced in Sections 268 and 269 of the Draft Constitution. In view of the growing magnitude of the annual loan operations, it seems necessary that the specific sanction of the Legislature to the purpose and the amount of each loan should be obtained before the loan is raised. If the loan is being raised to meet a revenue deficit or any other unproductive purpose, the Legislature, and particularly the money market, will take due note of the fact. It will also enable audit to see whether the loan has actually been spent for the purpose for which it was raised and also whether the amount spent is not greater than that sanctioned by the Legislature.

Control by Committees of the Legislature.

The main Committees of the Legislature concerned with financial control are :—

- (1) The Standing Finance Committee.
- (2) The Public Accounts Committee.

The Standing Finance Committee was brought into existence after the Montagu-Chelmsford Reforms of 1921, but was discontinued after the inauguration of the Constitutional Reforms of 1937. It has recently been revived at the Centre, but not in the provinces. Its function is to advise Government on new proposals for expenditure before they are included in the Estimates. It fulfils a useful function and should be continued under the new Legislative Rules.

The Public Accounts Committee—The main committee of the Legislature concerned with financial control is the Public Accounts Committee. It is a recognised provision in the financial systems of countries enjoying responsible government that there should be a review of transactions after the

close of the year. It is clearly useless to give to the Legislature the power of voting money for particular purposes unless the Legislature is assured that the money has been spent by the Executive for the purposes -for which it was voted. For obtaining this assurance, the Legislature appoints a Committee composed of its own members to go through the public accounts. In order that the public accounts may bring to light the true state of affairs it entrusts the task of auditing them to a body of public servants who are engaged in a continuous audit of the accounts and who are independent of the spending authorities. It is the examination of the auditor's reports on the public accounts which is the main task that the Public Accounts Committee has to perform.

Public Accounts Committees have been in existence in this country, at the Centre and in the Provinces, ever since the inauguration of the Montagu-Chelmsford Reforms. They have done useful work in securing orderly finance. So far as their membership and functions are concerned, they have generally been modelled on the lines of the British Public Accounts Committee. Secretaries to Government, heads of departments and other spending officers are called before it to give evidence and this exercises a wholesome influence in the spending of public money. The Auditor-General (or the Accountant-General in a Province) usually attends the meetings of the Committee to assist it in its deliberations and proceedings. The major point of difference between British and Indian practice has been in the matter of chairmanship of the Committee. In Great Britain, the Chairman is usually a leading member of the Opposition, whereas in this country the Finance Minister has invariably got himself elected to the chair by virtue of his party majority. This gives to the

Committee an official colour, and places the Finance Minister in the invidious position of having to criticise acts which he may have approved in his capacity as a member of the Government. Several attempts have been made in the past to change this practice, but without success. It is suggested that a convention should be adopted under which the Finance Minister should cease to be a member of the Committee and the Chairman should be a leading member of the Opposition. The secretarial work of the Committee should be entrusted to the Auditor-General and not to the Finance Department, as at present.

Functions of Audit.

Audit performs functions both on behalf of the Legislature and the Executive Government. It is chiefly the parliamentary functions of audit which will be dealt with here.

Sections 124 to 127 of the draft constitution relate to the Auditor-General of India and Sections 210 and 211 to the Auditors-in-Chief for the States. Section 124, sub-section (1) gives to the Auditor-General the same position of independence which is given to a Judge of the Supreme Court. This is a very necessary provision, as no audit can function without it. It has existed in India since 1913 when Lord Hardinge's Government was overruled by the Secretary of State for India, who accepted the dissenting view recorded by Sir Guy Fleetwood Wilson in favour of independence of audit. In the matter of the duties and powers of the Auditor-General, Section 125 continues the existing position, which is governed by the Audit and Accounts Order of 1936. This is not satisfactory, for reasons which will be given below.

The Auditor-General of India at present exercises powers and functions both for the Centre and the provinces. An audit

and accounts is a provincial subject, provinces were free even under the Government of India Act, 1935, to make their own arrangements. But they have so far not preferred to do so both on grounds of economy (the Centre pays for the Accounts, and Audit Department) as well as efficiency. In the new draft the provisions relating to the Provinces (now to be called States) have been separated from those relating to the Centre. In order to distinguish the provincial head from the Auditor-General of India, it is proposed that he should be called the Auditor-in-Chief. No such change has been proposed in the case of Chief Justices: there will be a Chief Justice of India and a Chief Justice of each province (or State). This reminds me of the story current in an Indian State where the Regent, who held the honorary rank of Lieutenant-General in the British Army, objected to the use of the term Accountant-General for the head of the Accounts Department on the ground that there could be only one general in the State and the designation was accordingly altered to Chief Auditor.

The main point relating to audit is that the functions entrusted to it should be comprehensive in character, and should include a scrutiny of *all* the financial transactions of Government. It is obvious that if some categories are excluded from the scope of audit, the Legislature, which has no other source of information, will be hampered in exercising financial control over the Executive.

Financial transactions of Governments mostly consist of:—

- (i) receipts of revenue ;
- (ii) expenditure ; and
- (iii) purchases and issues of stores and stock.

Audit of expenditure. So far as the audit of expenditure is concerned, the functions of the Auditor-General are suffi-

ciently comprehensive, and are practically the same as those of the Comptroller and Auditor-General in Great Britain under the Exchequer and Audit Departments Act. There is however, one important difference. In England, the Comptroller and Auditor-General combines in his own person two offices which formerly were separate. In his capacity as Comptroller of Exchequer Issues, he controls the issue of public money ; in his capacity as Auditor-General, he is Auditor of public accounts. Till 1913, the designation of the head of the Accounts and Audit Department in India was the same as in England, but as this designation did not correspond to reality and as he had no control over issues from treasuries, a change was made. The authority in respect of such issues vests in the Finance Department. Money can be issued in India (but not in England) without the cognisance of audit, for an unauthorised purpose. When such a transaction comes into the public account, it is scrutinised by the Audit Department. It will be within the recollection of many persons that during the last war large sums were issued from treasuries in Bengal on the authority of the Bengal Government, which were later on found to be irregular and about Rs. 19 crores had to be written off. The English practice is commendable from the common-sense point of view. It is obviously much better to prevent unauthorised issues than to bring to notice unauthorised expenditure several months after the expenditure has actually been incurred. As they say in common parlance, it is no use crying over spilt milk.

Another point in relation to the powers of the Auditor-General deserves consideration. Though he is free to decide the scope of audit in relation to expenditure, his budget is

controlled by the Finance Department and in practice demands for establishment considered necessary for the execution of his statutory duties are turned down by the Finance Department. This is unsatisfactory, as no person can discharge the responsibility placed upon him if somebody else holds the purse strings. It is suggested that in respect of administrative powers also, the Auditor-General should be treated in exactly the same manner as the Chief Justice of the Supreme Court.

Audit of revenue. So far as audit of receipts is concerned, the position is very unsatisfactory, and the disparity between English and Indian practice is most glaring. In England, the Comptroller and Auditor-General is required by law to audit all accounts of revenue and to report on them to Parliament. In India, the Auditor-General cannot of his own motion undertake the audit of the receipts of any department. He can do so only with the approval of and to the extent desired by the Executive Government. In the case of audit of expenditure he decides what constitutes expenditure and the nature of the scrutiny to be applied in audit. The work of revenue-collecting departments on the financial side may generally be said to fall under the following three categories:—

- (a) Assessment ,
- (b) Collection , and
- (c) Remittance of collections into the treasury.

An audit of receipts to be complete must be applied to all the above categories. In relation to (a), it is necessary to see that the assessment, or the demand against each individual, is correctly fixed and that there are no defects in methods of assessment generally. In relation to (b), audit has to see that all sums due are received and checked against demand ;

that remissions and suspensions are made under proper authority, and that adequate regulations and procedure exist in relation to collection of revenue. In regard to (c), it is necessary to see that the entire collections, without any deduction or reservation, are remitted into the treasury, and brought to credit in the accounts.

In England the Comptroller and Auditor-General performs all these functions on behalf of the House of Commons, but in India audit is restricted to function (c). It has no concern either with (a) or with (b). The fact of the matter is that when the audit regulations were first framed about 1870, land revenue was the main source of revenue. It was then considered that audit officers would not have the necessary knowledge to check assessments and collections of land revenue and that in any case there would be duplication, as this was the ordinary function of District Collectors and Commissioners of Divisions. But now things have changed; land revenue is no longer a source of income for the Centre Taxes on income can easily be checked by audit officers as in England. The same remarks apply to Customs and Excise duties. It is only in the Railways, Posts & Telegraphs, and the Public Works Department (Buildings and Roads, not Irrigation) that receipts are audited by the Indian Audit Department. Income-tax receipts, which are the biggest single item of revenue and bring in altogether about Rs. 140 crores, are not audited at all. It is at least open to question whether the cases of tax evasion on a large scale running into hundreds of crores of rupees which recently came to light and which are now under examination by a special tribunal would not have been more promptly brought to notice had such receipts been

subjected to audit. It seems strange, to say the least, that while so much effort is being devoted to scrutiny of outgoings from the public purse very little attention is being paid to scrutiny of incomings. In private life it is considered necessary to examine both the debit and the credit sides of one's bank pass book. Why a different rule is adopted in respect of the public account is hard to understand.

Audit of Stores Accounts. The position with regard to audit of stores and stock accounts is much the same as in relation to receipts. The Auditor-General can audit such accounts only if required, and to the extent approved, by the Executive Government. When stores are purchased payment has to be made and such payment comes within the cash account and is subjected to audit in the same way as other cash expenditure. But what happens to the stores after they have passed through the cash account is generally not the concern of the Audit Department. In Great Britain, the Audit Department conducts the audit of all stores and stock accounts on behalf of the House of Commons. The same should be the case in India. The results of all such audits of revenue and stores and stock accounts should be reported to the Legislature and all such audit reports should be dealt with by the Public Accounts Committee in exactly the same manner as it deals with the Appropriation Accounts.

Lastly, it is not fair that while the duties and powers of the Chief Justice of India are being incorporated in the Draft Constitution itself, the duties and powers of the Auditor-General should be dealt with under statutory orders to be issued by the Governor-General under Section 125. Any one who is familiar with the day to day working of the administration will at once realise that such a procedure really will mean that the drafting of such rules or orders will in practice be

done in the Finance Secretariat and the latter will naturally see that the orders that issue have the bias of the view of the Secretariat, which is jealous of independent financial powers being exercised by any other authority. It is, therefore, suggested that either there should be a separate Act on the lines of the Exchequer and Audit Departments Act, or, preferably, the duties and powers of the Auditor-General should be incorporated in the Constitution Act itself, long as it is already.

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