

# THE Servant of India

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## TOPICS OF THE WEEK.

THE almost sensational fall in the sterling value of the rupee to the neighbourhood of 16d. has created a curious exchange situation. Without having a favourable effect for the time being on the export trade, it has hit importers rather hard, and speculation is rife as to the probable course of the exchange in the immediate future. The *London Times* states that the fall of the rupee is a natural outcome of the deadness characterising the Indian export trade for some time past and reports that Eastern bankers in London forecast an immediate reaction upwards. The truly determining factor in the situation is the tendency of our export trade, and it is generally recognized that a rise in exchange cannot be either substantial or sustained until exports show a steady improvement. The winter is ordinarily the busy export season; but this year over large areas in the country the crops are in an unsatisfactory condition and the buying power of India's usual customers has been curtailed owing to economic depression. In any case, there is little prospect of exchange rising to levels where Government has fixed it by law, and the question becomes pertinent if it is not desirable for Government to reconsider the whole exchange problem.

NOW that exchange has gone down to 16d. a suggestion has come from certain unexpected quarters that Government should resume the sale of reverse councils. It is contended that it is incumbent on the Government now to declare its readiness to sell reverse bills to all comers at 16d. less the usual charges as "they took in many millions on the basis of 16d. and they must now deliver at this rate at least so long as they have the goods in their recent possession." The contention is not unsound, and the Government cer-

tainly has funds in London on which it can draw for the payment of the reverse drafts. But Government has fixed 24d. as the legal value of the rupee and all its efforts to maintain exchange at that rate have come to naught. The proposed measure is calculated only to prevent exchange from falling still further. Will it not, however, be much better for Government not to have anything to do directly with the rate of exchange and allow it to find its own level? It will be another matter altogether if Government will reconsider the question of the exchange and try to restore the old parity and to maintain it with the means available to it.

"WE had to get back to sound economics and to our gold standard if these islands were to maintain their position in the world," is an observation from the speech of Lord Inchcape made at a recent ordinary general meeting of the P. and O. Company, which pithily sums up the case for the economic rehabilitation of Great Britain. Extravagance of Government departments, a huge national debt, currency inflation and unemployment are a legacy of war time, and various restrictions of trade and industry which were necessary for the successful prosecution of the war but which are now out of date are hampering the nation's economic recovery. The critics of the Government of Mr. Lloyd George have been passionately pressing for economy and the restoration of freedom of competition. Lord Inchcape drove this criticism home by remarking that "the country's need more than ever was commercial liberty without obstruction, tariffs or bureaucratic meddling." It does not seem likely, however, that England will once more have its free trade policy in an unadulterated form. The thin end of the wedge of protection has been introduced already, and it will not be easy for any British Government to do without protection in one form or another. The dye industry is being supported by Government, and the restrictions in connection therewith have been allowed even by Mr. Asquith. The labour difficulty referred to by Lord Inchcape is the hardest nut to crack, and it is not possible to solve the problem of the struggle between capital and labour unless the present organization of industry is modified so as to satisfy the reasonable demands of workmen.

IN *United India* of November 17 and 24 is presented a view of Esher Committee's report somewhat different from the one expressed in the

*Times*. The article is written by a retired officer of the regular Army evidently imbued with sympathy with India's aspirations and is well worth perusal. The relaxation of the control of the Secretary of State and Parliament over the Government of India in military affairs, recommended by the Committee, has the support of the writer. Such a decentralisation is, in his opinion, a mere corollary of the Reform Act of last year and will considerably strengthen the position of the Governor-General in Council, which he thinks is all to the good. For, "under the Reform Act, the Governor-General in Council, if backed by his Indian ministers and legislature, would be a much more formidable person and require far more persuasion than a Secretary of State responsible only to the Parliament at Westminster, which knows little, and often cares less, about purely Indian problems." Indian interests are therefore, according to this writer, more likely to be safeguarded under the scheme of decentralisation proposed by the Committee than they are at present.

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BUT the scheme must be consistent, the Committee adds, with allowing the Imperial General Staff, through its chief, to exercise a considered influence on the military policy of the Government of India, and it is this condition which is interpreted by the *Times* as "the proposed subordination of Indian forces to the Imperial General Staff." The writer in *United India*, however, holds that the control proposed, if properly interpreted, is mainly of a technical character and similar to that accepted without demur by the other self-governing Dominions. But suspicions are aroused by references in the report "to probable military operations in the Near and Middle East, which seem to foreshadow a policy of adventure to be pursued in this direction." The expense of the Indian Army has already increased to double its pre-war cost, and "in face of this it is utterly preposterous to suppose that India should be asked to bear any further expense in connection with the policing of Mesopotamia for an indefinite period." "If, however, troops were needed for such expeditions," the writer says, "they could be quite easily provided by withdrawing British units from the army in India, where their presence is at present undoubtedly excessive. They have, as a matter of fact, for a long time past been 'boarded out' upon India not for her security, but in order to save expense to the British taxpayer. Whenever, therefore, the 'policy' of adventure requires more troops, as it is bound to do, India could very well dispense with these battalions and in so doing get rid once and for all of a large part of her crushing burden of military expenditure."

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BUT the Indian authorities, the writer thinks, will have the power to veto such "forward" policy. "One very important recommendation empowers the Government of India to fix the rates of pay and expatriation allowances for all Indian troops

thus employed, and, of course, such powers could be used as a weapon to prevent any but volunteers from so serving, by gradually increasing the cost to the British Treasury till it became impracticable to any longer employ Indian troops in this way. There can, moreover, be little doubt that the elected representatives of the people of India will in any such case be able, as never before, to bring pressure to bear on the Viceroy so as to prevent any Indian forces from being used to carry out wild-cat schemes of military aggrandisement." "It is unthinkable," he remarks, "that anyone in such a position (as will be that of the Governor-General freed from the control of the Secretary of State) will submit to a military policy for India being imposed by the Imperial General Staff in England without regard for Indian interests." It is much to be feared that the power of the elected representatives of the people in the legislature over military matters is here greatly exaggerated. What the writer contends will hold true only if the suggestion made by Dr. Keith in the *Times* is accepted, viz. that no action should be taken on the Esher Committee's report till the Legislative Assembly is consulted on it, and that "the Government of India should defer to its judgment, unless it considers that this is impossible consistently with the safety of India itself," no other consideration being held to justify the overriding of the Assembly.

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THE freedom which is allowed to newspaper correspondents in Ireland in face of the civil war which is raging there stands out in bold relief when contrasted with the gag which was applied to the Press in the Punjab when O'Dwyerism had to deal with the local disturbances of last year. The Irish Chief Secretary stated in Parliament: "There had never been the slightest obstacle put in the way of any Pressman in Ireland. He had provided motor-cars and facilities of every kind to the Press, because he believed that the more publicity was given to events by persons who visited Ireland the more the British Government would be supported by this country and civilization. . . He could assure Mr. Martin (whose life was alleged to be attempted) that he could sleep in any bed he liked in Ireland. He had said mean and inaccurate things of the police, but they would stand guard over him and would let him say what he liked about them." O'Dwyerian statesmen evidently did not think (and who could say they were wrong?) that civilization would support them if Mr. Andrews were allowed to go into the Punjab and to tell the world of the happenings there.

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WE see that neither in Madras nor in the Deccan was a single non-Brahman candidate returned to the council because of the reservation of seats for them. In no district was there need for them to avail themselves of the concession. But the conditions in the Deccan were peculiar this year, Nationalists having retired from the contest. But, in any case, the reservation does no harm.

### THE RANGOON UNIVERSITY.

WE read the other day that the youth of Burma were planning to boycott the Rangoon University. Without seeming to lend countenance to any such project we must say that the dissatisfaction felt by the educated classes in that province is perfectly intelligible. The principal objection of the Burmans seems to be directed to the centralised university of a teaching and residential type which is being set up in Rangoon; they want an affiliating rather than a unitary university, because they fear that if no institution outside the limits of Rangoon can become a constituent college in the University, it will retard instead of promoting the spread of higher education in their province, where last year there were no more than 3000 students reading in high schools. The people's representatives in the Legislative Council urged no other objection when the University Bill was under discussion, and the Director of Public Instruction summarily disposed of their arguments as being founded on an utter misconception of the nature or the consequences of the measure before them. It is a thousand pities that while by their line of attack they rendered themselves open to the charge of being oblivious of the advantages of a teaching as contrasted with a mere examining university, they left unassailed the several weak places in its organisation. The constitution which has been adopted for this University is defective to a degree. The academic independence which, according to the report of the Sadler Commission, the new type of university is to enjoy is entirely lacking in the Rangoon University; it is absolutely an officialised body under the almost exclusive control of the Chancellor. The Director of Public Instruction observes in the "statement of objects and reasons" that he has taken due note of the Calcutta University Commission's recommendations in regard to the Dacca University. If he has taken note of them it is only to put them away as inapplicable to the conditions in his province. There is indeed some outward similarity in the constitution proposed for the Dacca University and the one devised for the Rangoon University; but, in all vital matters, there is complete dissimilarity. All power resides, so far as Sir Reginald Craddock's University is concerned, in Sir Reginald, that is, in the Chancellor; everything else is subsidiary to the main purpose of making his autocracy secure.

The Vice-Chancellor, who is the chief executive officer of the University, is to be appointed by the Chancellor, no other person or body having any part or lot in the transaction. The Sadler Commission, it will be remembered, recommended that the Vice-Chancellor should be appointed by the Vice-Chancellor after a consideration of the recommendations of the Executive Council, and effect is given to it in the constitution of the Dacca and Lucknow Universities. The popular demand is that the office should be in the gift of

the Court or, alternatively, the Executive Council, but in the Rangoon University it will be in the sole gift of the Chancellor. It cannot, of course, be urged that the fact that the Vice-Chancellor is not intended to be a whole-time officer makes any real difference. The Chancellor will have under him the Council and the Senate, to which is committed respectively the administrative and educational business of the University. The Council combines in itself the functions of the Court and the Executive Council of the Lucknow University; it is the supreme governing body "in administrative affairs," and has control of the statutes. There is also the Executive Committee, but it is more like a committee of the Council than an independent body. It has charge of the administration of the University's revenue, "subject to the control of the Council." The Council is composed of five *ex officio* members, 15 members appointed by the Chancellor, five representatives of bodies nominated by the Chancellor, 8 members of the Senate elected by the Senate and two heads of colleges, who both are practically nominees of the Chancellor, and only twelve members elected by registered graduates or other bodies. That is to say, it will consist, as to 70 per cent. of the members, of persons appointed directly or indirectly by the Chancellor. And, what is more, its constitution is fixed up in the Act itself; it is not provided for, as in the Lucknow and the Dacca Universities, by statutes, which it will be possible for the Council to amend. The constitution of the Senate, which is the academic body of the University, is also rigidly laid down in the Act, beyond the reach of statutes. In fact, very little is left to the statutes, and that the Senate, three-quarters of which consists virtually of the Chancellor's nominees, has control of them means little substantial power.

The appointment of the professors of the University is vested exclusively in the Chancellor, the Senate or the Council standing out of the picture so far as the selection of the professoriate is considered. In regard to the appointment of lecturers and other teachers, the Senate may "if necessary" make representations on the subject through the Council to the Chancellor, whose decision shall be final. Thus the whole teaching staff is to be appointed by the Chancellor. How simple is Sir Reginald Craddock's scheme! No complication in it of selection committees, a part of which to represent the Council and a part to represent the Senate. He cuts the Gordian knot by himself making all the appointments. He is thus able to control the whole of the Council. But that is not all. He is to admit an institution as a constituent college of the University, on the recommendation of the Senate and with the approval of the Council. In the Dacca and the Lucknow Universities this matter is governed by ordinances, which are subject to the Chancellor's veto. But it will be recognised that there is a very wide difference between the Chancellor having the power of finally vetoing a thing and his deciding it

in the first instance on the recommendation of a body to whom, in propriety, it should be primarily entrusted. In the London University the Court has the power of approving of the admission of colleges on the recommendation of the Senate. In regard to the admission of students to the University, not merely the Chancellor but the Governor-General is brought in. The test is to be prescribed by the regulations, subject to the control of the Governor-General in Council. But Sir Reginald is not content with even so much barefaced autocracy. All these provisions are accompanied with a bludgeon clause conferring emergency powers on the Chancellor: If the Chancellor finds anything going wrong, he will ask explanation of the Council, the Senate or the constituent college; if no satisfactory explanation or proposal of amendment is forthcoming, he will issue instructions to which the Council, the Senate or the constituent college "shall give effect." This clause, be it noted, is in addition to the one relating to the Visitor which vests considerable power in the Chancellor. After this even Sir Reginald will find nothing wanting to make his autocracy complete in the new University!

### PROVINCIAL EXECUTIVES.

#### SIZE OF THE EXECUTIVE COUNCIL.

IT would appear that, in Madras and Bengal at any rate, the retention of two British members of the executive council is decided upon by Government, and since the Joint Select Committee has insisted upon an equality of European and Indian members, another Indian will have to be added to the existing one, so that the executive council in these presidencies will consist of two Indian and two European members. Thus, after the transfer of more than half the work to ministers, we shall have a council of four men to do the smaller half of the work which is now being done by three, and which, before 1909, was being done by two men. This is a scandalous waste of public money of which no Government which places the interests of the country above the vested interests of the officials will be guilty. It is not contended that the work has increased; indeed the authorities make no bones of their anxiety to have two European members on the council in order that these may act as an effective counterpoise not only against their Indian colleagues, but against the ministry. Look at what Sir John Hewett told the Select Committee: "An executive council of one official European and one non-official Indian is probably numerically sufficient for any province with a dual Government; but it is likely to leave the Governor very weak in the case of discussions about the preparation of the budget and generally when there is associated deliberation." The whole idea here is that Government should be able to maintain a balance between the executive councillors and the ministers, which means in plain English that the former should be in a position to

bear down the opposition of the latter when questions like the division of finance between the two halves of Government come up for settlement. Sir E. Colvin advocated the retention of the British members on the ground that, in his opinion, two European councillors were necessary for the purpose of securing the control of the executive over reserved subjects—here the witness had in mind the balance between the Indian and non-Indian executive councillors. Sir A. Cardew argued that two officials were necessary in the executive councils, because inexperienced ministers "will need all the assistance they can get from the trained officials who are to deliberate jointly with them." This also, it will be seen, is a variant of the same theme—that of maintaining what the officials consider an equipoise between Indian and European councillors on the one hand and between the executive council and the ministry on the other. There was not one official witness who tendered evidence before the Select Committee who maintained that, apart from the balance of power desiderated by the bureaucracy between the official and non-official elements in the Government, the mere ends of administration required a council of four members with two Europeans on it. Of course there would not be the slightest justification for such a course. Sir William Meyer told the Select Committee straight out that it would be "pure waste" to increase the size of the council, exactly at the time when its work had been considerably reduced. This policy would impose, as Mr. Bhupendranath Basu said, "an unnecessary and intolerable burden on the tax-payer," and Sir Archdale Earle, Sir T. Holderness and even Sir Verney Lovett agreed that normally the executive council should be composed of one Indian and one European member. There was such overwhelming evidence in favour of this view that the Joint Select Committee arrived at the same conclusion and expressed it in no unambiguous terms. No extraordinary circumstances are or indeed could be pleaded; and, therefore, the inference is irresistible that if the policy upon which Government seems to be intent is not wholly dictated by considerations of a balance of power, it could only be actuated in part by the desire to oblige the present incumbents in office, which would mean that with the Government the interests of public servants outweigh those of the public. As it has so happened in Bombay that the seniormost councillor has recently laid down the reins of his office, it is to be hoped that in this Presidency at any rate such a reckless waste of public money will not take place.

#### SALARIES OF MINISTERS.

If on one side there is a danger of official extravagance, there is on the other side a danger of popular extravagance. The ministers' salary is to be determined, under the Government of India Act, by the legislative council. The M.-C. Report had originally proposed that the power of fixing the salary of ministers should be vested in the Governor, and if the latter had fixed it on a lower scale than the

executive councillors' salary, it would naturally have been regarded as a slur. The Government of India receded even from the M.-C. Report and desired to make the position of ministers no better than that of clerks. This was naturally resented by the public and the demand was strongly pressed that both in status and power and emoluments the ministers must be on no inferior footing to that of the executive councillors. That demand has been conceded to the full by the Select Committee; the minister will now hold the same position as his official colleague, and the Governor has been deprived of the power of determining his salary. On the contrary it is provided that the salary will be the same with that of the executive councillor. But, recognising the equality of his position, the legislature has been granted the further right—it is no disability that has been imposed upon the minister—of fixing his salary within the limits of the councillor's salary. If his salary is now reduced it will be done not by the autocracy of the Governor, but by the democracy in the legislature, and this is as it should be. Our attitude to this question must now change with the wholesome change effected in the Act. If formerly we demanded identical pay it was because lower pay would have meant, if it had been fixed by the Governor, lower status, as then seemed to be the desire of the Government. But the Government of India have been beaten hollow in that matter, and a lowering of salary effected by the popular legislature will not be susceptible any longer of the depreciatory construction which it would have legitimately borne before. Our representatives too have clearly explained our real motive in insisting upon identical salary. For instance, Mr. C. P. Ramaswami Aiyar said: "The amount of salary was not the material point, ... The status and position of the minister ought to be exactly the same." This having been secured, we must consider the question of salary on its merits. There is no doubt among Indians that the executive councillor's salary is much too high. It follows then that minister's salary must undergo a sweeping reduction. The salary should not be so low as to scare people away; nor should it be so tempting as to make it in itself a prize to aim at. For it must be remembered that all our future ministers will not be Paranjpyes or Malavias to whom calumny cannot ascribe interested motives. And in determining our salary we must bear in mind the fact that emoluments alone are not the only motive power with men; a sense of power is an equally potent incentive, if we put the desire to do public good on one side for the moment. Ministers are everywhere paid smaller salaries than what men of their attainments would get in professions. Cabinet ministers in the United States get a little over Rs. 3,000 per month; and those in Japan get about Rs. 1,000 a month. Is there any reason why provincial ministers in India should get more than what Cabinet ministers get in Japan, house rent and allowances being duly provided for? We cannot conceive of any. No one

thinks in these countries of judging of a minister's position by the amount of his salary. Mr. Fisher does not occupy a lower position in the British Cabinet because the pay attached to his office is £2,000 annually while the Prime Minister and Secretaries get £5,000. The status of Lord Sinha as Indian Under-Secretary of State was not lower than that of an executive councillor in the provinces, because the former post carries a salary of £1,500 a year while the latter carries a salary of Rs. 64,000 a year. We want under home rule to make drastic reduction in the salaries of the high-grade officers and bring them into some sort of relation with India's economic position. What a moral force would our ministers wield if they themselves surrendered their high salaries! Instead of the ministers being regarded as of inferior status on that account, the executive councillors would have a guilty sense in their company, and whatever the ministers' personal feelings may be, the council must demand a large reduction of their salary. Sir Stanley Reed expressed himself "appalled at the expense" which would be incurred if executive councillors and ministers were paid at the present unconscionably high rates, and Mr. Lionel Curtis rightly reminded us that "the money (which will be spent by way of inordinately high salaries to ministers) will be deducted from the fund available for education and other transferred subjects." Is it right that the minister should divert even a single rupee from people's education merely for the sake of satisfying his sense of prestige, which is more fancied than real?

#### NUMBER OF MINISTERS.

Such a reduction of their salary would better enable us to have more ministers, and it is desirable to have more ministers than two. For we must bear in mind that the work which they will perform differs in kind from that done hitherto by executive councillors. Ministers have to shape their policy in accordance with public opinion, and it will be their business to create and mould public opinion as well as to be guided by it. Executive councillors concerned themselves very little with what people thought, but ministers cannot keep themselves in being unless supported by public opinion, and much of their time will be consumed in creating such opinion. Moreover, they have to frame schemes of expansion on new and untried lines and they will be able to do so adequately if they have charge of only one department. The initial difficulties which will beset the ministers are well set forth by Lord Meston in his Rede lecture at Cambridge.\* "In countries with an older political life," he said, "the electorate is practised in watching its own interests, in organizing public opinion and bringing it to bear on the legislature. In India a small section of public men have to work upon a perfectly raw electorate, to create public opinion before they can lead it, to take decisions and initiate policies with no defin-

\* "India at the Crossways." (Cambridge University Press.)

ed party behind them. This responsibility will be fastened upon them while they are handicapped by administrative inexperience, and uncertain of the grouping of discordant interests which will determine their tenure as parliamentary leaders. Even the commonplaces of political advance will thus assume difficulties of their own in India. . . . Their solution calls for the genius of the statesman as well as the adroitness of the politician." That is why Lord Selborne who presided over the Select Committee gave expression in Parliament to the belief that there will have to be three ministers in every province and four in some. He observed: The Lieutenant Governors think "that in their executive councils they could keep down the number of Indians chosen, as I have said, because they command the confidence of the legislative council (*i. e.* ministers). That is a perfectly idle dream. . . . Under this system, with the largely magnified field of governmental activity, it is quite idle to think that you can run the machine in the provinces with the same number of men that you have run up till now. You will have to increase them. It is not a question of one or two Indians, but in my judgment in no Government will there be less than three, and often four." It is of course evident that the more ministers we have, the more experience we shall get, and when at the beginning we shall have to undertake investigation in every department and plan future progress in unsettled conditions, it is essential that we should have more ministers.

### THE NEW ERA.

SIR M. VISVESVARAYA'S "Reconstructing India,"\* just to hand, is a remarkable book that ought to be studied with keen interest by every student of Indian administration as well as by those responsible statesmen who aspire to be at the helm of affairs in Indian politics to guide the destinies of our country under the Reform Act in the new régime. It is a very suggestive contribution to the solution of the problem of India's reconstruction in the immediate future. Sir M. Visvesvaraya's views on this subject are entitled to great weight on account of his administrative experience for a number of years in the service of the British Government as well as in a leading Indian State and his first-hand knowledge of the problem of reconstruction in foreign lands in which he has travelled on several occasions. The book seeks to indicate the avenues towards reconstruction opened out to us under the new dispensation and "attempts, in a constructive spirit, to outline a scheme of true national life, and for the high task of achievement invites co-operation from all parties." The author has a lively sense of the extensive changes made by the new Government of India Act, whose "spirit and intention is to prepare the country for full responsible government," and hence appeals to his fellow-countrymen "to remove at once every stumb-

ling-block from their path and to take the most complete advantage of the new opportunity."

The book covers a very wide range of topics. No important phase of the problem of reconstruction as it is bound to arise before an Indian administrator is left untouched. The political, administrative, economic and social aspects of the problem have received the author's consideration, and his views for the most part are such as to meet with general approval. The book is replete with suggestions of an eminently constructive character for the improvement of agriculture, expansion of education, trade and industries, development of communications, betterment of social conditions, and the question of finance. The hints thrown out in the book will prove an interesting reading to our executive councillors, Indian ministers and members of Indian legislatures.

In Chapter I headed "The Indian Problem" the author points out the essential difference between the problem of reconstruction as it will have to be faced in India and the one in western countries. "India, happily, has had no devastated cities to reconstruct, no ruined homesteads to restore and no sunken ships to replace," but "reconstruction on an extensive scale is more urgently needed in India than in other countries, because political, social and economic developments have been insufficiently considered for many years past, and because, in consequence of such neglect, the standard of living has reached a level far below the minimum recognized in civilized communities as necessary for decent existence." Therefore, the problem before the Indian statesmen is to place before the people a higher standard of living, to utilize India's man-power and material resources for national regeneration, to stimulate private initiative, to adapt foreign experience and useful institutions to Indian conditions. The pace of progress will be determined, as the author has rightly remarked, by "the forethought and vigour with which Indians apply themselves to the new task, their capacity for joint action, their ability to maintain harmonious relations between all races and communities and the co-operation which they will be able to secure between themselves and Government agencies."

In Chapter II which deals with "India in relation to progressive countries" the writer has collected some very important and interesting statistics which bring home to an Indian reader the deplorable backwardness and poverty of his country. The author has made special references to conditions in the Dominion of Canada and Japan, because they, in his opinion, are expected to be models for our future development.

Chapters III and IV deal with the political and administrative aspects of the problem of reconstruction. The author deplores the decision of the Joint Committee "that India is not yet ripe for a true federal system" for two reasons; first, because he thinks that full provincial autonomy is not possible unless the functions of the central Gov-

\* P. S. King & Sons. 7s. 6d. net.

ernment are limited to the administration of national affairs and intervention in provincial affairs is reduced to the lowest possible minimum; and, second, a federal system would have facilitated closer association of Indian States with the central Government. However desirable such a state of affairs would have been, it could not have been introduced under the present Act which is very limited in its scope and unless the Indian States themselves had manifested their readiness to establish, on the one hand, constitutional government within their territories and, on the other, to abide by the decisions of the federal chamber. Let us hope the Princes' Chamber which is to be inaugurated in February next will tackle this problem in a spirit of broad statesmanship and will spontaneously arrive at a decision to introduce reforms within their own territories and to avail themselves of the benefit of federation in the central Government.

In regard to the constitution of the executive councils, Sir M. Visvesvaraya hopes that the removal of the statutory limit will be utilized to increase the number of members of the councils. This suggestion may not find favour with many an Indian publicist. The author insists that "rapid Indianization of the personnel of the central Government is necessary to ensure the administration of affairs in consonance with Indian ideals and wishes" and that men, "acceptable to the Legislative Assembly" should alone be selected for such posts. In order to establish harmonious relations between the executive and the legislature, it is suggested "that the Governor-General should be guided by the wishes of the people's representatives, as in the self-governing Dominions;" he should seldom use his power of vetoing legislation, should not dissolve the chambers, unless advised by his councillors. The author suggests that the Indian legislature should take steps to make provision for the payment of salaries to its members as in the United Kingdom and other constitutionally governed countries. On account of the highly centralized character of the Government of India, it is suggested that the popular assembly should have a long annual session.

The author has devoted most attention to the problem of ensuring rapid development of the material and moral resources of the country and in this connection suggests the establishment of three ministries in the central Government, viz: (1) a Ministry of Reconstruction to deal the development of material resources; (2) a Ministry of Conservation to co-ordinate the efforts of departments and agencies concerned with material development; and (3) a Ministry of Labour and Civics devoted to the task of training the people for new occupations and for the opportunities afforded by the new powers conferred on them. Unless the Government of India give up their old and traditional methods of administration and take up the task of reconstruction on some such sound and modern lines, they will not be able to give a

good account of themselves before the statutory commission at the end of ten years.

The position of ministers and the formulation of a programme of provincial reconstruction are the two most important questions treated in chapter IV dealing with the provincial administration. If the members of the executive councils will afford all possible help and sympathy to the ministers and give them full scope for developing various departments transferred to the control of the legislature there can be no doubt that the pace of progress of the country will be rapid and sure. To secure efficient management of the various departments the author is of opinion that the number of executive councillors and ministers together should be raised to twelve at least in the major provinces, but the salaries of the ministers should not exceed Rs. 3000 per month and all the ministers need not occupy the same rank and status. There is bound to be a difference of opinion regarding this suggestion. Some may object to the increase in the number of members of the executive councils, some may insist on the reduction of the ministers' salary to half of what Sir M. Visvesvaraya proposes. Unless the total strength of the legislature is increased a good deal, it will be very difficult to select such a large number of well-qualified gentlemen to take up the work of the Cabinet ministers.

In the forefront of the reconstruction problems the author puts "the expansion of the urban population, the extension and improvement of educational facilities and economic development." Similarly, local bodies, he suggests, should be made completely self-governing, and powers of borrowing for local productive undertakings should be conferred on them. Large public works should be under national ownership and their management should be under public control. Systematic efforts should be made to spread the knowledge of civics and elementary economics in schools of all grades. In short, unlike Mr. Gandhi, the idea of the author is to bring within easy reach of even an ordinary Indian peasant all the comforts and conveniences of modern civilized life. For the achievement of success in this task both men and money are required. With regard to the first deficiency the author suggests that the provincial Governments should arrange to send deputations of local merchants, businessmen and educationists to countries like Canada, Japan and Australia to learn the technical processes and methods of development employed there." A number of committees and commissions composed of officials and non-officials should also be constituted to investigate different problems and submit their recommendations thereon. Much of the spade work of our national reconstruction will have to be undertaken after thorough inquiries in various matters which require reform and remodelling. With regard to the question of finance, which is treated in Chapter VI, the author remarks that the system of finance followed in India is highly prejudicial to

Indian interests. Improvements in this direction can be secured if all the Indian money would go back to India and would be available for expansion of Indian credit; if military expenditure is curtailed, if the defence organization of the country is entirely remodelled, if the high cost of administration is reduced and if new or neglected sources of revenues are rapidly developed. It will not, however, be possible to provide out of current revenues large sums for expenditure on education and industries. The author suggests that "a loan averaging about fifteen crores per annum be raised for these purposes during the next ten years." Unless such a drastic step is taken and large funds are kept at the disposal of provincial Governments, appreciable progress will not be ensured. We strongly recommend this book for deep study by everyone who wishes to take a hand in the development of India for which the Reform Act gives such splendid openings.

K. G. LIMAYE.

### CIVIL LIBERTY IN AMERICA.

CIVIL liberty is in a very bad way just now in the United States. In the abstract the American constitution is perfect, so far as providing guarantees in the fundamental law of the country against arbitrary inroads on constitutional liberty is concerned. In the concrete, however, this constitution can hardly be claimed to have made freedom more secure in America than it is in other countries where the rights of citizenship are not protected by a law placed above the caprices of the legislators. At present the United States Government is engaged in waging a regular "war" against Radicals in that country, setting at defiance almost every article of the constitution which is supposed to be a bulwark of civil liberty. We print below a report of a committee of eminent attorneys made after full inquiry. Their conclusions are supported by a mass of evidence which is attached to this report. The revelations made by them as to the lawless practices of high officers of the law would be unbelievable were they not made by men of unimpeachable integrity. Of the methods employed by the United States Government Judge George W. Anderson of Boston exclaimed from the Bench: "A more lawless proceeding it is hard to conceive. . . . I can hardly sit on the Bench as an American citizen and restrain my indignation. I view with horror such proceedings as this." And yet the violations of the constitution go on merrily all over the United States. The report, given below, makes gruesome reading. It is dated May, 1920.

For more than six months, we the undersigned lawyers, whose sworn duty it is to uphold the Constitution and Laws of the United States, have seen with growing apprehension the continued violation of that Constitution and breaking of those laws by the Department of Justice of the United States Government.

Under the guise of a campaign for the suppression of Radical activities, the office of the Attorney General, acting by its local agents throughout the country, and giving express instructions from Washington, has committed continual illegal acts. Wholesale arrests both of aliens and citizens have been made without warrant or any process of law; men and women have been jailed and held *incommunicado* without access of friends

or counsel; homes have been entered without search warrant and property seized and removed; other property has been wantonly destroyed; workmen and working women suspected of Radical views have been shamefully abused and maltreated. Agents of the Department of Justice have been introduced into Radical organisations for the purpose of informing upon their members or inciting them to activities; these agents have even been instructed from Washington to arrange meetings upon certain dates for the express object of facilitating wholesale raids and arrests. In support of these illegal acts, and to create sentiment in its favour, the Department of Justice has also constituted itself a propaganda bureau, and has sent to newspapers and magazines of this country quantities of material designed to excite public opinion against Radicals, all at the expense of the Government and outside the scope of the Attorney General's duties.

We make no argument in favour of any Radical doctrine as such, whether Socialist, Communist or Anarchist. No one of us belongs to any of these schools of thought. Nor do we now raise any question as to the constitutional protection of free speech and a free press. We are concerned solely with bringing to the attention of the American people the utterly illegal acts which have been committed by those charged with the highest duty of enforcing the laws—acts which have caused widespread suffering and unrest, have struck at the foundation of American free institutions, and have brought the name of our country into disrepute.

These acts may be grouped under the following heads:

#### 1. *Cruel and Unusual Punishments:*

The Eighth Amendment to the United States Constitution provides:

"Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Punishments of the utmost cruelty, and heretofore unthinkable in America, have become usual. Great numbers of persons arrested, both aliens and citizens, have been threatened, beaten with black-jacks, struck with fists, jailed under abominable conditions or actually tortured.

#### 2. *Arrests without Warrant.*

The Fourth Amendment to the Constitution provides:

"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."

Many hundreds of citizens and aliens alike have been arrested in wholesale raids, without warrants or pretence of warrants. They have then either been released, or have been detained in police stations or jails for indefinite lengths of time while warrants were being applied for. This practice of making mass raids and mass arrests without warrant has resulted directly from the instructions, both written and oral, issued by the Department of Justice at Washington.

#### 3. *Unreasonable Searches and Seizures:*

The Fourth Amendment has been quoted above.

In countless cases agents of the Department of Justice have entered the homes, offices, or



gathering places of persons suspected of Radical affiliations, and, without pretence of any search warrant, have seized and removed property belonging to them for use by the Department of Justice. In many of these raids property which could not be removed or was not useful to the Department, was intentionally smashed and destroyed.

#### 4. *Provocative Agents:*

We do not question the right of the Department of Justice to use its agents in the Bureau of Investigation to ascertain when the law is being violated. But the American people has never tolerated the use of under-cover provocative agents or *agents provocateurs*, such as have been familiar in old Russia or Spain. Such agents have been introduced by the Department of Justice into the Radical movements, have reached positions of influence therein, have occupied themselves with informing upon or instigating acts which might be declared criminal, and at the express direction of Washington have brought about meetings of Radicals in order to make possible wholesale arrests at such meetings.

#### 5. *Compelling Persons to be Witnesses against Themselves:*

The Fifth Amendment provides as follows:

"No person... shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property, without due process of law."

It has been the practice of the Department of Justice and its agents, after making illegal arrests without warrant, to question the accused person and to force admissions from him by terrorism, which admissions were subsequently to be used against him in deportation proceedings.

#### 3. *Propaganda by the Department of Justice:*

The legal functions of the Attorney General are: to advise the Government on questions of law, and to prosecute persons who have violated federal statutes. For the Attorney General to go into the field of propaganda against Radicals is a deliberate misuse of his office and a deliberate squandering of funds entrusted to him by Congress.

Since these illegal acts have been committed by the highest legal powers in the United States, there is no final appeal from them except to the conscience and condemnation of the American people. American institutions have not in fact been protected by the Attorney General's ruthless suppression. On the contrary those institutions have been seriously undermined, and revolutionary unrest has been vastly intensified. No organizations of Radicals acting through propaganda over the last six months could have created as much revolutionary sentiment in America as has been created by the acts of the Department of Justice itself.

Even were one to admit that there existed any serious "Red menace" before the Attorney General started his "unflinching war" against it, his campaign has been singularly fruitless. Out of the many thousands suspected by the Attorney General (he had already listed 60,000 by name and history on November 14, 1919, aliens and citizens) what do the figures show of net results? Prior to January 1, 1920, there were actually deported 263 persons. Since January 1 there have been actually deported 18 persons. Since January 1 there have been ordered deported an additional 529 persons, and warrants for 1,547 have been cancelled (after full hearings and consideration of the evidence) by Assistant Secretary of Labour Louis

F. Post, to whose courageous re-establishment of American Constitutional Law in deportation proceedings are due the attacks that have been made upon him. The Attorney General has consequently got rid of 810 alien suspects, which, on his own showing, leaves him at least 59,160 persons (alien and citizens) still to cope with.

It has always been the proud boast of America that this is a Government of laws and not of men. Our constitution and laws have been based on the simple elements of human nature. Free men cannot be driven and repressed; they must be led. Free men respect justice and follow truth, but arbitrary power they will oppose until the end of time. There is no danger of revolution so great as that created by suppression, by ruthlessness, and by deliberate violation of the simple rules of American law and American decency.

It is a fallacy to suppose that, any more than in the past, any servant of the people can safely arrogate to himself unlimited authority. To proceed upon such a supposition is to deny the fundamental American theory of the consent of the governed. Here is no question of a vague and threatened menace, but a present assault upon the most sacred principles of our constitutional liberty.

## HINDU LAW IN THE NEW ERA.\*

### THE JOINT FAMILY.

WE may at the outset remark that father and son could together form a joint family only in tracts governed by Mitakshara, but not in Bengal where Jimuta Vahan prevails. In Mitakshara tracts a son by his very birth becomes a coparcener with his father and therefore can hamper him in his enjoyment of the family property, but, under the Bengal law, the father is entitled to all property, whether ancestral or self-acquired. The result is that in Bengal a joint family consisting of father and his own sons is entirely unknown in law. In Mitakshara parts of the country, however, people representing two or even three generations could form a joint family. Thus a propositus, with his sons and grandsons living together is a joint family, and this fact gives rise to some very awkward questions in practice. The general rule is that any coparcener has the right of calling for a partition; yet it was held by a full Bench in Bombay that a son, though a coparcener in the whole family, is not entitled to call for a partition from his uncles unless his own father consents thereto. In this case the eminent legal luminary, the late Mr. Justice Telang, strongly dissented from his colleagues on the full Bench on rational principles, and latterly a full Bench of Allahabad and Benches in Calcutta and Madras have agreed with Justice Telang. Yet the Bombay High Court has not yet given up its unscientific view.

Our own view is that, as in Bengal, a son should not be considered a coparcener, and so he should have no right to call for partition during his father's life-time. A suit by a son against his father for partition sounds very awkward, but this could only be made impossible by declaring the father absolute master of his property.

This is, however, a minor grievance. Our objections to the joint family go far deeper. The institution of joint family is no special glory of the Hindu Law. That institution is rather a relic of barbarism than anything the latter-day Hindus may

\* Previous articles in this series

feel legitimate pride in. It must be remembered that all primal society was tribal, and all that the tribe acquired was held to belong to the whole tribe in common. The subsequent disruption of tribes into family groups marked a distinct step in evolution, but the common ownership remained an important element. From family groups to individual families was the next step, and the final step is the small joint family we daily meet with in Hindu society. In a sense Bengal Dayabhag is behind us in giving full patriarchal powers to the father, and we are in advance of it in our recognition of the rights of the sons as against the father. But in another sense Bengal may claim to be advanced in that a Bengali gentleman is the equal of any other gentleman in the world.

We must, therefore, not lose sight of the fact that the joint family system is an anachronism in the twentieth century and should be abolished as early as possible. The powers that the father or the manager of the joint family exercises over grown-up members of the family are a survival of a ruder age for which there is no parallel in modern civilization. The father or manager "could modify their personal condition at pleasure; he could give a wife to his son; he could give the grown-up son's daughter in marriage; he could transfer any son to another family by adoption." And yet the grown-up members must submit to be so governed by the manager, any chafing against such use of powers being considered a sheer sacrilege. One ceases to wonder at the Hindus quickly allowing themselves to be governed externally by an alien Government, when one finds that they all relish being governed internally, within their own families, by the eldest member. A lethargic habit of mind is thereby developed within the family, and every grown-up member is taught as it were to shirk his responsibilities, and to leave things to be done for him by the manager. All the thinking out and planning and acting is done only by the manager, while all the others are tamely to submit to his autocratic ways, or at the most to indulge themselves in mere grumbling against those ways; but these members rarely care to move and work. They rather like to have orders given to them by the manager which they slavishly obey. The joint family system is thus the in-olipient breeder of the slave psychology against which we latterly hear so many complaints. It is this outcome of the dependent habit or mood of mind that we condemn in the joint family. Once it has taken root it is hard to eradicate, and so there is no wonder that, even in our national concerns, we find the Hindus so wonderfully efficient in the passive duty of obeying orders issued by an authority external to themselves. We must lay the axe at the joint family system for this reason if for nothing else, and the sooner this is done and a robust frame of mind instilled into the minds of young people the better for the nation as a whole.

This dependent state of mind generated in the coparceners is unhappily still further encouraged by the view that the High Courts have taken of the meaning of the Mitakshara. The coparceners are supposed by them to be mere automatons, not only unwilling to think and act for themselves, but also legally incapable of such conscious action, exactly as if they were idiots or minors. The result is that if any coparcener chose to act for himself, the High Courts have declared his actions void and nugatory. They have repeatedly held that an ordinary member in a coparcenary has no right to transfer his share of the family property. The Privy Council have thus laid down the law for the Mitakshara and Mithila

United Provinces and Oudh and the Punjab. The logical corollary follows that what a coparcener cannot alien to a stranger, he cannot equally alien to one of his coparceners. (16 All. 369.)

This will clearly show that in all the above mentioned provinces an ordinary coparcener is reduced to the position of a lunatic or a minor, who is unable to deal with his own property. He has as it were sold himself body and soul to the manager. The Privy Council have in a recent case (19 Bom. bay L. R. 646) laid down very clearly 'that where the property of a Hindu joint family under the Mitakshara is mortgaged by one of the members (who is not the manager) the general law is that the mortgage is void, and is *not valid even to the extent of the mortgage's interest*. Again they held at 19 Bombay Law Reporter 498 in equally clear and broad terms that, "under the law of the Mitakshara, the joint family property, which is owned by all the members of the family as coparceners, cannot be the subject of a gift sale or mortgage by any coparcener except with the consent, express or implied, of all the other coparceners." No doubt the Bombay High Court is still battling against the above broad decision of the Privy Council on the ground that the stream of decisions in Bombay has been in a contrary direction, *vide per Justice Shah* 22 Bombay Law Reporter 123, but there is also no doubt that the Bombay High Court will ultimately have to yield to the authoritative view propounded by the Privy Council. And even the stand taken by the Bombay High Court is not for conceding the right *absolutely* to a coparcener, but extends only to *transfers for consideration*. The Bombay High Court is against the right to gift or devise in any case.

Let us not be misunderstood. We are quite willing to admit that the views stated by the Privy Council are the logical outcome of the idea of joint family as conceived by the Mitakshara. No doubt the Mitakshara itself contains nothing upon this point, but Vyasa who is a sage of the Mitakshara school states in explicit terms that, "a simple coparcener ought not, without the consent of his coparcener, to sell or give away immoveable property of any sort which the family hold in coparcenary." Our concern is to find out what effect such a doctrine necessarily has on the mind of the coparceners, and we are quite sure that they are reduced as it were to the position of idiots or minors (or caged lions if you so prefer it), whose only concern is to eat what the manager supplies to them and sit quiet. All incentive to thinking and acting is absolutely taken away from them. Unfortunately the Mitakshara prevails almost over the whole of India excepting Bengal, and so we earnestly desire all of us to be free from such thralldom and to be able to claim the right of self-determination for all our manhood, as regards our own property. If we do not assert this right in our small concerns, with what face could we clamour for it in big ones?

It may be argued that the Mitakshara does not compel a man to live in the joint family, but only states his position while he so lives. No doubt a man can get separated and thus be free from the thralldom of the manager. But separation brings in its train the cessation of co-operation between brother and brother, and deprives him of the benefits of the maxim "union is strength." That system would be ideal which combines the benefits of union with the advantages of self-determination. Such an ideal has been reached in the Jimuta Vahan. There not only is the father absolute owner, unhampered by his sons, but the coparceners themselves are unhampered by each

other; for, in a Dayabhag joint family, any coparcener is absolutely at liberty to alien his share by sale, mortgage, gift or devise during the continuance of the coparcenary. Again, while a Mitakshara minor coparcener can only claim partition upon special grounds, the Dayabhag minor may do so as of right.

But by far the worst evil of the Mitakshara concept of coparcenary has yet to be noticed, and it is of such a disastrous nature that that alone would be enough to make us wish to destroy the Mitakshara coparcenary at once. This evil results from the concept of male survivorship inseparably connected with a Mitakshara joint family. The Mitakshara is pre-eminently unjust to women in not recognizing them as coparceners at all. They are mere chattel, mere dependants or hangers on, unfit to be spoken of in the same breath with the males. A male stripling of a few months has rights in the coparcenary as a coparcener, but the woman, no matter of what age or qualities, is a nonentity. She is a mere cypher. The coparcenary is restricted to males only. The results which flow from this concept are obviously disastrous to female folk. If four brothers form a coparcenary and one of them dies leaving a widow or daughter (but no son), the surviving three brothers wax fat over the dead brother by what is known as their right of survivorship, and the widow and daughter are absolutely ignored. They could claim only maintenance exactly as if they were mere cattle in the cow-pen. So long as their husband or father was alive, they were properly looked after by him. No doubt even during his life-time they were not themselves coparceners, but they had a powerful lever in him wherewith they could move the whole coparcenary. If they so wished, they could prevail upon him to ask for partition and get many other things done through him. So during his life-time they were respected through fear, if not actually honoured for their own intrinsic worth. But with the death of their man, that lever is wrested from their hands; their teeth and claws are as it were drawn, and they sink into the position of veritable cattle whose only right is a mouthful of food.

The greatest bane, therefore, of the joint family under Mitakshara is the absolute contempt shown to womanhood. The natural consequence follows. When a man dies his widow must succumb, unless she could seize another lever in the form of a male. This she could get only in her own son, or if she has none she could create one by adoption. But we have already seen how, for such adoption, she has to go on her knees and beg the male surviving coparceners for permission to adopt, and this permission is invariably withheld.

A sonless coparcener must, therefore, always remember that, as regards the comfort of his wife after him, he must be prepared to let her be turned back into mere cattle. For as soon as he disappears there is none to take care of her. If he leaves a son he might be expected to take care of his mother, but by herself she would be absolutely helpless. If that son should die, woe to her still further. A man imbued with modern ideas of the rights of women and the needs of their comfort would thus be standing at the mouth of a volcano, so long as he continues to be a member of a Mitakshara coparcenary. Nobody could know when by his own death that volcano would start emitting red-hot lava to consume his beloved wife. Hindu gentlemen who wish to live under this joint family system must plead either ignorance of this dangerous legal position in relation to their womenfolk, or must acquiesce in the fate that is to

befall them on their own death. There is no *via media*.

It goes without saying that a system that consigns all womenfolk to the position of cattle is a barbaric system unfit for the present times. We sincerely admire Jimuta Vahan who had the true sense of chivalry to recognise the worth of women and to translate that sense into his concept of the joint family. For under his Dayabhag women are as much coparceners as men. They are not mere dependants. When their husbands die, they are still coparceners in their own right and can even claim actual partition from their husbands' brothers. That being so, there is no right of survivorship available to the brothers to grow fat upon the death of one of themselves. The widows could enjoy all the proprietary rights exactly as their own husbands would have enjoyed. It is only after the widow's death that the surviving brothers could get the property.

The concept of the joint family under the Dayabhag is thus far superior to that of the Mitakshara in important particulars. There the father is absolute owner, each coparcener can alien his share in any way he likes, and even women are coparceners, and there is no right of survivorship. So if, as we strongly recommend, the joint family is not going to be abolished wholesale from the Hindu Law, the whole of India must at any rate immediately forswear the Mitakshara conception of it, and adopt Jimuta Vahan as their guide in this matter.

Before concluding we must sound a note of warning to Hindu gentlemen who may be disposed to make light of the evils of the joint family in the comfortable idea that they themselves have either no brothers or have got themselves partitioned from them already. They will be sadly mistaken in entertaining such an idea. The joint family is not so easily destroyed. It is a hydra-headed monster that raises up new heads again and again. Its ramifications are so wide-reaching that hardly one per cent. of Hindus could be said to have escaped from its clutches. As soon as a son is born to a man who has got himself partitioned from his brothers, a new joint family automatically starts up again and all the evils of the joint family system follow in its train. It is only the man who has no son at all and who has separated from his brothers, that can regard himself as not being subject to the evils of the joint family. Therefore a Hindu needs as much to guard his wife from his own son as from his brothers. Whoever be his coparceners—brothers or sons—his widow's lot, from the strict legal point of view, will hardly be any better than that of cattle as soon as he dies. Therefore, it is absolutely necessary to destroy altogether the Mitakshara concept of the joint family if one wants to be sure of the position of one's widow.

LEX.

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