

# THE INDIAN CONSTITUTION

BY

V. S. KRISHNASWAMI, M.A.

MADRAS.

1933

[Price 2-4-0

*All Rights Reserved by the Author*

DEDICATED

to

MY FATHER

as a token of

my sincere affection and respect

to his

Plain Living And High Thinking.

## PREFACE.

---

A study of the Indian Constitution includes a study of the constitutional history of India since the advent of the East India Company. I have tried to bring out in this book the salient features of the constitutional developments in India up to the present day. The nucleus of Indian Constitutional History is the Regulating Act which introduced for the first time a form of Government for the Company's first acquisitions. Beginning from the Regulating Act I have concluded with the Third Round Table Conference which is the latest development as regards proposals for change in the present Indian Constitution. I feel therefore that I have in the course of this small and handy book covered the entire ground of the Indian Constitution.

In particular, I have got to mention three important treatises to which any writer on the Indian Constitution has necessarily to refer. Ilbert's "Government of India" is perhaps the standard treatise on the historical development of the Indian Constitution till 1909. Cowell's "Courts and Legislative authorities in India" is also important as his Tagore Law lectures give an excellent account of the Judiciary in India. Lastly the Simon Commission Report Vol. 1

is a mine of information regarding the working of the constitution as is obtained since the Government of India Act of 1919.

I have got to express my indebtedness to a number of my friends who helped me in the preparation of this book. Mr. V. S. Chinnaswamy, B.A., B.L., was kind enough to give me a number of valuable suggestions from his experience as a journalist. Messrs. T. S. Ramanujam, M.A., LL. B. (London) and V. Ramaswami, M.A., B.L., rendered me great assistance in completing my book to serve as a guide to students of Indian Constitutional Law. I am also thankful to my friends Messrs. K. V. Narasimhan, M.A., and S. Ramachandran, B.A., Dip. (Econ.) who patiently went through the proofs and prepared the index.

Madras, }  
Dated 7-2-'33. }

V. S. K.

---

## CONTENTS

CHAPTER	PAGE
I THE TRADING PERIOD OF THE EAST INDIA COMPANY ...	1
II THE SECOND PERIOD—THE REGULATING ACT AND THE AMENDING ACT ...	7
III THE SECOND PERIOD—CONTINUED / ...	16
IV THE THIRD PERIOD—1858—1919 ...	30
V THE MONTAGUE-CHELMSFORD REFORMS ...	48
VI THE WORKING OF THE INDIAN CONSTITUTION—HOME GOVERNMENT ...	58
VII THE GOVERNMENT OF INDIA—THE VICEROY AND THE GOVERNOR-GENERAL ...	70
VIII THE GOVERNMENT OF INDIA—CENTRAL GOVERNMENT ...	81
IX THE CENTRAL LEGISLATURE ...	99
X PROVINCIAL LEGISLATURES ...	112
XI THE PROVINCIAL EXECUTIVE ...	125
XII THE FINANCIAL RELATIONS BETWEEN THE GOVERNMENT OF INDIA AND THE PROVINCIAL GOVERNMENTS ...	138
XIII LOCAL SELF-GOVERNMENT ...	150
XIV THE HISTORY OF THE JUDICIAL INSTITUTIONS PRIOR TO THE INTRODUCTION OF THE HIGH COURTS ...	159
XV THE EXISTING JUDICIAL SYSTEM ...	169
XVI LEADING CASES IN INDIAN CONSTITUTIONAL LAW ...	193
XVII INDIA IN THE MELTING POT ...	207
APPENDIX ...	214
INDEX ...	227

# THE INDIAN CONSTITUTION

## CHAPTER I

### THE TRADING PERIOD OF THE EAST INDIA COMPANY.

The history of constitutional developments in India may be broadly divided into four periods.

They are:—

1. The Trading period which dates from 1600<sup>1</sup> to 1765 A. D.
2. The period which marks the emergence of the East India Company as a territorial sovereign and its disappearance as such, which dates from 1765 to 1858.
3. The period of rule by the Crown dating from 1858 to 1918.
4. Lastly the period of constitutional devolution of power from British bureaucracy to Indian democracy dating from 1919 onwards.

### THE FIRST PERIOD (1600—1765.)

During the first period, the East India Company were primarily traders. They depended for their trading privileges on the Charters of the English Crown and in India, on the concessions granted by the Mogul Emperor and the local Indian Rulers.

On the 31st December, 1600, Queen Elizabeth granted a charter to the Earl of Cumberland and over 200 London merchants to trade by sea, with all countries, from the Cape of Good Hope to the Straits of

Magellan for 15 years. The Earl and his associates were incorporated in the name of the "Governor and Company of Merchants of London, trading into the East Indies." The points of constitutional interest in the Charter of Elizabeth are the constitution of the Company, its privileges, and its legislative powers.

The only peculiar feature to be noted as regards the constitution of the Company was that it belonged to the class of companies known as Regulated Companies. The members of such a Company were subject to certain common regulations and were entitled to certain common privileges, but each of them traded on his own separate capital, and there was no joint stock. The trading privileges of the East India Company were reserved to the members, their sons at 21 and their apprentices, factors, and servants.

The chief privilege of the Company was the exclusive right of trading between the Cape of Good Hope and the Straits of Magellan. In other words the Company acquired a monopoly of trade between these geographical limits. It was not until the year 1693 that the validity of granting such a monopoly was constitutionally questioned (the affair of the Red Bridge; the East India Company *v.* Sandys). But such monopolies were quite in accordance with the ideas and conceptions of freedom of trade of the time.

So far as legislative powers were concerned, they were empowered to hold a court or general assembly and to make such laws and regulations for the better advancement of their affairs and for the discipline and government of their own factors, masters, mariners,



### THE TRADING PERIOD OF THE EAST INDIA COMPANY 3

and other officers, apprentices and servants, as were reasonable and not contrary to English law and customs. The power of punishing by fine or imprisonment was specially included.

The period between 1600 and 1612 may be called the period of separate voyages. Each member contributed separately to the expense of each voyage and reaped the whole profits of his subscription. After 1612 the subscribers threw their subscriptions into a "joint stock" and thus converted themselves from a regulated company to a joint stock company. However the notions of the joint stock company of that time were widely different from modern conceptions of joint stock companies.

Of a series of Charters issued after 1612, the Charter of 1661 issued by Charles II is of constitutional interest. It conferred new and important privileges on the Company. The joint stock principle was recognised by giving each member one vote for every £500 subscribed by him to the Company's stock. In addition it conceded to them wide powers over their subjects in the East, servants and others; allowed them to have ships of war, munitions and forts; and permitted them to make war and peace with non-Christian subjects.

The Company had no political power whatever until in 1669 Charles II granted to them the Island of Bombay, over which the Company acquired administrative authority. The Company had no authority in other parts of India and in return for the trading privileges granted to them by the Mogul Emperor and local Rulers, they paid tributes to them. In 1678 we

find the beginnings of administration of justice by the Company in India. The Governor and his council at Madras held regular courts to hear and decide petty cases.

The Charter of 1683 authorised the Company to set up admiralty courts which could confiscate the ships and goods of all interlopers. The matter was fought out first in the Law Courts (East India Company v. Sandys).

The interval between 1692 and 1703 is of historical interest for the following reasons :—

A new Company sprang up in 1692 and continued attacking the privilege of the monopoly of trade of the old Company, a monopoly which was declared illegal in 1693 by a Parliamentary resolution. After 1693 the New Company was formed in the following manner.

“Mr. Montague, the then Chancellor of the Exchequer, wanted two millions to extricate the State from its financial embarrassments. That sum, he proposed to raise by a loan at 8 per cent. The lenders might be either individuals or corporations, but they were all, individuals and corporations, to be united in a new corporation, which was to be called the General Society. Every member of the General Society, whether individual or corporation, might trade separately with India to an extent not exceeding the amount which that member had advanced to the Government. But all the members or any of them might if they so thought fit, give up the privilege of trading separately, and unite themselves under a Royal Charter for the purpose of trading in common. Thus the General Society was, by its original constitution a regulated company; but it

was provided that either the whole Society or any part of it might become a joint stock company."

The Charters granted under Act of 1698 incorporated the General Society as a regulated company and most of the subscribers to the General Society as a joint stock company under the name of "The English Company trading to the East Indies." The constitution of this company was similar to that of the old company. The New Company could make bye-laws and ordinances and enjoyed other privileges like the Old Company.

A strange difficulty arose soon. It was found that the Old Company had captured the New Company by subscribing a major portion of the capital of the New Company. This led to a climax. Both companies were soon convinced that they must come to an understanding and amalgamate.

The amalgamation of the Companies was effected in 1702 through the mediation of Lord Godolphin and by means of an Indenture Tripartite to which Queen Anne and the two Companies were parties and which embodied a scheme for equalizing the capital of the two Companies and for combining their stocks. The amalgamated Companies carried on their trade in the name of 'The United Company of Merchants of England Trading to the East Indies.' In spite of this coalition, difficulties arose in carrying out the arrangement of 1702 and it became necessary to look to Parliament for assistance. The assistance was given after requiring from the English Company a further loan of nearly a million sterling. In consideration of this advance the privileges of the Company were continued to 1726 and Lord

Godolphin was asked to cement the differences that gave difficulties. Lord Godolphin's award was given in 1708 and in 1709 the Companies terminated their separate existence.

The period between 1708 and 1765 from the point of view of constitutional development may be passed over. It might be noted that in 1726 municipalities were established in Calcutta, Bombay, and Madras, and Mayors' and other courts were set up in these places. The Governor and the five senior members of the councils were to be Justices of the Peace and were to hold Quarter Sessions four times in the year with jurisdiction over all offences except high treason.

When in 1759, the Twenty Four Parganas and in 1760, Burdwan, Midnapore and Chittagong were ceded to the Company by the Nawab of Bengal to be held and administered under the sovereignty of the Mogul Emperor and subject to payment of revenue, the Company acquired more power than mere trading privileges. The grant of the Diwani in 1765 marks the dawn of the period of territorial sovereignty of the East India Company. The Company became more or less the *de facto* sovereign over Bengal, Bihar and Orissa, with a nominal submission to the Mogul Emperor.

---

## CHAPTER II

### THE SECOND PERIOD—THE REGULATING ACT AND THE AMENDING ACT

The second period marks an important phase of the history of the East India Company when they gradually threw off their trading cloak and emerged as a territorial sovereign. Once the Company began to taste the powers of territorial sovereignty, they rapidly increased their territorial possessions by conquests and annexations, by confiscations and treaty arrangements with Native Rulers, so that by 1856 nearly the whole of India and Burma came under their authority. Gradually, beginning with the Regulating Act, we find Parliamentary control and interference steadily increasing, until in 1858 the Crown took direct control of its Indian possessions.

**Grant of the Diwani and after:**—It was in 1765 that Shah Alam granted the Diwani or the fiscal administration of Bengal, Bihar, and Orissa. The grant of the Diwani increased the authority of the Governor-in-Council of Fort William. The collection of revenue and the administration of civil justice were transferred to him, while the Nizamath department of police and criminal justice remained with the Nawab,—an arrangement known as the double Government of the Nawab and the Company. At first the collection of revenue was left in the hands of the Indian officers of the Nawab, subject to the indifferent supervision of the Governor and his English officers.

The great events of 1765 produced immediate results in England. The Directors in England thought they had struck a gold mine when the Diwani was granted. They raised the dividend from 10 to 12 per cent. when as a matter of fact their financial position was actually in jeopardy.

At the same time the Government of Bengal was frightfully stained with corruption. The officers of the Company traded on their own accounts and by bribery and corruption amassed large fortunes and "The Indian Nabobs," as they were called, when they returned to England, were the Fords and Rockefellers of the times. This gave rise to public criticism in England and moreover "constitutional questions were also raised as to the right of a trading company to acquire in its own account powers of territorial sovereignty." The intervention of Parliament was demanded.

These evils were exposed by committees of Parliament that were appointed to enquire into the affairs of the Company. In spite of certain changes produced by legislation on the recommendations of those committees, the pecuniary embarrassments of the Company did not come to light and the Directors went on declaring dividends at the rate of 12 and 12½ per cent. At last the crash came. In 1772 the Company found itself on the verge of bankruptcy and approached Lord North's Government for a loan of a million pounds sterling. Lord North took advantage of this situation to introduce radical changes of governing the Company's Indian possessions.

Two acts were passed in 1773. By one of these the Ministers met the company's financial embarrassments. The other was that, commonly known as the Regulating Act.

**Constitution of the Company before the Act was passed:**—In England the Company was governed by the Charter of 1698, slightly modified later by legislation of 1767. There was a Court of Directors and a General Court of Proprietors. Every holder of £500 stock had a vote in the Court of Proprietors but the possession of £2,000 stock was the qualification for a Director and the whole of them were re-elected every year.

In India, the Governors and Councils of the three chief Settlements or Presidencies of the Company were independent of each other and absolute within their respective limits, subject only to the distant and intermittent supervision of the Directors in England. Each Governor had with him a large Council of 12 to 16 senior servants of the Company, who were also the heads of subordinate factories. The Government of the Presidency was vested in the Governor and his Council jointly and everything was decided by the majority vote.

At the Presidency towns, Civil Justice was administered in the Mayors' Courts and Courts of Request, Criminal Justice by the Justices of the Peace in the Petty and Quarter Sessions. In 1771, the Directors having resolved to stand forth as diwan, directed the Governor-in-Council of Fort William to undertake the Government of the Diwani territories through the agency of his own English servants. In pursuance of

this direction, a Board of Revenue was created consisting of the Governor and members of the Council of Fort William and the Treasury was removed from Moorshe-  
dabad to Calcutta. The supervisors of the revenue be-  
came the 'Collectors' and their Indian assistants were  
styled the "Diwans". Provincial courts were established  
in each collectorship, one called the Diwani or the Civil  
Court and the other Fanjdari or the Criminal Court.  
Superior Courts were established at the chief seat of  
Government called the Sadr Diwani Adalat and the Sadr  
Nizamat Adalat. These Courts derived their jurisdic-  
tion and authority from the Mogul Emperor. They  
were the Company's courts, not the King's courts.

**Provisions of the Regulating Act :—**(1) By the  
Regulating Act the qualification to vote in the Court of  
Proprietors was raised from 500 to £ 1,000 and was  
restricted to those who had their stock for twelve  
months. The Directors instead of being annually  
elected, were to sit for four years, a quarter of their  
number being annually renewed.

(2) The Civil and military Government of Bengal,  
Bihar and Orissa was vested in a Governor-General and  
four Councillors. They were named in the Act and  
they were to hold office for five years and were not re-  
movable in the mean time, except by the King on the  
representation of the Court of Directors. By the Act,  
the supremacy of the Bengal Presidency over the  
Madras and Bombay Presidencies was definitely declared.  
The Governor-General and Council were to be governed  
by the majority vote and the Governor-General had a  
casting vote.



THE REGULATING ACT AND THE AMENDING ACT 11

(3) Liberal salaries were provided for the responsible servants of the Company, so that they might not be tempted to take bribes or trade privately.

(4) The Governor-General and his Council were to act under the orders of the Court of Directors and keep them constantly informed of all matters relating to the interests of the Company. The Court of Directors in turn were required to submit to the Treasury all copies concerning the management of the Company's revenue, within fourteen days after receiving particulars from the Governor-General and Council.

(5) Far more important than the changes above mentioned introduced by the Act, was the establishment by the Crown of a Supreme Court at Fort William consisting of a Chief Justice and 3 other Judges who were to be barristers of at least five years' standing. Civil, Criminal, Admiralty and Ecclesiastical jurisdiction was conferred on the Supreme Court. The Court was declared to be at all times a Court of Record and Court of Oyer and Terminer and Jail delivery in and for the town of Calcutta and the factory of Fort William and the factories subordinate thereto. And it was to have "full power and authority to hear and determine all complaints against any of His Majesty's subjects for crimes, misdemeanours, or oppressions and also to entertain, hear and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Bihar and Orissa and any suit, action or complaint against any person employed by or in the service of the company or any of His Majesty's subjects."

The Governor-General and Council were exempt from the jurisdiction of the Supreme Court to hear or determine any indictment or information against them for any offence, not being treason or felony and further they could not be arrested or imprisoned in any suit or action in the Supreme Court.

So far as the native inhabitants of Bengal, Bihar and Orissa were concerned, suits might be filed against them in the Supreme Court with their consent. An appeal against the order or decision of the Supreme Court was to lie to the King-in-Council in England.

(6) Another important provision was the Governor-General and Council were to have power "to make regulations for the good order and civil government of the possessions of the Company." The Regulations so framed were to be registered and published in the Supreme Court with the assent of the Court subject to rejection by the King-in-Council.

**Defects of the Act:—**The Regulating Act was soon found to contain many defects of a grave and serious nature. They were:—

(1) The constitution of the Council:—As was pointed out, the Council contained four members and the proceedings of the Council were determined by the majority vote, with a casting vote in the hands of the President. In the regime of Warren Hastings, he found in the first two years, he was rendered absolutely powerless and thwarted at every instant by a majority against him. This seriously undermined the position of the Governor-General.

(2) The control of the Governor-General and Council over the other provinces was very ineffective as was evident by the wars waged with the Mahrattas and Hyder by the Bombay and Madras Governments.

(3) But the most serious defect in the Act was with regards to the Supreme Court. It has been pointed out that Warren Hastings had established provincial courts in each district with final appellate jurisdiction if the Governor-General and Council. The precise relation between the Supreme Court and the Company's courts was not touched at all in the Act. The authority of the Delhi Emperor was formally recognised by the Company and although the Delhi Emperor was a mere figure head, the Company could breathe as much life as possible into the figure head. Thus, on the one hand the Supreme Court claimed to have authority, as it was established by Royal Charter to hear appeals against the highest Court of the Company. The Governor-General-in-Council, on the other hand, evaded the restrictions of the Act and began to pass regulations for the mofussil Courts without submitting them to the Supreme Court for approval and registration. Accordingly, when in 1780 the Governor-General-in-Council passed some regulations and in 1781 revised and codified all the previous regulations, he purported to do so under the powers which he inherited from the Mogul Emperor. The Supreme Court refused to recognise them.

Further the Supreme Court claimed jurisdiction over the native population. The term "British Subject" without any proper explanation gave room to construe the term very widely by the Supreme Court. The

quarrel on this point between the Supreme Court and the Supreme Council culminated in what was known as the Cossijurah case, in which the Sheriff and his officers while attempting to execute a writ on a Zamindar were driven away by the Company's sepoys. The action of the Council was not disapproved by authorities in England, and that meant a discomfiture to the Supreme Court.

Nextly, the jurisdiction of the Supreme Court over the English and Native officers in matters of revenue gave rise to bitter differences.

Lastly, the right claimed by the Supreme Court to try actions against the judicial officers of the Company for acts done in the execution of what they believed, or said they believed, to be their legal duty gave rise to another serious difference. The question arose in the Patna case.

Thus these were the serious defects in the Regulating Act which led to difficulties, but at the same time the Act undoubtedly marks an important stage in the administration of the Company.

**The Amending Act of 1781:**—Some of the questions which created difficulties on account of the defects of the Regulating Act were settled after a Parliamentary Enquiry by the Amending Act of 1781.

(1) The Governor-General and Council of Bengal were not to be subject, jointly or severally to the jurisdiction of the Supreme Court for any act counselled, ordered, or done by them in their public capacity. This exemption did not apply to orders affecting British subjects.

(2) The Supreme Court was definitely deprived of any power to interfere with matters concerning revenue and its collection by the Company's officers.

(3) The appellate jurisdiction of the Governor-General and Council in provincial cases was recognised and confirmed and an appeal against their decision was to lie to the King in Council.

(4) The Act of 1781 contained a provision which marks a phase in the history of Indian legislation. The Governor-General and Council were empowered to frame regulations from time to time for the provincial Courts and Councils. Copies of the regulations were to be sent to the Secretary of State and the Court of Directors. These regulations were subject to disallowance or cancellation by the King in Council but they were to remain in force unless disallowed within two years. The regulations made by the Governor-General and Council were not required to be registered in the Supreme Court.

Thus several changes were made by the Amending Act to remedy the defects of the Regulating Act.

---

## CHAPTER III

### THE SECOND PERIOD—*continued*

We shall divide our course of study of the 2nd period into two broad divisions—*viz.*, (a) the powers of the Governor-General-in-Council and the local Governors in Council on the executive side. (b) the legislative powers of the Governor-General-in-Council and the local Governors in Council during the 2nd period. This method of division will serve to clarify ideas and also give a succinct idea of the development of Indian Legislation apart from the executive powers of the Government. A mass of details can be sifted and studied more methodically and further as the 3rd period and 4th periods aim at greater demarcation of the executive and legislative machinery, the continuity of the thread of our study will be maintained unbroken.

*The powers of the Governor-General-in-Council and local Governors in Council on the executive side.*

It has already been noted that before the passing of the Regulating Act, the Governors and Councils of the three presidencies were independent of each other and exercised their powers absolutely. The grant of the Diwani increased the authority of the Governor in Council of Fort William and the Company got the right of collection of revenues and the power of administering civil justice, while the Nizamuth Department of Police and Criminal Justice remained with the Nawab of Bengal. In 1771 the Directors resolved to stand

forth as Diwan and the administration of the Diwani Department passed into the hands of the English officers of the Company. Warren Hastings after the resolution of the Company to stand forth as Diwan, re-organised the whole system of revenue collection, and administration of justice, established revenue councils, set up civil and criminal Courts throughout the Diwani territory.

*After the Regulating Act.*

The Regulating Act, we have seen, appointed a Governor-General and a Council of four members and a separate Supreme Court was established by Charter of the King. The whole Government of Fort William and the Diwani territory of Bengal, Bihar, and Orissa was vested in the hands of the Governor-General and his Council. Further, we have seen that the Governor-General-in-Council had superintending authority over the other Presidencies by the Regulating Act and how this superintending authority proved ineffective. We have also noted in the preceding chapter the conflicts, that arose between the Supreme Court and the Governor-General-in-Council, and how far the defects of the Regulating Act were remedied to a great extent by the Amending Act of 1781. The Amending Act as has already been seen, while retaining the dependence of the Governor-General on the vote of his Council, made the Governor-General and his Council free from the jurisdiction of the Supreme Court in all matters counselled, ordered, or done by them in their official capacity, except in the case of orders affecting British subjects.

The number of the Governor-General's Executive Council was reduced to three by Pitt's India Act, of whom the Commander-in-chief was required to be one. Thus the Governor-General's position was strengthened by the reduction in the Executive Council. The deadlocks which were harassing Warren Hastings could be avoided by this wise move.

The same plan of Government was extended to the other presidencies of Madras and Bombay. The Governor's Council consisted of three members. But the superintending authority of the Governor-General-in-Council was defined more clearly. In transactions with Indian Rulers, as well as in matters relating to war, peace, or revenue, the local Governors and Councils were placed under the control of the Governor-General-in-Council, without whose permission nothing should be done. We have also seen the formation of the Board of Control and the Committee of Secrecy by the Pitt's India Act.

In 1786 an Act was passed which gave the Governor-General very wide powers. It empowered the Governor-General in special cases to over-ride the majority of his Council and act on his own responsibility. This Act was passed for the benefit of Lord Cornwallis who was appointed the Commander-in-chief of the Company's forces, as well as the Governor-General of Bengal. This over-riding power armed the Governor-General with an extraordinary weapon which marked him as real a head of the Government, as an independent ruler. But this power has rarely been used though it continues to the present day. The Governor-General having thus been



placed in a pedestal of power and importance, the Council has always tried to follow his wishes. The exercise of this power in 1879 by Lord Lytton to abolish partially the import duty on English cotton goods is a noteworthy instance. With the introduction of the Portfolio system, there is very little room for difference of opinion between the Governor-General and his Council, as the work of the Executive Government has become separated and put in sole charge of each of the members of the Executive Council and only the most important matters are referred to the Governor-General or dealt by the whole Council.

Until the passing of the Charter Act of 1833 the structure of the Executive Government remained unaltered after 1786. No important material alteration was made in the system of the then existing Executive Government of India by the Charter Act of 1833. Only it stressed and effected the unification and centralization of the whole government of India. But the Act is important, because for the first time the legislative function of the Governor-General-in-Council was differentiated purely from his executive function. Thus the civil and military Government was expressly vested in the Governor-General and his Council, who were to be styled as "The Governor-General of India in Council" and this Council was increased by the addition of a fourth member called the Legislative or Law Member, who was not to act as a Member of Council except for legislative purposes. Thus when the Governor-General sat in Council for discussing legislative measures, the Governor-General-in-Council was said to be the Governor-

General in Legislative Council. In order to enable the Governor-General to have proper control over the other presidencies, the unwieldy presidency of Bengal was to be divided into two presidencies each under a Governor and Council, but this provision was suspended by the Act of 1835; in its stead a Lieut. Governor was appointed over the North-West Provinces. Bengal remained under the administration of the Governor General-in-Council till 1834. The Governor-General was given discretion to fix up the members of the councils of the other presidencies and had power even to suspend the councils.

The Charter Act of 1853 authorised the appointment of a separate Governor for Bengal distinct from the Governor-General. The Act also provided that alternatively a Lieut. Governor might be appointed unless and until a separate Governor was appointed. Until 1912 a separate Governor for Bengal was not appointed; and Bengal remained under a Lieut. Governorship from 1854-1912.

The Act of 1854 empowered the Governor-General-in-Council with the permission of the Court of Directors and the Board of Control to take any part of the territories for the time being in the possession of the East India Company under his direct management by proclamation. Previously, newly conquered territories were constantly added to the existing presidencies. This increased the existing presidencies to unwieldy dimensions. In particular Bengal became too over-grown. By the Act of 1854, this difficulty could be avoided and the Governor-General-in-Council could take direct manage-

ment of, or provide for the administration of any part of the Company's territories. In exercise of this power, the Governor-General-in-Council appointed Chief Commissioners over Assam, Burma, Central Provinces, Coorg and transferred to them such powers as he did not wish to retain in his own hands.

The Government of India Act, 1858, closes the chapter of the territorial sovereignty of the East India Company and transferred the administration of the Indian possessions of the Company direct to the Crown. From now a new leaf in the page of the history of India has been turned. Queen Victoria, in consequence of the Act, was proclaimed Empress of India. The proclamation read out to thousands of assembled multitude was couched in terms of rare felicity and struck a happy note which went straight to the hearts of the millions of India. From now the Governor-General became the Viceroy of India.

### **The Legislative Powers of the Governor-General-in-Council and the local Governors in Council during the 2nd Period.**

We shall just recapitulate and note down briefly the legislative powers of the Governors-in-Council and the Governor-General-in-Council until 1784.

The Charters gave certain vague powers of legislation to the Company to maintain their factories and affairs in good order. The English traders had carried their own laws with them and the Moghul Emperor did not interfere with the internal affairs of their settlements. It was only in 1726 local legislative power was granted

which was applicable not only to English men but also to inhabitants of towns, places, and other factories under the Company. The Charter Act of 1753 re-affirmed this power of local legislation to Governors and Councils of the settlements.

The grant of the Diwani in 1765 gave a distinct source of legislative power to the Company. In pursuance of this power Warren Hastings set up revenue councils and provincial courts in the Diwani territory. The Regulating Act empowered the Governor-General in Council to make rules and regulations for the good and civil government of the Company's settlements, but required that such rules and regulations should be approved and registered by the Supreme Court.

We have seen how the omission to point out the relation of the Supreme Court with the Company's courts gave rise to difficulties and how in 1780 a conflict arose between the Governor-General-in-Council and the Supreme Court over some regulations, which the Governor-General in Council made for the provincial courts, but did not have them registered. The Amending Act of 1781 rectified matters by conferring on the Governor-General-in-Council power to frame regulations for the provincial courts and revenue councils free from the supervision or veto of the Supreme Court. Such regulations were ordinarily subject to amendment or disallowance by the King within two years.

So far as the presidencies of Bombay and Madras were concerned, the Regulating Act did not touch or affect the legislative authority of the Governors in

Council, although in matters of peace and war, they were placed under the direct superintendence of the Governor-General-in-Council of Bengal. Thus the Governors in Council were passing separate laws free from the control of the Governor-General-in-Council, by the powers conferred to them under the Charter Acts of 1726 and 1753. The Regulating Act only required the local Governors in Council to dutifully submit their orders and ordinances to the Governor-General-in-Council, but the Governor-General-in-Council was not given any power to modify or disapprove them.

Thus we see that after 1781 the Governor-General-in-Council possessed two distinct powers of legislation, *viz.*, one granted by the Amending Act, and the other under the Regulating Act. The Regulating Act empowered the Governor-General in Council to make rules and ordinances for the settlements and other factories which were subject to the jurisdiction of the Supreme Court. The Amending Act gave the Governor-General-in-Council powers to make rules and regulations for the provincial courts and revenue councils free from any check by the Supreme Court. This duality gave rise to the presidency and mofussil system of judiciaries. In 1793 one of Lord Cornwallis's regulations had provided, that all previous regulations enacted for the internal government of the British territories of Bengal should be compiled into one Code. This revised Code, as well as previous regulations, though purported to be done under the Amending Act, far exceeded the scope given by the Act and naturally again a conflict arose between the Supreme Court and the Governor-General-in-Council.

Therefore Parliament in 1797 passed an Act, giving retrospective validity to all such regulations, but required that regulations made thereafter by the Governor-General-in-Council "affecting the rights, persons, or property of the natives, or of any other individuals who might be amenable to the provincial courts of justice, should be registered in the judicial department, and formed into a regular Code and printed, with translations in the country languages." Copies of such regulations were to be sent to England.

An Act of 1800 established a Supreme Court in Madras as in Bengal.

"An Act of 1807 gave the Governors and Councils at Madras and Bombay powers of making regulations, subject to approval and registration by their respective Supreme Courts and Recorder's Courts, and appointing Justices of the Peace." Even though this Act directed the Governments of Madras and Bombay to submit copies of their regulations to the Governor-General-in-Council, the latter did not appear to have had any control over their legislation.

The Charter Act of 1813, while asserting the sovereignty of the British Crown over the Indian possessions for the first time, did not affect the legislative powers of the Governor-General-in-Council and the Governors-in-Council of the various presidencies. Only it required that copies of all regulations should be laid before Parliament.

Thus with powers to legislate independently, the three presidency Governments went on making regulations, until in 1833 the system of law became a very

complex and confusing skein. "At that date there were five different bodies of statute law in force in India" They were:—(1) The whole body of statute law as introduced by the Charter of George I which applied to presidency towns.

(2) English Acts subsequently passed.

(3) Regulations of the Governor-General-in-Council (from the revised Code downwards to Regulations passed till 1833).

(4) Regulations of Governor-in-Council of Madras from 1802—34.

(5) The Regulations of Governor-in-Council of Bombay.

Thus to introduce into such a cobweb of legal system any degree of order became a Herculean task. To clear the Aegian stables and to improve matters, the Act of 1833 made radical changes in the legislative powers of the Governors-in-Council.

The Governments of Madras and Bombay were drastically deprived of their powers of legislation and the Governor-General-in-Council was exclusively vested with power to make laws for the whole of the Company's territories. The local Governments could only recommend legislative measures to the Governor-General-in-Council. Thus the first radical change effected by the Act of 1833 was the concentration of legislative authority in the hands of the Governor-General-in-Council. The Governor-General's Council was strengthened by the addition of a Legislative or Law Member, who was not to sit with the Council except for legislative purposes and the Governor-General-in-Council with the

Law Member became the Governor-General in Legislative Council. Thus for the first time, India had a Legislative Council. Moreover "The Indian Law Commission" was appointed to enquire into the jurisdiction, powers, and rules of the existing courts of justice and police establishments and to codify the penal and procedure laws. The nature and operation of laws, civil or criminal, written or customary, prevailing in the Indian territories was also to be examined by the Law Commissioners.

### The Legislative Council of 1833

The powers of the new legislature were of the widest character. It could repeal, amend, or alter any laws or regulations which for the time being, were in force in the Indian territories. It could pass any laws subject to only certain wide exceptions. Laws made under the powers given by the Act were to be subject to disallowance by the Court of Directors acting through the Board of Control.

It was expressly laid down, that Parliament had the power to legislate directly for India and to repeal Indian Acts, and Indian Laws were required to be laid before Parliament. In other words the supremacy of Parliament was definitely declared.

Laws made by this legislature were henceforth to be known as Acts and were to have the same force and effect as Acts of Parliament and registration or publication in any court of justice was definitely declared not necessary.

Thus the Act of 1833 made two important changes, the first being the concentration of legislative power in



the Governor-General-in-Council, and the second being the establishment of a central though rudimentary legislature.

### Defects of the Act of 1833

The establishment of a central legislature at Bengal was an inefficient machinery for legislating throughout the whole of the Company's territories which was rapidly growing. The Council was small and consisted of members from the Bengal Civil Service. Naturally it was an impossible task for them to make laws for the other presidencies with singularly divergent customs, manners, and laws, prevailing in them, from a distance. The result was that soon a cry of discontent arose from the other presidencies that their interests were not guarded,

### The Act of 1853

This resulted in further alterations being effected by the Act of 1853. The composition of the legislature was changed. The fourth, "Legislative or law Member," became an ordinary member with power to vote in the executive meetings of the Council. The legislative council was enlarged by the addition of six more members. Thus on the whole the strength of the Governor-General's Legislative Council was made twelve and the twelve members were :—

1. The Governor-General. . . . . 1
2. The Commander-in-Chief . . . . . 1
3. The Governor-General's executive councillors . . . . . 4
4. The Chief Justice of Bengal . . . . . 1

- |  |     |   |
|--|-----|---|
| 5. A puisne Judge  | ... | 1 |
| 6. Representative members from Bengal, Bombay,<br>Madras, and North-West Provinces | ... | 4 |

The presence of at least six members including the local representative was necessary to form a quorum. Bills passed by the Council required the subsequent assent of the Governor-General to be put into force as Acts, whether the Governor-General was present or not at the time of the passage of the bills.

The Law Commission appointed by the Act of 1833 had ceased to exist before 1853. The moving force of the Commission was Lord Macaulay and with his departure from India it ceased to function properly.

The legislative council as established by the Act of 1853 modelled its proceedings on that of Parliament and began to show an inconvenient degree of independence. The business of the council took an elaborate character and the whole procedure was like that of an Indian House of Commons. Discussions became oral instead of being in writing as before. Select committees examined the bills. The sittings of the council were public and the proceedings were officially announced. It began to assume the character of a miniature representative assembly. It was never the intention of Parliament to create a representative assembly in India. The Council proved rather inconvenient when it discussed and criticised the measures of the executive Government.

Moreover even the constitution of the Legislative Council as affected by the Act of 1853 was far from

satisfactory so far as the other presidencies were concerned. Such a small council with a solitary member to represent each presidency and having the odds against the preponderance of representation of Bengal, could not adequately legislate for the whole of the Company's territories. It was impossible for a single legislative council to handle matters with sufficient experience and information. Last, but not least in the defects of the constitution, was that the legislative council consisting of only English men legislated for Indians. This naturally created utter discontent. Then came the cataclysm of the Great Indian Mutiny and all was changed. The Mutiny closes a Chapter of Indian history.

---

## CHAPTER IV

### THE THIRD PERIOD 1858—1919

The famous Mutiny of 1857 gave the death blow to the East India Company. Indian administration was directly taken by the Crown and there was the famous proclamation of Queen Victoria following the Government of India Act, 1858. The Act declared, that India was thence-forth to be governed directly by and in the name of the Queen and her successors, technically called the Crown. The Government of India was to be carried through one of the principal Secretaries—to be called the Secretary of State for India, who embodied in himself the powers of the Board of Control and the Board of Directors.

The Secretary of State was to be assisted by a council of 15 members, 8 of whom were to be appointed by the Crown and the rest to be elected by the Directors of the East India Company. The members were to hold office during good behaviour, but were liable to be removed on an address by both Houses of Parliament. The power of filling vacancies was vested in the Crown for Crown appointments and in the council itself as to others. The council was an advisory body to the Secretary of State. It was charged with the duty of conducting the business transacted in the United Kingdom on behalf of the Government of India and the correspondence with India. The Secretary of State had power to overrule his council.

The Government of India Act of 1869 and the Council of India Act of 1876 gave powers to the Secre-

tary of State to fill in all vacancies in his council. The period of office of the council was fixed as ten years, but special members could continue. The Government of India Act, 1915, reduced the strength of the council to 7 and the Government of India Act of 1919 fixed the minimum at 8 and the maximum as 12 and the period of office to five years.

Thus the Government of India Act, 1858, is our starting point during the third period and now we shall follow our old procedure of considering under separate heads, the changes in the Executive Government and in the legislative councils in that period.

### Changes in the Executive Government in the Third Period

The form of Executive Government, that had gradually taken shape during the second period and passed under the direct administration of the Crown under the Government of India Act of 1858, did not undergo any material change during the third period until in 1909, when the Minto Morley Reforms were introduced. The Acts of Parliament that were passed in the interval touched the executive only in matters of small details, as for example, the composition of the Executive Council, reorganisation of the civil service, the military and the navy, etc. The Acts of Parliament were mostly in relation to the legislative functions and the judicial system.

The Indian Council Act of 1861 modified the constitution of the Governor-General's Executive Council. A fifth ordinary member was added to the Governor-

General's Executive Council. Of the five members, three were required to have served for ten years in India under the Company or the Crown, and one was to be a barrister or an advocate of five years' standing. The Commander-in-chief could be made an extraordinary member. The Governor-General was empowered to invest himself with all the powers exercisable by the Governor-General-in-Council in case of his absence from headquarters.

We then pass on to the Act of 1870 which contained two provisions of considerable importance. One of them repeated and strengthened the power of the Governor-General to overrule the Council, and the other enabled any Indian to be appointed to any office, place or appointment in the civil service, notwithstanding that he had not been admitted to that service by competitive examinations in England. This resulted in the formation of the cadre of statutory civilians, which in course of time was superseded by the Provincial Civil Service. This was the beginning of the Indianisation of the services.

The Indian Councils Act of 1874 enabled a sixth member of the Governor-General's Council to be appointed for public works purposes.

Although a Legislative Council came into being by the Indian Council's Act of 1851, it has been over and over again affirmed, that the final control and direction of the affairs of India vested with the Home Government. The supremacy of Parliament over Indian affairs has remained absolute. Thus in 1870 when Lord Mayo's Government, as a whole, protested at being required to pass the bills which ultimately became the

Indian Contract Act and the Evidence Act, Gladstone's Government insisted upon the absolute responsibility of Parliament and said:—"The Government established in India is (from the very nature of the case) subordinate to the Imperial Government at Home. And no Government can be subordinate, unless it is within the power of the Superior Government to order what is to be done or left undone, and to enforce on its officers, through the ordinary and constitutional means, obedience to its direction as to the use which they are to make of official position and power in furtherance of the policy which has been finally decided upon by the advisers of the Crown." Again in Northbrook's time, when the Government of India attempted to assert its independence in fiscal matters, the Imperial Government emphasised upon its absolute subservience to its orders and forced it to carry out its own policy. In 1878 when a member of the Madras Executive Council moved an amendment, which had been rejected by the Government of India, to a bill in the Madras Legislative Council, his action was criticised as constitutionally improper by the Secretary of State. The debate on "Cotton Duties" in 1894 gave rise to another occasion when the Imperial Government forced its own policy upon the Government of India. Thus the Government established in India was one and indivisible, with the Government of India at the helm of affairs and standing absolutely responsible to Parliament for the government of India as a whole.

We have seen that the process of centralisation was started by the Act of 1833. This process and the

rigidity of official control reached the climax at the time of Lord Curzon. Provincial administrations were considerably hampered by the financial and administrative restrictions imposed upon them. They were given practically no scope and no free hand in the exercise of their discretion in their administrations. Moreover there was a certain amount of aloofness between officials and the people which led to much discontent.

As a measure of meeting these difficulties, the Decentralisation Commission was appointed. The Commission made investigations of the relations between the Central and the Provincial Governments and between the latter and authorities under them. They submitted their Report in 1909 and in the Report they recommended a number of measures which would give more elbow room to the local Governments to act. The Report suggested a relaxation of the control of the Central Government. The change in detail recommended by them was carried out by a series of Government orders and Resolutions between 1910 and 1917. The scope of action of the Provincial Governments was visibly enlarged and the control of the Central Government was considerably relaxed so that the Provincial Government had a free hand to act in many matters.

We now come to the Minto Morley Reforms. As a result of the liberal policy of the then Governor-General and the Secretary of State an important Act was passed by Parliament in 1909. This marked the period of the beginning of constitutional Government in India. It augured well for the future growth of responsible Government. The Act introduced changes



Both in the composition and powers of the Indian legislative councils. Also it effected the following changes in the Provincial Executive Governments. By section (2) of the Act power was given to raise the number of members of the executive councils of Madras and Bombay to a maximum of four, of whom two at least must, at the time of the appointment, have been in the service of the Crown for a period of twelve years. Moreover, for each executive council, a Vice-President was required to be appointed from among the members to preside at the meetings and generally to act for the Governor in his absence. The Governor-General was authorised to establish an Executive Council for the Lieut.-Governor of Bengal and one each for other Lieut.-Governors, in the latter case, subject to disallowance by either House of Parliament. When in pursuance of this power an executive council was proposed for the United Provinces, the House of Commons vetoed it.

The liberal policy pursued by the Government to associate Indians with the service of the Government led to the appointment of Mr. Sinha (afterwards Lord Sinha) in 1909 to the post of Law Member in the Governor-General's Council. This appointment carried a step further the policy adopted in 1907, when two Indians were appointed to the Secretary of State's Council.

The intimate relation between the British subjects in India and the Crown in England was vividly brought out at the Delhi Durbar of King George V on the 12th December 1911. "The event was unprecedented

in the history of British India. Never before had an English King worn his Imperial Crown in India. Indeed, never before had a British sovereign set foot on the Indian soil." The event was a magnificent and notable one and at the Durbar were announced two great administrative changes; *viz.*, (1) the remodelling of the partition of Bengal; (2) the transfer of the capital of India from Calcutta to Delhi.

1. In 1905, the huge province of Bengal was bifurcated into two Lieut Governorships. The re-arrangement united the old Provinces of Bengal and formed them into a Presidency under a Governor and Council. It created a Lieut. Governor in Council over Behar and Orissa, and Assam was placed under a Chief Commissioner. These changes were carried out in the Proclamation issued under powers already granted by previous Acts and partly by provisions of the Act of 1912.

2. The Government of India despatch which recommended the transfer of the seat of Government from Calcutta to Delhi in order that the Central Government should not be connected with any Provincial Government, emphasised the necessity of larger Indian element to be associated in the government of the country and indicated, that the future development of the Indian constitution should germinate from a gradual evolution of self-government in the provinces, until at last "India would consist of a number of administrations, autonomous in all provincial affairs with the Government of India ordinarily restricting their functions in matters of Imperial concern." When this passage gave rise to the interpretation in some quarters that the scheme of

government aimed to introduce an administration on the model of Colonial Governments, the Secretary of State repudiated it.

The admittance of the Indian ingredient in the participation of the government of the country was a gradual process. But we have noted that with the formation of the Provincial Civil Service and the appointment of Indians in the Secretary of State's Council and the Viceroy's Council, the policy of the Government was getting liberalised. To explore the means of giving Indians a larger share in the government of the country a Royal Commission was appointed in 1912. Its Chairman was Lord Islington and Mr. Ramsay MacDonald was one of its members. Its report was completed in 1915, but owing to the outbreak of war, it was not published till 1917. The report recommended that some services should be recruited entirely in India and that the Indian element in others should be increased, while a preponderating proportion of the English officers was to be necessarily kept in the security services. With the growth of education and more democratic ideals, the report fell far short of Indian aspirations and therefore was considered hopelessly inadequate.

In conclusion, it is necessary to consider the growth of local self-government in this period. In connection with the scheme of financial settlements, Lord Mayo in 1870, emphasised for the first time the importance of local self-government. But it was left to Lord Ripon to take the first really important step in respect of local self-governments. The measures introduced by him to afford a good training ground to Indians in the manage-

ment of public affairs, were given a step forward in 1918 as a result of the recommendations of the Decentralisation Committee. The Committee on de-centralisation recommended considerable increase of the elective principle in the constitution of the boards and that certain minor sources of revenue should be transferred to them. Till then the municipal and the local boards were entirely under the control of District Officers who were generally the chairmen of the local boards. Thus the people were given very little share in managing the boards. To remedy this, Lord Hardinge's Government passed a resolution, indicating to the Local Governments, the general lines upon which advance should be made in the direction of local self-government for municipal bodies. They suggested the appointment of non-official chairmen, the introduction of elected members and of greater freedom in taxation, in the framing of the budget, and the control of establishment. Also suggestion was made for the establishment of village panchayats with certain administrative powers and certain jurisdiction to try in petty, civil, or criminal cases. The Government could not carry out these suggestions on account of the diversity of local conditions. Greater interest towards the progress of local self-government was taken only in the next period, which we shall consider in a different chapter.

### Legislative Changes in the Third Period

The Indian Council's Act of 1861 was the first step in the policy of decentralisation, which has been the outstanding feature, since the Mutiny. The whole

system of centralised legislation had become both inconvenient and inadequate. Moreover legislation was entirely in the hands of British officials. The Indian Councils Act of 1861 reconstituted the legislative councils. The legislative machinery was overhauled in the following ways:—

1. By decentralisation.
2. By further differentiation of the executive from the legislature.
3. By restriction of the legislative function to legislation pure and simple.

1. **Decentralisation.**—The Act restored to the Governments of Madras and Bombay, the powers of legislation, which the Act of 1833 had withdrawn, but with the difference that the Governor-General's previous sanction was needed for some classes of provincial legislation and the subsequent assent for all. Moreover the Governor-General was directed to establish a Provincial Legislative Council for Bengal and was empowered to set up similar councils for the North West Provinces and the Punjab. In pursuance of this provision a legislative council was established in Bengal in 1862, for North West Provinces in 1866, and for the Punjab in 1897.

2. **Differentiation of the Legislature and the Executive.**—The strength of the Central Legislature was increased, the number of additional members was raised from 6 to 12 and half of these had to be non-officials. Likewise the legislative councils in Madras and Bombay were to contain in addition to the Governor and the Executive Councillors, the Advocate

General of the Province, and other additional members nominated by the Governor, half of whom were to be non-officials. In other Provinces one third of the additional members were to be non-officials. Some of these new seats in the Central Legislature were given to Indians and it is therefore from 1861 that an Indian element has taken part in the making of laws for India. The non-official members were of course nominated. Another three decades were to pass before use was made of the method of election. In practice an official majority was always maintained in the councils before 1909 except in Bombay.

3. **Restriction of the legislative function to legislation pure and simple.**—We have seen how the representative council as constituted by the Government of India Act of 1853, behaved in a manner, as though the Legislative Council was a miniature House of Commons. Their independence and free debate proved rather inconvenient. Therefore the functions of the new legislative councils were limited strictly to legislation. They were expressly forbidden to transact any business except the consideration and enactment of legislative measures or to entertain any motion, except a motion for leave to introduce a bill, or to make reference to a bill already introduced. The legislative councils were not to be deliberative bodies at all. The Central Legislative Council could legislate for the whole of British India, while the Provincial Legislative Council could legislate for the whole of the Province. Thus the provincial and the central legislatures had concurrent powers of legislation.

In certain matters measures were not to be introduced without the Governor-General's previous sanction. The assent of the Governor-General was required for every Act passed by the council, subject to disallowance by the Queen acting through the Secretary of State. Thus the Governor-General was given direct and personal control over the exercise of all legislative authority in British India. Provincial councils were given power not only to pass new laws, but also to repeal or amend all laws affecting the provinces, as which were passed before 1861. But provincial legislation could not affect the jurisdiction and power of the High Courts. Thus once again the power of provincial legislation was revived by the Act of 1861, but placed under the close and rigid scrutiny of the Central Government.

In addition to the above changes the Act contained the following provisions:—

1. An exceptional power was given to the Governor-General in cases of emergency, to make without consulting his Council, ordinances, which were not to remain in force for more than six months.

2. Under the regime of the East India company, in regard to certain newly acquired territories of the Company, the method of legislation was the course adopted to extend to them, with some variations the laws and regulations in force in the older provinces of Bengal, Bihar, and Orissa. But later on instead of this, legislation was done for the newly acquired provinces by means of executive orders corresponding to the Orders in Council made by the Crown, to what are called Crown Colonies. Provinces in which this power

was exercised were called Non-Regulation Provinces, to distinguish from the Regulation Provinces, which were governed by regulations formally made under the Charter Acts. By means of such executive orders a large body of laws had gathered; and in order to clear any doubts as to their validity a section was introduced in the Indian Councils Act of 1861 declaring, that no rule of law or regulation made before the passing of the Act, by the Governor-General or certain other authorities, should be deemed invalid by reason of their not having been made in conformity with the provisions of the Charter Acts.

**The Indian High Courts Act of 1865** :—This extended the legislative powers of the Governor-General's Council to all British subjects in Native States whether servants of the Crown or not, and enabled the Governor-General-in-Council to define and alter by proclamation the territorial limits of the various presidencies and Lieut-Governorships.

**The Indian Council's Act of 1869** :—This still further extended the legislative powers of the Governor-General's Council by enabling it to make laws for all Native Indian Subjects of His Majesty in any part of the world whether in India or not.

**The Government of India Act, 1870** —It has been seen that the Indian Council's Act of 1861 while validating the laws made by executive orders by the Governor-General for the Non-Regulation provinces retrospectively, deprived him of making such laws thereafter. An important modification was made by this Act. It restored to the Governor-General such a



power of legislating for the less advanced parts of the country called the Scheduled Districts.

**The Indian Councils Act of 1892**—This Act is important in that it marks another step in the direction of greater differentiation of the legislature from the executive and the democratisation of the legislature. Lord Dufferin's Government at whose insistence the question of further reforms was taken up for consideration, had recommended striking reforms for the liberalisation of the councils. For instance, the suggestion of the direct and the indirect methods of election and a greater popular representation by means of more non-official members and also more scope for expression of views in the councils were some of the recommendations. The Imperial Parliament were not prepared to go so far. Ultimately, only a few of those recommendations was followed and the Indian Council's Act of 1892 was passed.

1. The Act authorised an increase in the number of non-official members in the councils and made a change in the method of choosing the non-official members, which had a far-reaching effect and ultimately opened the way to election.

2. The Act relaxed the restrictions imposed by the Act of 1861 on the proceedings of the legislative councils by enabling them to discuss the budget, but not voting on it, the power of asking questions but not of supplementary questions.

3. For the Central Council, the maximum number of additional members was increased from 12 to 16 and for the councils of Bombay and Madras from 8 to 20.

and also the maximum for Bengal from 6 to 20 and for the United Provinces the maximum was fixed as 25. When the Punjab and Burma in 1897 and Eastern Bengal in 1905, got legislative councils under the same powers, the numbers for them were fixed respectively as 15, 15 and 20.

4. Instead of nomination of additional members being left entirely in the hands of the Governor-General as before, this Act required regulations to be made by the Governor-General-in-Council with the approval of Secretary of State for determining the methods and conditions of nomination. This is what was called "The Kimberly Clause."

5. The regulations that were framed, provided for a majority of the nominations being made on the recommendations of specified persons, bodies, and associations, so as to give a representative character to the persons nominated. Of course, there was no obligation to accept the recommendations of these bodies, but in practice they were never refused. This system of nomination amounted to election. As a result of this change there were in the minor Provinces 8 elected members, elected by Municipalities, District Boards, Chambers of Commerce, and Universities, out of 20 additional members nominated to each Council. In the Central Council there were 5 official members out of 10 non-official members nominated to it.

#### **The Minto Morley Reforms.**

The Minto-Morley Reforms of 1909 were only the necessary consequence and natural extension of the sys-

tem of 1892, but had been precipitated by political unrest connected with the partition of Bengal which had been quickened by the Russo-Japanese War. The Act of 1909 made important changes both in the constitution and functions of the Indian legislative councils. The policy of the Government was in no way changed, but more popular control over the legislation in the Provinces was given by providing small non-official majorities. The supremacy of the executive was in no way altered. The Act effected changes in three directions :—

- (1) It increased the number of non-official members
- (2) It partially substituted election for nomination
- (3) It gave greater freedom of discussion to non-official members than they had before.

1. The maximum number of additional members was raised 50 for each of the provincial legislative councils of Bengal, Madras, and Bombay and 30 for the Burma and Punjab Councils and 60 for the Central Council.

2. Under the Act of 1861 at least one half of the additional members of the Governor-General's Legislative Council and of the Madras and Bombay legislative councils and at least one third of the members of the other legislative councils had to be non-official and they were required to be appointed by election, the rest being nominated by the heads of the respective Governments.

The proportion of non-officials and of elected members was left to be determined by regulations which were directed to be framed by the Indian authorities. Under the regulations non-official majorities were created in all the legislative councils and an elected

majority in Bengal, but an official majority was maintained in the Central Council. The method of election which was a special feature of this Act was however indirect. Classes and interests were to be represented and it was not on a territorial basis. Municipalities, District and Local Boards, Universities, Chambers of Commerce, Trade Associations, Land holders, Tea Planters, and Muhammadans were the constituencies for returning members to the provincial councils for election among themselves. Nomination was retained for the appointment of special members and a certain number of non-official members to represent special interests which had no chance of being represented by elected members. Thus there were three classes of additional members *Viz* (1) nominated officials (2) nominated non-officials and (3) elected non-officials.

3. The Act gave more freedom of discussion to the legislative councils. They were given power to move resolutions not only on the budget before it was finally settled, but also on any matter of public interest and to decide upon them. In each case the resolutions were to be mere recommendations to the Government and the Government was not bound to act on them. Supplementary questions were also allowed to be put subject to disallowance by the President. To avoid abusing their powers by the non-official majorities in the legislative councils, concurrent powers of legislation were retained in the hands of the Governor-General's Legislative Council which had an official majority. In practice the Central Legislative Council ordinarily

refrained from legislating for any province when that province could legislate by itself.

The growth of Indian democracy is a very slow process. The Minto Morley Reforms mark a great advance from the previous stage. The legislative councils were made more representative and members were given some means of influencing the executive, but with the growth of education and the rapidity of political development in the country gave these reforms an evanescent character. Soon public opinion in India was dissatisfied with these reforms and clamoured for a change.

---

## CHAPTER V

### THE MONTAGUE CHELMSFORD REFORMS

The Minto-Morley Reforms did certainly mark a great advance in the direction of making the legislative councils more representative of the people and it was regarded by British statesmen at the time of their introduction, that the Reforms were great concessions to Indians and India should be satisfied. But the Minto-Morely Reforms served on the other hand to sow the seeds of greater discontent among the intellegentia of the nation and the precipitation of democratic feeling caused by the out-break of the Great War spread a wave of political consciousness among Indians. The result was that there arose a clamour for further reforms. "Home Rule" and "Self-Government" have since become the slogans in the mouths of the Indian politicians.

British politicians could after a time no longer brush aside Indian aspirations. To them, like Oliver Twist, India was asking for more. But the magnificent services rendered by the Indian troops in the Great War forced the British Statesman to think of further reforms in India. Much important correspondence passed between Mr. Montague, the then Secretary of State and Lord Chelmsford, the then Viceroy of India. On August 20, 1917, Mr. Montague when answering a question in the House of Commons made a declaration of Government policy, which became famous as "Montague's Announcement". He said, "The policy of His Majesty's Government with which the Government of India are

in complete accord is that of increasing the association of Indians in every branch of the administration, and the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in India as an integral part of the British Empire."

The three cardinal features of the structure of the Indian constitution prior to the Montague Chelmsford Reforms were :

1. The concentration of authority at the centre.
2. The control over legislative functions exercised by the executive.
3. The ultimate responsibility of Parliament for the whole of the Indian Government.

Let us consider these features separately.

### 1. The Concentration of authority at the Centre

We have seen in 1833 that the process of centralisation began. By the Charter Act of 1833 the Governor-General of Bengal became the Governor-General of India and his Government was known for the first time as the Government of India. The first result of centralisation was the deprivation of all legislative power from the Madras and Bombay Governments. The Governor-General-in-Council became the supreme authority for every act of civil or military government in India. This power of centralised bureaucracy has lived unimpaired, and provincial Governments have been only agents of the Government of India with delegated duties. They had to keep the Central Government diligently informed of all important matters and await directions from them.

In the financial sphere, they were absolutely dependent on the Central Government. Provincial settlements were not based on provincial revenues but on provincial needs. That being the policy, although certain heads of revenue were allotted for provincial needs, provincial expenditure, provincial taxation, and provincial borrowings could be exercised only after the sanction of the Central Government. Thus in the matter of finance, the subordination of the provincial Government was complete.

Thirdly in the provincial councils, all legislative action was to be done according to "instructions" issued by the Central Government. Thus in all matters administrative, financial, or legislative, the concentration of authority was at the centre and the entire government system was one and indivisible before the pre-reform days.

## 2. The Control of the Executive over Legislative Functions

Although by successive stages, the legislative councils were enlarged and made more representative of the people, law-making by the legislature was not possible on account of the control of the executive over the legislative functions. Though the Minto-Morley Reforms marked a considerable advance in the direction of introducing a greater degree of popular control over the legislative councils of the provinces, by providing small non-official majorities, yet the control of the executive was in no way relaxed. By retaining an official majority in the Governor-General's legislative council, the finality in all matters of legislation rested with the executive.



Therefore, in relation to the people of the country the government was only a benevolent despotism. Further, previous sanction to introduce new legislation had to be obtained from the Secretary of State and any law could be subsequently vetoed by the Governor-General.

The Minto-Morley legislatures had powers to move resolutions, discuss the budget, and put questions to the executive, all within limits. These powers were conceded to the legislatures in order to enable the people to influence the executive, but not to control it or make it responsible to them.

It is necessary, that if the executive is not to be responsible to the legislature, the legislature must be controlled by the executive, unless as in the United States of America, both are subject to another superior authority. The control of the executive was complete in India before the pre-reform constitution or in other words, the legislative councils were mere enlargements of the executive councils. Thus the Government was an autocracy although it could be more dignifiedly called a constitutional autocracy. The increase of Indian participation in the administration of the country (after the Minto-Morley Reforms) was not such as to materially affect the character of the bureaucracy.

### 3. The Ultimate Responsibility of Parliament

"A third feature of the Government of British India, which remained unimpaired down to the introduction of the Montague Reforms, was the supervising and controlling power (over the whole field of Indian legislation and administration) of the Home authorities,

that is to say, of the Secretary of State with his constitutional responsibility to Parliament." "Ultimate responsibility for every act of the Government must always rest somewhere and so long as no portion of the final responsibility resided in India, it necessarily followed that all parts of it rested upon White Hall and Westminster."

The vesting of the Government of India in the Crown meant that Parliament was ultimately responsible for the Indian administration. The Governor-General-in-Council is not directly amenable to Parliament, but the Secretary of State as the actual head of the Indian bureaucracy stands responsible to Parliament.

### The Out-lines of the Montague Chelmsford Reforms

Having considered the cardinal features of the pre-reform structure, let us pass to the Reforms of 1919 and see how far these features have been modified. The Montague-Chelmsford report laid down the essence of the Reforms to be introduced in the shape of four governing principles:—

1. "There should be as far as possible complete popular control in local bodies and the largest possible independence for them from outside control.

2. The provinces are the domain in which the earlier steps towards the progressive realisation of responsible Government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the province the largest measure of independence, legislative, administrative, and financial, of the Government of

India which is compatible with the due discharge of the latter of its own responsibilities.

3. The Government of India must remain wholly responsible to Parliament and saving such responsibility its authority on essential matters must remain indisputable, pending experience of the effect of the changes now to be introduced in the Provinces. In the meantime, the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government should be increased.

4. In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and Provincial Governments must be relaxed."

The last three formulae will be seen to touch the cardinal features of the previous system which we considered. Let us now outline the essentials of the Reforms of 1919 introduced with the formulae as the basic principles.

#### The grant of Provincial Autonomy

Substantial provincial autonomy was given by the Government of India Act, 1919. Devolution to the provinces was carried out by rules made under the Act and passed by both Houses of Parliament. It must be pointed out that the provincial devolution thus effected was carried out in reference to nine major provinces only called the "Governors' Provinces." The rest of India so far as devolution of central authority is concerned, remains in the same position as before the Act. The Governors' Provinces are Madras, Bombay, Bengal, the United Provinces, Bihar and Orissa, the Central Provinces, Assam and Burma.

With respect to these provinces, in order to fix the limits of the functions of provincial Governments and legislatures, subjects have been classified by Devolution Rules as "Central subjects" and "Provincial subjects". The functions of the Government of India are now principally in relation to central subjects. Provincial subjects are defined as subjects in which the interests of the provinces predominate or in which provincial Governments are to have acknowledged authority of their own, while central subjects are those in which extra-provincial interests predominate. Subjects which do not come under the classification are deemed to be central. In the matter of provincial subjects, the local governments are given a great degree of freedom from control of the central Government both in the spheres of administration and legislation.

Similarly the reformed constitution effected a delimitation of sources of revenue for the purposes of provincial finance. The division of revenues follows closely the division of subjects into central and provincial. The powers of the Central Government are restricted to central revenues, which are clearly distinguished from provincial revenues.

### **Changes in the Executive Government**

The Act has little affected the structure of the executive of the Government of India. But great changes have been introduced in the executive of the Provincial Governments. It has already been noted that the Montague-Chelmsford Report laid down that it was in the domain of the provinces that the first advance towards the progressive realisation of res-

possible Government should begin. Responsible Government implies two conditions which are, (1) the executive should be responsible to the legislature; (2) the legislature should consist of the representatives of the people. This kind of responsible Government has not been introduced in India. The principle of responsible Government was recognised in the provincial councils, by splitting the provincial executive, into two distinct and co-ordinate parts and making one part responsible to the electorate. This was meant by the Reforms to be the chrysalis stage in the growth of responsible Government in India.

The method followed in allocating functions to the Ministers was to sub-divide provincial subjects into "transferred subjects" and "reserved subjects." The Executive Government in each province is divided into two parts—the Governor and his Executive Council in charge of the reserved subjects and the Governor and Ministers in charge of the transferred subjects. The Ministers are responsible to the legislative councils and to enforce the responsibility of Ministers, the legislative council has power to pass a vote of no confidence, or of censure, or to reduce or refuse any demand for grants made by them. This is the system of the present responsible Government in the province. This is what is otherwise known as "Dyarchy."

The control of the Government of India and the Secretary of State over the provincial Governments have been relaxed to the extent that responsibility for transferred subjects has been shifted from the execu-

tive councillors to the ministers and also to a limited extent in relation to reserved subjects.

### Changes in the Central Legislature and the Local Legislative Councils

(a) • **Central Legislature** :—The Reform Act has made radical changes both in the Central Legislature and the Provincial legislative councils. The Central Legislature has been enlarged and made bicameral in character. It consists of the Governor-General, the Council of State and the Legislative Assembly. Both the Chambers contain elected majorities. The Council of State is to be in the language of the Joint Select Committee, "a true second Chamber". The two chambers have to co-ordinate powers of legislation, but the second chamber is to be a true revising body.

The Central Legislature has very wide powers of legislation. But the executive of the Government of India is not responsible to the Legislature. But short of constitutional control, the Reform Act has given the Indian Legislature as many opportunities of criticising and influencing the executive as in the House of Commons. The Indian Legislature can exercise its influence in three ways: (1) by questions and resolutions; (2) by voting on the budget; (3) by appointment of Standing Committees. The business procedure approximates the Parliamentary standard.

Complete freedom of discussion is given to the members of the Indian Legislature. Moreover, the budget is to be placed before the Legislature. The items of expenditure are divided into "votable" and "non-votable." The votable items must be placed in the

legislature as demands for grants and the Legislature has power to reject or reduce the demands.

(b) **Provincial Legislative Councils:**—Similar changes are introduced in the provincial legislative councils. The legislative councils are enlarged and they consist of elected majorities. The proceedings are based after the Parliamentary standard and complete freedom of discussion is given and the appropriations of provincial revenues are submitted to the councils in the shape of demands for grants.

The powers of the members of provincial legislative councils have been increased considerably. In respect of transferred subjects, the members now exercise full control over the ministers and hold them responsible for their part of executive Government. In respect of reserved subjects, the provincial legislative councils, like the Central Legislature, have no control over the executive councillors, although they have been given considerable opportunities of influencing the local Governments.

The position of the Governor of a province has changed very much under the Reforms. He now combines in himself, the character, of a Prime Minister, a constitutional monarch, an agent of the Government of India and the representative of the Crown. He is the pivot of the executive as constituted by the Act. The smooth working of the two parts of the executive, considerably depends on him. In respect of legislation, he does not take part in the council deliberations as before.

This in short gives an outline of the Reforms. In the succeeding chapters, we shall study in detail the present working of the Indian Constitution.

## CHAPTER VI

### THE WORKING OF THE INDIAN CONSTITUTION

#### HOME GOVERNMENT

The Indian Legislature derives its powers from Parliamentary enactments and therefore cannot be said to be a sovereign legislature. Outside of the powers and responsibilities transferred by Parliament, the responsibility of Parliament for the good government of India remains ultimate. Section 33 of the Government of India Act requires the Governor-General-in-Council to pay due obedience to all orders which he may receive from the Secretary of State and thus by the exercise of powers of control over Indian legislation, finance, and administration, inherent in the Secretary of State, the supervision of the British Parliament over Indian affairs is completely secured.

#### The Secretary of State for India

The Secretary of State and the Council of India are respectively the successors of the Board of Control and the Court of Directors of the East India Company. The offices of the Secretary of State for India and the Council of India were created by the Government of India Act of 1858, which transferred to the Crown the direct administration of British possessions in India.

The Secretary of State, a Member of the Cabinet, is the immediate agent of Parliament for the discharge of their responsibilities over Indian affairs. The Secretary of State is authorised by the Government of India Act to superintend, direct, and control all acts, opera-



tions, and concerns, which relate to the Government or Revenues of India. The Governor-General-in-Council and through him the Provincial Governments are required to pay due obedience to the orders of the Secretary of State.

### The Council of India

The India Council is an advisory body to the Secretary of State and both in respect of its composition and powers, generally speaking, it is controlled by the Secretary of State. The Council of India is to consist of such number of members—not less than eight and not more than twelve—as the Secretary of State may determine. At present, the number is ten. The right of filling any vacancy is vested in the Secretary of State.

The members of the India Council must be sufficiently experienced in Indian affairs. One half of the members of the Council must be persons who have served or resided in India for at least ten years and have not left India more than five years before the date of their appointment. Every member of the Council holds office usually for a term of five years. The Secretary of State may for reasons of public advantage, re-appoint any member of his Council for a second term of five years. In such a case the reasons for the re-appointment shall be set forth in a minute signed by him and laid before both Houses of Parliament. Any member may, by writing signed by him, resign his office and any member may be removed from his office by His Majesty on an address of both the Houses of Parliament.

### Functions of the Council of India

As has been mentioned above, the Council of India is merely an advisory body to the Secretary of State. He is not bound to follow the recommendations of the Council except in certain specified matters which are:—

- (1) (Section 21 of the Government of India Act) in the matter of grant or appropriation of any part of the revenues of India coming into the possession of the Secretary of State in Council;
- (2) (Vide section 28) in the matter of selling and disposing of any real or personal estate for the time being vested in His Majesty for the purpose of the Government of India and mortgaging the same;
- (3) (Vide section 29) in the matter of making contracts by the Secretary of State;
- (4) (Vide section 30) in the matter of instructing the Governor-General in Council or the local Governments to sell, dispose of, or mortgage any real or personal estate in British India, for the time being vested in His Majesty for the purpose of the Government of India;
- (5) (Vide section 85-2a) in the matter of issuing orders affecting the salaries of the members of the Governor-General's Executive Council;
- (6) (Vide section 94) in the matter of leave of persons in the service of the Crown in India and to frame rules for the terms as to continuance, variation, or cessation of pay, salary and allowances on which absence of leave may be permitted;
- (7) (Vide section 95) in regard to power to make rules as to Indian military appointments;
- (8) (Vide section 99) in regard to power to appoint certain persons to reserved offices;
- (9) (Vide section 100) in regard to make provisional appointments. In these cases the Secretary

of State for India has to act in concurrence with the majority of the Council.

It is in regard to these matters that the Secretary of State has to act not only in Council, but with it. Outside this limited means, the Secretary of State who is the President of the Council, can use his unfettered discretion and has complete control over the business and procedure of the Council. He has power to direct the manner in which the business of the Council shall be transacted, what matters shall be placed before it and what weight shall be given to any decision of the Council.

In actual working, the Council is divided up into Committees corresponding to the broad divisions of the subjects coming up for decision. The full Council meets normally once in a week.

Section 9 of the Government of India Act tells us the procedure in the Council meetings :

1. " At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except a question with respect to which a majority of votes at a meeting is by this Act declared to be necessary, the determination of the Secretary of State shall be final.

2. In case of an equality of votes at any meeting of the Council, the person presiding at the meeting shall have a second or casting vote.

3. All acts done at a meeting of the Council in the absence of the Secretary of State shall require the approval in writing of the Secretary of State.

4. In case of difference of opinion on any question decided at a meeting of the Council, the Secretary of State may

require that his opinion and the reasons for it, be entered in the minutes of the proceedings, and any member of the Council, who has been present at the meeting, may require that his opinion, and any reasons for it that he has stated at the meeting, be also entered in like manner."

The most important function of the Council is in financial control. It has, however, no power to initiate new expenditure. It can only consider proposals made by the Secretary of State. It is possible for the Council to interpose its financial veto against a policy which has the approval of the Secretary of State, but in practice differences yield to discussion. The Council is most effective when there is a doubt whether a particular item of expenditure is to be charged to the revenues of India or of the British Government.

In dealings with foreign powers or with Native States or in matters of war or peace, which are all within the Crown's prerogative, the Council need not be consulted. But in practice, the Secretary of State allows his decisions to be guided in all matters by his Council.

So far as the commencement of hostilities is concerned, Parliament is to be apprised of the fact and the India Council is subject to the overriding authority of Parliament.

**The Secretary of State's control over Transferred Subjects:**—Subjects have been classified by the Government of India Act, by means of Devolution Rules, into "Central" and "Provincial." Provincial subjects are divided into "Reserved" and "Transferred." Reserved subjects are to be under the control of the Governor and

his Executive Council and transferred subjects are to be under the control of the Governor acting with ministers to be chosen from the elected members of the provincial legislature. The Joint Select Committee recommended that over transferred subjects, the control of the Governor-General in Council and the Secretary of State should be restricted to the narrowest limits. The powers of superintendence, direction and control vested in the Secretary of State and the Secretary of State in Council under the Act in relation to the transferred subjects, shall be exercised only for the following purposes:—As required by Devolution Rule 27, the local Government of a Governor's province shall not without the previous sanction of the Secretary of State in Council, or the Governor-General in Council, as the case may be, include any proposal for expenditure on a transferred subject in a demand for a grant, if such sanction is required by the provisions of Schedule 3, in the Devolution Rules. The Local Government of a Governor's province shall have power to sanction any expenditure on transferred subjects, which relates to the heads enumerated in section 72-D (3) of the Act, subject to the approval of the Secretary of State in Council or the Governor-General in Council, if any such approval is required by any rule for the time being in force. The Secretary of State in Council retains control over expenditure on transferred subjects, which is likely to affect the prospects or rights of All-India services, which he recruits and will continue to control, and he retains power to control the purchase of stores in the United Kingdom.

In accordance with the recommendations of the Joint Select Committee, the following rule has been made by the Secretary of State in Council under section 18-A of the Government of India Act:—

"The powers of superintendence, direction and control vested in the Secretary of State and the Secretary of State in Council under the Act or otherwise, shall, in relation to transferred subjects, be exercised only for the following purposes, namely:—

(1) to safeguard the administration of central subjects;

(2) to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at an agreement;

(3) to safeguard Imperial interests;

(4) to determine the position of the Government of India in respect of questions arising between India and other parts of the British Empire; and

(5) to safeguard the due exercise and performance of any powers and duties possessed by or imposed on the Secretary of State or the Secretary of State in Council, under or in connection with or for the purpose of the following provisions of the Act, namely, section 29-A, section 30 (1-A), Part VII-A, or of any rules made by or with the sanction of the Secretary of State in Council.

### **The Secretary of State's control over Reserved Subjects.**

The reserved subjects are directly administered by the Governor and his Executive Council and they are

under the superintendence of the Governor-General in Council. The Secretary of State, as we have already noticed, has powers to superintend, direct and control the executive machinery of the Government in India. Although in actual working, the Secretary of State has delegated most of his powers and does not interfere in the ordinary working of the Indian administration, he stands responsible collectively to Parliament for the Government of India.

### **Fiscal Policy and the Home Government.**

“The Secretary of State should as far as possible avoid interference on this subject when the Government of India and the Indian Legislature are in agreement and it is considered that his intervention when it does take place should be limited to safeguard the international obligations of the Empire or any fiscal arrangement within the Empire to which His Majesty’s Government is a party.”

### **The Liability of the Secretary of State to be sued in Indian Courts.**

In England no proceedings, civil and criminal, are maintainable against the sovereign in person or against the Government as such. “Where in the eye of the law, no wrong can be done, no right to redress can arise.”<sup>1</sup> If anybody has actually suffered an injury or damage by an act of an official of Government, his remedy is against the actual wrong-doer and not against the Government. But as a matter of grace, not of right,

---

<sup>1</sup> Feather v. Queen.

remedy is allowed against the Crown, that is the Government, by the procedure of the Petition of Right, only in civil cases not arising out of torts. In all other cases, the only remedy is against the actual wrong-doer.

The Indian Government can on the other hand claim no such prerogative. The Secretary of State in Council, as the highest executive officer of the Indian Government is not the successor of any king, but the East India Company, which was a commercial corporation and a legal person. No marks or functions of sovereignty can divest the East India Company of its legal personality. As a corporation, it was liable to be sued not only for breaches of contract, but also for the torts by its agents in discharge of their duties connected with commerce.

Section 32 of the Government of India Act says:—"The Secretary of State in Council may sue and may be sued by the name of the Secretary of State in Council as a body corporate."

"Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company, if the Government of India Act, 1858, and this Act had not been passed."

The principles deducible from judgments of Courts show when and how far the Secretary of State in Council is liable to be sued. The principles can be summed up as follows:—

(1) The Secretary of State in Council is not a body corporate for holding property, but only for suing and being sued. (*Kinlock v. Secretary of State.*) All property belonging to the Government of India is vested in



the Crown. The Section 32 does not make the Secretary of State in Council a corporation, but only provides for suits by or against the Indian Government in the name of the Secretary of State in Council as a body corporate.

(2) The Secretary of State in Council cannot be sued for his actions which are Acts of State. There can be no Act of State in any action of the Government within its own territories. There can only be Acts of State so far as the foreign relations of the Government are concerned. Therefore such acts are beyond the powers of municipal courts to question. "The transactions of independent states between each other are governed by other laws than those which municipal courts administer; such Courts have neither the means of deciding what is right nor the power of enforcing any decision which they can make."<sup>1</sup>

*Leading cases*:—The Nawab of Carnatic v. The East India Co; The Nawab of Coorg v. The East India Company; *In re* Maharaja of Panna.

(3) The Secretary of State in Council can be sued in respect of contracts entered into by the Government, or for restitution of property, or for the declaration of the validity of any enactment, or for decision on a point of constitutional law.

*Leading case*:—The Secretary of State in Council v. Moment.

(4) The Secretary of State in Council can be sued in respect of acts or defaults of the servants of the

---

1. The Tanjore case. The Secretary of State v. Kamatchi Bai Sahiba.

Government causing injury or loss to an individual, in the conduct of such undertakings by the Government, which do not come under its Governmental functions. That is, they must be undertakings which can as well be done by private individuals, *e.g.*:—The business of dock-yard, carriage of goods and passengers, conveyance of letters, etc.

*Leading case*:—*P and O. Company v. The Secretary of State in Council.*

(5) But he cannot be sued for an injury or loss caused to an individual by an act of an official of Government done in the course of his work of Government. Because Government officials are not in the positions of employer and employee with each other, but are all servants of the Crown. If their acts are lawful and within their statutory authorities, no wrong is done and the injured person has no remedy at all. But if the official exceeds his powers, the injured person can only proceed against him personally.

*Leading cases*:—*Nobin Chunder v. The Secretary of State*; *Hari Bhanji v. The Secretary of State*; *The Secretary of State v. Cockraft*; *Ross v. The Secretary of State.*

### High Commissioner for India.

A clear separation of the agency functions from those of a purely political nature is one of the results of the Reforms. A High Commissioner for India has been appointed to handle the agency functions. "It is no figure of speech to say that the appointment of a High Commissioner for India in London is the outward sign

in London of the new status of India approximating her to that of the Dominions " says Sapre. The High Commissioner is a servant of the Government of India and his pay and expenses of his establishment are paid out of the Indian revenues. A number of sundry functions, for example, those relating to the Stores Department, the Indian Students Department, the training of the Probationers to the Civil Service have been made over to him.

---

## CHAPTER VII.

### THE GOVERNMENT OF INDIA : THE VICEROY AND THE GOVERNOR-GENERAL.

The head of the Government of India is the Viceroy and the Governor-General. He is appointed for a term of five years by His Majesty by warrant under the Royal Sign Manual. He is chosen from among the most prominent public men of Great Britain. "The Governor-General occupies the most responsible as it is the most picturesque and distinguished office in the overseas service of the British Crown. For, while his activities comprise all the social and benevolent obligations of the Governor-General in the self-governing Dominions, there rests upon the Governor-General of India a direct personal share in the main burden of Government, such as pertains to no other representative of the sovereign within the Empire." Formerly he could not leave India during his term of office, but by an amendment of the Statute made in 1924, he may be granted leave of absence once, but not more than once, and unless special reasons require it for not more than four months. He is not subject to the original jurisdiction either civil or criminal of any High Court in India in his official capacity. His functions are both administrative and legislative and in addition he is the only constitutional link between British India and Native States and is in direct personal charge of the relations of India with foreign affairs. He is the actuating force of the Indian Government and the course of Indian politics is profoundly affected by his personality and influence.

He is in regular correspondence with the Secretary of State. Although constitutionally the Governor-General in Council is subordinate to the Secretary of State, the same thing cannot be said of the Governor-General personally, as it is not in keeping with his dignity as the Viceroy or the representative of the Crown.

### **The Governor General's Powers and Responsibilities.**

He has an Executive Council to assist him and normally he carries out his functions with the guidance and concurrence of the members of his Executive Council and subject to the critical observation of the Indian Legislature. But he is armed with extraordinary powers.

The business procedure of the Executive Council of the Viceroy is subject to his final decision. The transaction of Council business, the allocation of portfolios among its members, and the limitation of their scope, are all to be finally fixed by the Viceroy. If in his judgment, any matter is of grave importance, he can over-rule even the majority opinion of his Executive Council.

So far as the Indian legislature is concerned, the powers of control vested in the Governor-General alone can be classified as ordinary and extraordinary, according as they correspond or differ from the powers of the Crown in relation to British Parliament.

The ordinary Powers are :—

- (1) To fix the terms for election of members ;

(2) to convoke either Chamber ; to fix times and places for its sessions ; to prorogue its sessions ; to dissolve it before the expiry of the term or to extend its term as he thinks fit ;

(3) to address either Chamber and to require the attendance of its members for that purpose ;

(4) to recommend proposals for appropriation of revenues ;

(5) to allow at his discretion the legislature to discuss or vote upon those heads of expenditure, which are ordinarily non-votable, on the analogy of the Consolidated Fund Charges in England ;

(6) and to give his assent to or veto a bill passed by both Chambers or to reserve it for the signification of His Majesty's pleasure thereon.

The extraordinary powers are both of a positive and a negative character. Both are to be used as weapons in case of need. The Indian Legislature may not be willing to pass certain necessary laws or grants. Either Chamber may refuse such laws or grants. In such a case, the Governor-General wields his positive power of control and sees that such laws are passed and such grants restored. In certain cases, the legislature may exceed its powers given to it by Parliament and the Governor-General prevents the legislature from over-stepping its limits.

Sections 67-(3), 67 (4), 67 (A)-7, 57 (A)-8, 67 B, of the Government of India Act give the positive powers of control of the Governor-General.

Sections 67(3) and 67(4) run as follows :—

“ If any bill which has been passed by one Chamber is not, within six months after the passage of the bill by that Chamber passed by the other Chamber either without amendments or with such amendments as may be agreed to by the two Chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both the Chambers ; provided that standing orders made under this section may provide for meetings of members of both Chambers appointed for the purpose in order to discuss any difference of opinion which has arisen between the two Chambers.”

“ Without prejudice to the powers of the Governor-General under Section 68 of this Act, the Governor-General may where a bill has been passed by both Chambers of the Indian legislature, return the bill for reconsideration by either Chamber.”

The first section above provides for joint sitting of the two Chambers in case a bill is passed by one Chamber and is not passed within six months by the other Chamber without any modification. The fixing of the joint sitting of both the Chambers is left to the discretion of the Governor-General. The second section above gives power to the Governor-General to send a bill for reconsideration by either Chamber, although the bill has been passed by both the Chambers.

Sections 67(A)-7 and 67(A)-8, relate to the Governor-General's extraordinary powers to get necessary financial grants. The sections say :—

“The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has

been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act, as if it had been assented to, notwithstanding the withholding of such assent or reduction of the amount therein referred to, by the Legislative Assembly."

"Notwithstanding anything in this section, the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof."

The sections above give the Governor-General power to override the Legislative Assembly in cases where he thinks that necessary demands for grants have been refused or reduced. If necessary demands for grants are refused, the Government may come to a stand still and the Executive will be left powerless. In order to avoid such a difficult impasse, the Governor-General again is vested with extraordinary powers.

The power of certification is used to provide for cases of failure of necessary legislation being passed and to prevent undesirable legislation being passed. Sections 67-B and 67 (2) (A) give such powers.

The sections run as follows :—

Section 67-B:—(1) Where either Chamber of the Indian Legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General any bill, the Governor-General may certify that the passage of the bill is essential for the safety, tranquillity, or interests of British India or any part thereof, and thereupon :—

(a) If the bill has already been passed by the other Chamber the bill shall, on signature by the Governor-General



notwithstanding it has not been consented to by both Chambers, forthwith become an Act of the Indian Legislature in the form of the bill as originally introduced or proposed to be introduced in the Indian Legislature, or (as the case may be) in the form recommended by the Governor-General; and

(b) If the bill has not already been so passed, the bill shall be laid before the other Chamber, and, if consented to by that Chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or if not so consented to, shall on signature by the Governor-General, become an Act as aforesaid.

(2) Every such Act shall be expressed to be made by the Governor-General and shall as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect unless it has received His Majesty's assent, and shall not be presented for His Majesty's assent until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat; and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the Indian Legislature and duly assented to.

Provided that where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council."

Thus we see the Governor-General can override the fully considered expression of the Indian Legislature. He himself has inherent powers of legislation.

Section 67 (2-a) gives a negative power of control of the Governor-General to prevent undesirable legislation being passed. The section says:—

“Where in either Chamber of the Indian Legislature, any bill has been introduced, or is proposed to be introduced, or any amendment to a bill is moved, or proposed to be moved, the Governor-General may certify that the bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and may direct that no proceedings, or that no further proceedings shall be taken by the Chamber in relation to the bill, clause or amendment and effect shall be given to such direction.”

Thus it is within the power of the Governor-General to check either Chamber from passing any legislation, which in his opinion, affects the safety or tranquillity of British India.

In certain specified matters the previous sanction of the Governor-General is necessary before any Chamber can introduce any measures touching them. The specified matters are:—

- (1) The public debt or public Revenues of India or imposing any charge on the Revenues of India;
- (2) The religion or religious rites and usages of any class of British subjects in India;
- (3) The discipline or maintenance of the Army in India;
- (4) The relations of the Government with foreign princes or states;
- (5) Any measure touching a provincial subject which is not declared by rules to be subject to legislation by the Indian Legislature;

(6) Any measure affecting any Act of a provincial legislature ;

(7) And any measure repealing or amending any Act or ordinance made by the Governor-General.

#### **Powers of Certification by the Governor-General.**

The powers of certification are extraordinary powers of the Governor-General. As we have seen, the Governor-General may use his powers of certification for the following purposes :—

(1) to provide for cases of failure to pass necessary legislation.

(2) to prevent undesirable legislation being passed.

Thus a power of certification is a double-edged weapon in the hands of the Governor-General, to override the Indian Legislature either in the exercise of his positive or negative powers of control. But it is rarely used and up till now, there have been only four occasions when the Viceroy has exercised his power of certification. The first time the Governor-General exercised his power of certification was in the summer of 1922. Government had promoted a bill to prevent the dissemination of books and newspapers calculated to excite disaffection against Rulers of Indian States. The Assembly took the strong measure of refusing to agree to the introduction of the bill and the Governor-General was forced for the first time to bring into use the special powers of securing essential legislation entrusted to him by the Act. He "certified" the bill which was then passed by the Council of State and thereupon received his assent. Again in 1923, when the Government proposed an increase in the salt tax, the Assembly

rejected the clause in the Finance Bill embodying the increase and for the second time the Governor-General used his extraordinary powers to secure its passage.

During the sessions of the second Assembly, the Assembly rejected Government's demands for grants, as a constitutional protest, and refused permission to introduce the Finance Bill of the year; the Governor-General used his weapon of certification to override the Assembly.

In 1924, there was a revival of revolutionary crime in Bengal. An Ordinance had been passed to deal with it. A bill to extend the Ordinance after the expiry of six months was rejected by the Bengal Legislative Council and had been certified by the Governor. Supplementary legislation was necessary in the Central Legislature. The Bill was introduced in the spring of 1925. The Assembly rejected the essential clause and the Governor-General was once again compelled to use his special powers.

These are the instances when the Governor-General has used his powers of certification.

Besides these powers, it is for the Governor-General to decide what items of central expenditure fall within the non-votable categories. Further the nomination of official and non-official members to the Central Legislature is to be done by him.

As we have seen, the previous sanction of the Governor-General is required for the introduction of certain classes of bills in the Central Legislature. Likewise, his previous sanction is necessary before bills

relating to certain specified matters are introduced in the provincial legislatures.

Besides all these powers, the Viceroy has in addition the powers in an emergency without consulting the Legislature to legislate by Ordinance. The ordinance has effect as law for six months. This is indeed the most powerful weapon in the hands of the Viceroy.

Section 72 says :—"The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good Government of British India, or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian Legislature, but the power of making ordinances under this section is subject to the like restrictions as the power of Indian Legislature to make laws: and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian Legislature and may be controlled or superseded by any such Act."

In addition to these powers the Viceroy carries with himself when on tour all the powers of the Governor-General in Council.

These may be said to be the principal legal powers of the Viceroy. But as the Simon Commission Report says, "No mere list of powers can convey the full importance of his office or the range of his individual authority." He is not merely the constitutional head of the Indian Government, but is vested with all the powers of an autocrat. He is in constant contact with the leading public men and everything of importance comes under his notice. He is in constant touch with the Governors of provinces and helps them by his considered advice in their administrations.

A survey of the Viceroy's powers would not be complete without reference to his relations with Indian Princes.

### **The Viceroy and the Indian Princes**

Outside of these administrative powers, the Viceroy forms the constitutional link between British India and the Native States. The desire of the Indian Princes to be placed in direct relationship with the Viceroy rather than with the Governor-General in Council as given out by the Butler Commission Report places an additional wreath to the glory of the Viceroy. It shows how much trust and confidence they place in the Viceroy and it is certainly very easy to see that to be placed in direct and sole touch with the Viceroy well becomes the exalted position of the princes. On the Viceroy falls the task of presiding annually at the sessions of the Chamber of Princes. He comes in contact personally with them by paying ceremonial visits to their States.

### **The Viceroy and the Secretary of State**

Constitutionally, the position of the Governor-General is one of subordination to the Secretary of State. In actual practice the relations between them are largely determined by personal factors and the subordination of the Viceroy is not apparent. But the subordination and politically inferior position of the Governor-General cannot be denied. He is, for instance, required by the revised instrument of Royal instructions, to pay due obedience to the directions of the Secretary of State.

---

## CHAPTER VIII.

### THE GOVERNMENT OF INDIA. THE CENTRAL GOVERNMENT.

The Central Government is the Governor-General in Council. The growth of the Governor-General's Executive Council up to 1919 has been sketched already. The Government of India Act removes the limitation of the number of ordinary members to six, providing that the number shall be such as His Majesty thinks fit to appoint.

#### Composition of the Governor-General's Executive Council.

The members of the Governor-General's Executive Council are appointed by His Majesty by warrant under the Royal Sign Manual. Three of them must have the qualification of at least ten years experience in the service of the Crown in India. The Law Membership is open to a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, or a pleader of a High Court of not less than ten years standing. The number of members of the Governor-General's Executive Council at present is seven. They are:—

1. The Army Member (the Commander-in-Chief).
2. The Home Member.
3. The Finance Member.
4. The Law Member.
5. The Commerce Member.
6. The Member in charge of Education, Health and Lands.
7. The Member in charge of Industries and Labour.

“The Commander-in-Chief, besides controlling Army Headquarters, is in charge of a civil department called the Army Department, which performs functions roughly analogous to those of the Civil Secretariat of the Secretary of State for War in England. Its secretary is also nominated to be an official member of the Central Legislature. The Home Department deals with the All-India Civil Service and with such subjects as police and prisons and judicial matters, so far as these subjects are the concern of the Central Government. It initiates legislation in the sphere of both civil and criminal law and controls administration of such subjects, so far as the Central Government is concerned. In areas outside the Governors' Provinces, it exercises a direct jurisdiction; within these areas its departmental control is made effective through the Governor in Council. In short, it is also the department which has general charge of internal affairs and the oversight of internal politics. The Law Member is the head of the Legislative Department, and is responsible for the drafting of Government Bills. He advises the Government on many legal questions but does not, like a Law Officer in Britain, conduct any Government cases in Court. In addition to the Commerce Department, the Commerce Member is in charge of the Railway Department which functions through an organisation known as the Railway Board. The Education, Health and Lands Department is also concerned with such subjects as local government, agriculture, forests, famine-relief, etc., so far as these things touch central administration and responsibility and, in addition, deals with questions concerning



the position of Indians in other parts of the Empire. The Department of Industries and Labour also concerns itself with the Post Office and the telegraphs, irrigation, factories, and civil aviation.

The Viceroy himself holds the portfolio of the Foreign and Political Department. There is a Secretary in charge of each of the two branches, who holds the rank of Secretary to Government and sits as a nominated official in one or other House of the Central Legislature. The Foreign branch conducts external affairs and relations with frontier tribes; the Political branch has charge of relations with the Indian States."

In practice, out of six members excluding the Commander-in-Chief, three are Indians. Each Executive Councillor is a member of one or other of the Chambers of the Indian Legislature and has also the right of attending and addressing the Chamber to which he does not belong. Executive Councillors are official members of the Legislature. If a non-official member of the Legislature becomes an Executive Councillor, his seat falls vacant and he would become a member of either Chamber in his new official capacity.

The Governors of Madras, Bombay and Bengal become "extraordinary" members of the Governor-General's Executive Council, if it meets within their Presidencies. The Council may assemble in any place in India, which the Governor-General fixes; in practice it meets only in Delhi and Simla.

### **Business Procedure of the Governor-General's Executive Council.**

The Commander-in-Chief has rank and precedence in the Executive Council next after the Governor-General. The Governor-General remains the President of his Executive Council and he appoints a vice-President. "At any meeting of the Council, the Governor-General or any other person presiding and one member of the Council (other than the Commander-in-Chief) may exercise all the functions of the Governor-General-in-Council." The Governor-General makes rules and orders for the transaction of Council business and every order made or an act done in accordance with such rules and orders shall be treated as an act of the Governor-General-in-Council.

In regard to his own portfolio, each Executive Council Member is largely in the position of a Minister of State and has the final voice in ordinary departmental matters. But it is the duty of a member of Council to submit "every case of major importance in his department with the orders proposed by him" to the Governor-General. Besides, if any matter concerning one department affects another, the members in charge must discuss and if no agreement could be reached, the matter must be referred to the Governor-General. In this connection, an actual illustration, where an Executive Councillor failed to bring to the notice of the Governor-General an important matter might be noted. In 1921 the Government launched a prosecution against certain persons at the instance of the member in charge of the Munitions Board in con-

currence with the Law Member. While the case was proceeding, Sir Thomas Holland, the member of Council concerned, ordered to give up the prosecution. He took this important step without referring to the Governor-General or placing it in the Executive Council. His action was criticised by Government and Sir T. Holland "expressed deep regret at his error of judgment in failing to submit the matter to the Governor-General" and resigned.

The members of the Executive Council meet periodically as a cabinet. Ordinarily, they meet once in a week. All the important Government decisions are made by it. The Home Member generally acts as the Leader of the House ; but as a matter of fact, one member, who sits at the Legislative Assembly must act, as the leader.

The proceedings of the Governor-General's Executive Council are decided by the majority vote. In case the members are equally divided, the Governor-General or the person presiding has a casting vote.

As we have already seen, the Governor-General can override any decision of his Executive Council. "Provided that whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity, or interests of British India, or of any part thereof, are, or may be, in the judgment of the Governor-General, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the Council dissent from that opinion, the

Governor-General may, on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part." In such cases, any two members of the dissentient majority may require the matter with their reasons for differing to be reported to the Secretary of State.

In this connection it is very important to note that when the Governor-General overrules his Executive Council, he cannot do anything which the Governor-General in Council cannot do.

All orders of a Governor-General in Council are signed by a Secretary to the Government of India.

#### **The Functions of the Governor-General in Council.**

The functions of the Government of India are now principally in relation to those subjects which have been classified as Central Subjects. As we have noted, subjects, which happen to be omitted from the classification list by Devolution rules, are deemed to be Central subjects, and further Devolution Rule 4 lays down, that when a doubt arises whether a particular matter belongs to a provincial subject or not, it must be referred to the Governor-General in Council whose decision shall be final.

#### **Central Control over Provincial Matters.**

Although the Reforms have drawn a line of demarcation between Central and Provincial duties and given the provinces a large measure of independence in their legislative, administrative and financial spheres, the responsibility for the financial and administrative stability of India as a whole, rests on the Central

Government. For this reason, the responsibilities of the Government of India require that it should be kept informed of all important matters even though of provincial concern. The obligation to supply information to the Governor-General in Council is imposed by statute and again more precisely by rule, on both halves of the provincial Governments.

Section 45 says :

" Subject to the provisions of this Act and rules made thereunder, every local government shall obey the orders of the Governor-General-in-Council, and keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to the Government of its province."

Devolution Rule 5 says :—

" The Local Government shall furnish to the Governor-General-in-Council from time to time such returns and information on matters relating to the administration of provincial subjects as the Governor-General-in-Council may require and in such form as he may direct."

Certain central subjects again are of such a nature as to have little meaning so far as Governor's provinces are concerned apart from the administration of provincial subjects, as for example, All India Services. In such cases the Central Government issues orders to both halves of the Provincial Government. But in the matter of " External Relations" the Central Government cannot discharge its responsibilities without interfering in both the reserved and transferred parts of the

Provincial Governments. Thus, it cannot be said that the responsibility of the Central Government, so far as provincial transferred subjects are concerned, has all but been eaten away by the Act. Only the responsibility of the Centre over Central subjects prevails over provincial transferred subjects. But the Act has specifically limited the control of the Governor-General-in-Council over provincial transferred subjects.

Devolution Rule 49 gives :—

“ The powers of superintendence, direction, and control over the Local Government of a Governor's province vested in the Governor-General-in-Council under the Act shall in relation to transferred subjects be exercised only for the following purposes, namely :—

1. To safeguard the administration of central subjects ;
2. to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at an agreement ; and
3. to safeguard the due exercise and performance of any powers and duties possessed by, or imposed on, the Governor-General-in-Council under, or in connection with, or for the purposes of the following provisions of the Act, namely, Section 29A, Section 30 (1a), Part VIIA, or of any rules made by, or with the sanction of, the Secretary of State in Council.”

## 2. Control in the Reserved Field.

In addition to the direct administration of central subjects the Government of India has two other executive duties to perform, firstly superintendence, direction and control over provincial Governments in respect of reserved subjects and secondly administration of all

subjects in such areas of British India as fall outside the Governor's provinces, (The North-West Frontier Province, British Baluchistan, Ajmer-Merwara, the Andaman and Nicobar Islands and Coorg). Of these, Coorg has recently got a legislative council. But no explicit devolution of authority has been made to the local Government. All these provinces are under Chief Commissioners, who administer the provinces as agents of the Governor-General-in-Council.

The control of the central Government over the official part of a provincial Government is complete. It is exercised most fully and constantly in the domain of "Law and Order." The Home Department of the Government of India keeps itself fully informed of all important provincial affairs through the Criminal Investigation Department. The Home Department is charged with the general responsibility of all internal affairs. To discharge such a responsibility, it alertly watches the progress of important events in British India as a whole. The C. I. D.'s tentacles extend from Dan to Beer Sheba. The Home Department thus follows closely the march of political movements, keeps vigilantly informed of any industrial or commercial unrest, or any seditious or revolutionary propaganda. It indicates the general lines of policy to be followed by the Provincial Governments. From time to time, it directs prosecutions to be instituted for seditions and crimes. Besides, the Central Government has drawn the attention of the Provincial Governments over the need for maintaining adequate police force, expediting criminal trials, etc.

It has relaxed its control over provincial matters concerning reserved subjects according to the importance of the subjects. In the purely provincial sphere, it has limited its supervision principally to securing that provincial finances should not be detrimentally affected by large alienations of land or land revenue or wide departure from the accepted principles of assessment.

**The Central Government in relation to provincial transferred subjects.**—We have seen that a policy of non-interference with provincial transferred subjects has been chalked except for some limited purposes, by the Central Government. But an entire isolation of each province must result in a warped outlook of administrations and hamper the material progress of the province. Therefore, in order to secure uniformity of development in provincial administration on the transferred side, the Government of India has adopted the practice of arranging periodical conferences among ministers and heads of departments. There have thus taken place at Delhi and Simla conferences attended by provincial Education Ministers, and Directors of Public Instruction, and Provincial Excise and Agricultural Ministers, as well as by Inspectors-General of Police and Jails, and Finance Members. It is a sound method of pooling experience and initiating joint policy.

The form in which the Government of India has couched its communications to the provinces is invariably one of advice and suggestion and not of command. But the advices or suggestions are commands, so far as the provincial reserved half is concerned and the transferred half readily falls in with the suggestions.



### Financial control by the Centre

The powers of the Central Government in the financial sphere are restricted to central revenues. The classification of revenues, central and provincial, follows closely the division of subjects into central and provincial, except that a fixed share of 25 per cent. in the growth of income tax collections due to increase in income within the provinces is assigned to the respective provincial Governments in addition to the provincial heads of revenue.

Over provincial finances, the control of the Central Government is limited to :

1. New Provincial taxes, other than those already earmarked for them in the Devolution rules called scheduled taxes.
2. Provincial borrowings, whether in India or outside India; in the latter case the sanction of the Secretary of State in Council is also necessary.
3. New items of expenditure on establishments and on capital outlay.

Over the financial administration of the central Government, the Secretary of State still maintains a control more rigid than in any other sphere of administration. The Secretary of State in Council scrutinise the budget proposals of every year, before they are presented to the Assembly. No doubt the belt of financial control has been loosened gradually. Large powers of expenditure have been delegated to the Government of India, but in a limited number of cases, previous sanction of the Secretary of State in Council is necessary. In cases

of taxes falling within the scope of the Fiscal Convention, the Secretary of State does not interfere, when the Government of India and the Legislature are in agreement. The Secretary of State also controls the management of the gold standard and the paper currency reserves, the policy with regard to exchange and currency, and all borrowings in England and India.

### **The Central Executive in relation to the Central Legislature**

The differentiation of the legislature from the executive must result in the control of the legislature by the executive or *vice versa*, otherwise the machinery of Government would come to a standstill. In U. S. A., both the legislature and the executive are subordinate to a superior body. In India, until responsible Government is given, the executive cannot be amenable to the legislature.

### **The Contrast with Westminster**

"The first essential for a correct understanding of the relations of the Central Government with the Central Legislature in India is to divest the mind of analogies drawn from the British parliamentary system. A British Cabinet can only survive, so long as it has the support of a majority in the House of Commons. The Central Executive in India—the Governor-General-in-Council—is, on the other hand, entirely independent of, and, indeed, can seldom count with confidence on a majority in the Indian Legislature. Yet, no defeat can drive its Members from Office, and the statutory powers of the Governor-General or the Governor-General-in-Council are sufficient to prevent opposition from bring-

ing administration to a standstill. Again, the Opposition in the British Parliament has always before it the prospect of a return to office, when it will itself bear the burden of administrative responsibility and have to justify its former declarations. The position in India is very different. The Opposition's opportunities for criticism and its powers of influencing the course of legislative and administrative business are extensive. But it cannot be vested with responsibility for the administration and thus be called on to reconcile its criticisms with the requirements of actual government. Such a constitutional system might be supposed to have led to wholly irresponsible criticism from the Legislature and to complete indifference in the Executive. But, the course of development has been otherwise. On the one hand, while the attitude of the Assembly has often been strongly influenced by its constitutional irresponsibility, it has co-operated with Government in a good deal of constructive work. On the other hand, the Executive has been far from unresponsive to the criticism and to the suggestions of the Legislature."

**Control of the Central Executive over the Central Legislature.**—In order to see that the central legislature does not in any way impair the responsibility of the Government of India to Parliament, the Act has vested the Executive with certain degree of control over the legislature. This control is exercised mainly by the Governor-General himself, about which we have seen, and partly by the Central Executive. The control of the Central Executive consists in the rule making powers given to it by Sec. 129-A.

**The Section says:—**

"Where any matter is required to be prescribed or regulated by rules under this Act and no special provision is made as to the authority by whom the rules are to be made, the rules shall be made by the Governor-General-in-Council, with the sanction of the Secretary of State in Council, and shall not be subject to repeal or alteration by the Indian Legislature or by any local Legislature."

The skeleton of the new constitution under the Reforms having been framed by Parliament, it has delegated to the Indian Government authority to fill in the details of the working of the constitution. This is necessary as the details to be filled, depend much, on first hand experience and the Governor-General-in-Council are naturally deputed to do it. The Rule-making Powers vested in the Governor-General-in-Council under Section 129-A are for:—

1. framing rules to fix the qualifications of electors and candidates and determining the method of election, nomination and all other matters connected with the composition of the legislatures, central and provincial. Refer to Section 64 of the Act;

2. making provision by rules for regulating the course of business and the preservation of order in the Central Legislature and selecting the manner of providing a person to preside in the absence of the President and Deputy President, and to determine what number should constitute the quorum and other matters connected with the proceedings in the legislature. Refer Section 67;

3. classifying the subjects into central and provincial both for administrative and legislative purposes;

4. framing of the first standing orders.

The rules can be amended only by the Governor-General-in-Council, but the standing orders may be amended by the Chamber concerned.

### The Central Government in Relation to Native States

The powers of the Governor-General-in-Council in interfering with the Government of Native States come under the extra-territorial powers of the Government of India. "By successive Charters and Acts, extensive powers of sovereignty have been delegated by the English Crown, first to the East India Company and afterwards to the Governor-General-in-Council as its successor". The Governor-General-in-Council is the representative in India of the British Crown and as such can exercise under delegated authority the powers incidental to sovereignty with reference to both British India and to neighbouring territories, subject to the restrictions imposed by Parliamentary legislation and to the control exercised by the Crown through the Secretary of State for India. Thus he can make treaties and conventions with the rulers, not only of Native States within the boundaries of what is usually treated as India, but also of adjoining states which are commonly treated as extra Indian such as Afghanistan and Nepal and can acquire and exercise within the boundaries of such states, states powers of legislation and jurisdiction similar to those which are exercised by the Crown in foreign countries in accordance with the Foreign Jurisdiction Acts and Orders in Council under them, and extending to persons, who are not subjects of the King."

The existence of the extra-territorial powers of the Governor-General-in-Council and their exercise to some extent was regulated by the Foreign Jurisdiction and Extradition Act of 1879 of the Government of India. In order to draw out the analogy between the extra-territorial powers of the British Crown in other parts of the world and the extra-territorial powers of the Governor-General-in-Council, an Order in Council by His Majesty was passed in 1902 superseding the above Act.

#### **The Order in Council of 1902**

1. The substitution of an Order in Council for an Act of the Indian Legislature places the extra-territorial jurisdiction of the Governor-General-in-Council on a wider and firmer basis.

2. The language of the Order is wide enough to confer every possible source of extra-territorial jurisdiction. Both executive and legislative powers of extra-territorial jurisdictions are delegated by the Order in Council. The regulations issued under this Order take the form of directions to the Native States, constituting Civil and Criminal Courts, and declaring what law to be administered.

3. The local limits in which the Governor-General-in-Council can exercise extra-territorial jurisdiction under the Order are the "territories of India outside British India" or in other words, Native States and any other territories which His Majesty in Council might declare to be within the jurisdiction of the Government of India. The local limits include local territorial waters.

In point of fact, the jurisdiction of the Governor-General-in-Council within the Native States is exercised :—

- (a) over European British subjects in all cases;
- (b) over Native Indian subjects in certain cases;
- (c) over all classes of persons, British or Foreign within certain areas;

(d) there are certain areas within which full jurisdiction has been ceded to the Government of India and within which, jurisdiction is accordingly exercised by British Courts and Officers over all classes of persons, *e.g.*, the Berars or the Assigned Districts of Hyderabad were leased by the Nizam in perpetuity to the British Government. The British Government exercises complete jurisdiction over all subjects in the Berars.

Besides, full jurisdiction is enjoyed by the Government of India in cantonments and residencies. Under arrangements with the Native States, full jurisdiction has been ceded in Railway lands within the territories of those States. The effect of these grants came into question in *Muhammad Yusufin v. Queen Empress*.

In this case a Magistrate at Simla issued a warrant for the arrest of a subject of the Nizam. The offence was alleged to have been committed at Simla. The warrant was executed over an area of railway land in the State. The question was whether the execution of the warrant under the circumstances was legal. It was held that the jurisdiction depended on the agreement between the Nizam and Government of India and the jurisdiction

conceded must be limited to jurisdiction required for railway purposes and the warrant was illegal.

Besides, the Government of India may enjoy in some cases what is called "Residuary jurisdiction." That means the residue of jurisdiction which has not been left with the Native Ruler, but exercised by the Government of India. This is to be inferred from sufferance and usage. By this, considerable jurisdiction is exercised by the British Government through the Government of India in some of the Native States over the subjects or a particular class of subjects.

---



## CHAPTER IX

### THE CENTRAL LEGISLATURE.

We have seen that the Montague-Chelmsford Reforms left the structure of the Central Executive little altered. It was in the re-organisation of the legislatures that the Reforms effected great changes. The Montague-Chelmsford Report pointed out as the cardinal defects of the Morley legislatures, "the very restricted nature of the franchise" and "the lack of connection between the primary voter and the member who sits in the Councils." The radical change to be made was "to call an electorate into existence capable of bearing the weight of responsible Government." To secure this end the structure and composition of the legislatures were entirely altered and a new life was breathed into the working of the legislatures. Let us now consider the structure and the powers of the Central Legislature.

#### Structure of the Central Legislature.

The Indian Legislature consists of the Governor-General and the two Chambers, viz., the Council of State and the Legislative Assembly. The Government of India Act fixes the maximum number of members in Council of State to be sixty, of whom not more than twenty should be officials. A minimum number of members is fixed on the other hand to the Legislative Assembly and the number is fixed as 140. The Act fixes that five-sevenths of the members shall be elected and one-third of the rest shall be non-officials. The Assembly now consists of 145 members, of whom 105 are elected, 25 are officials and 14 are non-officials.

The electorates for both the Chambers are general, communal (Muslim, European or Sikh) and special (Indian Commerce, European Commerce, or Land-holders). The property qualifications for the Council of State are the highest of all and those of the Assembly are higher than for a provincial legislature.

#### **Duration and Sessions of the Two Chambers.**

The Council of State sits for three years and the Legislative Assembly for five years. As we have seen, the Governor-General can dissolve either Chamber sooner, or extend the period further than the periods of duration given above. But the executive is not to rule without the Legislature for more than six months or even with the permission of the Secretary of State for more than nine months. We have seen that the Governor-General is not a member of either House and the Executive Councillors of the Central Government are members of either House. We have also noted the powers of the Governor-General with respect to the Indian Legislature.

#### **The Presidents of the Council of State and the Legislative Assembly**

The Council of State has a nominated President, but the President of the Legislative Assembly was to be first appointed by the Governor-General and after the first four years, to be elected by the members and appointed by the Governor-General. The first President was chosen from his experience of the House of Commons and it was his duty not only to set the Assembly going on right lines, but also to be the guide and adviser of the Presidents of the provincial legislatures.

### Procedure in the Central Legislature

The Governor-General fixes times and places for holding the sessions of either Chamber of the Indian Legislature and he may from time to time, by notification or otherwise, prorogue such sessions. The quorum for the Assembly is twenty-five; and for the Council of State fifteen. If the President, on a count taken at any time ascertains that a quorum is not present, he must adjourn the House till the next day on which it ordinarily sits.

The list of business is prepared by the Secretary in accordance with the Standing Orders of the House.

**Questions:**—The first hour of every meeting is available for the asking of questions of public concern. A question may be addressed to a member of the Government in relation to the public affairs of which he is officially connected, or to a matter of administration for which he is responsible. If a question is addressed to a non-official member, it must relate to some Bill, Resolution or other matter connected with the business of the House for which the member is responsible.

The Legislatures in India have adopted for the time being the rules of Parliamentary etiquette in its proceedings. The first Standing Orders were framed on the model of the written and unwritten rules of Parliamentary debate. It is open to the Chamber or Legislature concerned to alter the Standing Orders and adopt a new practice. "The Assembly must create its own precedents and traditions. It is a swadeshi Parliament. It is not called upon to imitate slavishly the British Parliamentary practice. But it would do well

to take advantage of the long experience of that House which has been crystallised in conventions."

In India the Rules provide that no question may be asked in regard to any of the following subjects:—

(i) Any matter affecting the relations of His Majesty's Government, or of the Governor-General-in-Council, with any foreign States;

(ii) any matter affecting the relations of any of those authorities with any Prince or Chief under the suzerainty of His Majesty, or relating to the affairs of any such Prince or Chief, or to the administration of his territory; and

(iii) any matter which is under adjudication by a Court of Law having jurisdiction in any part of His Majesty's dominions.

A question is a demand for information. The President may disallow any question, when in his opinion, it is an abuse of the right of questioning or calculated to obstruct or prejudicially affect the procedure of the House.

Notice of questions is of course necessary to collect the desired information. The length of notice is fixed by Standing Orders.

After the question has been answered, any member may put a supplementary question to elucidate further information. The supplementary question must be put at once; it cannot be deferred to the end of question time.

**Resolutions:**—A resolution is a specific recommendation to the Government by the House as a body, on

motion made and carried. A resolution must not be made on any matter, on which a question may be barred by rule.

The Governor-General may disallow any resolution on the ground that it cannot be moved without detriment to public interest or on the ground that it relates to a matter which is primarily not the concern of the Government.

The other details of procedure consist in moving for adjournments, in moving amendments, in taking the vote, etc.

**Committees :—**There is no provision of law for the Legislature to dissolve itself into committees. But they have adopted the Parliamentary practice of appointing Standing Committees. The most important of the Standing Committees are the Standing Finance Committee and the Committee on Public Accounts. The Finance Committee is to scrutinise the Government's proposals for new items of votable expenditure. It is an advisory body presided by the Finance Member and its recommendations, though not binding on the executive, carry great weight with the Government and the Assembly. The Public Accounts Committee deals with the auditing and appropriation of the accounts. It has to scrutinise whether the money voted by the Assembly has been spent within the scope of the demands. It also examines the expenditure on non-votable items. Two-thirds of this Committee are elected by non-official members of the Legislature and the rest nominated by the Government.

**The Budget:**—The position of the Legislature in relation to the raising and spending of the revenues of the country is similar to that which has been established in the House of Commons. "The elements of the principle, that the people are not to be taxed without their consent, are to be found in the rules requiring the budget to be laid before the Legislature each year with the proposals of the Government, for the appropriation of the revenues to various items of expenditure stated in the form of demands for grants, on which the Legislature will be asked to vote."

The Budget is submitted to both Houses for a general discussion. The demands for grants arising out of it are, under the Act, submitted to the vote of the Legislative Assembly only. But, of course, the Council of State can express its views not only in the general discussion, but also in the form of resolutions. Proposals for new taxation and changes in the existing taxes, that might have been imposed by law, have to be submitted as bills and thus come before both Houses.

A refusal of a grant is exceptional. A nominal reduction only is required to criticise a department. Any further reduction must be with the object of retrenchment. But a refusal of a grant on an important branch of Government would merely dislocate the administration. But we have seen that the Governor-General has extraordinary powers to overrule the refusal of grants by the Legislature, in such cases, where he thinks that a particular demand is essential to the discharge of his responsibilities.

Non-votable items in the budget cannot be reduced or refused. Discussion on these matters is to be decided by the President.

**Bills:**—The general principles underlying procedure as regards to bills are as follows: A bill has to be published with a full statement of "Object and Reasons." When first introduced, the debate is to confine itself as far as possible to the principle of the Bill. Sufficient time is allowed to elucidate public opinion on that matter. A Bill that is contentious or in any way complex is referred to a Select Committee of the House. The Select Committee's report is then presented by the member in charge of the Bill and is then sent back to the Select Committee, if any alterations or modifications are to be made. When the Bill finally comes to the House, any member may propose amendments. Then the Bill is considered, clause by clause, in all its details. At the end of the debate on each clause, the President puts the question, that the clause or that the clause amended, stands part of the Bill. And finally after an interval, the Bill is put to the vote in its final form.

All matters are decided by the majority vote. The President or the person presiding has a casting vote. The President is free to exercise his casting vote as he thinks best. But it is understood as a rule, he will throw his vote to maintain the *status quo* rather than to bring about a change.

No Bill becomes law unless passed by both Houses and assented to by the Governor-General; but any such

law may be disallowed by His Majesty in Council and it becomes void from the date, when such disallowance is notified. The Governor-General may assent to a Bill, or withhold his consent, or reserve the Bill for the signification of His Majesty's pleasure thereon. In the last case His Majesty in Council (who would act on the advice of the Secretary of State in Council) may assent to it or may not assent to it. Unless His Majesty in Council assents to it, it does not become law.

We have seen in an earlier chapter, the Governor-General's power of overruling the Legislature and 'certifying a bill'. We have also noted, under what circumstances, the Governor-General can convene a Joint Sitting of the Houses.

### The Law making Powers of the Central Legislature

Wide powers of legislation have been given to the Indian Legislature.

Section 65 says :

1. The Indian legislature has power to make laws—

(a) for all persons, for all courts, and for all places and things, within British India, and

(b) for all subjects of His Majesty and servants of the Crown within other parts of India, and

(c) for all native Indian subjects of His Majesty, without and beyond as well as within British India; and

(d) for the Government of officers, soldiers, airmen and followers in His Majesty's Indian forces, wherever they are



servng, in so far as they are not subject to the Army Act or the Air Force Act ; and

(e) for all persons employed or serving in or belonging to the Royal Indian Marine Service ; and

(f) for repealing or altering any laws, which for the time being are in force in any part of British India, or apply to persons for whom the Indian legislature has power to make laws.

2. Provided that the Indian legislature has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting—

(i) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act, the Air Force Act and any Act amending the same) ; or

(ii) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India ; and has not power to make any law affecting the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty, or dominion of the Crown over any part of British India.

3. The Indian legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any Court, other than a High Court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing an High Court.

A more important limitation for practical purposes is contained in Section 67 which requires the previous sanction of the Governor-General for the introduction of any measure affecting—

(a) the public debt or public revenues of India or imposing any charge on the revenues of India ; or

(b) the religion or religious rites and usages of any class of British subjects in India ; or

(c) the discipline or maintenance of any part of His Majesty's military, naval or air forces ; or

(d) the relations of the Government with foreign princes or States :

or any measure—

(i) regulating any provincial subject or any part of a provincial subject, which has not been declared by rules under this Act to be subject to legislation by the Indian legislature ; or

(ii) repealing or amending any act or a local legislature; or

(iii) repealing or amending any Act or Ordinance made by the Governor-General.

A similar provision limits the powers of a local legislature when they embark upon any matter of legislation which would be properly considered by the Central Legislature. There is no formal distribution of legislative power in the Indian Constitution between the centre and the Provinces. The practical demarcation follows the classification of subjects into central and provincial. The Central Legislature is entitled to legislate for the whole field, to any rate with the Governor-General's sanction, even if the topic relates to a provincial matter.

### The Financial Powers of the Indian Legislature

We have seen how the Budget is presented to the Central Legislature. The proposals of the Governor-General-in-Council for the appropriation of revenues or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General directs otherwise :—

- (i) interest and sinking fund charges on loans;
- (ii) expenditure of which the amount is prescribed by or under any law;
- (iii) salaries and pensions payable to or to the dependants of—
  - (a) persons appointed by or with the approval of His Majesty or by the Secretary of State in Council;
  - (b) Chief Commissioners and Judicial Commissioners;
  - (c) persons appointed before the 1st day of April, 1924, by the Governor-General-in-Council or by a local Government to services or posts classified by rule under the Act as superior services or posts; and
- (iv) sums payable to any person who is or has been in the civil service of the Crown in India, under any order of the Secretary of State in Council or of the Governor-General-in-Council, or of a Governor, upon an appeal made by him in pursuance of rules made under the Act.
- (v) expenditure classified by the order of the Governor-General-in-Council as—
  - (a) ecclesiastical;
  - (b) political;
  - (c) defence.

The proposals of the Governor-General-in-Council for appropriation of revenue relating to heads of expenditure not specified in the "non-votable list" above, shall be submitted to the vote of the Assembly in the form of demands for grants.

In this connection we have seen the Governor-General's overruling power.

The Finance Bill, which is the annual statutory authority for most of the central taxation, comes before both Houses which have equal power of dealing with it. It is formally introduced at the time of the Finance Member's budget speech, though it is not discussed or voted upon, until after the estimates have been passed or certified.

#### Relations Between the two Houses.

The two Chambers differently constituted are bound to differ in view. The Government of India Act seeks to avoid such differences by (1) Joint Committees (2) Joint Conferences (3) Joint sittings.

By means of Joint Committees differences are forestalled and the passage of a particular Bill is expedited. Joint Committees are formed by each Chamber contributing an equal number of members by formal resolutions.

By means of Joint Conferences, differences of opinion are discussed. Here again, each contributes an equal number, but no decision is taken. The results are to be looked for in the proceedings of both or either Chamber.

Joint sittings are convened by the Governor-General when a Bill is passed by one Chamber and is

not passed in without amendments or with such amendments as may be agreed to, by both the Chambers, within six months after the passage of the Bill in the first Chamber.

### **The Central Legislature in Relation to the Central Executive**

Short of constitutional control, the members of the Indian Legislature have as many opportunities of criticising and influencing the executive as the House of Commons. In actual working, the influence of the Legislature, particularly the Assembly has been considered to be enormous. The legislature can exercise its influence in three ways :—

- (1) By questions and resolutions.
  - (2) Voting on the budget.
  - ✓ (3) Appointment of standing committees.
-

## CHAPTER X

### PROVINCIAL LEGISLATURES

In our consideration of the Central Executive and the Central Legislature, we discussed first about the Governor-General and his powers, then passed on to the Central Executive, leaving the Central Legislature as the last in the order of exposition. But so far as the provinces are concerned, it is necessary to reverse this order. We have seen that the changes introduced by the Reforms left practically the Central Executive unaltered, while important changes were made in the structure and powers of the Central Legislature. Apart from the fact that the Central Legislature was made bicameral, and elected majorities were introduced in both the Chambers, and greater opportunities of influencing the executive were conceded by the Reforms, the responsibilities of the Governor-General and the Central Executive to Parliament have been left unimpaired. Therefore our scheme of study was proper, in beginning with the Executive, and then considering how far the Central Legislature's powers were widened.

But, in the provincial sphere, the Reforms have introduced changes of a far reaching character. The changes in the provincial legislatures and executives are fundamental features of the new constitution. The keynote of the Reforms is the establishment of provincial autonomy and the introduction of responsible Government in the provinces. Responsible Government, as we have seen, works through the *de facto* sovereignty of ministers responsible to the electorate,

represented by the legislature. It is but proper therefore to begin our study of the provincial constitution, with provincial legislatures and consider how far the provincial legislatures control the provincial executives.

**The Provincial Legislature:**—The Minto-Morley Legislative Councils were mere enlargements of the Executive Councils for the purpose of law making. Narrow franchises and indirect elections failed to encourage in the members a sense of responsibility to the people generally. No general franchise and no territorial constituencies existed and the powers of the councils were limited in the way we have seen. Further, the Minto-Morley Legislative Councils could legislate and advise, but had no administrative control. The Governor presided over the Councils and exerted an exceptional influence over all deliberations.

The grant of 'Responsible Government' in the provinces being the cardinal feature of the Reforms, the Legislative Councils have been radically altered. The provincial legislature under the Act is an autonomous body *in posse*.

**Composition of the Legislative Councils:**—The Act of 1919 provides that, at least 70 per cent. of the members of a Legislative Council shall be elected members (except in Burma where it is 60 per cent.) and not more than 20 per cent. shall be officials. In addition to elected and official members, there is a third group, *viz.*, the non-official members. Non-official members are nominated by the Governor. Nomination secures representative to a class or community, which would otherwise go unrepresented and is used by the

Governor to redress inequalities or to fill up an undesirable gap. The detailed work of defining constituencies and franchise, in fact fixing up the exact number of the Legislative Councils, was done by the Franchise Committee of Lord Southborough. The recommendations of this Committee were considered by the authorities and embodied in Electoral Rules.

The constituencies generally based upon territory are supplemented by constituencies representing particular communities or special interests such as Universities, Indian and European Commerce and Landholders. The former, or General constituencies are divided into "Communal" and "Non-communal" and these are sub-divided into "Rural" and "Urban." The composition of the Legislative Councils has been very much enlarged. The statutory minimum for Madras is 118. The actual elected numbers fixed is 98; nominated officials and Executive Councillors form 11 and nominated non-officials form 23, the total being 132. Similarly, the compositions of the other Legislative Councils have been fixed.

**Franchise** :—A broad franchise, that is, the abolition of the narrow franchise of Minto-Morley Reforms, was desired by the Mont-Ford Report. The normal qualification for the vote is residence within the constituency, coupled with the payment of a small amount of land revenue rent, or local rates in rural areas, and of municipal rates in urban areas. The Electoral Rules did not establish woman suffrage, but they empowered the Legislative Councils by resolution to remove sex-barrier themselves and this has been done in every



province. In Madras, it may be noted, there has been a woman Deputy President of the Legislative Council.

It is beyond the scope of this book to enter into a discussion of the distribution of seats by communal electorates, reservation of seats, etc. Suffice it to note, that the provincial legislatures under the Reforms are enough to be representative in the full sense of the term.

**Business and Procedure in the Provincial Legislatures:**—The bulk of the Rules and Standing Orders regulate the business and procedure in the Legislative Councils. The President was to be appointed by the Governor for the first four years and then Presidents are elected by the members of the Council. There is a Deputy President elected by the members and approved by the Governor. Further, at the commencement of each session of the Councils is elected a panel of four Chairmen, any one of whom presides over the Council in the absence of the President and the Deputy President. The President decides all points of order which may arise and his decision is final.

The procedure as to questions, motions for adjournment and resolutions is similar to what obtains in the Central Legislature. Similar limitations exist in both cases.

**Budget:**—After the Budget has been presented to the Council by the Finance Member, the Council proceeds to deal with it in two stages:—(a) General discussion (b) Voting of demands for grants.

(a) A statement of the estimated annual revenue and expenses is presented before the end of the current financial year and on a day allotted subsequent to this,

by the Governor, the Council discusses the Budget as a whole or any question of principle involved in it. At this stage, no motion is moved nor is the Budget submitted to the vote of the Council. At the end of the discussion, the Finance Member gives a general reply to the debate.

(b) The second stage begins with the voting of grants. The estimated expenditure for each department of Government is presented in the form of a demand for a grant to that amount. The demand must give all the items of expenditure showing detailed statements. The demands for the transferred subjects are to be kept distinct from the demands for reserved subjects. Not more than twelve days can be allotted by the Governor for the discussion of the demands and not more than two days for the discussion of a single grant. The executive only is entitled to make any motion for appropriation of a demand. No motion of a private member is in order, except the one to omit or reduce any item in the grant, or to reduce the demand, or omit altogether.

Supplementary estimates and demands for new grants may be presented in the course of the year.

**Duration and Sessions of Provincial Legislatures :—**The ordinary duration of a Legislative Council is three years from its first meeting. But the Governor may dissolve it sooner or extend it for a period, not exceeding one year, if he thinks fit. But after dissolution, the executive is not to work without the Council, not more than six months, or for not more than nine months

with the sanction of the Secretary of State from the date of dissolution.

The Governor may appoint such times and places for holding the sessions of his Legislative Council and may prorogue the Council.

Any meeting of the Legislative Council may be adjourned by the person presiding.

All questions, in the Legislative Council are determined by the vote of the majority of the members present, and in case of equality of votes, the President has a casting vote.

**Powers of the Provincial Legislatures:—**The provincial legislatures under the Reforms are intended to be sovereign bodies with regard to the transferred functions of the Government and have great opportunities of criticising and influencing the executive, so far as the reserved functions are concerned.

**Law-making Powers:—**Section 80-A says:—(1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good Government of the territories for the time being constituting the province.

(2) The local legislature of any province may, subject to the provisions of the sub-section next following, repeal or alter as to that province, any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

As we have seen in the case of the Central Legislature, there are certain specified matters which require

the previous sanction of the Governor-General before the provincial legislature can make any law regarding them. They are laws;—

1. imposing or authorising any tax, except scheduled taxes;
2. affecting the public debt of India or the customs duties or other taxes and duties imposed by the Governor-General-in-Council for the purposes of the Government of India as a whole;
3. affecting the naval, military, or air force;
4. affecting the relations of the Government with foreign princes or states;
5. regulating any central subject;
6. regulating any provincial subject declared by Rules to be subject to legislation by the Indian Legislature;
7. affecting any power expressly reserved to the Governor-General-in-Council;
8. altering or repealing the provisions of the codes and acts specially declared by rules to be outside the jurisdiction of the provincial legislature; and
9. affecting any Act of Parliament.

In these matters, the powers of the provincial legislature are thus limited.

**Financial Powers** :—The Provincial Legislative Council has the power to vote upon the budget in the form of demands for grants as we have seen. We have also noted that the Council can move motions either to omit or reduce any grant or any item in the grant.

In respect of this power, three limitations are to be made:

(i) In the first place, certain charges of a special or recurring kind mentioned in Sec. 72-D, are not

submitted to the vote of the Council. Contributions payable to the Government of India, the interest and sinking fund charges on loans, expenditure prescribed by or under any law, the salaries of High Court Judges and of persons appointed by the Secretary of State in Council or by or with the approval of the Crown, and similar charges are heads of expenditure excluded by the Act from the control of the provincial legislature.

(2) The Governor has the power to authorise such expenditure in an emergency as may be necessary for the safety or tranquillity of the province. This corresponds to the Governor-General's power of sanctioning grants for any emergency.

(3) In view of the Council having the power to vote upon the budget, the Governor has been armed with the power of restoring grants. If the Council reduces or refuses a grant which relates to a reserved subject, it rests upon the Governor to decide whether the expenditure is essential to the discharge of his responsibility for the subject; and if the Governor "certifies" to that effect, he can restore the grant. The provincial executive can expend the amount on that subject, just as if the legislature has voted the demand. The Joint Select Committee made it perfectly clear that this power of restoration by the Governor was real and its exercise should not be regarded as unusual or arbitrary. Also, it must not be thought that the power of a Provincial Council to reduce or refuse a supply for a reserved subject is merely nominal. The Council has the opportunity to put on record its reasons for the vote. Anyhow, if the Council justly refuses or reduces a grant or

does so to criticise the Government, it will act as a corrective in course of time.

(4) If the provincial legislature reduces or refuses a grant relating to a transferred subject, its decision is almost decisive. The Governor with the advice of the Ministers can re-submit the demand to the Council for a review of the former decision.

With reference to transferred subjects, the Governor has the right in cases of emergency to authorise such expenditure, as may, in his opinion, be necessary for the carrying on of any department.

A bill passed by the legislature and not assented to by the Governor, does not become an Act and has no effect. Bills passed by the provincial legislature require not only the assent of the Governor, but also that of the Governor-General. Certain classes of bills must be reserved for the consideration of the Governor-General. Such cases, in which reservation for the Governor-General is compulsory are bills containing provisions (a) affecting the religion or religious rights of any class of British subjects in India, (b) regulating the constitution or functions of any university, (c) having the effect of including within a transferred subject, matters which have hitherto been classified as reserved subjects, (d) providing for the management or construction of light or feeder railways or tramways, (e) affecting the land revenue of a province in the matter of period of settlement or pitch of assessment or modifying materially the general principles of land revenue assessment.

Reservation is optional in the case of a bill which appears to the Governor (a) to affect any matter,

wherein he is specially charged under his Instrument of Instructions, (b) to affect any central subjects, (c) to affect the interest of another province.

A bill passed by the legislature and assented to by the Governor is submitted to the Governor-General and becomes an Act only on his signifying his assent to it. ✓ If the Governor-General withholds his consent, he has to give his reasons for the same. Generally, the Governor-General does not withhold his consent unless, (1) the bill oversteps the limits of the powers of the provincial legislature or (2) it affects all India interests or (3) central legislation on the same matter is contemplated.

Where the bill is reserved by the Governor for the assent of the Governor-General (in such cases mentioned above) it becomes law only, if the Governor-General assents to it within six months.

A bill passed by the legislature may be returned to it by the Governor for reconsideration with such amendments he may recommend; a bill passed by the legislature and reserved for the assent of the Governor-General may within six months be returned for reconsideration, with the consent of the Governor-General; the legislature may then reaffirm the bill with or without amendments and send it for the assent of the Governor-General. If a bill reserved for the assent of the Governor-General is not assented to, by him and is not sent for reconsideration within six months, it lapses.

The Governor-General may reserve a bill submitted to him in the ordinary course for the signification of

His Majesty's pleasure and such a bill becomes law on the assent of His Majesty in Council.

An Act assented to, by the Governor General may be disallowed by His Majesty in Council and becomes void from that date.

### **Governor's Powers with regard to Legislation.**

The Governor's powers with regard to the provincial legislation are both of a positive and negative character.

The positive power of the Governor is given by Sec. 72-E. The Section runs as follows:—

1. Where a Governor's Legislative Council has refused leave to introduce or has failed to pass in a form recommended by the Governor, any bill relating to a reserved subject, the Governor may certify that the passage of the bill is essential for the discharge of his responsibility for the subject, and thereupon the bill shall, notwithstanding that the Council have not consented thereto, be deemed to have passed, and shall on signature by the Governor, become an Act of the local legislature in the form of the bill as originally introduced or proposed to be introduced, in the Council (as the case may be) in the form recommended to the Council by the Governor.

2. Every such Act shall be expressed to be made by the Governor and the Governor shall forthwith send an authentic copy thereof to the Governor-General, who shall reserve the Act for the signification of His Majesty's pleasure and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect, as an Act passed by the local



legislature and duly assented to; provided that, where in the opinion of the Governor-General, a state of emergency exists, which justifies such action, he may instead of reserving such an Act, signify his assent thereto and thereupon, the Act shall have such force and effect as aforesaid, subject however to disallowance by His Majesty in Council.

3. An Act made under this section shall as soon as practicable after being made, be laid before each House of Parliament, and an Act, which is required to be presented for His Majesty's assent shall not be so presented, until copies thereof have been laid before each House of Parliament for not less than eight days, on which that House has sat.

Thus, this section gives the power of certification to the Governor to get essential legislation passed. But in order he may not misuse his power, the bill so certified by him must be sent to the Governor-General, who in turn should reserve it for His Majesty's pleasure, unless in his opinion, a state of emergency exists, in which case his signification of assent will make it law. If His Majesty in Council assents to it, the Act has the same force and effect, as if it had been passed by the local legislature. Even the signification of assent by the Governor-General in a state emergency is subject to disallowance by His Majesty in Council. Before the bill reserved for the assent of His Majesty in Council is considered by His Majesty in Council, copies must be placed in each House of Parliament for at least eight days.

The negative power of controlling legislation by the Governor consists in his preventing undesirable legislation getting passed by the legislature.

Section 72-D. (3) says :—“ Where any bill has been introduced, or is proposed to be introduced, or any amendment to a bill is moved, or is proposed to be moved, the Governor may certify that the bill, or any clause of it, or the amendment affects the safety and tranquillity of his province, or any part of it, or of another province and may direct that no proceedings, or no further proceedings shall be taken by the Council in relation to the bill, clause or amendment, and that effect shall be given to any such direction.

---

## CHAPTER XI

### THE PROVINCIAL EXECUTIVE.

The Provincial Executive under the Reforms is the outcome of the genius of British statesmanship. Montague's announcement of 1917 unequivocally said the progressive realization of Responsible Government was the key note of British policy in India. This gave rise to the question, how and where Responsible Government should be introduced and this was answered by the Montague-Chelmsford Report. The domain of the provinces was to serve as the training ground for Indians to "progressive realisation of Responsible Government." But the authors of the Mont-Ford Report had reached the definite conclusion, that complete responsibility for provincial Government could "not be given immediately without inviting a breakdown." Therefore, in order to avoid the breakdown on the one hand, but to initiate Indians in the path of Responsible Government, they devised the means of splitting up the provincial executive, which goes by the name of "Dyarchy." In each province, under the Government of India Act of 1919 the executive consists of two parts. One part consists of the Governor and his Executive Council and the other part consists of the Governor and Ministers. The Ministers are chosen by the Governor from the elected members of the Provincial Legislative Council. The Governor in Council is in charge of the reserved subjects, while the portfolios of the transferred subjects are placed in the hands of the Ministers. The principle of Responsible Government

is introduced by making the Ministers responsible to the electorate, so far as the transferred functions are concerned.

### The Governor Acting with Ministers

The number of ministers varies from two to three in different provinces. They are appointed by the Governor from the elected members of the provincial legislature and they hold office during his pleasure. The salary of a Minister is fixed as the same as that of an Executive Councillor; but a smaller salary may be fixed by the vote of the Legislative Council.

Section 52 (3) of the Government of India Act says:—"In relation to transferred subjects, the Governor shall be guided by the advice of his ministers, unless he sees sufficient cause to dissent from their opinion, in which case, he may require action to be taken otherwise than in accordance with that advice." This shows that in relation to transferred subjects, the Governor is not entirely a constitutional head, bound to follow the decision of his Ministers. He is armed with sufficient reserve powers to disregard the advice of the Ministers. The Joint Select Committee say: "Ministers who enjoy the confidence of a majority in their Legislative Council will be given the fullest opportunity of managing that field of Government, which is entrusted to their care. In their work, they will be assisted and guided by the Governor, who will accept their advice and promote their policy, whenever possible. If he finds himself compelled to act against their advice, it will be only in circumstances roughly analogous to those in

which he had to override his Executive Council—circumstances which will be indicated in the Instrument of Instructions.” The Instrument says: “In considering a Minister’s advice and deciding whether or not, there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the Legislative Council and to the wishes of the people of the Province, as expressed by their representatives therein.”

Further the exercise of the reserve powers by the Governor is facilitated by the provisions of Sec. 49 (2) which empower the Governor to make rules for the convenient transaction of business with his Ministers. Under these rules, particularly those framed for Madras, the Secretaries of Departments are given power to dispose of cases at discretion, without the concurrence of Ministers, to refer cases to the Governor over the heads of the Ministers and to have access to the Governor, without the concurrence of the Ministers.

The resultant effect of all these provisions is to make the responsibility of the Ministers to the Governor, not a mere theory or fiction, as in England, but a reality of considerable importance. With reference to Ministers, the Governor has not been made a mere constitutional head. He is the *defacto* head of both sides of the executive.

The Governor is not himself responsible, either to the Legislative Council or the Government of India for orders passed by him, whether according to or differing from the views of the Ministers. The rules framed

under Sec. 72 (5) provide that the Legislative Council has no power to pass any Resolution, criticising the Governor, even in respect of any action taken by him in regard to transferred departments. Devolution Rule 49 frees him from the interference of the Governor-General-in-Council, except for certain specified purposes. Thus, in his sphere of activities free from the control of the Government of India, the Governor has the powers of an autocrat.

The position of the Ministers on the other hand, is that of a servant with two masters. They are responsible to the Legislative Council for what they do, whether they act themselves or under the orders of the Governor. To enforce the responsibility of Ministers, the Legislative Council can pass a vote of no confidence or of censure or can reduce or refuse any demands for grants made by them. Whenever the Legislative Council expresses its want of confidence in the Ministers and shows its disapprobation in any of the ways above mentioned, the Governor has the constitutional right of either dismissing the Ministers or dissolving the Legislative Council.

Thus the Ministers are forced to play to the tunes of both the Governor and the Legislative Council. If the Governor and the Council disagree, the Ministers will have no option but to resign. But in practice, deadlocks have been very rare. This is chiefly due to the absence of parties in the local Councils with avowed political views. The tendency of the non-official nominated element generally is to vote for the Government. So much so, the Ministers have come to be dependent

more on the support of the Executive Councillors than on the vote of the elected members of the Council.

**Joint Ministerial Responsibility** :—Although, neither the Act nor the Joint Select Committee has fixed any provision for joint responsibility of the Ministers, it was clearly anticipated by the Joint Committee. Joint Responsibility leads the way to the cabinet system. The Joint Select Committee say: "It should be recognised from the commencement that Ministers may be expected to act in concert together. They probably would do so; and in the opinion of the Committee, it is better that they should do so." It was the view of the Joint Select Committee that this principle of collective responsibility should appear on the face of Government of India Bill and accordingly Sec. 52 (3) was made to read, "in relation to transferred subjects, the Governor should be guided by the advice of his *Ministers*" But, unfortunately in the Instrument of Instructions to Governors, the wording does not lay stress on the principle of collective responsibility. The word "Minister" occurs in singular in the Instrument which does not evidently refer to joint responsibility.

The general principles of all the foregoing views of the Joint Committee are:—(1) That the Ministers should have the confidence of the majority in the Councils, (2) they should be jointly responsible. The working of Dyarchy has shown that these principles could not be followed. This has been partly due to the lack of experience and sufficient political education on the part of the members of the Councils and partly due to the absence of political parties with common political

views. Except the Swarajists, who entered the Councils in 1924, the chief tendency has been for members to group themselves on communal grounds. The growth of political institutions, habits and conventions is not certainly a simple affair. The Joint Responsibility of Ministers is absolutely impossible, unless they belong to a solid political party, which predominates the legislature. The Governor, in view of these circumstances, in making appointments of Ministers has either rewarded outstanding merit or tried to satisfy the claims of different communities. There has been possible for a majority party in Madras and the Governor has been taking the constitutional means of inviting the leader of the party to form the Ministry. The principle of Joint Responsibility has thus been accepted and embodied in practice in the acknowledgment of a "Chief Minister." But again, the whole system is vitiated by communalism. In other provinces, the principles above-mentioned could not be worked out in actual practice.

The absence of Joint Responsibility made the Ministers weak and ineffective as against the Governor and the Reserved half. In most provinces, the Ministers came to be treated in fact, not merely in law, as advisers of the Governor.

**The Governor and His Executive Council:—**  
The members of a Governor's Executive Council are appointed by His Majesty by warrant under the Royal Sign Manual and their number must be such, not exceeding four as the Secretary of State in Council directs.

One of them must be a person, who at the time of his appointment has been for at least twelve years in



the service of the Crown in India. There is nothing in the Act prescribing the distribution of Executive Councillorship as between members of different races. There are four members of the Executive Council in Madras, Bombay and Bengal and in each case (as was recommended by the Joint Select Committee) two are Indians. In the other six Governors' provinces, there are two Executive Councillors in each, one being an Indian. All Executive Councillors are ex-officio members of the Legislative Council. But the Council has no control over their emoluments or tenure of office which is in practice limited to five years. If an elected member is appointed as an Executive Councillor, his seat as an elected member falls vacant, although he enters the Council in his new capacity as an Executive Councillor. The Governor usually presides at meetings of his Executive Council and all proceedings are determined by a majority vote and the presiding member has a casting vote in case of an equal division. But this rule is subject to the overriding power of the Governor which is given by Section 50 (2).

" Provided that, whenever, any measure is proposed before a Governor in Council, whereby the safety, tranquillity, or interests of his province or of any part thereof are or may be in the judgment of the Governor, essentially affected, and he is of opinion that either the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected and the majority present at a meeting of the Council dissent from that opinion, the Governor may, on his own authority and responsibility, by order in writing, adopt, suspend or reject the measure in whole or in part. "

### Relation between the two parts of the Provincial Government.

The two parts of the provincial executive are kept separate and distinct. But in the actual working of the dyarchy, it is impossible to put all important questions of Government into water tight compartments. There are matters in which joint decision and co-operation are necessary. A purely departmental issue can be disposed of, inside the department. If it is of considerable gravity, consultation between the Minister and the Governor may solve the issue. But "cabinet questions have to go before a meeting of the whole cabinet" and that means joint discussion of both the halves of the Government. But it must be understood that there is no decision, for which the halves are jointly responsible. The Joint Select Committee had therefore emphasised the necessity of Joint deliberations between the two halves.

The Committee said:—"The Government thus composed and with this distribution of functions shall discharge them as one Government. It is highly desirable that the executive should cultivate the habit of associated deliberation and essential that it should present a united front to the outside." Further their views on joint deliberation were clearly expressed as follows:—

"There will be many matters of administrative business, as in all countries, which can be disposed of departmentally. But there will remain a large category of business of the character which would naturally be the subject of Cabinet consultation. In regard to this

category, the Committee conceive that the habit should be carefully fostered of joint deliberation of the members of the Executive Council and the Ministers sitting under the Chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subjects, but the Committee attach the highest importance to the principle that, when once, opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for the decision lies."

Thus, in this scheme it is the Governor that acts as a connecting link between the two halves. "In such cases, the Governor occupies the position of an informal arbitrator between the two halves of the executive and on him lies the duty of effectively putting into practice of joint decision of the two halves; "The position of the Governor will be thus one of great responsibility and difficulty and also of great opportunity and honour. He may have to hold the balance between divergent policies and different ideals, and to prevent discord and friction."

Accordingly, Section 49 (2) empowers the Governor to make rules and orders for regulating the relations between the two parts of the Government. Devolution Rule 7 empowers him to decide finally whether a particular matter falls within the reserved or the transferred field. Devolution Rule 9 provides that, if a matter affects both the halves and difference of opinion arises between them, the Governor should, if necessary, hold a joint consultation. Devolution Rule 30 enjoins joint consultation or proposal for taxation and borrowing.

Responsibility is shouldered on that part which originates the proposal. Devolution Rules 31 and 32 provide for the allocation of revenue by mutual agreement between the two halves and vest the Governor with his final decision in such matters, in case the two halves are not agreed.

The two halves have equal authority to issue orders in the name of the Government of the province, but the orders must bear the necessary indication to which of the two halves the order belongs.

Within the Legislative Council, the Joint Committee advised that the Executive Councillors and the Ministers should not oppose each other by speech or vote. They should not be required to support the other by speech or vote, in cases of proposals which they do not approve.

### The Governor.

We shall close this chapter with an account of the Governor and his powers. Occupying as he does, an unique position of responsibility and authority as head of the province, it is fit to terminate this chapter with an account of the Governor. "He is not only the direct representative of the Crown appointed by His Majesty by warrant under the Royal Manual and the head of the province in all matters of dignity and precedence: he is not only the chief patron of innumerable institutions and endeavours and the dispenser of unending official and personal hospitality; he is also the actual and working head of the executive, presiding over its full meetings and providing by his influence

and advice, and sometimes even direction, the cohesion between the two sides of Government, which would otherwise be wholly lacking." Thus the Simon Commission Report gives a beautiful epitome of the position of the Governor. The Governor usually holds office for a term of five years. The three Presidency Governors are chosen from distinguished men in the field of British Politics, while the other Governorships are held by officials belonging to the Indian Civil Service. It may be noted that Lord Sinha has been the only Indian appointed for this important post.

#### **His Relations with Executive Councillors and Ministers.**

As the head of the province, the Governor is an ex-officio member of the two halves of the provincial executive. But his relations with the Executive Councillors and the Ministers are different.

In the Executive Council, he is the working head of the Government. He takes part in all deliberations. He has a casting vote as president and has authority to overrule the majority in matters which affect the safety, tranquillity and interests of his province. He is a subordinate officer of the Crown so far as the reserved subjects are concerned. He, with his Executive Council, is fully responsible to British Parliament for the proper administration of the reserved departments and is under the superintendence, direction and control of the Governor-General in Council.

In relation to Ministers, he is in the position of a constitutional head representing the Crown. So far as

the transferred subjects are concerned, the Ministers are wholly responsible to the Legislative Council. We have seen that in relation to transferred subjects, he shall be guided by the Ministers, unless he sees sufficient cause to dissent from their opinion, in which case, he may require action to be taken otherwise than in accordance with that advice. Thus, except in such matters where his interference is necessary, he is a constitutional head with reference to the transferred subjects.

Besides, the Governor has also the power of the temporary administration of a province in the case of a ministerial vacancy. There had been cases of individual resignations of Ministers, but in such cases there was no difficulty in filling up the vacancy. But on account of the obstructionist policy of the Swarajists block, in Bengal, the Government of transferred subjects had been brought to a standstill and in such cases the Governor had to take up the administration himself. In such a case, the Governor has to certify in writing that an emergency has arisen and forward a copy of the certificate to the Governor-General in Council for information. It must be noted that in such a case, the Governor-General has nothing to do with the transferred subjects, nor can he transfer the subject to the reserved category.

We have also seen in respects of legislation and voting of demands for grants concerning reserved departments, the Governor enjoys extraordinary powers analogous to those of the Governor-General in regard to Central Legislature.

Further a careful survey of the relations between the two halves of provincial executive has shown that the Governor is the key stone of the arch of provincial Government.

He is responsible in general for the welfare and progress of his province. The Instrument of Instructions charges him with the duty of maintaining peace and tranquillity, religious and racial equality and protecting the backward classes, Europeans and Anglo-Indians, the services and minorities.

---

## CHAPTER XII

### FINANCIAL RELATIONS BETWEEN THE GOVERNMENT OF INDIA AND THE PROVINCIAL GOVERNMENTS

#### Before the Reforms of 1919.

We have seen that the policy of Parliament from the Regulating Act onwards was the gradual unification and centralisation of the system of Government in India under the single authority of the Governor-General-in-Council. The process of centralisation was completed by the Charter Act 1833 and continued unimpaired for nearly a century until the Reforms of 1919. The whole administration of India was concentrated in the hands of the Governor-General-in-Council and the Governments of the provinces were merely agents of the Government of India.

Under this centralised system of Government, the provincial revenues went directly into the coffers of the Central Government and the provincial Governments could incur no expenditure without the formal orders of the Government of India. The Central Government was the guardian of the provincial Governments in all respects. Especially, the careful scrutiny and control of the provincial finances by this guardian became in course of time a suicidal policy. The utter dependence of the provincial Governments was illustrated by Sir John Strachey. "If it became necessary to spend £20 on a road between two markets, to rebuild a stable that tumbled down, or to entertain a menial servant on a wages of 10 shillings a month, the matter had to be



formally reported for the orders of the Government of India." This arrangement led to a scramble for funds among the provincial Governments, and to a waste in expenditure. No agent would like to effect economies, and improve the income, if the profits are to be reaped wholly by the principal.

This state of circumstances continued right up to 1871, when the first step towards decentralization of revenues was taken by Lord Mayo. Certain heads of expenditure, for example, Jails, Registration, Police, Education, Medical Services, Printing, Roads, etc., were transferred from the Centre to local Governments, with the revenue under the corresponding heads to be supplemented by a fixed annual Imperial grant. The local Governments were authorised to allot the revenues assigned to them at their discretion, subject to certain financial rules. But the provincialised departments, though administratively transferred, yielded little revenue and could not serve as an impetus to the local Governments to develop provincial resources.

However, this measure of decentralisation was found to be markedly successful and a further step was therefore taken during the Viceroyalty of Lord Lytton. Lord Lytton's Government made the following improvements in 1877-78:—

1. Certain additional heads of expenditure, for example, Land Revenue, Excise, Stamps, General Administration, Stationery and Printing, Law and Justice, were transferred to the provincial Governments.

2. For the administration of these additional departments, instead of making an increase in the

permanent grants, certain important heads of revenue such as stamp duties, alcoholic excises and income-tax collected in the province, were provincialised.

3. Either the complete income or a fixed share realised under these heads were assigned to the provincial Governments.

Thus for the first time, a classification was made of revenue heads into "Indian," "Provincial" and "Divided." It generally happened, however, that the assigned revenue of the provinces fell short of their required expenditure and the deficit had to be made good as before, by a fixed annual grant.

This method led to annual bargaining between the Central and the Provincial authorities. Moreover the fixed grant bore so great a proportion to the resources of the Provinces, that the necessary stimulus to develop them was still wanting. In 1882, Lord Ripon's Government went still further. (1) Instead of the annual settlements, a system of periodical settlements in every five years was introduced. (2) Instead of making up the provincial deficit by an Imperial grant, a certain percentage of Land Revenue was made over to the Provinces. At each allotment, the provincial needs were revised and alterations were made. The provincial balances were taken by the Central Government. The system of dividing some heads of revenue was retained however. Settlements on these lines were made in 1882, 1887, 1892 and 1897.

Even this arrangement was found to have grave defects. The taking over of provincial balances at the renewal of the quinquennial contracts by the Central

Government weakened the administrative responsibility and financial conscience of the provincial authorities. Besides special contributions were also taken now and then by the Central Government. The result was, that the saving habit was not fostered and the provincial Governments tried to minimise their balances as much as possible.

"The provincial sheep was close clipped and shorn of its wool, and turned out to shiver till its fleece grew again." Thus the arrangement of periodical allotments, grew less and less satisfactory, and it became essential to give provincial Governments a more independent position. With this object, the Government of Lord Curzon, therefore, made the settlements quasi-permanent in 1904. Thenceforwards, the revenues assigned to a Province were definitely fixed and were not subject to any alterations by the Central Government, save in case of extreme and general necessity, or unless experience proved that the assignments made were disproportionate to normal provincial needs.

A new device of famine insurance was introduced soon after the settlements became quasi-permanent, as a result of the famine of 1907. The Government of India placed to the credit of each Province, a fixed amount, on which it could depend in case of famine, and famine expenditure by any Province beyond this fixed amount was to fall equally on the Province and the Central Government.

The final link in the chain of these periodical settlements is that of 1912, when Lord Hardinge's Government, made these financial settlements permanent. ✓

The "Permanent Settlement" of Lord Hardinge, was but a half way stage between the original and centralised system and the separation of revenues effected by the Mont-Ford Reforms. Though by this arrangement, the Provinces got larger revenues and greater freedom in their application, it did not amount to a devolution of authority but mere delegation of authority to collect and disburse certain revenues for the provincial needs, which were themselves fixed by the Central Government.

**The Outstanding Defects were three in Number.**

They were :—(1) The Provincial Governments could not budget for a deficit and they had to maintain a minimum cash balance with the Government of India. Provincial expenditure was regulated and definite restraints upon the powers of the provincial Governments were imposed to create new appointments and raise emoluments. In view of its own competing needs, the Central Government was interested in controlling provincial expenditure and therefore in preparing the provincial budgets and as soon as heads of revenue were divided, the Government of India interfered with the details of collection also.

(2) The Government of India controlled provincial taxation also. The Indian revenues continued to be one and indivisible. No provincial Government could impose a new tax without the previous sanction of the Government of India and the Secretary of State and without the scrutiny of the Central Finance Department, which was entrusted with the work of seeing whether the proposed provincial tax could affect the Central Government's resources of taxation.

(3) Last, but not least of the restrictions of the Central Government was in respect of borrowing by the provincial Governments. The provincial Government had no power of borrowing at all, as they had no independent financial status. Only the Secretary of State and the Government of India with the sanction of the Secretary of State could borrow in the public loan market, either in England or in India. Provincial Governments could only borrow from the Central Government, who therefore had to be satisfied as to the necessity for borrowing and coaxed into yielding.

This completes our preliminary survey of the financial relations between the Government of India and the provincial Governments. The Mont-Ford Reforms have effected radical changes and the introduction of provincial autonomy meant *ipso facto* the granting of financial autonomy and we shall now consider the effect of the Reforms in the financial sphere.

#### **Financial Devolution under the Reforms : The Meston Settlement :**

The authors in outlining the scheme of financial separation between the Central and Provincial Governments wrote:—"The existing financial relations between the Central and provincial Governments must be changed, if the popular principle in Government is to have fair play in the Provinces. The present settlements by which the Indian and provincial Governments share the proceeds of certain heads of revenues are based primarily on the estimated needs of the

Provinces, and the Government of India disposes of the surplus. This system necessarily involves control and interference by the Indian Government in provincial matters. An arrangement which has on the whole worked successfully between two official Governments would be quite impossible between a popular and an official Government. Our first aim has therefore been to find some means of entirely separating the resources of the Central and Provincial Governments."

The Joint Report therefore declared that the first step in minimising the interference of the Central Government over provincial finance was a complete separation of Indian and provincial sources of revenue which meant the abolition of heads known as "Divided." A special committee known as "The Financial Relations Committee" presided over by Lord Meston was appointed to examine the matter in detail.

The Meston Report recommended the provincialisation of Land Revenue, Excise, Irrigation and Stamps and it recommended the whole of the Income-Tax should go to the Central Government. Such a distribution of sources of revenue resulted in a deficit in the central budget and a method had to be devised to make good this deficit. This resulted in the adoption of provincial contributions as recommended by the Meston Report. These initial contributions were to be reduced or increased over a period of seven years so as to conform to certain "standard proportions" based on the relative taxable capacity of the Provinces, their indirect contributions to the Central Government, the relative incidents of central taxes and other economic factors.

The other changes introduced by the Reforms are secured by 'Devolution Rules'. They may be considered under the following heads :—

**Relaxation of control—**

- (a) over budget,
- (b) over expenditure,
- (c) over revenue including taxation,
- (d) over provincial borrowing, and
- (e) over cash balances.

**(a) Relaxation of control over budget :—** Before the Reforms, the Provincial Budgets were included in the Budget of the Government of India. But after the Reforms, Provinces have been given complete freedom to prepare their own budgets. Only the Government of India have to be supplied with certain information about—

1. withdrawals from the Provincial balances,
2. any loans required by the Provincial Governments from the Central Government,
3. the opening and closing balance of Famine Insurance Fund, and
4. the paying off the Provincial Loan Account.

**(b) Control over Expenditure :—** With the establishment of Responsible Government in certain spheres of Provincial administration, control over expenditure of the transferred services has definitely passed to the Provincial Legislatures. But the Secretary of State has not completely divested himself of the responsibility of expenditure, even on transferred departments. For, no proposal for the appropriation of funds in a Province may be made except on the recommendation

of the Governor. Further the Devolution Rules require the previous sanction of the Secretary of State in Council to certain proposals of expenditure in respect of transferred subjects, before they can be included in a grant.

As regards provincial reserved subjects, the Secretary of State in Council has considerably relaxed his powers of control. The delegation of powers is by means of executive orders. Certain principal items of reserved expenditure, such as the expenditure of the Governors, pay and allowances of All-India Services, etc., require the previous sanction.

**(c) Control over Revenue Including Taxation:—** Under the Reforms, the Provinces have been given wide powers of taxation. Certain taxes can be levied by the Province at its own discretion. Section 80-A of the Act requires that the local legislature should obtain the previous sanction of the Governor-General-in-Council for the introduction of any legislation imposing new taxes (except those exempted from this provision) or affecting the public or any other central tax. The taxes which are exempt from this provision are called Scheduled Taxes.

**(d) Control over Provincial Borrowing:—** We have seen that before the Reforms, Provincial Governments could not borrow as they had no revenues of their own, but under the Reforms they have acquired considerable freedom, but the borrowings are regulated by the Statutory Rules. No loan can be raised by any Provincial Government outside India without the sanction of the Secretary of State or within India without the sanction



of the Governor-General-in-Council and Provincial borrowings are restricted to certain purposes specified in the 'Devolution Rules', viz., capital expenditure or projects of lasting public utility, e. g., famine relief and repayment of previous loans on advances. Some Provinces have resorted to borrowing in the open loan market. But the bulk of provincial borrowing has been from the Central Government.

(e) **Control over cash balances** :—As the statutory custodian of the balances of the Provincial Governments, the Central Government is armed with additional powers, with the exercise of which provincial overdrawn can be prevented. The Central Government may, with the previous sanction of the Secretary of State in Council describe the procedure to be followed in payment of money into and withdrawal, transfer and disbursement of money from the public account. It has also the power to require the Provincial Governments so to regulate the programme of expenditure as not to reduce the balance at their credit below a stated figure.

### The Revenues of India.

The revenues of India are received for and in the name of the Crown, and must, subject to the provisions of the Government of India Act, be applied for the purposes of the Government of India alone. They 'include all the territorial and other revenues of or arising in British India,' and, in particular, tributes and other payments from Indian States, fines and penalties imposed by a Court of law in British India, and all property, movable or immovable, in British India

'escheating for want of an heir or successor, or devolving as *bona vacantia* for want of a rightful owner.'

There are to be charged on these revenues alone—

1. all the debts and other liabilities of the East India Company;
2. 'all expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India;' and
3. all payments under the Government of India Act, except so far as is otherwise provided by it.

But, 'except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity,' the revenues of India cannot, without the consent of Parliament, be used for defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces maintained out of those revenues. This safeguard was originally provided in the Government of India Act of 1858 in order that it might serve, it was said, 'as a pecuniary check on the prerogative of the Crown in regard to the army of India.' If there were no such provision in the Act, it was feared that the Crown might employ the Indian troops 'in wars wholly and entirely unsanctioned by Parliament,' and that 'the whole force of India might be carried to any portion of the world.' The real intention of the framers of the Act in making the provision appears, however, to have been not so much to limit the prerogative of the Crown (of making war or peace) as to protect the revenues of India. But the phrase 'or under other sudden and urgent necessity'

above is very significant. Under it, the revenues of India may, without the consent of Parliament, be applied to defraying the expenses of any military operations carried on by the Indian forces beyond the frontiers of India and in any part of the world. So long as that phrase is there, the safeguard provided against the improper expenditure of Indian revenues appears to be inadequate.

The portion of the revenue of India which is remitted to the United Kingdom and 'all money arising or accruing in the United Kingdom from any property or rights vested in the Crown for the purposes of the Government of India, or from the sale or disposal thereof, are to be paid to the Secretary of State in Council, to be applied for the purposes of the Government of India Act.' All such revenue and money have, except as is otherwise provided in the Act, to be deposited in the Bank of England to the credit of an account entitled 'The account of the Secretary of State in Council of India'. The Secretary of State in Council is empowered by the Act to authorize all or any of the cashiers of the Bank of England,.....

1. to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council ;

2. to purchase and accept stock for any such account ;  
and

3. to receive dividends on any stock standing to any such account and to direct ' the application of the money to be received in respect of any such sale or dividend.'

---

## CHAPTER XIII

### LOCAL SELF-GOVERNMENT

A survey of the field of local self-government is essential to our study of the Indian constitution, as the progress of representative institutions in India, will throw light on the advance made in the direction of shouldering civic responsibilities by Indians.

**Before the Reforms:**—The local self-government before the Reforms of 1919 owed its origin to the desire of the Central Authority for what is called Deconcentration as distinct from Decentralisation. The District officer was an officer of the Central Government operating in a particular district. As Chairman of the District Board, and often of one or more municipalities, he was just an organ of the Provincial Government. Local self-Government was just one of his many activities.

**Beginnings of Municipal Government:**—The earliest essays in Municipal Government were, as might be expected, in the great Presidency towns of Calcutta, Bombay and Madras. In these towns, corporations, consisting of a Mayor and Aldermen according to the English model had been established at an early date, but it was not till about the middle of the 19th century that, first in Calcutta and Bombay, and later in Madras, recognition was given to the elective principle by giving the rate-payers the right of choosing representatives to the corporations.

A series of Legislative enactments was passed between the years 1842 and 1862 providing for the setting

up of municipal institutions in other towns. An Act of 1850 provided for the voluntary constitution of Town Committees and levy by them of certain taxes, but few towns came forward to establish such Committees. On account of this, Provincial Governments were empowered to appoint Commissioners to bring about improvements in Municipal affairs.

**Lord Mayo's Contribution:** A step forward was taken in 1870 by the publication of Lord Mayo's Resolution on provincial finance. In connection with his scheme of financial settlements, the importance of local self-government was for the first time emphasised. The Resolution indicated the extension of municipal self-government as the most promising field for the greater association of Indians in the administration of the country. The Resolution encouraged the general application of the principle of election with the avowed object of developing self-government. The result was a very considerable increase in the number of municipal bodies in urban areas with well marked fields of activity and the introduction of the elected element in them. But in rural areas, little or nothing was done.

**Advance Under Lord Ripon:**—The Resolution of Lord Ripon on local self-government in 1882 was the first really important and decisive step in the progress of local self-government. The Resolution advocated the establishment of a net work of local self-government institutions, with special emphasis on the necessity for meeting the hitherto neglected requirements of rural areas, the reduction of the official element in local bodies to not more than a third of the

whole, the exercise of control from without and not from within; a larger measure of financial decentralization and the adoption of election as a means of constituting local bodies, wherever possible. As a result of the Resolution, a series of Acts passed in 1883-85 introduced a scheme of local self-government based on the creation of District Boards and Subordinate bodies, modelled closely on the English system of County Councils and Rural District Boards. At the same time, the powers of Municipal Boards were extended, and the Government of India intimated that the Chairman of a Municipality should be a non-official, whenever possible. Of course, a large discretion was given to local Governments and administrations concerning the manner in which the institutions should be constituted and operated. The degree to which the elective principles were introduced varied in different parts of India.

In spite of the intentions of the Ripon Reforms, the actual working of the Boards hardly justified the hopes of Lord Ripon. The natural apathy of Indians to shoulder responsibilities prevented real and substantial progress being made in political and popular education in the art of self-government. In the Districts, local self-government continued to be, as previously, one of the many functions of the District officer. No real attempt was made to inaugurate a separate system amenable to the will of the local inhabitants.

**Local Self-Government after the Reforms :—**The Montague-Chelmsford Report recognised very clearly the defects which we have seen above. Therefore the policy advanced by the Montague-Chelmsford Report as regards

Local self-government and embodied in the first formula was to concede complete popular control to local bodies and give them the largest possible independence of outside authorities. In pursuance of this policy, the Government of India passed a Resolution in 1918 formulating certain basic principles calculated to establish wherever possible complete popular control over the local bodies. It suggested elected majorities on all Boards, the replacement of official Chairmen by elected non-officials in Municipalities and, where possible, in Rural Boards, the lowering of the franchise to an extent to make constituencies really representative of taxpayers and the representation of minorities by nomination where necessary and not by communal or proportional voting. Nomination of experts where official experience was held to be necessary was also suggested. Finally, the Resolution of 1918 laid fresh emphasis on the advisability of developing the corporate life of the village as a step in the growth of self-governing institutions.

Under the Government of India Act of 1919, local self-government has been placed under the control of the Ministers, who are answerable to the provincial legislatures. As a result of this, the Councils have endeavoured to make local bodies a more effective training ground for larger and wider political responsibilities.

**The Existing System in Presidency Towns :—**The unit of local self-government in urban areas is the Municipality. The Corporations of Calcutta, Bombay and Madras have been constituted each under its sepa-

rate Statute and each with its own specific powers and privileges. The councillors, who vary in number from 106 in Bombay to 61 in Madras, are with the exception of a small number of Government nominees, elected on a fairly wide franchise, varying from 10 per cent of the population in Bombay to 5 per cent. in Madras. Business interests are also given special representation. There are no communal constituencies except in Calcutta. In Calcutta, the Corporation elects its own Mayor and its chief executive officer, while in Madras, the latter is appointed by the Provincial Government. In Bombay, a convention has been established whereby, the President is elected in turn from the Hindu, the Muslim, the European and the Parsi communities. Each of these Municipalities enjoys considerable freedom in the management of its municipal affairs, subject to certain powers of control in relation to appointments, contracts, the raising of loans and audit accounts which are vested in the local Governments.

**The Madras Corporation:**—Under the Madras City Municipal Act of 1919, which amended and consolidated the previous enactments, the administration of municipal affairs in the city is distributed among the Council, four Standing Committees of the Council and the Commissioner, who together constitute the Corporation. The Council is to consist of 50 members, of whom 30 are to be elected by the rate-payers from their respective divisions; 11 elected to represent commercial and other special interests and 9 nominated by the Government to represent minorities. The election of divisional councillors is held annually, for one-third of



the number by rotation. The full term of councillorship is three years. The President of the Council is elected from among the members.

The four Standing Committees are to deal respectively with finance, works, health and education. ✓

The Commissioner is appointed by the local Government for three years, but may at any time be removed by Government and shall be removed, if not less than 33 councillors vote for it at a special meeting called for that purpose. The Commissioner is the highest executive officer and is charged with the duty of carrying out the provisions of the Act. He is also vested with extraordinary powers to meet emergencies. He is not a member of the Council but has to attend its meetings. The Municipal Government of the city is vested in the Council which discharges all the functions not assigned to the Commissioner or the Standing Committees.

The Corporation has very wide discretion in the matter of town improvement, town extensions and Municipal trading.

It has full authority to impose taxes specified in the Act and to frame the budget free from outside interference subject to a minimum balance being maintained. It has large powers of making subsidiary legislation and also powers of borrowing on the security of its own resources for works of public utility with the sanction of the local Government.

### **Other Municipalities in India**

There are 749 other Municipalities in India with elected majorities in all of them, varying from four-fifths.

of the total membership in Behar and Orissa to two-thirds in Bengal. The functions of the Municipal Councils comprise the administration of education, public health, sanitation, medical relief and public works, including roads and bridges. While possessing little control over the details of administration, the provincial Government holds the ultimate power of superseding, suspending or abolishing a Municipal Council. The local Government also retains the power of nominating members and can require the appointment and prescribe the terms of service of the Health Officer or the Engineer. Municipalities are given a wide choice in the form of taxes which they may levy and the control of the Government over their finances is generally limited to see that a working balance is maintained and that the interests of the general public are cared for.

#### District Boards.

In all Provinces, except Assam, the most important unit of self-government in rural areas is the District Board, the jurisdiction of which is co-terminous with the District. Each Board has an elected majority. The franchise now gives the vote to little more than 3·2% of the population. Communal electorates for Muhammadans are provided in the Bombay Presidency and the United Provinces for District Boards and in Assam for Local Boards. Elsewhere representation of minorities is secured by nomination by the local Government. The Chairmen of the Boards are all elected except in the Punjab. The functions of the District Boards are much the same as those of the Municipalities with similar

powers of control and intervention in the hands of Provincial Governments. In Madras the Boards have power to construct and manage light Railways, and the Tanjore Board actually operates 134 miles of Railway.

### Minor Rural Authorities.

Within the area of the District Board, there are minor authorities varying in name, function and composition from Province to Province. The Local, Taluk, or Circle Board exists in all Provinces, except the Punjab and the United Provinces. It has jurisdiction over part of a District. It is composed in the main of elected members and as a rule chooses its own Chairman. All the elected members of the District Boards in Madras and Bengal, and two-thirds in the Central Provinces are chosen by the members of the Taluk Boards.

### Panchayats.

The Village Panchayat, or Union Board, is an attempt to re-create the village as a unit of self-government. It has jurisdiction over a village or a group of villages. Its primary function is to look after such matters as wells and sanitation, but it is sometimes entrusted with the care of Union roads and the management of Schools and Dispensaries and in Madras, of village forests and irrigation works and in some Provinces, it has been given power to deal with petty criminal and civil cases. Except in the United Provinces, the members are almost entirely elected. In Madras, Bombay and Assam, all male adults and in the Central Provinces all adults have the vote. The Rural authorities have power to impose certain taxes prescribed by

law but the most important of which is a cess levied on the annual value of land and collected with the land tax.

A very large portion of the revenue of these authorities consists of subventions from the Provincial Government. They are given not only as grants-in-aid for particular services, but also in the form of capital sums for the provision of works of construction.

---

## CHAPTER XIV

### HISTORY OF THE JUDICIAL INSTITUTIONS PRIOR TO THE INTRODUCTION OF THE HIGH COURTS

**The Presidency Town System** :—Foremost among the judicial institutions in the Presidency towns was the Supreme Court at Calcutta which was established under the Act of 1781. It continued to exist for upwards a period of eighty years, until in 1861, Royal Charters were issued establishing the existing High Courts, when the Supreme Court ceased to exist.

The history of the Supreme Court at Calcutta runs into a continuous thread during this period ; except the inconveniences that remained from the double system of judicial administration. There was an utter want of connection between the Supreme Court and the Company's Provincial Court. Nevertheless, the two systems were maintained. The powers of the Supreme Court were gradually extended within the limits marked out by the Act of 1781. It had five jurisdictions, viz., civil, criminal, equity, ecclesiastical, and Admiralty. An appeal lay to the Privy Council in all suits where the amount in dispute was of the value of Rs. 10,000.

**In Madras and Bombay** :—Supreme Courts in the Madras and Bombay Presidencies were introduced very late after the establishment of the Supreme Court at Calcutta.

The Mayors' Courts which were established at Madras and Bombay in 1753, existed till the year 1797 when they were replaced by the Recorders' Courts. These

consisted of the Mayor, three Aldermen and a Recorder, being in fact, the old Mayor's Courts with the addition of a Recorder appointed by the Crown. They had civil, criminal, ecclesiastical and Admiralty jurisdiction. They possessed all the powers of the Mayor's Courts, and their jurisdiction extended to British residents within the British territories, subject to the Governments of Madras and Bombay or within the territories of Native Princes in alliance with these Governments. The restrictions that applied to the Supreme Court at Calcutta applied to these Recorders' Courts.

These Courts were very short-lived. In 1779, a Supreme Court was established at Madras, in place of the Recorder's Court. This Supreme Court had like powers as the Calcutta Supreme Court. This new Charter was granted in 1801. The Recorder's Court at Bombay existed till 1823, when a Supreme Court was established in its stead in the same manner as at Madras.

The Supreme Courts were the chief tribunals, which owed their authority exclusively to the English Parliament and Crown. However, there were other inferior judicial authorities with powers derived from the same source.

**Courts of Requests** :—These were established by the Charter of 1753 which renewed the Mayors' Courts in the three Presidency towns.

**Justices of the Peace** :—The next judicial officers, who formed part of the Crown or Parliamentary system introduced in India were the Justices of the Peace. They were first established at Madras, Bombay and Calcutta by a Charter of George I in 1726, which

appointed the Governor and Councils of these places to be Justices of the Peace with power to hold Quarter Sessions. The law regulating the appointment and powers of the Justices of the Peace was subsequently laid down by Act II of 1869 and afterwards by the Code of Criminal Procedure.

The functions of a Justice of the Peace were three-fold:—First, the trial and punishment under certain Acts and statutes of offences by summary conviction, and without a jury; secondly, the investigation of charges in view to the committal or discharge of the accused person; and thirdly, the prevention of crime and breaches of the peace.

**Presidency Town Magistrates:**—Magistrates of Police for the Presidency Towns were first appointed under Act XIII of 1856.

### The Provincial Civil Courts.

**In Bengal:**—In 1771, when the Directors of the East India Company resolved to stand forth as diwan, Warren Hastings reorganised the whole system of revenue collection and administration of Justice throughout the Diwani Territory. He established Civil and Criminal Courts, original and appellate throughout the mofussil. Mofussil Dewani Adawlut or Provincial Courts of Civil Justice, superintended by Collectors of the Revenue were established in each district. These Courts took cognizance of all disputes, real and personal, all causes of inheritance, marriage, and caste, and all claims of debt, disputed accounts, contracts and demands of rent.

In 1775, the superintendence of the collection of revenue was vested in six Provincial Councils. The administration of Civil Justice was transferred from the European Collectors to Native Amils. From the Amils, an appeal lay to the new Provincial Councils and from them to the Governor-General-in-Council as Sudder Adawlut.

In 1780, regulations were made under the Regulating Act which confirmed the jurisdiction of the six Provincial Councils to revenue matters only. For the administration of Civil Justice, District Courts of Dewani Adawlut were established within the jurisdictions of the Provincial Councils. The ultimate appeal lay to the Sudder Dewani Adawlut.

The business of the Sudder Dewani Adawlut was to receive appeals from these District Courts, and superintend their conduct. An Act of Parliament in 1781 made the Sudder Dewani Adawlut, a Court of Record.

Lord Cornwallis, at first directed a union of the functions of Civil and Criminal Justice with those of the collection and management of revenue. But experience showed that the fiscal and judicial systems should be separated. Accordingly, he abolished all the Revenue Courts and empowered the Civil Courts to adjudicate all causes.

The Sudder Dewani Adawlut was established in the Presidency and consisted of the Governor-General and Council. It received appeals from the Provincial Courts and the Board of Revenue. In 1801, it was made to consist of three Judges appointed by the Governor-General and later on, it was made to consist of a Chief



Justice and as many puisne Judges, that the Governor-General thought fit to appoint. The Sudder Dewani Adawlut was vested with appellate jurisdiction and general power of supervision over the inferior courts in all suits above Rs. 1,000. Provincial Courts of Appeal were also established over the District and City Courts. The District Court consisted of the Judge, a Kazi and a Pandit.

Below the City and District Courts were the Registrars' Courts, for deciding cases not exceeding Rs. 200 in value and the Munsiffs' Courts and the Ameens' Courts to try cases of the value of Rs. 50 and under.

In 1831, important alterations were made. The powers of the Munsiffs were raised and their pecuniary jurisdiction was raised to Rs. 300. A higher grade of Judicial officer known as the "Principal Sudder Ameen" was established, who was authorised to decide suits for the value not exceeding Rs. 5,000. The Registrars' Courts as well as the Provincial Courts of Appeal were abolished in 1833.

The Adawlut system was revised and placed upon a definite footing by the Bengal Civil Court's Act of 1861.

**The Madras Courts** :—It appears that the Adawlut system based on the plan of Lord Cornwallis adopted in Bengal, was introduced in Madras in 1802. The Civil and Revenue Courts were kept distinct. The Registrars had jurisdiction to try suits referred to them by the Judge. The Judges could decide finally in suits under Rs. 1,000 in value. There were four Provincial Courts of Appeal; and the Sudder Courts consisted of the Governor-in-Council with an appeal from him in

suits of the value of Rs. 45,000 to the Governor-General in-Council. In 1806, the constitution of the Sudder Court was altered and new Judges were appointed and in the following year the Governor was declared to be no longer a Judge.

In 1816, village Munsiffs were appointed by regulation of the local Legislature and were empowered to form panchayats to decide civil suits within the village jurisdictions.

In 1843, Provincial Courts of Appeal were abolished, District Courts were established and the pecuniary jurisdiction of Subordinate Judges and Principal Sudder Ameen was raised to Rs. 10,000. An appeal from the latter tribunals was to lie to the District Judge. Eventually, Act III, 1873 established a system of Courts as at present constituted.

**In the Bombay Presidency :—**It appears that the Court of Directors in 1794 transmitted to the Government of the Presidency of Bombay a copy of the regulations of Lord Cornwallis and eventually Courts of Civil and Criminal Judicature were constituted by the Bombay Government similar to those in Bengal. In 1827, all the previous Bombay Regulations were rescinded and a new code was established by which the system of Judicature was revised and remodelled. In 1845, the appointments of Joint District Judges for all civil cases were authorised.

Finally Act XIV of 1869 reconstituted the Bombay Courts.

**The Provincial Criminal Courts :—**In Bengal : Criminal Courts denominated as Foujdary Adawlut

were first established in Bengal for the trial of persons charged with crimes and misdemeanours pursuant to the regulations passed by the President in Council in 1772. The Collectors of Revenue were entrusted with the supervision of these Courts.

A Sudder Nizamut Adawlut was established in Moorshedabad under the superintendence of a committee of revenue for the purpose of revising the proceedings of the Provincial Courts in capital cases. At first, the Foujdary Adawluts could not work successfully, as the Governor-General, as head of the Nizamut Adawlut or the Supreme Penal Court of Calcutta could not effectively discharge this function in addition to his other responsibilities. Therefore, this work was entrusted to a Mohammadan Officer called the Nazim. The process of administration of Criminal Justice was, that Mohammadan tribunals administered Mohammadan Law under the general control of the Nazim, subject to the supervision of English authority.

In 1790, regulations were passed, in pursuance of the suggestions of Lord Cornwallis, by which the powers of the Nawab Nazim passed over to the Governor-General-in-Council. They formed the Sudder Nizamut Adawlut having general control over the Criminal Courts.

In 1801, the Governor-General and Council were required not to sit in the Court of Nizamut Adawlut and in the Diwani Adawlut, and a Chief Justice and puisne Judges were appointed.

Next in rank to the Nizamut Adawlut came Courts of Circuit. Each Court consisted of the same judges

of the Provincial Civil Court of Appeal with the addition of a Kазee and a Moofti. These Courts of Circuits were abolished in 1829, when Commissioners of Revenue and Circuit were appointed. They were entrusted with powers formerly vested in the Courts of Circuit, together with those belonging to the Board of Revenue; the former to be exercised under the authority of the Nizamut Adawlut and the latter to be exercised under the authority of a Sudder Board of Revenue. The Commissioners thus became the Criminal Judges in all cases.

Two years experience showed that the labours cast upon the Commissioners were too heavy. Thereupon in 1831, the Magistrates were authorised to refer to the Sudder Ameens any criminal case for investigation, although the Ameens were not authorised to make any commitment. The same year, District Judges not being Magistrates were empowered when ordered by the Governor-General-in-Council to conduct the duties of the sessions, to try commitments made by Magistrates and to hold gaol deliveries for each district at least once in every month. Provision was made in 1832, for referring suits to a panchayat or for constituting assessors to assist the Judge, the decision however being vested exclusively in the officer presiding in Court.

The practice, which grew up under this state of the law, was for the local Governments to appoint particular persons to be "District and Sessions Judges." The practice of appointing separate persons to be District and Sessions Judges was, for a long period of

time, utterly without authority. But it continued as long as 1871, when Mr. Fitzjames Stephen introduced into the Legislative Council, the Bengal Sessions Courts Act of 1871, which provided for the appointment of Sessions Judges and Additional Sessions Judges by the local Governments in Bengal and the North-West Provinces. The Act was merely a temporary measure, passed in order to give a legal jurisdiction and existence to the Superior Courts of Criminal Justice which had previously been wanting. It was repealed in 1872, the Criminal Procedure Code of that year constituting all the Criminal Courts of the country.

#### **Criminal Justice in Madras**

In the Presidency of Madras, a system of administration of Criminal Justice was introduced in 1802, framed upon the system which prevailed in Bengal. Magistrates and Assistant Magistrates were appointed, with power to apprehend, bring to trial, and in light cases to inflict petty punishment. Four Courts of Circuit were established, and the Chief Criminal Court consisted of the Governor and Council.

The system so introduced was afterwards modified and altered. In 1827, Assistant Judges were appointed under a Regulation of that year, and then were constituted joint Criminal Judges of their districts. Native Criminal Judges were appointed in that year, without jurisdiction over Europeans and Americans, and were afterwards called Principal Sudder Ameen. Trial by jury was ordered to be gradually introduced.

The Madras Courts of Circuit were abolished in 1845 and the Judges of Districts Courts were directed to hold permanent Sessions for trial of persons accused of crimes formerly triable by Courts of Circuit. Natives might be called in to assist either as assessors or as a Jury.

### Criminal Justice in Bombay

With regard to the Presidency of Bombay, the Governor-General-in-Council in 1797 authorised the local Governments to establish Courts of Civil and Criminal Judicature in the Presidency based upon the system that prevailed in Bengal. Mohamadan Law did not generally prevail in this Presidency. Hindus were tried by their own criminal law, Parsis and Christians by English Law. Judges' and Magistrates' Courts and Courts of Session were established, and the Governor-in-Council had the appellate jurisdiction and the power of revising sentences. In 1827, the Bombay Code was passed which established the basis of the whole judicial and police system of Bombay. Magistrates and Police Officers apprehended offenders and punished for slight offences. District Judges and Assistant District Judges exercised criminal jurisdiction; the Court of Circuit held by one of the Foujdary Adawlut Judges, retained cognizance of the most serious crimes. In 1830, the Provincial Court of Circuit was abolished, and the Criminal Judges were vested with the powers of Sessions Judges and Courts of Circuit. Joint Sessions Judges were appointed under an Act of 1845.

---

## CHAPTER XV.

### THE EXISTING JUDICIAL SYSTEM

The organisation of the Judicial system in India varies slightly from Province to Province. But a study of the Judicial system of the Madras Presidency will suffice as a guide to the understanding of all provinces.

#### The Provincial Judiciary

**Village Munsiff and Panchayats:**—The lowest judicial authority is the Village Munsiff or the Village Panchayat, having jurisdiction over a village or group of villages. It can deal only with petty cases both civil and criminal. In civil suits, the value of the claim should not exceed Rs. 50 and where both parties consent in writing Rs. 200. In criminal cases, a petty fine or confinement in the village office for a few hours can be given.

From this stage there is a bifurcation in the administration of civil and criminal law. Let us consider the Provincial Civil Courts and the Provincial Criminal Courts separately.

#### The Provincial Civil Courts.

Outside the Presidency towns, we have in each Presidency a number of Courts of different grades. In the Madras Presidency, we have three grades of Courts. They are the (1) the Districts Munsiffs' Court, (2) the Subordinate Judges' Courts or the Sub-Courts, (3) the District Judges' Courts or the District Courts.

The jurisdiction of a District Munsiff extends to all original suits, of which the value does not exceed

Rs. 2,500. The jurisdiction of District and Subordinate Judges extends to all original suits, whatever may be the value of the suit. But a District Court is a Court of superior grade to the Sub-Court. It is the principal Court of Original Civil Jurisdiction in the District and it is also the Court of Appeal from decrees and orders in certain suits passed by other Courts in the District including Courts of Subordinate Judges. Thus, though the Munsiffs' as well as the Sub-Courts have jurisdiction to try a suit, say, to recover Rs. 500 according to Sec. 15 of Civil Procedure Code, "the Court of the lowest grade competent to try the suit" must try it. That is, the suit shall be instituted in the Munsiff's Court.

An appeal from the decision of the Munsiffs Court lies to the District Judge.

From the decisions of Subordinate Judges, the appeal lies to the District Judge, if the value of the case does not exceed Rs. 5,000 and in all other cases direct to the High Court. The original jurisdiction of the District Judges is unlimited in amount, including an important miscellaneous Civil Jurisdiction, as for instance, under the Succession Act, the Divorce Act and the like. An appeal from their decisions lies to the High Court.

**Provincial Small Cause Courts:**—Besides these, we have Small Cause Courts in the mofussils, about which more details will be given later.

### **Provincial Criminal Courts**

Outside the Presidency towns, the following classes of Criminal Courts exist.



They are:—

1. Court of Sessions.
2. Magistrate of the 1st Class.
3. Do 2nd Class.
4. Do 3rd Class.
5. Honorary Magistrates.
6. Village Munsiffs or Panchayats.

The Criminal Law is administered by Magistrates, both salaried and honorary. Of the salaried, the chief is the District Magistrate, who is also a Collector and District Officer. He is a Magistrate of the first class and exercises supervision over all Magistrates in the district. The first class Magistrate may impose a fine up to Rs. 1,000 and pass sentences of imprisonment up to two years. He has also appellate jurisdiction over the other Magistrates not fully empowered, powers of committing more serious cases to the Sessions Court and powers of taking bonds to keep the peace or to be of good behaviour.

Any person convicted by an Assistant Sessions Judge, a District Magistrate or other Magistrate of first class may appeal to the Court of Sessions, provided as follows:—

(a) Any European British subject, so convicted, may at his option appeal either to the High Court or the Court of Sessions.

(b) When an Assistant Sessions Judge or a Magistrate specially empowered, passes any sentence of imprisonment for a term exceeding four years or any sentence of transportation, the appeal shall lie to the High Court.

(c) When any person is convicted by a Magistrate of an offence under Sec. 124-A of the Indian Penal Code, the appeal shall lie to the High Court.

No appeal can be made by a convicted person, in cases when a Court of Sessions, or the District Magistrate, or Magistrate of the first class passes a sentence of imprisonment not exceeding one month only or fine not exceeding fifty rupees only or of whipping only.

No appeal lies against summary convictions, in which a Magistrate empowered to act under the Criminal Procedure Code, passes a sentence of imprisonment not exceeding three months only or of fine, not exceeding two hundred rupees only or of whipping.

A magistrate of the second class may impose a fine up to Rs. 200 and may sentence up to a term of six months and an appeal against his decision lies to the District Magistrate. A Magistrate of the 3rd class may imprison for one month or impose a fine up to Rs. 50. An appeal lies to the District Magistrate.

Exercising appellate jurisdiction over the Magistrates is the District and Sessions Judge. The powers of a Court of Sessions extend to passing any sentence authorised by law; but any sentence of death passed by it, is subject to confirmation by the High Court.

Appeals against the decisions of the Sessions Judge lie to the High Court.

Honorary Magistrates, whether sitting singly or in benches are found principally in urban centres and they assist considerably in the disposal of criminal work.

Of Village Munsiffs and Panchayats, reference has been made.

### **In the Presidency Towns**

**The High Court** :—"The High Court is the supreme Judicial tribunal of the Province. It is the final link in the local chain of judicial authority exercised, on the Criminal side, through the District Magistrate and Sessions Judge in the District and the Presidency Magistrates in the Presidency towns, and on the civil side, through the District Judge and the City Civil Courts where they exist. It has appellate or revisional jurisdiction and powers of supervision over all judicial authorities in the province and in most cases the final Court of Appeal."

The greater part of British India is under the jurisdiction of one or other of the High Courts established by the Royal Letters Patent commonly called the Chartered High Courts. The High Courts of Madras, Calcutta, Bombay and Allahabad have been established by a Royal Charter. The other High Courts of India have been constituted by Acts of the Governor-General-in-Council. There is a Chief Court in Oudh, and the Central Provinces and Sind have been given a Judicial Commissioner. These Courts have practically the same powers and duties of a Chartered High Court and from these Courts as well as from High Courts, appeals lie to the Privy Council.

**Constitution of the High Courts** :—Every High Court is to consist of a Chief Justice and as many other Judges as the Crown may, subject to what follows, think fit to appoint. The maximum number of Judges of a High Court, including the Chief Justice and the Additional Judges, who may be appointed by the

Governor-General-in-Council for a temporary period not exceeding two years, is fixed as twenty. The Judges of the Chartered High Courts are appointed by His Majesty and hold office during his pleasure. One-third of them must be barristers of England or Ireland, or Members of the Faculty of Advocates in Scotland, of not less than five years standing, and one-third must be members of the Indian Civil Service. The constitution of the other High Courts is determined by Indian legislation.

**High Courts:**—Thus the High Courts are the highest law Courts in British India. Appeals from them to England are appeals to the King in Council, that is, to the Judicial Committee of the Privy Council. The conditions of such appeals are regulated by the Charters of the High Courts and the Procedure Codes.

**Jurisdiction of High Courts:**—The jurisdiction of every High Court has been defined by Letters Patent. The Letters Patent may be amended from time to time by the Crown by further Letters Patent. Each High Court is a Court of Record and has as such jurisdiction, original and appellate, including Admiralty, jurisdiction in respect of offences committed on the high seas, and all such powers and authority, over or in relation to the administration of justice including power to appoint clerks and other ministerial officers of the Court, and power to make rules for regulating the practice of the Court, as are vested in it by Letters Patent. It cannot, however, exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof, according

to the usage and practice of the country or the law for the time being in force.

**Jurisdiction of Chartered High Courts :—**Under the Charters, the several High Courts of Calcutta, Madras and Bombay have been vested with the following jurisdictions.

#### **On the Civil Side**

(a) They exercise ordinary original jurisdiction within their respective local limits as representing the jurisdiction of the Supreme Courts in the Presidency Towns. The local limits are the municipal limits of the several towns, but the Governor-in-Council may with the approval of the Secretary of State in Council extend them. In order that the High Court may have this jurisdiction,

(i) Where the suit is for immovable property, the property must be within the local limits, but if it is partly within and partly without, leave of the Court must first be obtained ; (ii) in other suits the cause of action must have arisen within the limits, but if part only has arisen within the limits, leave of the Court must first have been obtained, or if the whole of the cause of action has arisen outside the limits, the defendant must at the institution of the suit be dwelling or carrying on business or personally working for gain within the limits.

(b) They exercise extraordinary original jurisdiction to remove any suit from any Court subject to the High Court's superintendence and its self, try and determine it either by agreement of parties or for purposes of justice.

(c) They exercise appellate jurisdiction to hear appeals not only from Courts subject to its superintendence, but also from the original judgments of the High Court itself, or also appellate judgments in case of equal division between Judges.

(d) They are vested with jurisdiction as to infants and lunatics to the extent vested in the Supreme Court.

(e) They are vested with Insolvency Jurisdiction, both original and appellate.

## II. On the Criminal Side

(a) They are vested with ordinary original jurisdiction within the local limits of the town and also in respect of all persons, whether within or without those limits, provided, not within the limits of any other High Court and all persons regularly brought before it for trial.

(b) They have extraordinary original jurisdiction, over all persons residing within the jurisdiction of any Court subject to its superintendence and persons against whom charges are preferred by the Advocate-General or any other officer.

(c) They are vested with Appellate Jurisdiction from Criminal Courts in the Province subject to its superintendence. (There is no appeal from sentence or order passed on the original criminal side of the High Court) but a point may be reserved for opinion or the Advocate-General may certify for review.

III. They exercise Admiralty and Vice-Admiralty jurisdiction:

(a) and all such civil and maritime jurisdiction as was vested in the Supreme Court and also jurisdiction for the trial and adjudication of prize causes, and other maritime questions arising in India.

(b) and Criminal jurisdiction in connection with maritime matters or matters of prize.

[Supreme Court Charter:—Maritime matters include all matters whether contract, debt, exchange, insurance, charter party, bottomry, in connection with ships and arising in, upon, or by the seas, or public rivers, ports, harbours and places within the ebbing and flowing of the sea, and the high water mark, the cognizance of which belongs to the Admiralty jurisdiction as exercised in England.]

IV. They are vested with Testamentary and Intestate jurisdiction as possessed by the Supreme Court over assets left within the local limits whatever be the race of the owner and wherever he might have died.

V. Finally they have Matrimonial jurisdiction which is not regulated by the Indian Divorce Act.

The Charters of the Allahabad and Lahore High Courts do not mention ordinary original civil jurisdiction, nor Admiralty jurisdiction. The Rangoon High Court has all the jurisdiction; but the Patna High Court has all except ordinary original civil jurisdiction.

The Courts of Small Causes:—The Courts of Small Causes were originally established in the Presidency towns under Act IX of 1850. They are the successors of the old Courts of Requests, which were

established at Calcutta, Madras and Bombay in 1753 by George II's Charter. The limit of their jurisdiction was originally five pagodas and subsequently in 1797 was extended to Rs. 80. Two years later an Act of Parliament was passed enabling the Governor of Madras to extend the jurisdiction to Rs. 400 sicca, to alter and reform the constitution and practice of the Court and to frame new rules and orders. In pursuance of this, the jurisdiction of the Court was extended in 1819 to Rs. 400 sicca.

Act IX of 1850 repealed the provisions of George II's Charter and all acts concerning the constitution or practice of the Courts of Requests. Courts of Small Causes were established as Courts of Record with jurisdiction coterminous with that of the abolished Courts; the Judges were to be appointed by the Governor-in-Council and to have cognizance over all suits when the debt or damage claimed or the value of the property in dispute was not more than Rs. 500. All suits were directed to be heard and determined in a summary way.

In 1864 an Act extended the jurisdiction of these Courts to the recovery of any debt, damage, or demand exceeding Rs. 500, but not exceeding Rs. 1,000, provided that the cause of action should have arisen, or the defendant, at the time of bringing the action, should dwell or carry on business, or personally work for gain, within the local limits of the jurisdiction of the Court. By consent of parties the Court had jurisdiction in cases exceeding in value the sum of Rs. 1,000. In cases exceeding Rs. 500 in value the Judges were directed to give judgment contingent upon the opinion of the



High Court, whenever any question of doubt or law arose.

Act XV of 1883 repealed all prior enactments and constitutes the present Small Cause Courts of Presidency Towns. The law administered and the local limits of the jurisdiction correspond to the High Court in its ordinary civil original jurisdiction. They may try all civil suits when the value does not exceed Rs. 2,000, the leave of the Court however being necessary under certain circumstances. The exceptions include, amongst others, cases concerning the revenue, acts ordered or done by the Executive or by officers, and immovable property. They also include various suits belonging to equity, Admiralty and divorce jurisdiction. The Court is subject to the superintendence of the High Court.

An Act of 1860 established the Mofussil Small Cause Courts, while Act IX of 1889 authorised Local Governments to constitute District Courts of Small Causes or empower an ordinary Court to exercise small cause jurisdiction, generally up to a limit of Rs. 500, but with power to the local Governments to raise it to Rs. 1,000. The same restrictions on the class of cases cognizable, are placed on the Provincial Small Cause Court, as on the Presidency Small Cause Court.

#### Insolvency Courts.

The objects for which Insolvency Courts are established are to give relief to persons unable to pay their debts against the enforcement of the ordinary legal process by their creditors and to provide machinery for the equitable distribution of the assets of insolvent persons among their creditors.

An Act of Parliament passed in 1800 was the basis of jurisdiction to grant relief to insolvent debtors in India. It empowered the Supreme Courts at Fort William and Madras and the Recorder's Court at Bombay to make rules and orders extending to insolvent debtors in India, the relief, intended by an Act of Parliament called the Lord's Act and ratified all rules and orders previously made by the Supreme Courts for granting such relief and confirmed the acts done under such rules and orders.

The Courts for the relief of insolvent debtors in British India were first established by Act of Parliament in 1829. They were directed to be held once a month throughout the year in the three Presidency Towns by any one Judge of the Supreme Court of the Presidency. An appeal lay from it under the Statute to the Supreme Court, which had power to make rules to facilitate the relief of insolvent debtors, in cases for which sufficient provision had not been made in the Act. Four years was the period of duration assigned by the Act, which was continuously extended by subsequent enactments up to the year 1848, when the Act was repealed; the Insolvency Courts, however being at the same time re-established.

In 1848, an Act of Parliament was passed to consolidate and amend the law relating to insolvent debtors in India. It provided that the Courts of 1823 should be continued. Their jurisdiction severally extended to the disposal of all petitions by persons imprisoned within the limits of the Presidency Towns upon any process whatever, or who shall reside within the jurisdiction

of any of the Supreme Courts and be in insolvent circumstances.

At present, insolvency jurisdiction is exercised by one of the Judges of the High Court as a Commissioner in Insolvency. The Act also appointed a ministerial officer, called the Official Assignee and appeals from his orders go to the High Court.

The provisions relating to insolvency in the *moffusil* were contained in the Code of Civil Procedure which empowered District Judges to exercise insolvency jurisdiction. A Provincial Insolvency Act was passed in 1907, which was repealed and re-enacted with some alterations by another Act of 1920. Under this Act the District Courts exercise insolvency jurisdiction in the *moffusil*. But the local Government is empowered to authorise other Courts also to exercise the same jurisdiction. Usually insolvency matters in each district are generally looked after by a ministerial officer called the Official Receiver.

#### Admiralty Courts.

The original object of Admiralty Courts in England seems to have been to prevent piracy and other crimes on the narrow seas and to deal with questions of Prize. But civil jurisdiction soon followed. In England at present the Admiralty jurisdiction, both civil and criminal, is exercised by a division of the High Court of Judicature, from which an appeal lies to the Court of Appeals and thence to the House of Lords. There are Courts of Admiralty in Scotland and Ireland.

The High Court of Admiralty in England has civil jurisdiction in the following matters: *viz.*, possession

and co-ownership of vessels, mortgage of vessels, bottomry, damage by collision, damage to cargo, salvage, towage, forfeiture of ships, removal of Master, illegal colours, etc. The criminal jurisdiction extends over all crimes committed on board British ships at sea, or in tidal waters, even though such tidal waters, be within foreign territory, but not over crimes committed on board foreign ships on the high seas, either by British subjects or foreigners; for the high seas are the high ways of nations and a ship is considered a floating territory of the nation to which it belongs.

It is established by International Law that the territorial limits of a State on the sea board extend out to the sea as far as three marine miles from the low water mark on the coast and the State can legislate for exercise of jurisdiction by its courts up to that limit. The Territorial Waters Jurisdiction Act of 1878, which was passed in consequence of the decision in the *Franconia* case declared that an offence committed by a person whether a British subject or foreigner within the territorial waters of any part of the Empire is an offence within the Jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship.

With the acquisition of colonies and possessions beyond the seas by the British Government, the necessity arose for the establishment of vice-Admiralty Courts. The Supreme Courts of Calcutta, Madras and Bombay and the High Courts which were substituted for them had Admiralty jurisdiction by virtue of the Acts by which they were constituted and by the Charters issued.

under the provisions of those Acts. To define and regulate the jurisdiction and powers of Admiralty Courts in the colonies including India, the Colonial Courts of Admiralty Act of 1890 was passed, and the Vice-Admiralty Courts were abolished. Under this Act every Court of Law in a British possession, which is declared by its Legislature to be a Court of Admiralty, or if there is no such declaration, if it has original unlimited civil jurisdiction shall be a Court of Admiralty and for that purpose exercise all the powers which it possesses for its civil jurisdiction. The jurisdiction of a Court under this Act is the same as the Admiralty jurisdiction of the High Court in England and is to be exercised in like manner and to the same extent as that Court. The local Legislature of the place is given power to confer Admiralty jurisdiction on any other Court of unlimited jurisdiction and also to confer limited jurisdiction on inferior Courts. Appeals lie as in ordinary cases and ultimately to the Privy Council.

The Merchant Shipping Act of 1894, which extends to India, gives jurisdiction to try offences committed on the high seas whether by British subjects or not, whether on board of British ship or foreign ship, provided the offender is within the jurisdiction of any British Courts. The question whether in such a case the substantial law of crime to be applied is English Law or Colonial Law is not clear. The Calcutta High Court has held that the nature of the offence should be determined according to English Law though punishment would be according to local law.<sup>1</sup> But

---

1. 21 Cal. 782.

the Bombay High Court is of opinion that both the nature of the offence and the punishment should be determined by reference to local law.<sup>1</sup>

By the Act of 1891 the Court of the Resident at Aden and the District Court at Karachi have been declared to be Colonial Courts of Admiralty within the meaning of Act of 1890.

### Prize Courts.

When the Courts of Admiralty exercise in time of war jurisdiction in Prize, *i. e.*, to decide upon the Crown's rights to confiscate ships and cargo seized by His Majesty's ships of war, they are called Prize Courts. The prize jurisdiction is revived at the outbreak of war by a commission by the King and remains dormant during the peace time. The Prize Court is quite independent of the executive and is guided by international law originating in practice and usage or in express agreements.

### The Madras City Civil Court.

The Madras City Civil Court was created by the Madras City Civil Court Act of 1892 to constitute what may be called a regular side of the Madras Court of Small Causes, for the trial (1) of suits of the nature of Small Causes, but of a value exceeding Rs. 2,000 which was the pecuniary limit of the Small Cause Court, (2) of suits not of the nature of Small Causes. Till the passing of this Act, all such suits had to be instituted in the High Court. That meant a great waste of judicial power on the one side and a practical denial

---

1. 14 Bom. 227.

of justice to the suits by the enormous expenses of a trial in the High Court.

The Madras City Civil Court is vested with jurisdiction to receive, try and dispose of all suits and other proceedings of a Civil nature not exceeding Rs. 2,500, in value and arising within the City of Madras except suits or proceedings which are cognizable:—

(a) By the High Court as a Court of Admiralty or vice-Admiralty or as a Colonial Court of Admiralty or as a Court having Testamentary and intestate or Matrimonial jurisdiction, or

(b) By the Court for the relief of Insolvent debtors,

(c) By the Small Cause Court.

The Civil Procedure Code will apply in all cases in the City Civil Court. The Court authorised to hear appeals from the City Civil Court shall be the High Court.

### The Privy Council.

The highest judicial tribunal for India is the Judicial Committee of the Privy Council. Until 1833, the entire Council had the right to sit as a tribunal. But after 1833, only a section of the Council called the Judicial Committee was required to constitute the tribunal. The number required to constitute the Judicial Committee was four till 1843, which has since been reduced to three.

**Constitution of the Judicial Committee:—**The Judicial Committee now consists of the Lords of Appeal in ordinary; of such members of the Privy Council as hold, or have held, high Judicial office; of two other Privy Councillors if appointed by the Crown; and of

“one or two former Indian or Colonial Judges appointed for the purpose.”

Every decision of the Committee is submitted in the form of “advice to the Crown” and “must bear the appearance at least, of unanimity.”

### History of the law relating to appeals from India to the Privy Council.

(1) Appeals from Courts created by the Crown :—  
In 1726, by a Charter of George I, Courts were established at the three Settlements of Madras, Bombay and Bengal. An appeal to His Majesty in Council was given by the same Charter and this is the first occasion, upon which a right of appeal was granted by Royal Charter to the Privy Council from the judgments of the Courts in India. The Charter granted by George I in that year established the Mayors' Courts in the three Presidencies and gave a right of appeal from those Courts first to the Governor-General in Council and thence to the Privy Council, where the amount in dispute exceeded the sum of 1,000 pagodas, *i. e.*, Rs. 4,000. In 1773, the Regulating Act created the Supreme Court in India and an appeal against its decree was to lie to the King in Council subject to the conditions fixed by the Charter.

Both the Act and the Charter to which the Supreme Court of Bengal owed its existence reserved a similar right of appeal to the Sovereign in Council. The same right was also reserved in reference to the Recorder's Courts, and the Supreme Courts at Madras and Bombay. Any person aggrieved by a decision of



any of these Courts in a suit, the value of which was over 1,000 pagodas (except in the case of the Supreme Court of Bombay, where the value of the suit must have been above Rs. 3,000) could petition the Sovereign in Council, and the Council was empowered to refuse or to admit the appeal and to reform, correct, or vary such decision, according to the Royal pleasure. Such were the regulations with regard to Courts established by Royal Charter.

(2) Appeals from Courts created by the Company :—In 1781, on the establishment of the Sudder Court of Bengal, an appeal was given from its decisions in civil suits, the value of which should be £ 5,000 and upwards and Regulation XVI of 1797 was passed in order to provide rules relative to appeals to the Privy Council against decisions of the Sudder Courts. The Regulation limited the right of appeal in point of time to a period of six months from the date of the judgment and in point of value to cases where the judgments exclusive of costs of suit were of the value of Rs. 50,000.

In 1818, the right of appeal from the Sudder Courts of Madras and Bombay to the Privy Council was established.

A permanent Judicial Committee having been appointed in 1838, in an Order in Council was issued which limited appeals from the Supreme Courts in India in point of time to six months from the date of the judgment and in point of value to Rs. 10,000 instead of Rs. 50,000.

To-day an appeal lies from India to the Privy Council in the following cases :—

(1) from any decree or final order passed on appeal by a High Court or other Court of final appellate jurisdiction ;

(2) from any decree or final order passed in the exercise of original civil jurisdiction by a High Court. In this case no appeal lies to a Division Bench of the same Court ;

(3) from any decree or order, when the case is certified by the High Court to be a fit one for appeal to the Privy Council.

Except in cases so certified, no appeal lies to the Privy Council, unless the subject matter of the suit in the Court of first instance, is of the value of Rs. 10,000 or upwards or the decree or final order involves a substantial question of law. Similar provisions were also made in the Letters Patent Constituting the High Courts.

The Letters Patent provided for appeals to the Privy Council in cases decided in the exercise of the ordinary original criminal jurisdiction of the High Courts, if the High Courts certify the fitness of such cases for appeal. In cases decided by the High Courts on appeal from Mofussil Courts, appeals to the Privy Council can lie only, on the High Court granting special leave to appeal. The conditions on which such special leave is granted are disregard of the rules of procedure or violation of natural justice resulting in grave or substantial injustice.

*In re Dillet*, Lord Watson laid down that criminal appeals to the Privy Council would be entertained if "by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done." In *Vaithyanatha Pillai v. Rex*, these principles were applied. In this case, the appellant was convicted of murder of his daughter-in-law by the Sessions Judge of Tanjore and the sentence was confirmed by the High Court. But the Privy Council set aside the conviction on the ground that substantial and grave injustice was done, mainly by the admission of evidence, which was inadmissible and from the fact that at the end of the hearing before the Judge of the first instance, there did not exist any reliable evidence upon which a capital conviction could safely and justly be based.

### **Jurisdiction, King's Court, and A Court of Record.**

In connection with the discussion of Courts, it is important to understand the meaning of the terms, "Jurisdiction," "King's Court" and "Court of Record."

**Jurisdiction:**—Jurisdiction means the extent of authority vested in a Court to hear and determine a cause and generally to administer justice either as a Court of original jurisdiction or as a Court of Appeal. It means authority or power to act in a matter. It must be distinguished from the power or authority to do an act in a prescribed manner or form, which relates to the machinery and procedure available for the purpose.

The jurisdiction of a Court may be limited in respect of the subject matter, or nature of the suit and the value of the suit, or the place where the cause of action arose or the place.

of residence of the defendant and the place where he dwells or carries on business;

The jurisdiction of any Court is prescribed by the Legislature either in the enactment that constituted it or in any other enactment.

If a Court has jurisdiction in a matter, an order passed by it, if erroneous, can only be set aside on review, appeal or revision; but if a Court has acted in a matter, which falls beyond the ambit of its jurisdiction, its judgment or order is of no effect and no proceeding is necessary to have it set aside.

If a Court has no inherent jurisdiction in a matter, it cannot decide a matter, although the parties to it mutually consent to have the matter decided by it. Alien friends residing in British India can sue and be sued, but alien enemies cannot sue except with the permission of the Governor-General-in-Council. A decree can be passed against a foreigner, not resident in British India, provided the subject matter of the suit is within the territorial and pecuniary jurisdiction of the Court.

The jurisdiction of Courts in British India is ordinarily confined to the limits of British India, but by treaty, usage, capitulation, agreement, sufferance and other lawful means, the Crown or the Governor-General-in-Council, can obtain extra-territorial jurisdiction in Native States, adjoining British India.

**King's Court:**—The origin of the term "King's Court" must be traced back to the early days when the King himself sat in Court and dispensed justice. He was the source of the fountain of justice. When judicial tribunals were established later, it was still considered that justice was dispensed by the King through his Judges. Therefore, they came to be designated King's Courts. Though the King has now become a constitutional monarch, he is still regarded as the fountain of justice and it is one of the Royal prerogatives to

establish Courts of Justice in any part of the British Dominions. Besides, he is the final dispenser of justice, which he does, with the help of his Privy Council. Thus all justice is administered in the King's name and all judicial tribunals derive their authority from the King, either directly by Letters Patent or indirectly by executive orders.

**Courts of Record** :—A Court of Record is a Court, which maintains a regular record of all its proceedings and preserves it for future reference. Each action is recorded and the record is evidence of all that took place during the course of the action. The distinction between a Court of Record and a Court which is not one of record, takes us to the early days when the King's Courts were established in England. It was necessary in the King's Court that the Clerk of the Court should record all the proceedings of the Court. From this fact, the term " Court of Record " came into use.

All the Courts at the present day derive their authority from the King ; but all of them are not Courts of Record. The present importance of the distinction lies in the fact that a Court of Record has acquired the inherent power, under the Common Law, apart from Statute, of summarily punishing all crimes without any formal indictment, whereas a Court, not of record has no such power. A Court of Record has power to fine or imprison for contempt of Court or for other substantive offences.

With regard to summary punishment for contempt of Court, there is a distinction between superior and inferior Courts of Record. The superior Courts of Record may summarily punish by fine or imprisonment for contempt, whether committed in the presence of the Court *facie curiae*, or while the Court is not sitting, or at a distance from it. The inferior Court of Record can punish only for contempt of Court committed in open Court, while the Judge is actually discharging his duty. The High Court has power to punish not

only for contempt of its own authority, but also for contempt of inferior Courts under it, especially if the case is one which will in due course come before it.

A Court, not one of record has no power to commit for contempt, unless it has been vested with that power by Statute. It can only order any one to be ejected out of Court, if he obstructs its proceedings, or require him to furnish sureties for good behaviour.

In India, all the High Courts are Courts of Record, and possess the Common Law power of punishing for contempt, whether committed in the Court or outside it.<sup>1</sup> The District and the Small Cause Courts have no inherent power for punishing for contempt committed outside the Courts; but for offences committed in the presence of any Court, the Indian Penal Code has laid down the law.

With regard to the Indian Chartered High Courts, to punish for contempt of subordinate mofussil Courts, there was a difference of opinion between the Madras and the Calcutta High Courts, the former holding in *vs Venkat Rao* that it had the power, and the latter holding in *Legal Remembrancer v. Motilal Ghose*, that it did not have the power. The doubt on this point has been set at rest by the Contempt of Courts Act, 1906, which lays down that High Courts established by Letters Patent shall have the power, jurisdiction and authority to punish for contempt of Courts subordinate to them, (for contempts other than those punishable under the Indian Penal Code), as they have and exercise in respect of contempts of themselves and this power is extended to Chief Courts also-

---

1 *Surendra Nath Banerjee v. Chief Justice of Bengal*, (1933) 10 I.A.177.

## CHAPTER XVI

### LEADING CASES IN INDIAN CONSTITUTIONAL LAW

1. **East India Company v. Sandys** :—(10 State Trials 371).

The East India Company was constituted under the Charter of Queen Elizabeth (1600) with a monopoly of trade in the East Indies during the term and within the limits of the Charter. The legality of this monopoly by Royal grant came to be questioned. The East India Company brought an action against the defendant for infringing their exclusive right of monopoly under this Charter. The question at issue was whether the Crown could grant such a monopoly at all without the authority of Parliament. Chief Justice Jeffreys decided in favour of the Company. The arguments were :—

1. No subject could trade with infidels except with license from the King and foreign trade depended on arrangements between Kings.

2. Foreign trade by English subjects was subject to the King's restraining control.

3. The monopoly did not come under prohibited monopolies as the defendant's freedom of trade which he had enjoyed before the grant of monopoly was not affected.

4. Kings only had the right of granting monopolies which were valid.

2. **The Affair of the Red Bridge** :—Following the decision in *East India Company v. Sandys*, the Charter of the Company was renewed with all the privileges conferred upon the Company. The validity of the monopoly renewed by the Charter of 1693 was successfully

assailed. Immediately after getting a renewal of their Charter, the Directors of the Old Company used their powers to effect the detention of a ship called the Redbridge, which was lying in the Thames and was believed to be bound for countries beyond the Cape of Good Hope. The legality of detention was questioned and the matter was brought up before Parliament. In 1694, the House of Commons passed a resolution that all subjects have equal rights to trade to the East Indies, unless prohibited by Act of Parliament. "It has since been held," says Macaulay "to be the sound doctrine that no power but that of the whole legislature can give to any person or to any society an exclusive privilege of trading to any part of the world."

3. *Mayor of Lyons v. East India Company* :— (1 M. L. A. 176).

This is the leading case on the extent to which English Law had been introduced in India. The Judicial Committee in this case laid down the principle that the general introduction of English Law into a conquered or ceded country does not draw with it such parts as are manifestly inapplicable to the circumstances of the settlement and decided in particular that the English Law incapacitating aliens from holding real property to their own use and transmitting it by devise or descent had never been expressly introduced into Bengal and that the statute of Mortmain 9 Geo. 11, C. 36 did not apply in India.

4. *In Re Nuncomar* :—The important question of the precise date at which the English Criminal Law was introduced into India, arose out of the trial and



conviction of Nuncomar. Nuncomar was tried and convicted under the English Statute of 1728. According to the view of high judicial authorities in India, the Charters that established the Mayors' Courts in the Presidency towns, first introduced into their jurisdictions, the English Common and Statute law in force at the time, and later statutes did not apply to India, unless they were specially so extended, so that viewed in this light the conviction of Nuncomar would be illegal. But Sir James Stephen was of opinion that English Criminal Law was originally introduced to some extent by the Charter of 1661 and that the later Charters of 1726, 1753, and 1774 must be regarded as acts of legislative authority, whereby it was reintroduced on three successive occasions as it stood at these three dates, so that the statute of 1728 would have been in force in Calcutta at the date of Nuncomar's offence.

**5 & 6. The Patna Case and the Cossijurah Case** :—In the controversies which followed the passing of the Regulating Act of 1773, between the Supreme Council and the Supreme Court in India, there were three main heads of difference. One of them was as to the right of the Supreme Court to try actions against the judicial officers of the Company for acts done in the execution of what they believed or said they believed to be their legal duty. The question arose in the famous Patna Case, in which the Supreme Court gave judgment with heavy damages to a native plaintiff in an action against the officers of the Patna Provincial Council, acting in its judicial capacity. Impey's judgment in this case was made one of the grounds of

impeachment against him but is forcibly defended by Sir James Stephen as being not only technically sound but substantially just. Parliament intervened by the Amending Act of 1781 and the defendants in the Patna Case were released from prison on the Governor General and Council giving security for the damages recovered in the action against them; and were permitted to appeal to the King in Council.

6. Another point of difference was the claims of the Court to exercise jurisdiction over the whole Native population to the extent of making them plead to the jurisdiction, if a writ was served on them. The quarrel on this point culminated in what was known as the Cossijurah case, in which the sheriff and his officers when attempting to execute a writ against a zamindar were driven off by a company of sepoys acting under the orders of the Council. The Government also issued a notification to all that unless they were British Subjects or agreed among themselves to be tried by the Supreme Court, they were not to obey the process of the Court. The Court took proceedings against the obstructive company and its officers. The action of the Council was not disapproved by the authorities in England and thus this contest practically ended in the victory of the Council and the defeat of the Court.

7. **Alter Kaufman v. Government of Bombay :** 18 Bom. 636. In this case certain aliens resident at Bombay were arrested and sent to gaol under warrants issued under Sections 3 and 4 of Act III of 1864. They applied to the High Court and obtained a rule *nisi* under Sec. 491 of Criminal Procedure Code and under the Habeas

Corpus Act calling on the superintendent of the jail to show cause why they should not be set at liberty. The question arose whether Act III of 1864 was *ultra vires* or *intra vires* of the Governor-General-in-Council. Section 3 of the Act runs as follows:—"The Governor-General-in-Council may by writing order any foreigner to remove himself from British India and to remove himself therefrom by a particular route specified in the order and any local Government may by writing, make the like order with reference to any foreigner within the jurisdiction of such Government." It was held that Act III of 1864 was not *ultra vires* of the Governor-General-in-Council and Section 3 gave the fullest power to the Government of India to remove any foreigner from the pale of British India.

8. *R. v. Burah*, (1878) L. R. 3 A. C. 889.

In this case the Indian Legislature had passed an Act (Act XXII of 1869) purporting to remove the Garo Hills from the jurisdiction of the ordinary civil and criminal Courts and vesting the administration of justice in those parts in officers appointed by the Lieut. Governor of Bengal and empowering the Lieut. Governor by notification in the Calcutta Gazette to extend any provision of the Act to certain neighbouring mountainous districts. The validity of this Act of the Indian Legislature, especially of its delegation of powers to the Lieut. Governor of Bengal was called into question.

It was maintained by the Judicial Committee of the Privy Council that

(1) the said Act was not inconsistent with the Indian High Courts Act of 1861 or with the Charter of the Calcutta

High Court, (2) that the Governor-General-in-Council had powers to alter the local limits of the jurisdiction of any High Court, (3) that the empowering of the Lieut. Governor to extend the provisions of the Act to neighbouring districts was not a delegation of power but conditional legislation.

The Privy Council observed:—

“ The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it and it can of course, do nothing beyond the limits which circumscribe these powers. But, when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has or was intended to have, plenary powers of legislation as large and as of the same nature as those of Parliament itself.”

9. *In Re Ameer Khan*, 6 Bengal L.R. 392.

The suit was for a writ of Habeas Corpus against the arrest and detention without trial of Ameer Khan, a British Subject under a warrant of the Governor-General in Council issued under Regulation 3 of 1818 and Act III of 1858.

In this case the saving clause in Section 65 of the Government of India Act, “ The Indian Legislature has no power to make any law affecting any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom ” came into question.

The arguments for the prisoner were:—

1. that allegiance and protection are reciprocally due between the subject and sovereign and cannot be separated ;
2. that any law which takes away the sovereign's protection by infringing the right of liberty of the subject relaxes the allegiance of the subject towards the sovereign ;

3. that being the case, the law is *ultra vires* of the Indian Legislature under the saving clause given above.

It was held that the unwritten law of the constitution is of a flexible character. It admits of relaxation of rules securing private rights in times of public danger and distress.

Norman, J. observed:—"The principles which justify the temporary suspension of the Habeas Corpus Act in England justify the Indian Legislature in entrusting to the Governor-General in Council an exceptional power of placing individuals under personal restraint, when for the security of the British Dominions from foreign hostility and from internal commotion, such a course might appear necessary."

Phear, J. thought that the words whereon may depend, etc., "did not refer to any assumed conditions presumed to be performed by or on behalf of the Crown as necessary to found the allegiance of the subject, but to laws or principles which prescribe the nature of the allegiance." Markby, J. said that "the notion of the reciprocity between allegiance and protection is one which is wholly inadmissible in any legal consideration."

10. *Bugga v. King Emperor*, 47 Ind. App. 123 and 1 Lah. 326.

The argument was that the Marshal Law Ordinances which deprived British subjects in India of the right to be tried in the ordinary course by the ordinary Courts of law, affected the "Unwritten laws or constitution." The Privy Council in negating this contention, laid down—

"The sub-section does not prevent the Indian Government from passing a law which may modify or affect a rule of the constitution or of the common law, upon the observance

of which some person may conceive or allege that his allegiance depends. It refers only to laws, which directly affect the allegiance of the subject to the Crown, as by a transfer, or qualification of the allegiance or modification of the obligations thereby imposed."

11. **Damodhar Gordhan v. Deoram Kanji** (The Bhaunagar Case), 1 Bom. 367, 1876.

In this case the provision in Sec. 65 that the Indian Legislature has no power to make any law affecting "The sovereignty or dominion of the Crown over any part of British India" came under discussion in connection with the question of adding territory in British India. The Privy Council appear to have been of opinion that a cession of territory by an Act of the Indian Legislature would be *ultra vires*. They held that the Legislature could not by the enactment of a provision such as that contained in Sec. 113 of the Indian Evidence Act, bar the Courts from inquiring into the nature and lawfulness of such a cession.

12. **Keyes v. Keyes**, 1921 Probate 204.

It was held in this case by the Probate division in England that the Indian Divorce Act was *ultra vires*, if it gave to the local Courts power to decree divorce between parties not domiciled in India. That is, a general principle was established that the statute constituting the Indian Legislature intends that the laws to be made are to be of local operation only and may not be so extensive, for example, as to affect the status of subjects of the Crown who are not domiciled in India.

But a Full Bench of the Lahore High Court in **Lee v. Lee**, 5 Lah. 147 has differed from that view and

upheld the power of the Indian Legislature to enact a law of divorce applicable to persons resident in India even though not domiciled in it.

**13. The Secretary of State for India in Council v Moment, 40 Ind. App. 48.**

The suit was for damages to trespass of land. Moment, the owner of a house at Rangoon had his house partly dismantled by the Government, after it had been taken in possession in execution of a decree against which an appeal by Moment was pending. The appeal was allowed and Moment sued the Government for damages for trespass.

The question turned on the validity of an enactment by the Burma Legislative Council which provided that no Civil Court shall have jurisdiction to determine any claim to any right over land as against the Government. The Chief Court of Burma held that the particular Act was *ultra vires*, as it was not within the competency of the Burma Legislative Council to pass the Act. On appeal, the Privy Council also held that the said legislation was *ultra vires*, in as much as it deprived the right of a subject to sue the Government, conferred by Sec. 65 of Government of India Act, 1858 (corresponding to Sec. 32 of the present Act).

**14. Kinlock v. Secretary of State for India in Council, L. R. 15 Ch. D. 1.**

The question arose in connection with Sec. 32 of the Government of India Act. "The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council as a body corporate."

The Queen by Royal Proclamation granted booty of war to the Secretary of State for India in Council in trust for the officers and men of a certain regiment to be distributed among them. The suit was for accounts and distribution of the residue. It was held that the Secretary of State in Council was not a corporation for holding property and that what was granted was not really a trust to be enforced by the Court. Sec. 32 only provides for suits by or against the Indian Government being brought in the name of the Secretary of State in Council as a nominal party.

15. **The Nawab of the Carnatic v. The East India Company.**

The case illustrates the sovereign powers which were undoubtedly vested in the Company.

This was a suit for accounts and the plea of the Company was that it was a matter of political treaty between two independent sovereigns. It was held that the Company was capable of dealing with a neighbouring State in the character of a sovereign, notwithstanding that they were subjects with relation to England.

16. **The Rajah of Coorg v. The East India Company.**

The Company having annexed certain promissory notes along with the Raj, the Court entered into an examination whether the notes were the private property of the Rajah and as such separate from the public property of the State, which the Company intended to seize. Held they were not private property and the seizure was done in exercise of sovereign powers of the Company.



17. **The Tanjore Case: The Secretary of State in Council of India v. Kamachee Bai Sahiba**, 7 M. I. A. 476 of 1859.

Tanjore was taken over by the East India Company as escheat. It was established that certain properties in it were the private properties of the Raja. It was held that the Courts had jurisdiction to enter into the question of intension of the Government and in this case, the Government acted with the intention of confiscating property both public and private, and it was justified in retaining private property which was seized along with public property. It was further held that the act of the Company was an act of state and as such could not be questioned by Municipal Courts.

Lord Kingsdown, in delivering the judgment observed: "The transactions of independent states between each other are governed by other laws than those, which Municipal Courts administer. Such Courts have neither the means of deciding what is right nor the power of enforcing any decision which they may make."

18. *In re Mahara a Madhava Singh (of Panna)*, 32 Cal. 1, 1904.

In this case the Maharaja sought to obtain leave to appeal to His Majesty in Council against an act of the Governor-General of India in Council removing him from the Government of the State of Panna. It was held that the action of the Government in interfering with the administration of a State was a Political Act—an act of State.

19. **The P. & O. Steam Navigation Company v. Secretary of State for India**, 5 B. H. C. R

The facts were that the Government carried on the business of a dockyard at Kidderpore and the servants of the Government in the conduct of that business, through their negligence caused damage to the plaintiff. The business was not carried on, in performance of a duty cast upon the Government by an enactment, nor was it directly in the course of their governing duties or in the exercise of sovereign powers. It was an act done by a servant of the Government in the conduct of a business which the Government had undertaken, no doubt in the interest of the public, but which might have been carried on by a private individual, who had none of the sovereign powers of the Government.

The point decided was that the East India Company was (and therefore the present Government is) responsible for the acts of its servants, as an ordinary employer would be when engaged in undertakings of this nature. That is, the Secretary of State can be sued in respect of acts or defaults of the servants of the Government causing injury or loss to an individual done in the conduct of undertakings which fall within the scope of commerce and which could very well be done by private individuals, *e. g.*, the business of a dockyard, the carriage of goods and passengers, or the conveyance of letters, etc.

20. *Nobin Chunder Dey v. The Secretary of State for India in Council*, 1 Cal. 11, 1875.

This was a suit against the Government in respect of an alleged breach of contract to give a licence to trade in ganja.

It was held that even if the contract and breach be assumed, no action in respect of them could lie against the Government. The matter involved in them was not an undertaking which might be carried on by private individuals without sovereign powers. The contract was only part of the administrative contrivance and arrangement by which the Government is accustomed to collect excise duties and it could not be delegated by the sovereign to a private individual. Held therefore the Secretary of State in Council was not liable.

21. **Hari Bhanji v. The Secretary of State for India in Council.** 4 Mad. 344, 1879.

This was a suit to recover the amount of duty alleged to have been illegally levied by a Collector and subsequently ratified by the Government. On appeal Turner, C. J. said that he was unable to accept the propriety of the decision in Nobin Chunder Dey's case. He pointed out that there were two distinct rules laid down in P. & O.'s case, the first being that the personal exemption from suit which is the attribute of sovereignty did not attach to the East India Company and the second being that Municipal Courts have no jurisdiction to entertain claims in respect of Acts of State. He held that immunity from suit could not be claimed by the Government in respect of all such of its acts as could not be done by private individuals without sovereign powers, but that it should be restricted to Acts of State.

22. **The Secretary of State v. Cockraft,** 39 Mad. 357, 1914.

In this case the plaintiff claimed damages against the Government for injuries sustained by him in a

carriage accident which was alleged to have been due to the negligent stacking of gravel on a Military road maintained by the P.W.D. of the Government. It was held that the Act in question was done by the servants of the Government in exercise of the sovereign powers of the Government, and therefore the revenues of India were not liable.

23. *Dhack Ji v. The East India Company.*

The facts of the case were that a Police Officer, acting under a warrant from the Governor in Council of Bombay entered the plaintiff's house, seized certain papers and committed certain acts of trespass. It was held that no action would lie as the Company which had assumed the functions of the Government could not be sued for vicarious liability for wrongful acts of the servants.

---

## CHAPTER XVII

### INDIA IN THE MELTING POT

The march of political events in India during the last few years contains distinct landmarks in the growth of the Indian Constitution. A time has come when, what with the advancement of education, what with rapid improvements in industry and what with the effect of the vernacular press in rousing up the political consciousness of the masses, the seething forces of Indian life and society, Indian hopes and aspirations, are struggling to find an outlet and the old type of Government, in spite of the modifications of the Montague-Chelmsford Reforms, has long since been felt to be an anachronism in modern India. The time has come when the sluice gates have to be opened to give way to Indian political aspirations. The change in the constitution of India is absolutely necessary not only as a necessary consequence of her political advance, but of the distinct individuality which she is acquiring in world affairs.

**The Simon Commission.**—In accordance with the provisions of the Government of India Act, 1919, a Statutory Commission was appointed in 1927, to enquire into the fitness or otherwise of the next stage of constitutional advance as contemplated in the Act. The Government of India Act of 1919, fixed the date of the appointment of the Statutory Commission to 1929, but the appointment had to be necessarily hastened by the political agitation in India and H. E. the Viceroy, Lord

Irwin announced on the 9th November, 1927, the appointment of the Commission. The Commission was placed under the Chairmanship of Sir John Simon. The appointment of an all white commission roused a storm of indignation in India and all shades of political opinion joined in the protest.

**The Nehru Report.**—It may be noted while passing, that in this period, as an answer to the challenge of Lord Birkenhead, to the leaders of public opinion in India to produce a scheme of political advance, which would meet the acceptance of all parties, the Nehru Report was drafted.

**The Viceroy's Announcement of 1929.**—After an absence of four months in the summer of 1929, from India, Lord Irwin returned from England where he had important conversations with the members of the Cabinet. Shortly after his return, he made a famous pronouncement declaring that the goal for which the Government worked was Dominion Status. The announcement also contained the proposal of His Majesty's Government to convene a Round Table Conference of representative Indians and British Government to discuss and decide in detail a definite settlement, after the publication of the Simon Report.

**Publication of the Simon Report:**—The Simon Report was published in two volumes on the 10th and the 24th of June, 1930.

The first part of the Simon Report was a general survey of the Indian conditions and was a remarkably thorough and sympathetic piece of political writing, with a number of relevant facts ably marshalled.

The second part contained the proposals of the Simon Commission towards the change of the Indian Constitution. The outline of the changes proposed can be summarized as follows :—

**Modification in the Provinces :—**

- (1) The termination of Dyarchy is recommended. ✓
- (2) There is to be a provincial Cabinet. ✓
- (3) The members of the Cabinet are to be chosen by the Governor who keeps certain special powers to protect minorities in services and prevent break-down of administration.
- (4) The franchise is to be widened. ✓
- (5) The provincial Councils are to have within themselves the power of re-casting their own constitution.

**Modification at the Centre :—**(1) The legislature which should be called the Federal Assembly is to be re-constituted on the basis of the representation of the Provinces and other States as are in British India according to the population. The Federal Assembly is to be filled by indirect election.

- (2) The Council of State is to remain as it is.
- (3) There is to be also a Council for Greater India, to consider matters of common concern to the States and the people of British India.

The proposals of the Simon Commission did not satisfy any section of the people of India. More or less there was an unanimity of opinion that the proposals of the Simon Commission were out of date from the start.

**The First Round Table Conference :—**Following the pronouncement of the Viceroy, the First Round Table Conference was convened and worked for ten

weeks between November 1930 and January, 1931. The absence of the Congress element in the Round Table Conference divested it of its character of a truly representative body of Indians discussing with a delegation representing all parties of both Houses in the British Parliament. But one important feature in the Round Table Conference was that the Indian Princes participated in its discussions.

The two fundamentals which the Round Table Conference arrived at were that the new constitution for India should be a federation comprising all India and that subject to certain safe-guards, responsibility both in the provincial and the federal structures should rest on Indian shoulders. With these broad propositions as the basis of the new constitution, the other conclusions were largely provisional, in order that the public opinion and local conditions in India might be suited.

At the conclusion of the Conference the Prime Minister's declaration of British policy towards India was made. The conclusion of the Prime Minister's speech was a note of anxiety to stop the civil disobedience movement in India and bring the Indian National Congress to participate in the Round Table Conference.

**Gandhi-Irwin Agreement:**—By the good offices and untiring efforts of a number of prominent men of whom mention must be made of the Rt. Hon. Mr. Sastri, Sir T. B. Sapru, Mr. Jayakar and Mr. George Slocombe, the Viceroy ordered the release of all Congress leaders from the prison on 26th January. An



agreement was reached on 28th February, 1931, between Mahatma Gandhi and His Excellency Lord Irwin. The whole atmosphere in India was changed by the historic truce; for the first time the Government recognised the moral force behind the Congress movement. The Second Round Table Conference was to be convened, in which Mahatma Gandhi had agreed to take part.

**The Second Round Table Conference:**—The Federal Structure was fully discussed in the Second Round Table Conference. At the Premier's speech delivered at the closing of the Plenary Session of the Second Round Table Conference, he repeated the salient sentences of his previous declaration made at the close of the first Round Table Conference and made an analysis of the discussion they had in the second Conference. Referring to the difficulties that confronted them he said :—

“The discussions which have been proceeding during the past two months have been of value in showing us more precisely the problems we have to solve and have advanced us towards the solution of them. But they have also made it plain, that others still require further examination and co-operative consideration. There is still difference of opinion, for instance, as to the composition and powers of the Federal Legislature and I regret owing to the absence of a settlement of the key question of how to safe-guard the Minorities, under a responsible Central Government, the Conference has been unable to discuss effectively the nature of the Federal Executive and its relationship with the Legislature. Again, it has not yet been

possible for the States to settle among themselves their place in the Federation and their mutual relationship with it."

After the Premier's speech, Mr. Gandhi proposed a vote of thanks to the chair.

Thus the Second Round Table Conference concluded; throughout the discussions in the Conference, the personality and charm of Mahatma Gandhi spread a peculiar charm and halo to the weighty deliberations.

**The Third Round Table Conference** :—Mahatma Gandhi was not satisfied with the vague assurances given by the Premier and expressed his intention of starting a Civil Disobedience movement. The result was that within a month after Mahatma Gandhi's landing in India, he and the other Congress leaders were put in jail and the Congress Working Committee was declared unlawful.

The Third R. T. C. began on the 17th November, 1932, and lasted till the 24th December, 1932. The results of the Conference have been expressed by Lord Sankey. In his opinion, there will be a New India Act, in the Statute Book in the life time of the present Parliament. Further, he declared that the reaffirmation of the principles of the first R. T. C. was the most remarkable feature of the Third Conference. The first Conference established the most important principle of responsibility at the centre and the principle has now been nailed to the mast. Another achievement has been the advancement of the position of women. The Government of India is to convene shortly a

Joint Select Committee for the purpose of drafting the working scheme of the Federal Structure. It is to be hoped that Gandhiji and other Congress leaders will be released so that they may participate in the conclusions of the working of the Federal Structure.

In conclusion, let us hope, that the Government will secure the co-operation of all parties in India in drawing up a practical federal constitution. There is no other practical alternative to the solution offered as a result of the discussions of the Round Table Conference. In conclusion let us hope a constitution will evolve and India may be won over and at the same time be content as a Dominion—an equal partner within the charmed circle of the British Commonwealth of Nations.

---

## APPENDIX

---

**What is Constitutional Law:**—Dicey defines as follows:—"Constitutional law includes all rules which directly or indirectly affect the distribution or exercise of the sovereign power in the State. Hence it includes (among other things) all rules which define the members of the sovereign power, all rules which regulate the relation of such members to each other, or which determine the mode in which the sovereign power or the members thereof, exercise their authority."

These rules include two sets of principles or maxims of a totally distinct character. The one set of rules are in the strictest sense "laws." That is they are enforced by the Courts. These rules constitute, "constitutional law" in the proper sense of the term and may for the sake of distinction be called collectively "the law of the constitution." For example, to the law of the constitution belong the following rules:—(1) The King can do no wrong. (2) Some person is legally responsible for every act done by the Crown. These are rules in the strictest sense of "law."

The other set of rules consists of conventions, understandings, habits, or practices, which, though they may regulate the conduct of the several members of the sovereign power, of the Ministry, or other officials, are not in reality laws at all, since they are not enforced by the Courts. This portion of constitutional law may be termed the "conventions of the constitution." The following maxims are examples of conventions of the constitution:—(1) "The King must assent to any bill passed by the two Houses of Parliament." (2) "Ministers resign office when they have ceased to command the confidence of the House of Commons." These maxims are not laws in the strict sense, because no court would take notice of their violation.

**A State :—**A State is defined by Salmond, "as an independent political society or an association of human beings occupying a defined territory established for the attainments of certain ends by certain means and whose essential and primary function is to repel aggression from without and to maintain law and order within." Government is nothing but organised force and in the words of Salmond, "A State may be defined as a society of men established for the maintenance of peace and justice within a defined territory by way of force."

**Classifications of Constitutions :—**Constitutions may be broadly classified as (1) "Flexible and Rigid," and (2) "Unitary and Federal."

**I. Flexible and Rigid Constitutions :—**A flexible constitution is one, in which all laws of whatever description can legally be changed with the same ease and same manner by one and the same body. In other words every law is subject to the will of the supreme law-making body. There is no distinction between ordinary laws and constitutional or fundamental laws. In such a constitution, what are called, constitutional laws, are as much ordinary laws so far as the law-making body is concerned. In England, for example, laws are called constitutional, merely because, they refer to matters affecting the fundamental truths of the State. No other special efficacy is attached to it.

A Rigid Constitution is one in which the laws known as the constitutional or fundamental laws stand in a class altogether different from ordinary laws and they cannot be changed in the same manner as ordinary laws. Thus in U.S.A., France, or Belgium, the term Constitution has a legal significance and refers to the "Articles of the Constitution," which differ wholly from ordinary laws, in that the legislature, acting in its ordinary capacity, cannot alter or repeal

them. The Constitution of U.S.A. is rigid and the fundamental laws on which the Constitution is based, cannot be altered by the Congress, that is, the Federal Legislature acting by itself, but by a special body, called "the Convention" or by two-thirds majority of the Congress and in either case is to be subsequently ratified by three-fourths of the legislatures of the Constituent States.

In France, supreme legislative power is vested, not in the ordinary Parliament of two Houses, but in the joint body composed of the Chamber of Deputies and the Senate sitting together and forming what is known as the National Assembly.

**II. Unitary and Federal Constitution:—**Federal Constitution:—When two or more distinct and separate bodies of people or States, which are independent from each other, join together and agree in creating a supreme sovereign authority over themselves in certain matters common to all, a federal constitution comes into existence. Where however those who join together and create a sovereign authority are individuals, the constitution is said to be unitary.

Two conditions are required to form a federal state. (1) A group of countries, geographically, historically or racially connected together to come under the fold of a common nationality, (2) the existence of a sentiment to form an union without unity or the federal sentiment. The people of two or more states may desire to form a single nation (*e.g.* for common defence) for particular purposes, without at the same time surrendering their individual capacities as states. The aim of federation is therefore to reconcile national unity with the maintenance of state rights.

The constitution of the U. S. A. is the most completely developed type of federalism. In the American polity, federalism is achieved by the distribution of the executive, the legislative and judicial powers amongst bodies each of which

is co-ordinate with and at the same time independent of the other.

### Native States

Scattered across the length and breadth of India, are the innumerable patches of territories, which form the India of the Native States. Technically, legally and politically there is not one India, but two. There is "British India" and there is the India of Native States. The former is under the direct authority of the Central Indian Executive and Legislature and indirectly that of Cabinet and Parliament. The Indian States are under the suzerainty of the Crown and are by themselves autonomous units, with their hereditary Princes and Chiefs who are sovereign rulers, except in so far as their sovereignty has been abridged by treaty or usage with the British Crown. The Indian States range from countries like Hyderabad, which is as large as England and Scotland, to small estates owned by petty chieftains.

### Relationship between Paramount Power and States

The Indian States have no international life. For international purposes, State territory is British territory and State subjects are British subjects. The States cannot make peace or war or negotiate or communicate with foreign States. They have resigned the conduct of their foreign policy to the Government of India. The right of the Paramount Power to govern the foreign policy of the States and to represent them in international affairs, which has been recognised by the Legislature, is a right secured partly by treaties, but mostly by usage. The rights and duties thus assumed by the British Government, carry with them other consequential rights and duties. Paramount Power has the duty of protecting subjects of an Indian State while travelling abroad, as they are British subjects for international purposes. For all international obligations of Indian States, the Paramount Power is responsible. The States have to co-operate with the

Government of India, to maintain the international responsibility, which the latter has to discharge. Again with respect to foreign subjects in State territories, the Paramount Power is under an obligation to look to their safety.

As between Indian States, the policy of the Paramount Power was to put them into water-tight compartments, and to govern their relations as in the case of foreign countries. But during the present century, circumstances have combined to lead to greater inter-communication between the States.

It has been already referred to, that the Paramount Power has found it necessary to introduce the jurisdiction of its officers in particular cases, such as the case of its troops, stationed in cantonments, and other special areas in the Indian States, European British subjects and servants of the Crown in certain circumstances.

**Political Officers** :—The powers of the British Government are exercised through political officers, who, as a rule reside in the States themselves. In the larger States, the representative of the Government is the Resident, in groups of States, he is the Agent to the Governor-General. These political officers form the sole channel of communication between the States and the Government of India.

### **The Chamber of Princes <sup>1</sup>**

The Narendra Mandal or the Chamber of Princes came into existence with the earnest co-operation of a number of leading Princes themselves as one of the results of the Montford Report of 1919. The proposal was that the Chamber should exist as a permanent consultative body, with the Viceroy as President and the members composing the Chamber consisting mainly of the Princes and Chiefs having salute or whose membership might otherwise be considered desirable by the Viceroy. Certain smaller Chiefs were grouped and

---

1. The Times of India Year Book, 1930.



were given the privilege of nominating a member to represent them from year to year. The Chamber is a recommendatory body, which performs its functions under a Constitution approved by the Secretary of State and it deals with questions submitted to it concerning the Princes and their rights and privileges generally, and their position in Imperial affairs.

The formal inauguration of the Chamber was done by H. R. H. the Duke of Connaught in 1921. It meets once in a year and the agenda of subjects for discussion is framed and proposed by the Chancellor of the Chamber. The Chamber selects by vote its own officers, who are the Chancellor, a pro-Chancellor to act for him in his absence out of India and a Standing Committee of the Chamber. This Committee considers before the annual meetings the subjects to be discussed at them.

Until 1929, the proceedings of the Chamber were kept confidential, when by a formal resolution, all meetings were ordinarily made open to the public.

---

## BOOKS REFERRED

---

1. ILBERT (SIR C.) : Government of India.
2. EGGAR (A.) : The Government of India.
3. COWELL (H.) : Courts and Legislative Authorities in India.
4. SAPRE (B. G.) : Growth of Indian Constitution and Administration.
5. BANERJEE (D. N.) : The Indian Constitution and Its Actual Working.
6. VARMA (J. N.) AND GABEKHAN (M. M.) : The Constitutional Law of England and India.
7. THAKORE (B. K.) : The Indian Administration to the Dawn of Responsible Government.
8. BUTLER COMMITTEE REPORT.
9. THE TIMES OF INDIA YEAR BOOK (1930).
10. THE ROUND TABLE (1930).
11. THE REPORT OF THE INDIAN STATUTORY COMMISSION (SIMON COMMISSION).
12. THOMSON (E. J.) : The Reconstruction of India.

# INDEX

## ACT,

- of 1786, 18
- of 1813, 24
- of 1833, 19, 24, 27
- of 1853, 20, 27
- of 1858, 20
- of 1870, 32

## ADMIRALTY COURTS, 181

## BILLS,

- central, 105
- provincial, 120

## BUDGET,

- central, 104
- provincial, 115

## CASES, LEADING, 193—206

## CENTRAL GOVERNMENT,

- control over provincial matters, 87
- control in the reserved field, 88
- control in transferred field, 90
- financial control of, 91
- relation to Native States, 95
- residuary jurisdiction of, 98
- relation to Central Legislature, 93

## CENTRAL LEGISLATURE,

- structure, 99
- duration and sessions, 100
- procedure, 101
- law making powers, 106
- financial powers, 109
- relation between the two houses, 110

## CHARTER,

- of Queen Elizabeth, 1
- of Charles II, 3

## COMMITTEES,

- Public Accounts, 103
- Standing Finance, 103

## COMMISSION,

- Law, 28
- Royal, 27
- Simon, 207

## COMPANY,

- Regulated, 2
- New, 4
- Amalgamated, 5

## CONSTITUTIONAL LAW, 214

## CONSTITUTION, classification of, 215

## COUNCIL OF INDIA, 59

- functions of, 60
- financial control, 62
- relations with foreign powers and Native States, 62

## COURTS IN INDIA,

- history, 159
- at the present time, 169

## COURT,

- of Diwani, 10
- of Requests, 160
- of Record, 190

## DELHI DURBAR, changes introduced by, 36

## DEVOLUTION RULES, 145

## DISTRICT BOARD, 156

## DIWANI, grant of, 7

## DYARCHY, 55

- EXECUTIVE COUNCIL, CENTRAL.**  
 composition, 81  
 business procedure, 84
- FIRST PERIOD, 1**
- FINANCIAL RELATIONS,**  
 between Central and Provincial Governments, 138
- FISCAL POLICY, 65**
- FOUJDARI, 10**
- GANDHI-IRWIN AGREEMENT, 210**
- GODOLPHIN'S AWARD, 6**
- GOVERNOR,**  
 legislative powers, 122  
 relationship with Ministers, 126, 135  
 relationship with Executive Councillors, 130, 135
- GOVERNOR-IN-COUNCIL,**  
 legislative powers, 21
- GOVERNOR-GENERAL,**  
 powers and responsibilities, 71  
 extraordinary powers, 72  
 power of certification, 77  
 previous sanction, 77
- GOVERNOR-GENERAL-IN-COUNCIL,**  
 legislative powers, 21  
 functions, 86
- GOVERNMENT OF INDIA ACT,**  
 of 1858, 40  
 of 1870, 44  
 of 1919, *See* Montague-Chelmsford Reforms.
- HIGH COMMISSIONER FOR INDIA, 63**
- INDIAN COUNCILS ACT,**  
 of 1861, 31  
 of 1865, 41  
 of 1869, 42  
 of 1874, 32  
 of 1892, 43
- INDIAN HIGH COURTS,**  
 Constitution, 173  
 Jurisdiction, 174, 175  
 Act, 41
- INSOLVENCY COURTS, 179**
- JUSTICE OF THE PEACE, 160**
- JURISDICTION, 189**
- KING'S COURT, 190**
- LEGISLATIVE COUNCIL,**  
 of 1833, 26  
 changes in the third period, 38
- LEGISLATURE,**  
 central *See* under C  
 provincial, *See* under P
- LOCAL SELF-GOVERNMENT,**  
 before 1919, 150  
 after 1919, 152  
 in Presidency Towns, 153
- MACAULAY, LORD, 23**
- MADRAS CORPORATION, 154**
- MAYOR'S COURTS, 6**
- MESTON'S AWARD, 143**
- MINOR RURAL AUTHORITIES, 152**
- MINTO-MORLEY REFORMS, 34, 44**
- MINISTERS,**  
 constitutional position, 125

- MONTAGUE-CHELMSFORD REFORMS, 48**  
 three principles, 49  
 outline, 52  
 changes in the Executive Government, 54  
 changes in the Central Legislature, 56  
 changes in the local Legislative Councils, 57
- MUNICIPALITIES IN INDIA, 155**  
 of Bombay, Madras and Calcutta, 6
- NATIVE STATES, 217**  
 Relationship of Paramount Power, 217
- ORDER IN COUNCIL, 96**
- ORDINANCES, 79**
- PANCHAYATS, 157**
- PERIODS OF CONSTITUTIONAL DEVELOPMENT, 1**
- PRINCES, CHAMBER OF, 218**
- PRESIDENCY TOWN, system, 150**  
 Magistrate, 161
- PRIVY COUNCIL, constitution, 185**  
 history, 186
- PRIZE COURTS, 184**
- PROVINCIAL, autonomy, 53**  
 Civil Courts, 161, 169  
 Criminal Courts, 164, 170  
 Small Cause Courts, 170  
 Executive, 125
- PROVINCIAL LEGISLATURE, composition, 112, 113**  
 franchise, 113  
 business procedure, 115  
 law-making powers, 117  
 financial powers, 118
- REGULATING ACT, provisions, 10, 17**  
 defects, 12
- REFORMS, Minto-Morley, 34, 44**  
 Montague-Chelmsford, 48 See under M.
- REPORTS, Nehru, 208**  
 Simon, 209, 209
- RESOLUTIONS, 102**
- REVENUES OF INDIA, 147**
- ROUND TABLE CONFERENCE, First, 209**  
 Second, 211  
 Third, 212
- SECOND PERIOD, 16**
- SECRETARY OF STATE FOR INDIA, 58**  
 Control over transferred-subjects, 64  
 Control over reserved subjects, 64  
 liability, 65
- SINHA, LORD, 35**
- STATUTE LAW UNTIL 1833, 25**
- SUBJECTS, transferred and reserved, 55**
- SUPREME COURT, Calcutta, 11, 159**  
 Madras, 24, 160  
 Bombay, 160
- TALUK BOARD, 157**
- THIRD PERIOD, 30**  
 legislative changes, 38  
 Changes in Executive Government, 81
- VICEROY, relation with the Princes, 80**  
 relation with the Secretary of State, 80