

THE INDIAN CONSTITUTION

THE
INDIAN CONSTITUTION

AN INTRODUCTORY STUDY

BY

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TO
THE MEMORY OF
the late Dewan Bahadur
S. Srinivasaraghava Iyengar, C.I.E.
MY UNCLE
WHOSE STUDY OF INDIAN PROBLEMS
WAS AN INSPIRING AND INVALUABLE EXAMPLE
TO ALL THOSE WHO KNEW HIM

PREFACE TO THE FIRST EDITION

This book is intended to meet a demand which is likely to be increasingly felt with the widening of the political life of the Indian people by the inauguration of the new Reform Scheme. Accessible information on the constitutional aspects of the Government and administration of British India is not found in recognised books treating of the laws and institutions of India. Official publications also hardly go beyond bare summaries of facts and events. A systematic treatment of the features of the Indian Constitution, studied from the point of view of the Indian citizen and of the Indian student of political science, has not so far been attempted. Students of Indian history, as it is taught in our schools and Colleges, hardly obtain an idea of the machinery whereby the Indian Constitution works and the lines on which it has been constructed and developed during more than a century of British rule. Such standard books as Cowell's "Courts and Legislative Authorities in India" and Sir Courtenay Ilbert's "Government of India," do, of course, treat of the Indian Constitutional Laws as they have been enacted, in all their details; but they

deal only incidentally with the constitutional or political principles, understandings and conventions, on which so large a part of the working of British institutions all over the world depends.

It is to stimulate the study of the Indian Constitution in this direction that this introductory sketch is primarily placed by the author before the public. It is also attempted in the book to furnish the Indian citizen with a handbook of information to be of use to him in the discharge of his duties. The average Indian who cares to interest himself in politics, gains a knowledge of political problems in a haphazard way. Such knowledge as he obtains by his business contact with other men, the reading of newspapers and the hearing and reading of political speeches, can but give him a slender acquaintance with the subject. Matters are not very much better even in regard to many who take an active, instead of a passive, part in public affairs. The author ventures to hope the present publication will give them some preliminary help in this direction.

The book lays no claim whatever to originality or research except in its method of presenting the leading facts and features of the Indian Constitution. Written, moreover, in the intervals of busy work, it is likely to contain many errors of style and of statement. For fuller information he would refer the readers to the authoritative works of Cowell, Ilbert and others, and to the many State Papers

and Proceedings published by Government. A small collection of select constitutional documents is, however, published in the Appendix, which the author trusts will prove useful both to students and to politicians.

MADRAS, }
December, 1909. } A. R.

PREFACE TO THE SECOND EDITION

In bringing out this enlarged and revised edition of a book intended merely as an introduction to the systematic study of the Indian Constitution and its history under British rule, the author desires to express his obligations to the many kind friends and generous critics whose appreciation and advice have enabled him to enlarge the scope of the book, to revise its contents in the light of later incidents and experiences, and to add to the material collected therein, of which the Table of Contents and the Index, which has now been added to the book, give some idea. The author also regrets that owing to pressure of other duties and to other causes, he was not able to publish this second edition earlier, especially as the copies of the first edition had been exhausted more than 18 months ago.

6th January 1913

A. R.

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General

33. (1) Every Member shall speak from his place, shall rise when he speaks and shall address the chair.

(2) At any time, if the President rises, any Member speaking shall immediately resume his seat.

34. (1) Any Member may send his speech in print to the Secretary not less than two clear days before the day fixed for the discussion of a resolution, with as many copies as there are Members, and the Secretary shall cause one of such copies to be supplied to every Member.

(2) Any such speech may, at discretion of the President, be taken as read.

35. (1) The President shall preserve order and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time submit a point of order to the decision of the President.

(4) The President shall have all powers necessary for the purpose of enforcing his decisions.

36. The Governor may appoint a Member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which the Revised Financial Statement or the Budget or any portion thereof is discussed in the Council.

37. The President for sufficient reason may suspend any of the foregoing rules.

SCHEDULE

Heads open to or excluded from discussion under rule 11

Revenue		Expenditure	
Heads open to discussion.	Heads not open to discussion.	Heads open to discussion.	Heads not open to discussion.
I.—Land Revenue.	IV.—Stamps.	1.—Refunds and Drawbacks.	2.—Assignments and Compensations.
V.—Excise.	VI.—Provincial Rates	3.—Land Revenue	
IX.—Forest.	VIII.—Assessed Taxes.	6.—Stamps.	
X.—Registration.	XVI.A.—	7.—Excise.	13.—Interest on debt.
XII.—Interest.	Courts. I	8.—Provincial Rates.	25.—Political.
XVI.B.—Jails.	XXVI.—State Railways.	10.—Assessed Taxes.	42.—Major Works; Interest on debt.
XVII.—Police.	All purely Imperial revenue	11.—Forest.	All statutory charges.
XVIII.—Ports and Pilotage.		12.—Registration.	All purely Imperial expenditure. 4
XIX.—Education.		18.—General Administration. 3	
XX.—Medical.		19.A.—Courts of Law. 3	
XXI.—Scientific and other Minor Departments.		19.B.—Jails.	
XXII.—Receipts in aid of Superannuation, etc.		20.—Police.	
XXIII.—Stationery and Printing.		21.—Ports and Pilotage.	
XXV.—Miscellaneous.		22.—Education.	
XXIX.—Irrigation, Major Works.		24.—Medical.	
XXX.—Minor Works and Navigation.		26.—Scientific and other Minor Departments.	
XXXI.—Civil Works.		29.—Superannuation-allowances and Pensions.	
		30.—Stationery and Printing.	
		32.—Miscellaneous.	
		33.—Famine Relief.	
		36.—Reduction or Avoidance of Debt.	
		40.—Subsidized Companies : Land, etc.	
		41.—Miscellaneous Railway Expenditure,	
		42.—Irrigation : Major Works—Working Expenses.	
		43.—Minor Works and Navigation.	
		44.—Construction of Railways charged to Provincial revenues.	
		45.—Civil Works.	

1. Mainly Court-fees and fines.
2. Purely Imperial heads of account are omitted from this list, e.g., II, III, XI, XIII, XIV, etc.
3. These heads include certain statutory changes, which will be excluded from debate.
4. Purely Imperial heads of account are omitted from this list, e.g., 4, 5, 9, 15, etc.

Notification No. 37, dated 31st December 1909

With reference to Rule 3 of the above rules, His Excellency the Governor in Council, is pleased to fix the strength of the Finance Committee *ex-officio* and to prescribe the following rules of procedure for the election of the six non-official Members of the Committee :—

Rules of Procedure for the Election of six non-official Members of the Finance Committee.

1. The election of Non-Official Members of the Finance Committee shall be made at a meeting of the non-official Additional Members of the Legislative Council, at which the Finance Member shall preside.

2. The Members shall, one by one, proceed to the Secretary to the Legislative Council, who shall be seated in a place screened from observation and receive from him printed list of the non-official Additional Members eligible for election.

3. Each Member has six votes. He shall vote by placing the mark opposite the names of six of the members whose candidature he supports and shall then hand the list back to the Secretary.

4. When all the members present have recorded their votes, the Secretary shall report the fact to the President who will then proceed to the voting table and, with the Secretary count the votes and announce the result.

5. In the event of there being a number of votes so that the inclusion of all of them would bring the total to more than six, the President shall, by lot, select from them such a number as will bring the total to six only. [The Rules for the discussion of the Budget in the Provincial Councils are *mutatis mutandis* the same].

(vi) RULES FOR THE DISCUSSION OF MATTERS OF
GENERAL PUBLIC INTEREST

IN THE IMPERIAL LEGISLATIVE COUNCIL

No. 24.—In exercise of the powers conferred by section 5 of the Indian Councils Act, 1909, the Governor-General in Council has, with the sanction of the Secretary of State for India in Council, made the following rules authorising at any meeting of the Legislative Council of the Governor-General the discussion of any matter of general public interest :—

DEFINITIONS

1. "In these rules—
 - (1) "President" means—
 - (a) the Governor-General, or
 - (b) the President nominated by the Governor-General in Council under section (a) of the Indian Councils Act, 1861, or
 - (c) the Vice-President appointed by the Governor-General under section 4 of the Indian Councils Act, 1909, or
 - (d) the Member appointed to preside under rule 27 ;
 - (2) "Member in charge" means the Member of the Council of the Governor-General to whom is allotted the business of the Department of India to which the subject under discussion belongs, and includes any member to whom such member in charge may delegate any function assigned to him under these rules ; and the Secretary.
 - (3) "Secretary" means Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary.

MATTERS OPEN TO DISCUSSION

2. Any matter of general public interest may be discussed in the Council subject to the following conditions and restrictions:—
3. No such discussion shall be permitted in regard to any of the following subjects, namely :—
 - (a) any subject removed from the cognizance of the Legislative Council of the Governor-General by section 22 of the Indian Council Act, 1861 ; or
 - (b) any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any Foreign State or in any Native State or in any Native State in India ; or
 - (c) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

RESOLUTIONS

4. Subject to the restrictions contained in rule 8, any Member may move a resolution relating to a matter of general public interest:—

Provided that no resolution shall be moved which does not comply with the following conditions, namely :

 - (a) it shall be in the form of a specific recommendation addressed to the Governor-General in Council ;

(b) it shall be clearly and precisely expressed and shall raise a definite issue ; and

(c) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity.

5. A Member, who wishes to move a resolution, shall give notice in writing to the Secretary, at least fifteen clear days before the meeting of the Council at which he desires to move the same, and shall together with the notice submit a copy of the resolution which he wishes to move :

Provided that the President may allow a resolution to be moved with shorter notice than fifteen days, and may, in any case, require longer notice or may extend the time for moving the resolution.

6. (1) The Secretary shall submit every resolution of which notice has been given to him in accordance with rule 5 to the President, who may either admit it or, when any resolution is not framed in accordance with rule 4, cause it to be returned to the Member concerned for the purpose of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, re-submit the resolution duly amended, the resolution shall be deemed to have been withdrawn.

7. The President may disallow any resolution or part of a resolution without giving any reason therefor other than that in his opinion it cannot be moved consistently with the public interest or that it should be moved in the Legislative Council of a Local Government.

8. (1) No discussion in Council shall be permitted in respect of any order of the President under rule 6 or rule 7.

(2) A resolution which has been disallowed shall not be entered in the proceedings of the Council.

9. Resolutions admitted by the President shall be entered in the list of business for the day in the order in which they are received by the Secretary :

Provided that the President may give priority to any resolution which he may consider to be of urgent public interest, or postpone the moving of any resolution.

DISCUSSION OF RESOLUTIONS

10. The discussion of resolutions shall take place after all the other business of the day has been concluded.

11. (1) After the mover of a resolution has spoken, other Members may speak to the motion in such order as the President may direct, and thereafter the mover may speak once by way of reply.

(2) No Member other than the mover and the Member in charge shall speak more than once to any motion, except, with the permission of the President, for the purpose of making an explanation.

12. No speech, except with the permission of the President, shall exceed fifteen minutes in duration :

Provided that the Mover of a resolution, when moving the same, and the Member in charge may speak for thirty minutes.

13. (1) Every Member shall speak from his place, shall rise when he speaks and shall address the chair.

(2) At any time, if the President rises, any Member speaking shall immediately resume his seat.

14. (1) Any Member may send his speech in print to the Secretary not less than two clear days before the day fixed for the discussion of a resolution, with as many copies as there are members, and the Secretary shall cause one of such copies to be supplied to each Member.

(2) Any such speech may at the discretion of the President be taken as read.

15. The discussion of a resolution shall be limited to the subject of the resolution, and shall not extend to any matter as to which a resolution may not be moved.

16. When a resolution is under discussion any Member may, subject to all the restrictions and conditions relating to resolutions specified in rules 3 and 4, move an amendment to such resolution.

Provided that an amendment may not be moved which has merely the effect of a negative vote.

17. (1) If a copy of such amendment has not been sent to the Secretary at least three clear days before the day fixed for the discussion of the resolution, any Member may object to the moving of the amendment ; and such objection shall prevail unless the President in exercise of his power to suspend any of these rules allows the amendment to be moved.

(2) The Secretary shall, if time permits, cause every amendment to be printed and send a copy for the information of each Member.

18. A Member who has moved a resolution or an amendment of a resolution may withdraw the same unless some Member desires that it be put to the vote.

19. When, in the opinion of the President, a resolution and any amendment thereto have been sufficiently discussed, he may close the discussion by calling upon the Mover to reply and the Member in-charge to submit any final observations which he may wish to make :

Provided that the President may in all cases address the Council before putting the question to the vote.

20. (1) When an amendment to any resolution is moved, or when two or more such amendments are moved, the President shall, before taking the sense of the Council thereon, state or read to the Council the terms of the original motion and of the amendment or amendments proposed.

(2) It shall be in the discretion of the President to put first to the vote either the original motion or any of the amendments which may have been brought forward.

21. If any resolution involves many points, the President at his discretion may divide it, so that each point may be determined separately.

22. (1) Every question shall be resolved in the affirmative or in the negative according to the majority of votes.

(2) Votes may be taken by voices or by division and shall be taken by division if any Member so desires.

(3) The President shall determine the method of taking votes by division.

GENERAL

23. (1) The President may assign such time as with due regard to the public interests he may consider reasonable for the discussion of resolutions of any particular resolution.

(2) Every resolution which shall not have been put to the vote within the time so assigned shall be considered to have been withdrawn.

24. Every resolution, if carried, shall have effect only as a recommendation to the Governor-General in Council.

25. When a question has been discussed at a meeting of the Council, or when a resolution has been disallowed under rule 7 or withdrawn under rule 18, no resolution or amendment raising substantially the same question shall be moved within one year.

26. (1) The President shall preserve order, and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time submit a point of order to the decision of the President.

(4) The President shall have all powers necessary for the purpose of enforcing his decisions.

27 The Governor-General may appoint a Member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which a matter of General public interest is discussed in the Council.

28. The President, for sufficient reason, may suspend any of the foregoing rules.

[The Rules for the discussion of matters of general public interest in the Provincial Legislative Councils are, *mutatis mutandis*, the same as those for the Imperial Council with the proviso that no resolutions will be permitted relating to subjects removed from the cognizance of the Provincial Legislative Councils under section 43 of the Indian Councils Act 1861, in addition to those mentioned in Rule 3 above].

(vii) RULES FOR THE ASKING OF QUESTIONS

IN THE IMPERIAL LEGISLATIVE COUNCIL

In exercise of the power conferred by section 5 of the Indian Councils Act 1909, the Governor-General in Council has, with the sanction of the Secretary of State for India in Council, made the following rules authorising the asking of questions at any meeting of the Legislative Council of the Governor-General:—

1. In these rules—

(1) "President" means—

(a) the Governor-General, or

(b) the President appointed under section 6 of the Indian Councils Act, 1861, or

(c) the Vice-President appointed by the Governor-General under section 4 of the Indian Councils Act, 1909.

(2) "Member in charge" means the Member of the Council of the Governor-General to whom is allotted the business of the Department

of the Government of India to which the subject of the question belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules; and

(3) "Secretary" means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary.

2. Any question may be asked by any Member subject to the following conditions and restrictions:—

3. No question shall be permitted in regard to any of the following subjects, namely:—

(a) any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any Foreign State or with any Native State in India, or

(b) any matter under adjudication by a Court of law having jurisdiction in any part of his Majesty's Dominions.

4. No question shall be asked unless it complies with the following conditions, namely:—

(a) it shall be so framed as to be merely a request for information,

(b) it shall not be of excessive length.

(c) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity, and

(d) It shall not ask for an expression of an opinion or the solution of a hypothetical proposition.

5. In matters which are or have been the subject of controversy between the Governor-General in Council and the Secretary of State or a Local Government no question shall be asked except as to matters of fact, and the answer shall be confined to a statement of facts.

6. A member who wishes to ask a question shall give notice in writing to the Secretary at least ten clear days before the meeting of the Council at which he desires to put the question and shall, together with the notice, submit a copy of the question which he wishes to ask.

Provided that the President may allow a question to be put with shorter notice than ten days and may in any case require longer notice or may extend the time for answering a question.

7. (1) The Secretary shall submit every question of which notice has been given to him in accordance with rule 6 to the President, who may either allow it or, when any question is not framed in accordance with rules 4 and 5, cause it to be returned to the Member concerned for the purpose of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, resubmit the question duly amended the question shall be deemed to have been withdrawn.

8. The President may disallow any question, or any part of a question, without giving any reason therefor other than that in his opinion it cannot be answered consistently with the public interest or that it should be put in the Legislative Council of a Local Government.

9. No discussion in Council shall be permitted in respect of any order of the President under rule 7 or rule 8.

10. Questions which have been allowed shall be entered in the list of business for the day and shall be put in the order in which they stand in the list before any other business is entered upon at the meeting.

11. Questions shall be put and answers given in such manner as the President may in his discretion determine.

12. Any Member who has asked a question may put a supplementary question for the purpose of further elucidating any matter of fact regarding which a request for information has been made in his original question.

13. The Member in charge may decline to answer a supplementary question without notice, in which case the supplementary question may be put in the form of a fresh question at a subsequent meeting of the Council.

14. These rules, except rules 6 and 7, apply also to the supplementary questions:

Provided that the President may disallow any supplementary question without giving any reason therefor.

15. The President may rule that an answer to a question in the list of business for the day shall be given on the ground of public interest even though the question may have been withdrawn.

16. No discussion shall be permitted in respect of any question or of any answer given to a question.

17. All questions asked and the answers given shall be entered in the proceedings of the Council:

Provided that no question which has been disallowed by the President shall be so entered.

18. The President may assign such time as with due regard to the public interests, he may consider reasonable for the putting and answering of questions.

[The Rules for the asking of questions in the Provincial Legislative Councils are, *mutatis mutandis*, the same as those for the Imperial Council.]

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