THE GOVERNMENT OF INDIA BILL

EXPLANATORY MEMORANDUM

Presented to Parliament by the Secretary of State for India by Command of His Majesty
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The great length of the Bill is to a large extent apparent rather than real. The Bill has to provide for three separate entities—

(a) the Indian Federation;

(b) the Indian Provinces which, with the States, will compose the Federation; and

(c) Burma.

The clauses relating to the Federal Executive and Legislature—11 and 27 respectively in number—are repeated in identical form, and to a large extent with identical matter, in relation to the Indian Provincial Executives and Legislatures, and again in relation to the Executive and Legislature of Burma. Further, the Bill, having set out the provisions for the Legislative Powers, Administrative Relations, Finance, Railways, the Judicature, the Civil Services, the Secretary of State and his Department and the matters included in Part XII described as "Miscellaneous and General", in their application to the Indian Constitution, necessarily repeats almost the whole of this matter with some modifications for Burma. The result is that, of the matter contained in the 150 clauses relating to Burma, there is nothing except the few provisions special to Burma which is not to be found in substance in other connexions in the earlier clauses of the Bill.

2. There are two reasons which have ruled out any attempt to avoid this duplication—in some cases triplication—of matter. First, it must be remembered that the provisions relating to Burma—that is to say the whole of Part XIV of the Bill—comprising as they do the future constitution for Burma, must be complete and self-contained, since it would obviously be inappropriate that the constitution for the separate country of Burma should have to be sought for all time among provisions relating to the government of India. Secondly, so far as the Central and Provincial Constitutions of India are concerned, although, as already explained, there are some 40 clauses which appear twice, to a large extent in common form, first in relation to the Federation and secondly in relation to the Provinces, there are none the less important differences of detail between these clauses in their relation to the Federation and the Provinces respectively, and any attempt to set out the Provincial Constitutions by a system of reference to the Federal Constitution, or *vice versa*, would have inevitably resulted in a most complex and confusing presentation.

3. The result of the arrangement adopted in the Bill is, however, that, although it contains 450 clauses, if due account is taken of the repetitions just described, it could be accurately described as a Bill of about half the length.

4. There is no need to explain in any detail the general purpose of the Bill, nor the nature of the Constitutions which it is designed to provide for India and Burma respectively: these matters have been set out at length and in detail in the Report of the Joint Select Committee, of which the Bill is the expression in legislative form. The Bill follows the Committee's Report with one or two exceptions (such as that it provides that the Federal Court should entertain appeals relating only to the interpretation of the Constitution Act and not to the interpretation of Acts passed by the Federal Legislature in the exercise of its exclusive legislative jurisdiction), and with certain additional details that were not dealt with by the Committee.

5. But, although detailed exposition of the contents of the Bill is for the reason just given unnecessary, there are one or two points which it is desirable to explain in order that its construction may be more readily understood. The present Government of India Act, after formally vesting in the Crown the government of India and assuming for the King all the powers which, up to 1858, had been vested in the East India Company, proceeded to place in the hands of a corporate body known as "the Secretary of State in Council of India" complete control over "all acts, operations and concerns which relate to the government or revenues of India". Further, the present Act commits the "civil and military government of India" to the Governor-General in Council, and the government of each Province to a Governor acting with an Executive Council and Ministers, but at the same time places the Provincial Governments in subordination to the Governor-General in Council, and the latter to the Secretary of State in Council, the Act merely enabling the Secretary of State in Council so far as "transferred" subjects in the Provinces are concerned by statutory rules to relax or remove his hitherto all-embracing powers of superintendence and control.

6. The purpose of the present Bill is to resume into the hands of the King all powers hitherto exercisable in, or in relation to, India by any authority (clause 2), and thereafter to distribute to the various authorities set up by this Bill the exercise of the whole of these powers so far as they are distributed by the Act, and to leave His Majesty free to delegate such of those as are outside the strict ambit of the Act as he may think fit to the Governor-General or the Governors to be exercised on his behalf. The consequence of this Bill will, therefore, be that the Federal Executive and each Provincial Executive will, by direct delegation from the Crown, exercise independently on behalf of the King the powers respectively vested in them by this Bill, subject

to superintendence by the Secretary of State over the Governor-General and Governors in certain directions referred to below.

7. The entry of the States into the Federation is dealt with in clause 6 and other provisions of the Bill of which the effect is that, while the States which accede to the Federation will accept the whole Act, the extent of the powers exercisable in relation to any Federated State by the Federal Executive and Legislature will be governed by the Ruler's Instrument of Accession which will specify the matters in the Legislative Lists which he accepts as Federal matters in and in relation to his State. It is proposed that, immediately after the Bill has been passed, the Crown should enter into negotiation with the States individually for the conclusion of their accession to the Federation. The extent to which each Ruler is proposing to accede will be brought to the knowledge of Parliament before Parliament, by affirmative Resolutions of both Houses, invite His Majesty to issue the Proclamation inaugurating the Federation.

8. The legislative powers conferred upon the Federation and the Provinces respectively are statutorily defined by Part V of the Bill, read with the connected Seventh Schedule. The distribution of financial resources is effected in part through the legislative powers and in part through the provisions of Part VII.

9. Executive authority will be exercised in the Federation by the Governor-General, and in the Provinces by the Governor: but the Governor-General and each Governor will have to aid and advise him in the exercise of this authority a Council of Ministers. In this connexion it is important that the meaning and effect of two technical terms used throughout the Bill should be clearly understood. The duty of Ministers is described in the Bill as being that of aiding and advising the Governor-General (or the Governor) "in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them *in his discretion*". Other provisions of the Bill require the Governor-General to exercise in his discretion his functions with regard to the three Departments which it is proposed to reserve for his own control (the Departments of External Affairs, Defence and Ecclesiastical Affairs), and various other specific powers conferred upon the Governor-General and upon the Governors by the Bill are described as being powers the exercise of which is in their discretion.

10. The result is that in regard to any power or function so described Ministers have no constitutional right to tender advice, but in regard to every matter not described as being exercisable by the Governor-General (or Governor) in his discretion the right to advise, i.e., to initiate proposals, rests with Ministers. The second technical term used in this connexion throughout the Bill is the phrase "exercise *his individual judgment*". This phrase, which is applicable to matters within the purview of Ministers, means that the Governor-General (or Governor) after considering

the advice of Ministers is free to direct such action as he thinks fit, that is to say, not necessarily to accept the advice tendered to him. This course is open to the Governor-General (or Governor)—

(a) whenever any of the special responsibilities enumerated in clause 12 (and 52) of the Bill is, in his opinion, involved, and

(b) whenever any of the powers conferred upon him by the Act specifically require him in their exercise to exercise his individual judgment.

Whenever the Governor-General or a Governor is "acting in his discretion" or "exercising his individual judgment" he is subject to the superintendence of the Secretary of State (clauses 14 and 54). Full directions will be given to the Governor-General and Governors by an Instrument of Instructions to be issued with the approval of Parliament by the Crown. This document, though it cannot of course confer powers which are not to be found in the Act, will regulate the use of the powers conferred by the Act, and though the Instrument will cover many other matters, the directions on the points just described as to their relations with Ministers will be of fundamental importance. Amongst the more important of the other matters with which it is contemplated that the Instrument of Instructions should deal are consultation between the Governor-General's Counsellors and his Ministers in the day to day working of the Federal Executive, and an explanation of the line which it is intended that the Governor-General and Governors should follow in the interpretation and application of their special responsibilities; the Instrument will also indicate the nature of the rights of Indian States which require protection, and the line to be followed by the Governor-General in giving his previous sanction to certain kinds of legislation (an important instance of this category is certain financial legislation and, in particular, legislation affecting a federal surcharge on income tax (clause 138)). It is intended that a provisional draft of the Instructions contemplated by the Government shall be available for the information of both Houses of Parliament before the Bill comes under detailed discussion in Committee.

11. As to the coming into operation of the various parts of the Bill, the intention is that, with the exception of Part II relating . the Federation, the rest of the Bill will come into force on such date as the King in Council may fix, and that Part II of the Bill shall be brought into force by Proclamation on such date after the coming into force of the remainder of the Bill as Parliament may, by the Resolutions referred to in paragraph 7 above, request. During the period while the Bill, other than the provisions of Part II, is in operation, the transitional provisions contained in Part XIII, read with the Ninth Schedule, will regulate the powers of the existing Central Government. The effect of the provisions in Part XIII is to keep in operation, with some necessary modifications, such as the transfer of the conduct of

relations with the States to the authority specified in clause 3 (2), the provisions of the present Act relating to the Central Executive and Legislature; and to make such modifications as are necessary in the powers exercisable by that authority under such Parts of the Bill as are in operation. Their effect is also, while bringing to an end the Council of India as at present constituted, to leave in the hands of the Secretary of State and of the Advisers, who, under this Bill are to take the place of the members of the Council of India, the same measure of control over the financial operations of the Central Government, during the period intervening between the commencement of "provincial autonomy" and the establishment of the Federation, as is at present exercised by the Secretary of State in Council.

12. The Bill necessarily contains provisions (clauses 156 and 426) giving power to regulate the trade relations between India and Burma during the period immediately following separation, with the object of minimising the disturbance of the economic conditions in Burma which might otherwise result. In their present form these clauses must be regarded as provisional since discussions on the matter are still in progress, and it is impossible until they are concluded to be certain that provisions on the lines at present in the Bill are sufficiently precise. But, whatever form the powers granted to His Majesty in Council by the Bill may ultimately assume, it is not intended that they should be so exercised as to prejudice the fiscal autonomy which India has enjoyed in the past.

13. The franchise proposed for the provincial legislature is that embodied in the White Paper, as modified by the Joint Select Committee. It will be observed that the details of this find at present no place in the Schedules to the Bill, which has been drawn on the assumption that these matters in view of their technical character will, like many other matters of detail, be prescribed by Orders in Council to be made, subsequently to the passage of the Bill, with the approval of both Houses of Parliament. If, however, it should be found that Parliament would prefer that the provisions for franchise for the territorial Constituencies should be included in Schedules to the Bill, it should be possible to move the addition of another Schedule or Schedules for this purpose.

14. As for the expenditure necessitated by the Bill, so far as there is any charge on British Revenues, the financial memorandum attached to the Bill explains the position. So far as Indian Revenues are concerned, whilst it is impossible to estimate in advance and with precision the exact figures, the general effect may be gauged by the estimate laid before the Joint Select Committee and discussed in paragraphs 267-273 inclusive of their Report.

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