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**THE GROWTH OF
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BY

B. G. SAPRE, M.A.,

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Economics of Agricultural Progress

Third Edition

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PREFACE TO THE THIRD EDITION

In rewriting the Third Edition I have abridged the earlier historical portion and devoted more space to the actual working of the Reforms of 1919. The Simon Commission and the Committee of the Indian Legislature are at present examining the operation of the Government of India Act, 1919, and their Reports will be soon presented to Parliament and the responsibility of implementing them has fallen upon the Labour Government. This is a fortunate coincidence. I have focussed in a few pages the demands of the Liberal School of Indian politicians.

Every effort has been made to secure accuracy, I hope the new Edition is in every respect an improvement upon the old one. I have made extensive use of recent literature, official and non-official, upon the subject of Indian Constitutional Reform and I have great pleasure in acknowledging my indebtedness to it.

WILLINGDON COLLEGE,
SANGLI.
30th July, 1927.

}

B. G. S.

EXTRACT FROM PREFACE TO FIRST EDITION

Three years ago I wrote a book named "*The Reformed Constitution of British India*" giving a full account of the main changes brought about by the Government of India Act of 1919 in the Indian Constitution. I did not dwell in that book upon the *growth* of the Indian Constitution. While I was gathering material for such a historical treatment of the subject, the course of study in Indian History and Administration prescribed for the Intermediate Examination of the Bombay University was changed, greater emphasis being laid upon Constitution and Administration than upon History. The present book is an attempt to compress within reasonable limits that modicum of knowledge of History, Constitution, and Administration which every College-student ought to possess. The College-student of to-day is the citizen of to-morrow and I can conceive of no greater obligation upon him than an endeavour to understand the Indian Constitution. That Constitution is undergoing a silent change almost every moment. He ought to understand how the Constitution was shaped by the British Parliament from time to time in the past, for Parliament *alone* can change it in the future. Parliament will no doubt be guided in that task by the use we make of the opportunities afforded by the existing Constitution. I shall feel myself amply rewarded if the present book, by contributing in its humble way to the education of the people, brings about their speedy progress towards full Responsible Government.

WILLINGDON COLLEGE,
SANGLI,
15th June, 1924.

} B. G. S.

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PART I

THE BEGINNINGS

CHAPTER I

THE EAST INDIA COMPANY (UP TO 1772)

(1) ITS FIRST SETTLEMENTS AND CONQUESTS IN INDIA

Argument.—The period from 1600 in which year the East India Company was incorporated in England by a Charter from Queen Elizabeth to 1858 in which year the Government of India passed from the Company to the Crown, is full of interest to the student of Indian history and administration. He must carefully study the following points in this period: (1) how the Company established and extended possessions in India; (2) The early constitution of the East India Company and how it got its commercial and political privileges through Charters from the Rulers of England; (3) how, under the guidance of the Court of Directors it evolved a system of administration in India; and (4) how, as the result of territorial expansion and failure in administration it increasingly came under the control of Parliament, and finally ceased to exist.

Nor is less important the subsequent period from 1858 to 1919 in which latter year the first instalment of responsible government was granted to British

India. Here the student should note: (1) how the bureaucratic form of government, in spite of many advantages, led to discontent among the people; (2) how the discontent was sought to be removed by measures of decentralization and the establishment of popular councils, which finally (3) paved the way for the first step towards Responsible Government.

First Settlements and Early Struggles.—I shall first of all describe how the Company established its settlements in India which in course of time expanded into territorial possessions. As a result of the great maritime activity in the days of Queen Elizabeth, Englishmen went out to trade with distant parts of the world and they tried different forms of settlements in different places. They established 'plantations' and 'colonies' in America, for they had gone there with a view to stay permanently; in India and the Far East, however, they put up "factories" only which were well suited for trade and commerce. Such factories were early established at Surat, Madras, Masalipatam, and Hooghly and were for years confined to the coast line of India. But the merchant-adventurers of the East India Company soon came in conflict with other European merchants who were earlier in the field, *e. g.*, the Portuguese and the Dutch. The former were very strong in the Persian Gulf and on the West Coast of India, and the latter had established prosperous trading centres in Java, Sumatra, and the "Spice Islands" generally. Here the rivalry between the Dutch and the English was so keen that it culminated in the so-called massacre of Ambyona, (1623) when most of the English merchants were put to death. From that time the Company fixed their

attention more and more upon India. This diversion of the attention of the Company from the Far East to India was important in this sense that it thereby opened to them 'a wider and more Imperial destiny'* in the Indian Continent itself.

In those days commerce with the interior was difficult or impossible for foreigners unless they obtained some sort of 'Firman' or 'Patent' recognising their status and granting them protection and privileges. It was always the ambition of the pioneers of European trade to secure such Firmans from the Emperors at Delhi. In 1615 the British 'Ambassador' Sir Thomas Roe led an embassy to the Court of Jehangir and obtained from him such a Firman. But, though the English necessarily came in contact with the power of the Emperor or the local Nawab, for many years they confined themselves strictly to commercial pursuits. They took a lesson from the fate of the Portuguese and the Dutch merchants who had followed a more aggressive policy, had come in frequent collision with native powers, and as a result had to maintain large and costly establishments for their protection, to the detriment of profitable commerce. Sir Thomas Roe warned his countrymen against this danger. He asked them to confine themselves to commerce. "Let this be received as a rule that if you will profit, seek it at sea, and in quiet trade; for without controversy, it is an error to affect garrisons and land-wars in India."†

Departure from a strictly commercial policy.—In the year 1686, largely under the influence of the two brothers Sir Joshua Child and Sir John Child, whose

* Roberts : 34.

† Quoted in Roberts : page 37.

voice was then decisive in the affairs of the Company, a departure was made from the policy of non-interference with internal affairs. In that year an expedition was led against Chittagong. It failed ludicrously and only served to rouse the wrath of the Emperor Aurangzib, who ordered the wholesale expulsion of the English from their factories at Patna, Kasimbazar, and Masulipatam, and Vizagapatam, and they were only saved by timely submission and by a display of superior naval strength. In 1690 a treaty was made with the Emperor, by which the old privileges were confirmed. Not only were the deserted factories reoccupied, but Job Charnock established a new factory at Calcutta. "The same year, therefore, which witnessed the abasement of the Company before Aurangzib also witnessed the humble foundation of the future capital of India."^{*}

The Anglo-French Struggle in Europe.—But, in spite of this check which the English received, events were happening both in Europe and India at this time, which forced the Company to take an active interest in the affairs of India. It is true that the Portuguese and the Dutch had ceased to cause anxiety to the English; but a more powerful rival appeared in the French East India Company which, under the fostering care of Colbert, soon established factories in India. The ultimate success of the English over the Dutch and the French merchants was due, to no small extent, to the European policy of the French King Louis XIV. He was bent upon destroying the independence of the Dutch Republic. This was exactly what England wanted. For though she sympathised with the Re-

* Roberts : p. 46.

public and Protestant Holland on political and religious grounds in Europe, Holland was her commercial rival in the East. She, therefore, watched with delight the enfeeblement both of France and Holland, caused by the wars of Louis XIV. As Sir Alfred Lyall points out, this gave great advantage to the naval operations of the English, "who thenceforward, began to draw slowly but continuously to the foremost place in Asiatic conquest and commerce."^{*}

Its counterpart in the Karnatak Wars.—Whilst this contest for commercial and colonial supremacy between the French and the English was raging in the West, events were happening in India which rendered adherence to the policy of indifference to local affairs any longer impossible. Aurangzib died in 1707; the Subhadars of the distant Provinces of Bengal and Hyderabad virtually became independent; and above all, there was, in the Deccan, a vigorous rebirth of the Maratha power under the Peshwas.

The Indian counterpart of the Anglo-French struggle in Europe is comprised in the three Karnatic Wars (1744-1763).

It is not proposed to go into the details of these wars. Dupleix arrived in India in 1741, and took up the cause of a claimant to the throne of Arcot; the French took Madras from the English who had espoused the claim of the rival Nawab. The treaty of Aix-la-Chapelle (1748) put an end to this war (the First Karnatic War) in which, on the whole, the French had triumphed over the English. During this war Dupleix is said to have made the 'discovery' that

^{*} Lyall : page 28.

the irregular hordes maintained by the Indian Princes could be turned into an excellent army if they were drilled, disciplined and led by European Officers. In the Second Karnatic War (1750-54) the succession dispute at Arcot between two Nawabs was complicated by another at Hyderabad between two Nizams. Dupleix succeeded in establishing his own candidates, one as the Nizam of the Deccan, and the other as the Nawab of Karnatic. But his progress was checked by the dramatic emergence of Robert Clive who turned the tide of war in favour of the English. Dupleix was recalled and peace was made with the English in 1754. Thus, though England and France were at peace in Europe, their Companies were fighting in India and the war is therefore called an "unofficial" War. Both sides were equally exhausted and if Mahamad Ally (the English candidate) remained Nawab of the Karnatic, Salabat Jung (the French protégé) was the Nizam at Hyderabad, and thus there was a balance of power between the two European Companies in Southern India. The struggle was resumed at the outbreak of the Seven Years' War in Europe. Lally was severely defeated at Wandewash (1760) and Pondicherry was taken in 1761. The Peace of Paris (1763) though it restored Pondicherry to the French, gave a death-blow to the dreams of the French to establish an Empire in India.

Causes of the French Failure.—It is beyond the scope of this book to discuss the causes of the final failure of the French in India. Sir Alfred Lyall has done a great deal to elucidate this point. He distinguishes between the immediate local causes and the essential underlying causes of this failure. The leadership of men like Clive and Lawrence and the conquest of

Bengal which placed at the disposal of the English the vast resources of that Province belong to the former group. The financially rotten condition of the French East India Company; its close connection with and helpless dependence upon the French Government and the consequent mal-administration of its affairs belong to the latter group. Thus, even supposing that Dupleix, Bussy, and Lally were free from those shortcomings of temperament or character which all acknowledge, and supposing further that they had not committed the tactical blunders attributed to them, it is doubtful if they could have succeeded as against the English. The ultimate cause of the French failure is to be found, to use the words of Lyall, "in the continual sacrifice of colonial and mercantile interests to a disastrous war-policy (of Louis XIV & XV) on the Continent, and above all to the exhaustion of their naval strength which left all transmarine possessions of France defenceless against the overwhelming superiority of England."*

Struggle in Bengal.—It has been pointed out by Lyall that after 1763 the contest for ascendancy in India is not between rival European Companies but between the English Company and the Native Powers. The first half of the struggle was decided on the coast line of Madras in the short period of 20 years (1745-63); the second half began in the interior of Bengal in 1756, extended over the whole of India and occupied a whole century. And curiously enough, Clive is the connecting link between these two periods and theatres of the struggle. As a reward for his services in the Karnatic Wars he was appointed in

* Lyall: page 95.

1756 the Governor of Madras; but the condition of Bengal became so serious that he had to go to Calcutta. Ali Vardikhan the strong *Nāzim* (or Governor) of Bengal died in 1756 and was succeeded by his son Suraj-Udawala, a youth of barely 20 years of age. He was bent upon driving the English—who, against his orders were fortifying Calcutta—out of Bengal and therefore, took Kasimbazar, marched upon Calcutta and the “Black Hole” tragedy took place on 23rd June. It was for the recovery of Calcutta that Clive and Admiral Watson were sent from Madras. The position of the Company in Bengal was rendered more precarious by the negotiations of Suraj-Udawala with the French, between whom and the English the Seven Years’ War had broken out in Europe. But Clive, by allying himself with Mirjafar who was plotting the overthrow of the *Nāzim*, routed his army in the battle of Plassey, and Mirjafar was made the *Nāzim*. In recognition of these services Clive was made the President of the Council and Governor of Bengal. He was thus enabled to utilise the resources of Bengal against the French in Madras. He sent Col. Forde to the Northern Circars to divert the attention of the French, and Forde took Masulipatam in 1759 April. Col. Forde also defeated the Dutch—the only other European rival of the English in Bengal; Clive after thus establishing securely the power of the Company in Bengal, returned to England in 1760. A comparison of the position of the Company in 1756 with that in 1760 shows the magnitude of the achievement of Clive. He had raised the status of the English from a commercial Company to the supreme power in Bengal, and the accession of the wealth of Bengal also altered the position of the Company in Madras as against the

French. The English got a firm footing inland from which it became easy for them to defeat their European rivals and develop their resources for the fight with the Native Princes. It gave them a position in upper or Continental India as distinguished from lower or Peninsular India. The English secured the richest Province in upper India in point of fertility and manufacture. It was a province eminently suited for maritime people. It was free from such powerful rivals as the Peshwas and Hyder in Western and Southern India respectively.

(2) ITS EARLY CONSTITUTION AND HISTORY

Having described so far how the original factories of the East India Company expanded into territorial possessions it is now time to turn to the development of that Company in England. The Company was formed by a Charter from Queen Elizabeth in 1600, which incorporated "George, Earl of Cumberland and 215 knights, aldermen and burgesses, by the name of the Governor and Company of merchants of London trading with the East Indies".

The points of permanent interest in the development of the Company are (a) the early constitution of the Company; (b) its privileges; (c) its legislative powers.

Constitution.—The merchants who formed the Company were to elect annually one Governor and twenty-four "Committees" for the management of its Voyages, Shipping and Commercial affairs. The "Committees" were individuals, not bodies, and they were the predecessors of the subsequent Court of Directors. In the first Charter there is no reference to the capital of the Company for it was much looser

10 (2) EARLY CONSTITUTION AND HISTORY

in constitution than a modern joint stock company. Each merchant invested his own capital at his own risk in each voyage, and agreed to obey certain 'regulations' for his own protection. This period of 'separate voyages' lasted till 1612. But many merchants began the practice of carrying over their profits from separate ventures and thus subscribed for a series of ventures. This system was called "Investment in the Joint Stock". From this the transition to the pure and simple Joint Stock principle was easy and was made in 1657. The entrance fee was £5, the minimum subscription for a shareholder £100; the holder of £500 stock was to have a vote in the General Court of Proprietors' and of £1,000 was to have the right of being elected as a "Committee" *i. e.* as a Director twenty-four of whom were to form the Court of Directors. Thus the 'Regulated' Company became transformed into a Joint Stock Company with its two organs of a Court of Proprietors (corresponding to the modern general body of shareholders) and the Court of Directors (corresponding to the modern Board of Directors).

The Directors were annually elected by the Proprietors and received a salary of £300. The Chairman and Deputy Chairman got £500. They transacted business through various Committees chosen from among themselves. There were as many as ten such Committees of each of which the Chairman and Deputy Chairman were *ex-officio* members. The names of the Committees indicate the varied business the Company had to attend to in England as well as in India. (1) The Committee of Correspondence, which was the most important, in charge of the correspondence to and from India; (2) the Committee

of Law Suits ; (3) the Committee of Treasury to provide for the payment of dividends, negotiate loans etc; (4) Committee of Warehouses, mostly dealing with the import of commodities made in India; (5) the Committee of Accounts; (6) Committee of Buying attending to the export of articles made in England; (7) Committee of the House, in charge of the repairs to the India House; (8) Committee of Shipping; (9) Committee of Freight, Demurrage etc. on private trade; and finally (10) a Committee to prevent the growth of the private trade of the servants of the Company.

It will be thus seen that the Company had evolved an elaborate organization in England admirably suited to its varied functions.

(b) *Commercial privileges*:—The Company enjoyed the monopoly of trade with the East Indies for the period of 15 years. The concession of such exclusive privileges was necessary at a time when trade with distant and unknown lands was full of risks and dangers. (c) *Legislative powers*:—The 'General Court' (which consisted of all those who had invested capital in the Company) was authorised to make laws and inflict punishments, for the good government of the Company and its servants, provided such laws and punishments were reasonable and not contrary to the laws of England.

Such was the type of private association of merchants, incorporated under a Royal Charter and enjoying commercial privileges and legislative powers that was evolved for the extension of trade in the 17th Century. As Lyall points out, "the Charter expressed the delegation of certain Sovereign Powers for distinct purposes; it amounted from one point of view to a license for private war; and the system has since had

a long and eventful and curious history which has as yet by no means ended." *

The Company under the Stuarts.—James I on the whole was favourably disposed towards the Company; his Charter of 1609 made the Company perpetual and those of 1615 and 1623 authorised it to exercise martial law to maintain discipline among its servants. Charles I, by giving a patent to a rival Company 'encouraged the class of unauthorised traders with the Indies, known as 'interlopers'. Cromwell, the father of the Navigation Acts and an enemy of the Dutch (who had given asylum to the fugitive Prince Charles), gladly took up the cause of the Company and exacted from the Dutch adequate compensation for the losses suffered by the Company in the Far East.

The transition of the Company from a purely commercial to a political body is seen in the new powers—as those of erecting fortifications, coining money, making of peace and war—conferred by the Charters of Charles II, who also gave to the Company the island of Bombay which from that time became the most important possession of the Company on the Western Coast of India. The transition is also marked by the following famous Resolution which the Company adopted in 1681.

"The increase of our revenues is the subject of our care as much as our trade; it is that must maintain our force when twenty accidents may interrupt our trade; it is that must make us a Nation in India; without that we are but a great number of interlopers, united by His Majesty's Royal Charter, fit only to trade where nobody of power thinks it their interest to prevent us;

* Lyall : p. 15.

and upon this account it is that the wise Dutch, in all their general advices that we have seen, write ten paragraphs concerning their Government, their Civil and Military policy, warfare, and the increase of their revenue, for one paragraph they write concerning trade.”*

The Company after the Revolution.—The Revolution marks an important step in the career of the East India Company. As Sir William Hunter points out, it brought the Company face to face with Parliament.† The monopoly of the Company was opposed by various parties on different grounds. Some were hostile to it on the old mercantile ground that trade with the East involved a continuous drain of bullion out of the country, and bullion was regarded by this school as wealth *par excellence*; others opposed not so much the trade as the monopoly of it enjoyed by the East India Company. Many enemies of the Company, therefore, formed a rival Company, and having secured the support of the powerful Whig party, petitioned the Crown to grant monopolies to private associations. But all authority had now passed from the Crown to Parliament and the House of Commons, therefore, in 1694, resolved “that *all* subjects of England have equal rights to trade to the East Indies unless prohibited by Act of Parliament.” Thus, as Ilbert says, the question whether the trading privileges of the East India Company should be continued was removed from the Council Chamber to Parliament, and the period of control by Act of Parliament over the affairs of the Company began ‡

An unhealthy competition now arose between the old East India Company and a new Company that was

* Quoted in Ilbert's Historical Introduction.

† Hunter: Vol. II, page 275. ‡ Ilbert : Historical Introduction.

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started to take advantage of the new freedom of trade; and in 1708 the rival Companies were amalgamated under the new title "The United Company of Merchants of England trading to the East Indies."

The Company had now to be on good terms with the Ministers of the King, and to get extensions of their privileges by often bribing them. A Charter of 1726 empowered the Company to ordain byelaws and rules, provided they were reasonable and not contrary to the laws and statutes of England and they were not to have any force or effect until they had been approved and confirmed by order in writing of the Court of Directors. This Charter also established or reconstituted the Mayor's Courts in Calcutta, Bombay and Madras and expressly introduced the laws of England into the Presidency Towns. Such Charters show how the Company had become a partially sovereign body. As Macaulay says: "It is a mistake to suppose that the East India Company was merely a commercial body till the middle of the 18th Century. Commerce was its object but in order to enable it to pursue that object it had been invested from a very early period with political powers. Its political functions attracted little notice because they were merely auxiliary to commercial functions. Soon, however, they became more important.....Long before 1765 the Company had the reality of political power. In fact it was considered by Lord Clive and Warren Hastings, as a point of policy to have the character of the Company undefined in order that they might treat the Princes in whose name they governed—as realities or non-entities as might be most convenient."*

Factory to Fort, and Fort to the Presidency.—Let

* Speech 1833.

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us now turn to the development of the early Factories of the Company in India to Forts and then to Presidencies. The Servants of the Company in a typical 'factory' were the 'Writers', "Factors" "Junior merchants" and "Senior merchants". The writers, who were young cadets receiving only a nominal salary but having the privilege of private trade, became after a period of service 'Factors'. The Factors, in their turn, became 'Junior' and 'Senior' merchants from among whom the members of the Council were chosen.

The life of the merchant-community was centred in the 'Factory'. They led there a corporate life as in a College. The instructions which the Directors now and again sent out to India show what were the special evils against which they wished to guard their young servants. There are frequent exhortations against the evils of duelling, against intemperance, extravagance, and gambling. They also condemned private trade on the part of their servants. Nor did the Directors forget to send out suitable books for the benefit of the young. Thus though they cared first for profits, they were not unmindful of the larger interests of their servants.

It should be noted that in course of time the factories attracted a large heterogeneous population from the surrounding country. Fortifications were built for protection, money began to be coined, justice to be administered, and a native militia entertained. As Lyall points out, in the system thus introduced was contained the germ out of which these scattered trading settlements eventually expanded into territorial dominion. *

* Lyall : page 29.

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Geographically they fell into three groups: Bombay, Bengal and Madras. Each was called a Presidency as it was governed by a President and Council. The President, also called the Governor, was sent out from England by the Court of Directors. The Council consisted of all the 'senior' merchants in the Presidency. Some lived in the Capital, but others were scattered over the whole presidency in charge of factories. The Governor and Council had great powers—civil and criminal—for the maintenance of discipline among their servants and of peace and order within their jurisdiction.

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Reforms of Clive.—Nothing brings out more clearly the transformation of the Company from a commercial body into a territorial power than the acquisition of *Dewani* by Clive in 1765. Reference has been made to the part he played in overthrowing the power of Siraj-ud-davala of Bengal and his return to England in 1760. On his departure, there ensued, in the words of Sir Alfred Lyall, "the only period of Anglo-Indian history which throws grave and unpardonable discredit on the English name." Government fell in the hands of Holwell and Vansittart who now became the Governor of Bengal. As Mirjafar was not able to pay his stipulated amounts, they entered into a secret treaty with Mir Kasim, who, as the price of his elevation to the throne, presented to the Committee £200,000 out of which Vansittart got £28,000. But Mir Kasim proved a more capable and independent ruler than was expected by the Company and protested against the abuse by the servants of the Company of the trading

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privileges. The whole internal trade was in the hands of these servants. They claimed exemption from the payment of all the internal duties, and under this unfair competition the Indian merchants suffered. Mir Kasim protested but as his complaints proved of no avail, he abolished duties in the case of both English and Indian merchants. As this concession was opposed by Mr. Ellis, a merchant of the Company at Patna, Mir Kasim attacked Patna and imprisoned him. There was now an open rupture between Mir Kasim and the Council and the latter again made Mirjafar the *Nāzim*. Mir Kasim was defeated and he ordered the massacre of the prisoners at Patna and was finally defeated in the battle of Buxar, October 1764. As Mirjafar had died in February of the same year, the Council raised his grandson Nazim-ud-davla—a minor—to the throne and appointed a *Naib Nāzim* to carry on the civil administration. The Company was to be paid £50,000 per month for the maintenance of the army in Bengal.

Such was the condition which Clive was called upon to improve during his third visit to India.

In a letter (30th September 1765) to the Court of Directors that he wrote soon after his arrival in Bengal, Clive refers to the corruption, extravagance and luxury of the servants of the Company as the besetting sins of Government in Bengal. His labours, therefore, to remove them have been rightly compared to the cleansing of the Augean stables. His first reform was to reconstitute the Council at Calcutta. In the place of an unwieldy body of sixteen members scattered over the whole province he substituted, with the sanction of the Court of Directors, a Select Committee of four members. With the help of this Com-

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mittee he next proceeded to reorganize the administration of the minor Nawab Nazim-ud-davla. He appointed Mahamad Rezakhan as *Naib Nāzim* and restricted his power by associating with him two Hindu grandees.

Clive then turned his attention to a more ambitious project. It was agreed that the Nawab Vazier should pay to the Mogul Emperor the sum of twenty six lacs of rupees per annum and also cede the districts of Allahabad and Korah. In return for this the Emperor made over to the Company, on 12th August, the *Dewanee* of the three provinces of Bengal, Bihar and Orissa. It was further agreed that the Nawab Vazier was to receive Rs. fifty three lacs out of the revenues of the provinces 'as an adequate allowance for the support of the Nizamat' and the surplus was to be appropriated by the Company itself.

Clive in his letter of 30th September 1765 explained to the Court of Directors that the Dewani was an *employment* conferred upon the Company "the nature of which is the collecting of the all revenues, and defraying of all the expenses of the army, and allowing a sufficient fund for the support of the Nizamat, to remit the remainder to Delhi, or wherever the Emperor shall reside or direct". As a matter of fact the claims of the Emperor and the Nawab Vazier were compounded for by the annual payments of Rs. twenty six and fifty three lacs respectively and the Company obtained all the surplus revenues.

The new rights acquired by Clive were so important that he was anxious to have them in the name of the English Government and not of a mercantile Company. As he wrote in a private letter to Pitt: "So

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large a Sovereignty may possibly be an object too extensive for a mercantile Company, and it is to be feared they are not of themselves able, without the nation's assistance, to maintain so wide a dominion; I have therefore presumed, Sir, to represent this matter to you, and submit it to your consideration, whether the execution of a design, that may hereafter be still carried to greater lengths, be worthy of the Government's taking it into hand. I flatter myself I have made it pretty clear to you, that there will be little or no difficulty in obtaining absolute possession of these rich kingdoms and that with the Mogul's own consent, on condition of paying him less than a fifth of the revenues thereof."

Pitt let go the offer, nor were the Directors more appreciative of the advantages that the *Diwani* conferred upon the Company. They warned the Company not to undertake *directly* the work of collecting revenue or administering justice, for which, they said, Englishmen were unfit. They wrote in their Despatch of 17 May, 1766, "we conceive the office of the *Dewan* should be exercised only in *superintending* the collections and disposal of revenues, which though vested in the Company, should be officially executed at the Darbar, under the control of the Governor and the Select Committee. The administration of justice, the appointment of Officers, Zamindars etc., whatever comes under the denomination of civil administration, we understand, to remain in the hands of the Nawab or Ministers."

The fundamental defect of this view of the Directors was that though nominally the civil administration was vested in the Nawab all real power was in the hands of the Company, and when later on

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the powers of military protection and criminal jurisdiction (*i.e.* of the Nizamat) were taken away from the *Nāzim*, he became a mere shadow with an annual pension of 53 lacs of rupees. Thus was introduced in Bengal a dual system: the actual work of administration being carried on by the servants of the Subha, but the real authority being exercised by the Company. Clive found great convenience in this mask of *Diwani* and warned the servants not to throw off the mask: He wanted to keep up the authority of the shadowy Subha.

He declared "Be it, therefore, always remembered that there is a Subha; and that, though the revenues belong to the Company, the territorial jurisdiction must still rest in the Chiefs of the country, acting under him and this Presidency in conjunction". The mask of *Diwani* also served to disarm the jealousy of foreigners like the French and the Dutch at the aggrandizement of the English.

Even within the three provinces of Bengal, Bihar and Orissa vast stretches of land were unoccupied, and Clive was opposed to extend the authority of the Company beyond them. Members of the Select Committee were for an immediate march upon Delhi to put upon the throne a puppet Emperor. But Clive struck a note of warning: "My resolution, however, was, and my hopes will be to confine our assistance, our conquest, and our possessions to Bengal, Bihar and Orissa. To go further is, in my opinion, a scheme so extravagantly ambitious and absurd, that no Governor and Council, in their senses can adopt it, unless the whole system of the Company's interest be entirely new modelled."*

* Firminger : Introduction Chapter VIII.

(4) DOUBLE GOVERNMENT UNDER DIWANI 21

This policy of friendship with the Vazier of Oudh who was to be formed as a barrier between the English possessions in Bengal and other powers in North India remained the policy of the English up to the end of the century.*

(4) DOUBLE GOVERNMENT UNDER DIWANI.

It is customary to pass lightly over the administration of Bengal during the interval between the departure of Clive in 1767 and the appointment of Warren Hastings as the Governor of Bengal in 1772. As a matter of fact the interval is full of experiments and failures that compelled the Company to throw off the mask and "stand forth as the Dewan" in 1773.

A brief reference must be made to the system of revenue collection under the Moguls. The *Diwan* was charged with the administration of the civil law and the collection of revenue.

Under the Moguls, the fiscal unit in Bengal was the *Pargana* administered by a Zamindar, a group of Parganas forming a *Sarkār*, or *Chaklā*. To control the Zamindar in his fiscal capacity, a *Kanungo* was appointed to each Pargana. He kept the rates of assessments, controlled the survey of the *Pargana*, and generally maintained the rights of the cultivators. What the *Kanungo* was to the Pargana, the *Patwari* (accountant) was to the village.

This was the normal system of revenue collection. But in his anxiety to collect as large a revenue as possible, the *Subha* of the province also made use of the *Fouzdars* whose duty was to preserve peace in the District and overawe and restrain the Zamindars. Most

* Lyall : page 132.

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of the Fouzdars were Persian adventurers that had secured their appointments by speculative offers of lump sums of revenue that they undertook to pay. But as they were not always successful in the collection of revenue the *Subha* made use of local Hindu capitalists. Many of these revenue Collectors managed to become, in course of time, petty Zamindars. "The creation of the smaller type of Zamindars seems to have been due to the desire of the Moorshidabad power to have two strings to its revenue-bow—the Hindu who understood so intimately the habits of the people who paid the revenue, and the Fouzdar who, although distrusted, could squeeze, when occasion required, the petty Zamindars."*

Thus the Zamindars, included persons of varying degrees of importance, ranging from the representative of an ancient Hindu royal family to the revenue-farmer who had raised himself to that status by securing a patent from the Emperor. Whatever his origin, every Zamindar was bound to pay to Government a certain share of the revenue, in return for which he enjoyed the right to retain for himself whatever he collected from the ryots that cultivated the land in excess of the Government assessment. Below the Zamindars were the *ryots* who had to pay to the Zamindars certain dues (of the nature of feudal exactions in Europe) called *Abwabs* in addition to the customary rents. The revenue interests of the Government were watched by the officer called *Kanungo* who authenticated leases and transfers of land, and checked the accounts of the Zamindar. On the other hand the interests of the village were watched by its officer

* Firminger : Introduction.

called the *Patwari*, who was maintained by allowances from the cultivators and the grant of village land. The *Kanungo*, representing the State and the *Patwari* representing the village would have been invaluable officers had the whole system not been rotten on account of cesses. As it was the ryots suffered from both.”*

But though, in practice, there were considerable departures from the theory, in Bengal the State was entitled to a revenue only, the Zamindars were entitled to customary rents, paying revenue to the State; and the ryots had a hereditary right to the holdings, subject to the payment of customary rents to the Zamindars.”†

The Company got its first foothold in this fiscal system by obtaining the rights of a Zamindar long before it acquired the grant of *Diwani*. As early as 1696 when Calcutta was founded the Company got the Zamindari of the surrounding tract for which it had to pay annual revenue of Rs, 1500. It had to collect rents from the *ryots* and administer justice in this tract in its capacity as the Zamindar and this novel work was entrusted to a member of the Council. The next step was the acquisition of the 24 Parganas from Mirjafar as the price of the help he received from the Company for being made the Nawab of Bengal. A report was made on the condition of land revenue in this extensive tract, and instead of collecting it directly from the ryots or from the Zamindars, the lands were let out in 1759 to highest bidders for three years. This experiment proved disastrous both to the ryots and the Zamindars and

* Firminger; Introduction.

† Dutt: Early British Rule 56.

24 (4) DOUBLE GOVERNMENT UNDER DIWANI

also did not yield satisfactory revenue to the Company. When Mirjafar was set aside in favour of Mir Kasim, the Company got from the latter the three 'Ceded' districts of Burdwan, Midnapur, and Chitagong. In each of these districts a 'Chief' was appointed as the servant of the Company, who was responsible for the collection of revenue and the administration of justice. The system of 'farming' revenue, which had been tried in the 24 Parganas was not extended to the 'Ceded' districts.

When, however, Clive obtained the grant of *Dewani* in 1765, the actual work of revenue collection was not undertaken by the Council even though they had got experience of such work in the 'Ceded Districts.' The newly acquired country was so vast, revenue-collection so intricate a business, and demand for money so pressing that the Governor and Council reverted to the simple but disastrous policy of farming out lands to highest bidders. They appointed a Resident at Moorshidabad to watch the collection of revenue through the agency of revenue farmers. This led to great oppression of the ryots and fall in revenue. Richard Becher who was Resident at Moorshidabad has vividly pointed out the evils of the farming system. As the Zamindars could not or would not pay the exorbitant demands made upon them, they were ousted from their lands, and *āumils* who had agreed to pay a fixed revenue were put in their place. As these adventurers had no interest in the land they tried to make as much out of it as possible during their uncertain period of holding, and whole districts were thus impoverished.

Harry Verelst who succeeded Clive as Governor soon realized the evils of the farming system and in

1769 appointed to each district English 'Supervisors' for superintending the collection of revenue. The instructions issued by him for the guidance of these young officers show that Verelst expected much more from them than the mere supervision of revenue. They were to conduct exhaustive enquiries into the economic and fiscal condition of each district. The Directors approved of the appointment of these Supervisors and also instituted two controlling Councils of Revenue, one at Moorshidabad and the other at Patna. But the Supervisors soon became a source of mischief. They were young servants of the Company who, like their seniors, were not free from the taint of private trade, and soon obtained an undue influence in the district on account of their official position which they did not fail to use for their own aggrandizement. During all this time the condition of the people was going from bad to worse, and the terrible famine which visited Bengal in 1770 and which is said to have carried away a third of the population, at the very time when the revenue collections were actually increasing under the methods adopted by the Council at Calcutta, showed that the whole administrative system as established by Clive had become rotten to the core and required drastic reform.

(5) WORK OF WARREN HASTINGS

The choice of the Court of Directors fell upon Warren Hastings who had risen from the lowest rank in the service of the Company to the position of a Resident at Moorshidabad and a Member of the Council at Calcutta. No other person in the service of the Company had better knowledge of the commercial and revenue affairs of that body. The Court

of Directors had in August 1771 despatched the letter in which they ordered the President and Council "to stand forth as Diwan and by the agency of the Company's servants to take upon themselves the entire care and management of the revenues." This was a momentous decision.

'The British administration of India may be said to commence from this date and Warren Hastings may be regarded as the founder of that administration. He with the help of his Council adopted certain measures of reform which may be thus summarised' *

- (1) The lands were to be let out to revenue farmers for a period of five years.
- (2) A Committee of Circuit, consisting of the Governor and four members of the Council, was appointed to visit the principal districts and form the five years' settlements.

As the Directors had declared their policy to 'stand forth as the Diwan' of Bengal, Bihar, and Orissa, he suspended Mahamad Rezakhan (who as Naib Diwan since 1765 was responsible for the collection of revenue under the old system, and who was charged with embezzlement, though subsequently he was found to be innocent), appointed 'Collectors' in the place of the 'Supervisors' appointed in 1769. This was not a mere change in the title; for the Collectors directly collected the revenue. The instructions that Warren Hastings issued to the newly appointed Collectors clearly show the multifarious duties which they were called upon to perform and the high moral standard that was expected of them by the Government. But the Collectors proved even more oppressive

* Firminger : Introduction page 223.

than the Supervisors, and the Directors ordered them to be at once withdrawn, which was done in 1773. Provincial Councils were appointed in the place of the Collectors at Calcutta, Patna, Moorshidabad, Burdwan, Dacca, and Dinajpur. The Councils collected revenue through a body of native *āmils* appointed to extract the revenue. The Councils of revenue at Moorshidabad and Patna were abolished and final authority in revenue matters was vested in the Council itself sitting as Committee of Revenue at Calcutta, to which place the treasury was transferred from Moorshidabad.*

It became soon clear, however, that the mischief lay not so much with the agency of collection but with the excessive rate of assessment. In spite of the efforts of the provincial Councils vast sums of revenue fell into arrears. In 1781, therefore, the Councils were abolished and the Collectors again reinstated in their office. They made fresh annual settlements with the highest bidders and they were guided in these operations entirely by the newly created Committee of Revenue at Calcutta. Thus the question of revenue collection in Bengal remained unsolved in the days of Warren Hastings..

Hastings also tried to safeguard the interests of the Ryots from the undue exactions of Zamindars by requiring the latter to give written 'Pattas' or 'agreements' to the Ryots.

Such was the work of Warren Hastings. It is clear that some of the worst abuses of the old system were removed. He was most anxious to raise the tone of the Collectors by depriving them of the opportunity of private trade. But though the machinery of

* Firminger : Introduction page 230. *

collection was improved, the method of assessment continued as unsatisfactory as before.

The ultimate cause of the failure of the revenue policy of Warren Hastings is to be found in his having never appreciated the position of the Zamindars. His first anxiety was to get as large a revenue as possible to finance the commercial dealings of the Company. "The good of the people was made subservient to this primary object of the Company's administration; the rights of Princes and people, of Zamindars and ryots were sacrificed to this dominant idea of the commercial rulers of India; and from the point of view of its effects upon the economic condition of the people the administration of Hastings was a failure. *"

Judicial Reforms of Warren Hastings.—A word must finally be said here concerning the judicial reforms of Warren Hastings. What distinguished him from most servants of the Company of his time was his insight into and appreciation of the legal codes and customary laws which the Hindus and Mahomedans had elaborated in the past, and of the system of the administration of justice.

Accordingly the judicial reforms of Warren Hastings are based upon the distinction of powers enjoyed by the *Nāzim* and the *Diwan*. The former, as representing the supreme executive authority, exercised criminal jurisdiction and the latter civil jurisdiction. After a careful survey of the indigenous system of judicial administration, he explained the main reforms to be effected in his letter of August 15, 1772 to the Court of Directors. Commenting upon the state of

* Dutt; Early British Rule, pages 79-80.

judicial administration under the Native Government, Hastings said that there were, in theory, three Courts for the decision of Civil causes (the Court of the Diwan, of the *Deputy* of the Dewan, and of the *Kazi*) and one for Police and Criminal matters (the Court of the Fouzdar); but, in fact, the Dewani Adalat was the only tribunal which exercised any real authority. (2) Under the old system, there were no Courts in the mofussil and all complainants had to go to Moorshidabad,—a procedure at once oppressive, expensive, and tedious. (3) Again the powers claimed by the Zamindars were a source of great oppression to the ryots.

Hastings established in each District two Courts—one Civil (called Diwani Adalat) and the other Criminal (called the Fouzdari Adalat). Over the former the European Collector (who was appointed for the collection of land revenue) was to preside; but the Criminal Court was continued under the old Mahomedan Judges, a general supervision only over them being vested in the Collectors.

At the same time Hastings established two superior Courts at Calcutta: the Sadar Diwani Adalat for Civil matters and the Sadar Nizamat Adalat for Criminal matters. The former was to be presided over by the President and two Members of the Council, and the latter by a Mahomedan Judge, under the general supervision of the Council.

The fees and perquisites which had made the course of justice vexatious and costly under the old system were abolished, and the Judges were given fixed salaries. The District Adalats brought justice within the easy reach of all.

The success of this great reform was jeopardied

by the setting up of the Supreme Court under the Regulating Act in 1774. The conflict between this Court of the Crown and those established by the Company will be referred to in the next chapter but we will so far anticipate the result as to say that the action of Hastings was justified by Parliament which passed the Amending Act of 1781.

Hastings also passed many Regulations by which the Collectors of revenue or their agents were forbidden to engage in private trade or to farm revenue or to receive presents. By transferring the Board of Revenue from Moorshidabad to Calcutta he simplified the collections and reduced the system to a routine. "In transferring from Moorshidabad to Calcutta the seat of the Supreme Courts of justice, the head seat of revenue administration and the Khalsa, Hastings was instituting a policy deliberately designed to make the last named place the capital of British Bengal. If Job Charnock is to be considered the founder of Calcutta as a seat of trade, Hastings may be regarded as the founder of Calcutta as the political capital of the British Empire".*

The reforming zeal of Hastings was for a time held in check by the difficulties caused by the Regulating Act. Some of them were removed by chance and others by deliberate legislation by Parliament. Thus the death of Monson in 1776 made matters easy for Hastings in the Council. His most powerful antagonist was, of course, Philip Francis. The bitter controversies between these two members reached the dramatic climax of a duel fought at Calcutta in August 1780 after which Francis returned to England

* Firminger : Introduction, page 230.

to organize a definite party in Parliament for the impeachment of his colleague. Hastings now got the opportunity of resuming his work of improvement. In 1776 after the expiry of his first 5-year settlement he had appointed a separate Commission to carry out a fresh settlement of land revenue. Francis opposed the principles on which the settlement was to be carried. Hastings wanted to find out the value of land by letting it to the highest bidder; Francis wanted to make the settlement with the Zamindars whom he regarded as the owners of lands. Hastings wanted to make the settlement for life; Francis was in favour of making it *permanent*. There is no doubt that in this controversy the attitude of Francis was more liberal than that of Hastings and the views which he propounded made a powerful impression on the minds of the Ministers in England and ultimately were embodied in the Permanent Settlement of Bengal. Firminger observes: "Francis may with justice be described as the original promoter of the Permanent Settlement of Bengal." *

For the present the Directors accepted neither the views of Hastings nor of Francis but insisted in 1778 on annual Settlements, to the detriment of Zamindars as well as the ryots. In 1781 Hastings appointed a Committee of Revenue for the administration of land revenue. He abolished the Provincial Councils of Revenue and reinstated the Collectors in each district. The Collectors have since then remained the pivots of district administration under the British Rule.

The Diwani Adalats he had set up had received

* Introduction ; page 293.

a rude shock on account of their conflict with the Supreme Court. In the Mofussil Adalats he appointed separate Judges as Superintendents who had nothing to do with the revenue work. He cut the Gordian knot of the conflict between the Sadar Diwani Adalat and the Supreme Court by making Sir E. Impey—the Chief Justice of the latter Court—as the Superintendent of the former Court. Hastings expected that a common headship would lessen the distance between the two contending authorities and subsequent developments have fully justified the action of Hastings.

In 1861 the Supreme Court was united with the Sadar Diwani Adalat to form the High Court. The High Court exercises general supervision over the mofussil Courts and has an appellate jurisdiction over them.

The Criminal Courts in the mofussil had continued to function under the Fouzdars. When the Collectors were reinstated in 1781 Hastings invested them with magisterial powers. They could apprehend persons charged with crimes and commit them for trial to the nearest Fouzdari Court. This is the beginning of the combination of judicial and executive functions in the same official, and to this day forms an important feature of district administration.

Another defect of the Regulating Act was removed by the Amending Act of 1781. The Governor General and Council, jointly or severally, were declared as not subject to the jurisdiction of the Supreme Court for acts done in their public capacity. Similarly, the Supreme Court was to have no jurisdiction in matters concerning the collection of revenue. Finally, the hardship of applying English law to Indians was mitigated by the provision of the Amending Act that

matters of dispute between parties should be determined in the case of Mahomedans by the laws and usages of Mahomedans, and in the case of Hindus, by the laws and usages of the Hindus, and where one of the parties was a Hindu or Mahomedan, by the laws and usages of the defendant.

Both these amendments vindicate the actions of Warren Hastings.

The revenue and judicial reforms of Warren Hastings clearly bring out the transformation of the Company from a commercial body into a territorial power. The 'mask' of Diwani was thrown off and the Company stood forth as the real ruler of Bengal, Bihar and Orissa. It was now impossible to avoid two consequences of such a transformation: increased Parliamentary control in England and further territorial expansion in India. We shall examine these developments in the next two chapters.

CHAPTER II

FIRST ATTEMPTS AT PARLIAMENTARY CONTROL (1774—1784)

(6) THE REGULATING ACT

Misgovernment in Bengal.—Cornwall Lewis declared in the debate held in the House of Commons on the Bill that finally transferred the Government of India from the Company to the Crown, that no civilised Government existed on the face of this earth which was more corrupt, more perfidious and more rapacious than the Government of the East India Company from 1765 to 1784. Reference has already been made to the evil system of 'Double Government' that came to be established in Bengal as a result of the acquisition of *Diwani*. Clive could not stop the oppression of the people by the servants of the Company or the corruption of the latter. Though the evil of private trade as carried on by the Company's servants was checked to some extent, the monopoly which was established in the production of salt proved most oppressive to the people. In fact, it was from now (1767) that the Company began to use the powerful lever of political authority to extend its commercial operations. The surplus revenue of a populous province was utilised for the purpose of making what were called 'investments,' or the buying of goods, raw produce, and manufacture for exportation to Europe. It followed, as Burke said, that "whereas in other countries revenue arises out of commerce, in Bengal the whole

foreign maritime trade, of which the Company had monopoly, was fed by the revenue."* The dangers of this 'economic drain' were aggravated by the circumstance that the system of revenue assessment and collection at once impoverished the Zamindars, oppressed the ryots and threw large areas out of cultivation. This impoverishment went on *pari passu* with the systematic policy of killing indigenous industries of spinning and weaving which was followed by the Company.† No wonder then that the famine of 1770 found the people absolutely wretched and helpless and carried away a third of their number. The horrors of famine were followed by those of War and rapine, what with the Rohilla War and the recrudescence of Maratha invasions.

If the *Diwani* produced in Bengal the result of intensifying the dangers of a situation in which traders had become Rulers of territories, it made the Proprietors in England more greedy. They regarded the *Diwani* as marking the beginning of a golden millenium. They raised the rate of dividend to 10 and 12 p. c. when, as a matter of fact, the financial position of the Company was very critical. The stock of the East India Company was in universal demand, not only because the dividends were high but also because the political power they represented was great.

The Directors, on the other hand, were painfully aware of the state of corruption prevailing in Bengal and the indebtedness of the Company. A conflict of interest thus arose between the Proprietors and Directors, and it was fomented by the dissatisfied

* Lyall: page 147.

† See India under Early British Rule by Dutt.

servants of the Company returning home and this conflict attracted the attention of Parliament. It appointed Committees of enquiry into the affairs of the Company,* and as a result, limited the rate of dividend to 10 p. c. But the embarrassment of the Company continued and the Court of Directors approached the Ministry of Lord North for a loan of one million pounds. They attributed distress in Bengal to the misdoings and rapacity of their servants who were beyond their effective control. Nor was Government less eager to seize the opportunity thus afforded of having a voice in the affairs of the Company, of devising such measures for the better administration of Indian affairs as would bring the Company's business at Leadenhall under the control of Ministers at Westminster. "The policy which brought into existence the Regulating Act of 1773 looked in these two directions—the removal of the evils which had their operation in the constitution of the Company, and evils which had their operation in India"† and its provisions can be grouped as dealing with the one or the other set of evils.

Evils in England.—Reference has been made to the Court of Proprietors and the Court of Directors of the East India Company. The qualification for voting in

*NOTE: To escape from the Parliamentary inquiries the Directors proposed to send out a Commission of supervisors to India over which Edmund Burke was asked to preside, but he refused. "How different might have been the subsequent course of events in India, had even a ground plan whereon to build had been laid down by the noble, just, generous, far-sighted intellect of him who has been truly designated by Lord Macaulay as beyond comparison the greatest man of his time." Torrens : 77-78.

† Firminger : Introduction, page 255.

the former was the possession of stock of the value of £500 and in the latter of £1000. The Directors were 24 in number and were annually elected. Each Director received a salary of £300. The Chairman and Deputy Chairman got £500 per year. The Directors coveted their post not for the pittance of a salary that they got but for the possibilities it opened for providing their sons and relations with lucrative jobs in India. Hence the scramble to purchase enough shares of the Company to get oneself elected to the Court of Directors. Votes in the Court of Proprietors were manipulated to defend the evil deeds of servants of the Company in India. It became the ambition of many servants when they returned home after making their fortune in India to purchase shares of the Company and manipulate votes, or to enter Parliament. Hence arose the evil of 'trafficking' in votes. Also Parliamentary corruption and the consequent demand for Parliamentary reform which began in the latter half of the Eighteenth century can be traced to the ill-gotten wealth of these "Indian Nabobs". The Regulating Act tried to mitigate this defect so far as the East India Company was concerned by raising the qualification for a Proprietor to £1000 and for a Director to £2000, and by prolonging the period for which the Directors were elected, a quarter, instead of the whole body, being renewed annually.

Turning next to the evils that had their operation in India the chief remedies adopted by the Regulating Act were the following :

- (1) A new executive Government for Bengal.
- (2) Its control over the Presidencies of Madras and Bombay.
- (3) Purifying the Civil Service of abuses.

- (4) Setting up of a Supreme Court at Calcutta.
 (5) A new procedure for the making of Regulations.

A new Government for Bengal.—We have already referred to the defect of the system of a President and Council managing the affairs of the Company in each of the three Presidencies. The Members (generally senior merchants) were too numerous and were scattered over the whole Presidency and rarely attended the Council Meetings at Calcutta. The result was that the less senior servants who were at the Capital were afraid of checking and correcting the actions of their superiors in the mofussil. We have also seen how Clive formed a 'Select Committee' as an instrument to reform the administration. But soon a conflict ensued between the new Select Committee and the old Council. Warren Hastings complained of the great weakness of the executive Government in Bengal that resulted from this conflict. But the greatest defect of the system was that all members (including the President) were servants of the same Company and thus there was no independent check over them.

By the Regulating Act, the Civil and Military Government of Bengal, Bihar, and Orissa was vested in a Governor-General and four Councillors—all of whom were named in the Act—who were to hold office for five years and who were not removable in the meantime except by the King on the representation of the Court of Directors. It is important to understand the exact meaning of this provision. Parliament sought to control the actions of the Governors by imposing upon them Councils consisting of men specially sent out from England, and such as were not

servants of Company. As a further check upon the Governor-General, the decision of the majority was made binding upon him who had a casting vote in case of an equality of votes.

Relations with other Presidencies.—Before the Act the three Presidencies were absolutely independent of each other, and responsible only to the Company in England. By the Act the supremacy of the Bengal Presidency over the other two was definitely asserted at any rate in the declaration of war and negotiations for peace.

Purification of the Services.—Before the Act, the pay of the Civil and Military servants of the Company was almost nominal and few resisted the temptation of substantially increasing it (1) by extorting bribes, (2) by receiving presents, (3) by engaging in private trade and (4) by advancing money at usurious rates to Indian Princes. By the Act, liberal salaries were provided for the higher classes of servants and all were prohibited from practising the evil methods above mentioned, on pain of being fined, imprisoned, and sent to England for trial.

The Supreme Court.—Reference has already been made to the existence in Calcutta of the Mayor's Court which was established by the Charter of 1726.

An appeal against the Mayor's Court lay to the President and Council at Calcutta, and in the last resort to the King-in-Council in England. The fundamental defect of this system was that there was no separate and independent judicial check over the actions of the executive. The very merchants whose conduct was to be judicially examined by the President and Council, were members of the Council.

Now the Supreme Court was not a Court of the

Company at all, but one established by a Royal Charter and consisting of a Chief Judge and three Puisne Judges. It was to exercise Civil, Criminal, Admiralty, and Ecclesiastical jurisdiction, and its jurisdiction was to extend to all British subjects in Bengal, Bihar, and Orissa, except the Governor-General and his Council who could not be arrested or imprisoned in any action or suit proceeding in the Supreme Court.

With regard to the native inhabitants of Bengal, Bihar, and Orissa suits might be filed against them in the Supreme Court with their consent. An appeal against the Supreme Court was to lie to the King-in-Council in England.

Regulations.—We come now to the last provision made by the Act *i. e.* for the making of *Regulations*:—The Governor-General in Council was to have power 'to make Regulations for the good order and Civil Government of the possessions of the Company.' The Regulations so framed were required to be registered and published in the Supreme Court with the assent of the Court, and might be set aside by the King in Council.

Criticism of the Act.—Before proceeding to criticise the Act, it must be pointed out that it is the first instance of Parliament dealing with the affairs of India by means of an enactment. Parliament had no precedent to guide it, and as such, it has to be judged leniently. Lyall rightly says that the ill-constructed Regulating Act 'stands towards our latest system in the same relation as does the earliest traction engine to the present locomotive.*' Further, it must be remembered that the Act was based upon the 'theory of separation of powers—legislative, judicial and

* Lyall : page 152.

executive' which was so popular in Europe at that time. Each was to be independent of and a check over the other two. Thus the 'Regulations' made by the Governor-General in Council were required to be registered in the independent Supreme Court, which in its turn was to be a check upon the servants of the Company. But this system of checks and balances was not suited to the position of the Company in Bengal, and thus during the whole period of the first Governor-General under the Act—Warren Hastings,—he had to contend against difficulties caused by the operation of the Act. We may summarise these defects and difficulties as follows :—

(a) Out of the four Members of the Council that were named in the Act, Francis, Clavering, Monson, and Barwell, the Governor-General could depend upon the support of the last, whereas Francis had come out to India with an inveterate prejudice against Hastings and soon formed, with the help of Clavering and Monson, a standing opposition to him. And as the Governor-General was always bound by the vote of the majority, he was rendered absolutely powerless during the two years that the majority was against him *i. e.* until the death of Monson turned the tables against Francis. The Council even proceeded to undo the work which Hastings had accomplished as the Governor of Bengal during the preceding two years. This seriously undermined the position of the Governor-General not only in Bengal, but with regard to the control he was called upon to exercise over the other two Presidencies.

(b) In this respect also the provisions of the Act were defective, for the extent of control to be exercised over the subordinate Presidencies was at once small

and undefined. How serious the situation was capable of becoming is well brought out by a reference to the Maratha and Mysore wars fought at this time. Hastings protested against the Bombay Government interfering with the affairs of the Peshwa, and the Madras Government, inviting the hostility of Hyder. The Marathas and Hyder made a common cause and at no time were things as bad for the English as they were in 1780. But Hastings rose to the occasion and the death of Hyder in 1782 removed the last obstacle to the making of a lasting peace with the Peshwa (the treaty of Salbye). Thus in 1785 when Hastings resigned his office, the English were at peace with the native powers of India. "With the termination of this War ended the only period, in the long contest between England and the native powers, during which the position of the English in India was for a time seriously jeopardied. That the English dominion emerged from this prolonged struggle uninjured though not unshaken, is the result due to the political intrepidity of Warren Hastings."*

(c) But it was in the matter of the clauses dealing with the Supreme Court that the Regulating Act was most defective. We have already seen how Warren Hastings had established Judicial Courts in each District, and made the Governor-General in Council the highest tribunal both in Civil and Criminal matters. These Courts had been established to exercise the powers received by the Company under the Diwani. They had jurisdiction over all subjects of the Company—British and Indian,—and they mostly applied the written or customary law of the party that had sought their help.

* Lyall : page 176.

The relations of the Supreme Court with these Courts of the Company were not precisely defined. The Supreme Court, on the ground that it was constituted by a Royal Charter, claimed the right of hearing appeals even against the highest Courts of the Company, *i. e.*, the Governor-General in Council.

Further they claimed jurisdiction upon the entire native population and not merely upon 'British Subjects' as mentioned in the Act. There was no proper definition of the expression 'British Subject'. The Supreme Court included in that term the British and Indian servants of the East India Company employed in the administration of justice or the collection of revenue, and even the land-holders and farmers of revenue.

It was thus inevitable that the Supreme Court should come in conflict with the Governor-General in Council, who was at once the highest judicial and executive authority of the Company in Bengal.

The difficulty was partly owing to the failure to understand the intention of Parliament in setting up the Supreme Court. "The Judges in the Mayor's Courts of the Company were junior servants of the Company, and removable at the pleasure of the President and Council. They had to decide, without any professional knowledge of the law, cases affecting the property, the liberty, and the lives of British subjects and their native dependants. The process of an appeal from the Court to the King-in-Council was tedious. The institution of the Supreme Court was, therefore, an act of reformation rather than of innovation. It was not intended to supersede or trespass upon the judicatures deriving their authority from the Mogul Constitution. The Directors looked upon the Supreme

Court as an instrument to terrorize the servants in Bengal. Its establishment enabled them to take the trial of alleged offences of its servants out of the hands of a complacent Council Board, and have such cases determined by the awe-inspiring Puisne Judges of the Crown.”*

But, as already stated, the Supreme Court in exercising jurisdiction over the servants of the Company, particularly in the matter of revenue collection where there was the utmost scope for oppression and corruption, was bound to come in conflict with the Governor-General in Council. The nature of the conflict is well brought out in two historical cases: the Patna Case, and the Cossijurah Case. In the former the Supreme Court held that the law officers of a Provincial Council of Revenue acting in their judicial capacity were amenable to its jurisdiction. In the latter case the Raja or Zamindar of Cossijurah was seized and forced to present himself before the Supreme Court on the ground that as a farmer of revenue he was amenable its jurisdiction. The violent proceedings of the Court in both these cases struck terror in the hearts of the executive offices of the Company as well as the Zamindars.

As Firminger ably points out, (in his Introduction to the Fifth Report) “the survey of the years 1774-80 shows the fact that the method of the authors of the Regulating Act had produced a most serious harvest of evils. That method was to impose a feeling of responsibility on the Company’s servants by confronting persons accused of oppressive conduct with the displeasure of a Supreme Court composed of His

* Firminger : page 256.

Majesty's Puisne Judges. This procedure was calculated to intimidate the fearful as well as to restrain the overbold; it ruined the moral influence of the executive, and exposed the officers of Government to continuous persecution by litigious or irresponsible persons. That the Government of the country was seriously disturbed by the intervention of the Court in matters belonging to the Diwani cannot be doubted, though the blame lies with the Act and not with the Judges."*

Nor was the Supreme Court popular with the Native population. As Mr. Cowell says "the English lawyers struck the greatest fear among the Native population;" and Macaulay described the rule of the Supreme Court as a Reign of Terror. The Court was charged with stopping the wheels of Government by technicalities of English law and of effecting a total dissolution of social order.

Conclusion.—It will thus be seen that the lessons taught by the Regulating Act were:—(a) that a majority of the Council cannot be, at any rate under the conditions of difficult communication with the Home Authorities which obtained at that time, the ultimate authority in India, which must be the Governor-General armed with the power (though the power may rarely be used) of over-riding the decision of that majority; (b) that the resort to the method of controlling the Indian executive by an independent Supreme Court was premature; and finally, (c) the disastrous working of the Act "ended with the conviction on the part of Parliament, that the endeavour to subject the Local Government (*i. e.*, the Governor-General in

* Firminger; page 257.

Council) to *direct* Parliamentary control was a complete failure.”*

At the same time, the Regulating Act undoubtedly marks an important stage: “the administrative centre was now definitely located at Calcutta, with the Governor-General as its acknowledged head, invested with the chief control of the foreign relations of the three Presidencies, and deriving his authority from a Statute of the British Parliament.”†

(7) PITT'S INDIA ACT 1784

Parliamentary Enquiries.—These lessons of the Regulating Act were not lost upon those Members of the House of Commons who were taking a keen interest in what was happening in India. Philip Francis after his return to England had formed a definite party in Parliament that was pledged to bring about the recall of Warren Hastings and to institute legal proceedings against him. The hands of this party were strengthened by the accession of Edmund Burke to it as its leader, and by the reports of the many questionable means adopted by Hastings to get money to carry on his wars. Parliament was thus compelled to appoint two Committees one under Burke and the other under Dundas—to conduct an enquiry into the doings of Hastings, and as their reports were unfavourable to the Governor-General and the Chief Justice (Sir E. Impey), it demanded their recall. But the Court of Proprietors (in which votes could be easily manipulated by any interested group) refused to recall Hastings. A grave constitutional crisis thus arose. The problem of problems

* Cornwall Lewis : Speech 1853 in the H. of C.

† Lyall : page 156.

now was, not how to *regulate* the affairs of the Company in Bengal, but how to *control* the Company in England.

Fox's India Bill.—The first solution offered was that by Charles Fox who at this time was in power along with Lord North in what is notorious as the "hated coalition." Fox proposed to distinguish sharply between the commercial operations of the Company from their political dealings; he next proposed to abolish the Courts of Proprietors and Directors, and replace them by two bodies of 'Commissioners'. One (which was the less important of the two, consisting of nine members nominated by the Court of Proprietors) was to deal with the commercial affairs of the Company. To the other, which was to consist of 7 Commissioners, *all named in the Act*, was to be entrusted the entire and absolute management of the political affairs of the country such as the appointment and dismissal of the servants of the Company, the administration of the territories and revenue of the Company etc. Vacancies during the first five years were to be filled by the King alone.

Herein lay the fatal weakness of the proposals of Fox. It was rightly contended by his enemies that the proposed plan would place the entire patronage of the East India Company in the hands of the Ministers of the Crown, and that this would seriously endanger the Constitution of England. The Ministers would use the Indian patronage as an irresistible lever to control votes in Parliament and thus make themselves independent and despotic. It is to the alarm caused by this constitutional aspect of the Bill that its failure must finally be attributed, though the open hostility of King George III to Fox was the immediate cause of

the Bill being thrown out in the House of Lords, and the Minister himself being forthwith dismissed.

Pitt's India Act.—The task of dealing with the Indian problem now devolved upon the younger Pitt, the successor of Fox. He carefully left untouched the patronage of the Court of Directors. Nor did he introduce such a radical change in the constitution of the Company as was proposed by Fox. He retained both the organs of the Company namely the Proprietors and the Directors. The latter were also allowed to manage their commerce as they liked. But their political affairs were definitely brought under the control of the Imperial Government. This was accomplished by the creation of a Board of six Commissioners known popularly as the Board of Control. It was to consist of the Chancellor of the Exchequer, one of the Secretaries of State for the time being, and four other Privy Councillors appointed by the King and holding office during pleasure. To this Body was committed the "superintendence, direction and control of all acts, operations, and concerns which in anywise relate to the Civil or Military Government or revenues of the British territorial possessions in the East Indies." The Board was to have an effective control over the entire correspondence to and from India. A 'Committee of Secrecy' was formed consisting of the Chairman, the Deputy Chairman, and the Senior Director, and when the Board issued orders requiring secrecy, the Committee of Secrecy was bound to send the orders to India without informing the other Directors. Under the changes made by Pitt, the Court of Proprietors was reduced to a position of insignificance. Their activity was confined to the receipt of dividends and the election of the Directors.

The latter retained their right of making appointments in India, though the Crown was vested with the power of recalling any of the servants of the Company.

The changes made by Pitt's Act in the system of Government in India were neither numerous nor important. The Councils of the Governor-General and of the Governors were to have three instead of four Members, one of them being the Commander-in-Chief. The control of the Governor-General in Council over the subordinate Presidencies was extended to include the application of the revenues of the Presidencies.

Finally, Pitt's India Act imposed a definite principle upon the Governor-General in Council to guide him in his relations with the Indian Princes so as to avoid all wars and conquests.

"Whereas, to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour and policy of the Nation," the Governor-General and Council were definitely precluded from making war or peace with the Indian Princes without the permission of the Court of Directors.

This is known as the policy of "Non-intervention." A brief account of the alternating periods of adherence to and departure from this policy will throw light upon the course of territorial expansion of the E. I. Company.

PART II

SYSTEM OF DOUBLE GOVERNMENT

CHAPTER III

HALF A CENTURY OF TERRITORIAL EXPANSION (1785—1835)

(8) CORNWALLIS AND THE NON-INTERVENTION POLICY

We saw in the second Chapter how the 'policy of Non-intervention' was imposed upon Lord Cornwallis by the Act of 1784. Conditions in Northern India were favourable for adhering to such a policy. The English possessions were safe behind the "buffer" State of Oudh and the Nawab Vazier of that province depended entirely upon the Company for the defence of his territories. In the remaining portion of Northern India, the Marathas were everywhere in the ascendency and Mahadaji Scindia, particularly on account of his 'understanding' with Warren Hastings, had become the real authority behind the Imperial Throne at Delhi. Lord Cornwallis refused to disturb this ascendency of the Scindia, and therefore did not help (1788) the son of Shaha Alam, who was a fugitive at Benares, to recover the Throne of Delhi from the Marathas.

But things in South India were shaping themselves differently. Here there was a balance of power between Tipu (who was anxious to check the progress of the English); the Marathas who wished to regain the

(9) WELLESLEY'S DEPARTURE FROM POLICY 51

territories they had lost during their domestic troubles from both Tipu and the Nizam of Hyderabad; and finally, the last Prince, who was the weakest of the three, and therefore, most anxious to get English support, against the Marathas and Tipu.

Tipu was a great believer in the value of French help in his struggle against the English. He sent out an embassy to the Court of Louis XVI. The immediate cause of the outbreak of war was his attack upon the Raja of Travancore, an ally of the English. Lord Cornwallis formed a Triple Alliance between the English, the Marathas and the Nizam, defeated Tipu and forced him to part with half of his dominions and three crores of rupees. The acquired territory was equally distributed among the Allies, the English getting Malabar, Coorg, Dindigul, Baramahal, and the command of the passes through which Hyder used to descend upon Madras. Thus the Madras possessions were rendered quite immune from further trouble from Tipu.

(9) WELLESLEY'S DEPARTURE FROM THE POLICY

Wellesley's Policy.—If Lord Cornwallis had to engage himself in a single war against a single power in South India Wellesley made the whole of India the theatre of extensive wars and of more extensive conquests.

Mention has been made of how the struggle between the English and the French in Europe only helped to extend British power in India. The same thing was now repeated. The whole of Europe was fighting against Revolutionary France in the person of Napoleon Bonaparte. As the latter could not, on account of the Naval supremacy of the English, make a direct invasion of England, he wished to strike at his enemy in India

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where he found a willing ally in Tipu Sultan. Wellesley was thoroughly imbued with anti-French spirit and immediately on his arrival in India, he found himself involved in a war with Tipu in which Tipu was completely vanquished and killed. The Mahomedan kingdom of Hyder and Tipu was altogether destroyed, and out of a portion of its still extensive dominions was recreated the Hindu Raj of Mysore which was restored to a representative of the ancient Hindu Royal Family.

But Wellesley was not to be satisfied with a local or temporary solution of the great question he had proposed to himself : what was to be the status of the English in India ? Though they had come to hold a commanding position in Northern and Southern India their territorial possessions were confined to Bengal and small portions of Madras and Bombay. Wellesley was convinced that the condition for the English continuing in India was not that they were *one* among many Indian powers contending for supremacy, but that they were *the* paramount power in India. The result of the pursuit of this policy has been summed up in the statement : that under Wellesley's direction the British Empire *in* India was transformed into British Empire *of* India.

Wellesley's Subsidiary Alliances.—With this object in view he set about bringing all the remaining Indian powers in a relation of subordination to the British authorities, by means of "*subsidiary alliances.*" One of the first powers to be thus 'allied' with was the Nizam. He was indignant at the policy of neutrality adopted by Sir John Shore in his (Nizam's) struggle against the Marathas who had defeated him (Nizam) crushingly in the battle of Kharda (1795), and who, out of resent-

(9) WELLESLEY'S DEPARTURE FROM POLICY 53

ment for his (Nizam's) desertion, was reorganizing his army with the help of French Officers. But a fresh treaty with the Nizam (September 1798) was concluded and he disbanded his new levies under French Officers, accepted an English subsidiary force to be stationed at Hyderabad and agreed to cede the territories that had fallen to his lot in the late partition of Mysore as the price of the force, and above all left his relations with the Peshwa to be shaped by the English.

As these alliances proved a powerful weapon of reducing the Indian powers to a position of subordination, a word must be said here about their general characteristics. The Prince (with whom such a treaty was concluded) had (a) to leave his disputes with and claims upon his neighbours to the arbitration of the English, (b) to discontinue all connection with foreign European powers, particularly the French, (c) to entertain within his territory a British Subsidiary Force for his own personal protection and for the security of his possessions and finally, (d) to cede territory to the Company by way of payment for the subsidiary force.

Wellesley only developed a system that had been begun by Warren Hastings of placing English army at the disposal of a Prince for a monetary consideration, as in the Rohilla War, and of the treaty with the Nawab Vazir of Oudh made by Sir John Shore, by which, for the sum of 76 lacs of rupees, the Company undertook to protect that Prince. Also, before Wellesley, the British Contingent was stationed *outside* the territory of the Prince, was paid for by monthly or annual *cash* allowances, and helped and protected the Prince on the basis of *equality*.

But this arrangement was found to be unsatisfactory as the pay of the force often fell into arrears, and as it was still possible for the Prince to carry on his foreign relations, he could have an army of his own trained and officered by the French.

Wellesley had seen how on the European Continent the younger Pitt was carrying on the struggle against Napoleon by giving subsidies to the Continental Powers. In adopting this policy of Pitt, Wellesley reversed it and in return for subsidies (converted into territorial cessions for regularity of payment) he placed contingents of his army at the disposal of Indian Princes. The Company was thus enabled to increase vastly its own army at the cost of the Princes, and also to have it stationed in the very heart of the territory of the Princes. At the same time the danger of French influence at the Courts of Indian Princes was removed altogether. And the Company could effectively check the foreign relations of the Prince, who was thus isolated from the rest of India, and at the same time made dependent upon English support.

But the effect of these alliances on the Princes was deplorable. Even Arthur Wellesley was apprehensive about dangers of such alliances. They led to the complete annihilation of the military power of the Native States with which they were contracted. They removed the incentive on the part of the Native Rulers to be great and warlike and sympathetic towards their subjects.

Nor should a further disadvantage of such alliances be allowed to pass unnoticed; these alliances gave frequent opportunities of interfering in the internal affairs of the Ruler, and at the same time, the ever-recurring adjustment of payments served as the pre-

(9) WELLESLEY'S DEPARTURE FROM POLICY 55

tence for further annexation as in the case of Berar taken from the Nizam as late as 1803.

Wellesley and the Marathas.—From the Nizam Wellesley turned his attention to the Peshwa and the Maratha Confederacy of which he was the head. The Marathas though severely defeated at Paniput (1761) had built up an extensive Empire, thanks to the superior organization of their armies under great leaders like the Gaikwads, the Holkars, the Scindias, and Bhonsles. These leaders were loyal to the central authority of the Peshwa until the death of the great Madhavrao I in 1772. But after the First Maratha War (1775-83) the loyalty of the Maratha leaders diminished *pari passu* with the weakening of the central authority, and with the excellent opportunities each of those leaders obtained to carve out a dominion for himself in Central and Northern India. Holkar and Scindia particularly began to maintain large armies trained and disciplined by French officers, and neither was blind to the imminent danger to the Maratha Confederacy threatened by the growing power of the English. Before, however, the new armies could be combined and turned against the foreigner, Mahadaji Scindia who alone among the Marathas proved an apt pupil of his European rivals in the arts of Diplomacy, War, and Government, died in 1794. His powerful army, now entirely under the domination of French Officers, proved the ruin of his weak successor Daulatrao, who only used it to cripple Holkar in the North and the Peshwa in the Deccan. The only hope of putting off the inevitable break-up of the Maratha Empire lay in the coincidence of two things: that Nana Farnavis should once again establish his power at Poona by bringing under control the

incapable Peshwa Bajirao II, and that the Governor-General should be an adherent of the policy of non-intervention. But about the very time that Lord Wellesley was at the helm of affairs in India, and was waiting for an opportunity to strike at Poona, Nana died (1800). With him, as Colonel Palmer said, departed the wisdom and moderation of the Maratha Government. And the Peshwa Bajirao antagonized his Brahman and Maratha Sardars and had to fly from his capital to Bassein where he sought the protection of the English.

The Treaty of Bassein (1802) which was thus concluded with the Peshwa was the thin end of the wedge that Wellesley thrust in the Maratha Confederacy. The three Maratha Chiefs—Scindia, Holkar, and Bhonsle would not accept the treaty, declaring that the Peshwa as the head of the Confederacy ought not to have contracted it without consulting them.

Thus the Treaty of Bassein really involved Wellesley in "the interminable war with the many-headed Maratha Confederacy."* By this treaty the Peshwa agreed to cede to the English territory worth 26 lacs of rupees, for the services of a British contingent to be stationed in his dominions. He also agreed to conduct his foreign relations through them, and even his claims upon the Gaikwad and the Nizam were left to the arbitration of the English.

Operations were simultaneously begun against the Marathas in different parts of India. In the Deccan the campaign was sharp and decisive. Arthur Wellesley (the Duke of Wellington) having defeated the combined armies of Scindia and Bhonsle at

* Dutt ; Early British Rule, page 11.

Assaye (September 23rd 1803) and of Bhonsle at Argaon (November 29), Subsidiary treaties were made with both these Maratha princes.

But the campaign against Holkar proved abortive and it appeared that an extensive combination among the Marathas was imminent. This alarmed the Court of Directors who were already protesting against the financial burdens of the late wars of Wellesley and who had other grievances against the Governor-General, and the latter, therefore, was peremptorily recalled.

Wellesley and other Native Powers.—In addition to entering into subsidiary alliances with the more important Indian Princes, Wellesley also annexed the territories of many minor Rulers on grounds which cannot bear close examination. Thus he practically annexed the whole of the Karnatic, the Nawab of which kingdom was the first ally of the English in their struggle against the French and Hyder.

Advantage was also taken of succession disputes at Tanjore, to transfer the civil and military Government of this small Maratha principality to the Company.

The Nawab of Surat dying about this time, that principality also was annexed. Similarly also the boy Nawab of Farakkabad was made to give up his possessions. Finally came the annexation of half the territories of the Nawab Vazier of Oudh.

The policy of annexing one-half of the kingdom of Oudh has been condemned by historians like Mill; and even those who justify the policy base their argument on the ground of necessity. Thus Hutton, the biographer of Wellesley in the Rulers of India Series, says "after all the one cardinal justification of Wellesley's policy lies, not in any benefit to the population, or in an extension of the Company's

dominions or revenues, but in an absolute political necessity."

We have now glanced at the various annexations of Wellesley. His part in shaping the map of British India has been thus summarised by Sir Alfred Lyall. "By occupying the Imperial cities of Delhi and Agra with the contiguous tracts on both sides of the Jumna, and by annexing the whole country between the Ganges and the Jumna rivers, he carried forward British territory from Bengal North-Westward to the mountains with a frontier resting upon the upper course of the Jumna; and by his acquisitions of the Cuttack Province he secured the continuity of British territory south-eastward along the sea-coast, joined the two Presidencies of Bengal and Madras and established sure communications between them."*

It should be noted also in this connection that the disappearance of the Mahomedan kingdom of Tipu rendered the sea-coast of southern India free from the designs of the French.

(10) REVERSION TO NON-INTERVENTION POLICY

The costly wars of Lord Wellesley brought about a reaction against the aggressive policy followed by that Governor-General and, as already stated, Lord Cornwallis was sent out to India to reverse that policy. Though he died shortly after arrival, during the time of his successor Sir George Barlow, the negotiations with Scindia and Holkar were brought to an abrupt termination and each was allowed to deal with his feudatories and neighbours as he liked. No new relations were established with any Indian powers

* Lyall : 231

except those with whom definite treaty obligations had been previously made.

Lord Minto, under orders from the Directors, did not interfere in the affairs of Central India.

When Lord Hastings succeeded Lord Minto, he was called upon to face a situation which was the necessary outcome of the 'Non-intervention Policy.' Those Princes with whom subsidiary treaties had been concluded, disbanded their native armies and their soldiers went to swell the hordes of free-booters known as the Pindharis. The ravages committed by bands of these marauders who had their haunts in Malwa were soon extended to the territories of the English and their allies, and their leaders were known to be in correspondence with the Peshwa, Scindia, Holkar, and Bhonsle. Each one of these Maratha powers in turn had become a source of apprehension to the Company. At Poona the Peshwa, Bajirao II, was chafing under the restrictions imposed upon him by the treaty of Bassein and he was secretly levying troops to oppose the subsidiary force. Daulatrao Scindia wished to compensate himself for the territories ceded to the English by seizing the districts of Holkar and by harsh exactions from his Rajput feudatories. But he was a mere tool in the hands of his unruly army and as he was also an active supporter of the Pindharis, the central position he occupied with reference to military operations in North and Central India, made his attitude extremely menacing. Affairs at Indore and Nagpur were in a worse condition. Jeswantrao Holkar was dead, and the Pathan Officers of his army were all-powerful. At Nagpur also the death of Raghoji Bhonsle was followed by disputes about succession. In the end Appasaheb who was

60 (11) HASTING'S DEPARTURE FROM POLICY

openly hostile to the English and a strong partizan of the Peshwa, got his claim recognised by the latter and became the Ruler of Nagpur.

(11) LORD HASTING'S DEPARTURE FROM THE POLICY

It will thus be seen that the whole situation was fraught with the greatest dangers. Lord Hastings felt that the only way to meet it was to depart from the 'Non-intervention Policy.' He proposed to build up a confederation of such Indian powers as had suffered from the deprecation of the Pathans and the Pindharies with a view to confine their ravages to a smaller area and ultimately to stop them altogether. The Directors, however, were opposed to any such plan of a general confederacy.

But the very audacity of the operations of the Pindharies demanded immediate steps to be taken. The Nawab of Bhopal, and many Rajput Rajas who had suffered most at the hands of the free-booters were anxious for British protection and at last towards the close of 1816 Lord Hastings got the tardy and qualified permission of the Directors to adopt measures for the final suppression of the Pindharies. The Pindhari War led to many ramifications and involved campaigns against the leading members of the Maratha Confederacy. As a result the Peshwa lost the whole of his dominion and the Bhonsle a part known as the Narbada and Saugor Territories.

The hostilities openly commenced by the Peshwa and the Bhonsle encouraged the army of Holkar to participate in the struggle against the English which had now become general. It was completely defeated in the battle of Mahidpur, and Malcolm, by the treaty of January 1818, deprived Holkar of his claims on the

Rajput Rajas, and put a stop to the disorders that had obtained at Indore since the death of Jaswantrao.

Malcolm was also successful in smoothing the relations of Holkar with Scindia, and of the latter with the English.

Deprived of the help they secretly derived from the Peshwa, Bhonsle, Holkar and Scindia, the Pindharies soon fell an easy victim to the English armies. Large bands of them were hunted down and done to death, and their leaders either submitted or perished in the jungles.

The pacification of Rajputana was left to be accomplished by Metcalfe and Colonel Todd. The tributes which the Rajput Rajas had to pay to Scindia or Holkar were transferred to the English, and protective treaties were made with the Rulers of Kotah, Jodhpur, Udepur, Bundi, and Jaipur. The Nizam of Hyderabad had to exchange territory belonging to the Peshwa, Holkar, and Scindia. Nor was the Gaikwar of Baroda left out of account in the comprehensive settlement made by the Governor-General. He, out of all the members of the Maratha Confederacy, was the most subservient to the Company ever since he espoused cause of Raghunathrao Peshwa in the First Maratha War. Constant disputes about succession further weakened his position, and when in 1817 the imbecile Anandrao died, a subsidiary treaty was made with his successor Sayajirao in 1820 by Elphinstone who was now the Governor of Bombay.

Review of Hasting's Policy.—It has been urged that the object of Lord Hastings in his treaties as well as military operations was purely defensive. He wished to protect the dominions of the Company and of its allies against the ravages of the Pindharies. He

himself distinctly repudiated any aggressive design on his part. He attributed the loss of territory which the Peshwa (wholly) and the Bfonsle (partially) had to suffer to persistence in folly on their part rather than to aggressive motives on his own. He wished to suppress the predatory system "without disturbing any of the established powers of India or adding a rood to the possessions of the British Government." Whatever value we attach to this plea of Lord Hastings there is no doubt that he merely reaped the fruit of the policy of Wellesley. The Native States, in the predicament to which they had been reduced by that policy, found themselves isolated and helpless and entirely at the mercy of the English. When, therefore, the campaign against the Pindharies inevitably reached the proportions of a general war, it brought, in its wake, a comprehensive scheme of reconstruction. It proceeded upon the principle that the British Power had become the suzerain power in India. The foreign relations of the Native Princes came under the surveillance of the paramount power which also made itself responsible for their military protection. Such was the work of Lord Hastings.

Extension of the Frontier.—The additions made to the possessions of the Company in North India—particularly the territories acquired from the Nawab Vazir of Oudh were bound to lead to disputes with the warlike inhabitants of the mountains that cut off India from the Asiatic Continent. One of the first States that thus became involved in a war with the English was that of Nepal. Its Officers had made frequent inroads into territories that belonged to the Company, and as every effort to define the jurisdiction in a peaceful manner failed, war was declared in 1814. Partly

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on account of the ignorance of geography, but mostly on account of the stern resistance of the Goorkhas, the losses suffered by the English were very heavy. But in the end the Nepalese Government was forced to yield a long strip of land along Himalayas extending from Nepal to the Sutlej River. "All the hilly country that overhangs Rohilkhand, Agra and Oudh was thus annexed and the British frontier pushed Northward till it touched Tibet."*

Disputes also arose on the Eastern frontier of the Bengal Presidency. Here the *Burmans* who had been almost simultaneously with the English, extending their power came in conflict with the latter. Lord Amherst had to declare war against the Court of Ava, which yielded to the Company the Arakan and Tenassarim Provinces. Thus the Eastern Frontier was also consolidated, becoming coterminous with, in course of time, with that of Tibet.

(12) BENTINCK AND THE NATIVE STATES

We have already considered how the subsidiary alliances were bound to produce a debilitating influence upon the Indian Princes. The steps which Bentinck—whose pacific motives are unimpeachable—had to take in the affairs of many States form an effective commentary upon this statement. At Hyderabad the reigning Nizam Shikander Jah died in 1829 and his successor was allowed a larger measure of independence. But on account of financial difficulties the payment for the subsidiary force fell into arrears. At last Berar was leased to the English in satisfaction of these long-standing claims. At Mysore a long period

* Lyall : page 263.

of mal-administration set in after the retirement of the able Dewan Purnea. Sir Thomas Munro visited the capital, the Maharaja was deposed, and the whole State was placed under direct British Administration which lasted till 1881. In Coorg the Raja, after indulging in murder of his near relatives, fled away from his capital. Bentinck happened to be at Ootacamund at the time. He marched four armies into that small principality and Mercara the capital was taken and the whole State was annexed. In Oudh also there was grave mismanagement. Bentinck visited Lucknow to remonstrate with the Nawab Vazir. There was no improvement, and, as will be soon mentioned, this kingdom had to be annexed. Even the tiny State of Kachar which suffered from the same evils of mal-administration was also annexed. The Rajput States of Jaipur and Jodhpur became the scenes of civil war and bloodshed. Sir Charles Metcalfe had to intervene in the case of Jaipur, and with his help a Regency established there under the eye of a British Resident.

Such was the tone of the Native States—be they big or small, ancient or modern, Hindu or Mahomedan, situated on the hills or in the plains. Each told the same story of an administration which was as rotten as it was irresponsible.

CHAPTER IV

SECOND PERIOD OF TERRITORIAL EXPANSION (1835—57)

(13) EXTENSION OF FOREIGN RELATIONS AND THE FIRST AFGHAN WAR

Lord Minto's Missions.—Napoleon with the help of his revolutionary armies conquered the whole of Central Europe, and made a common cause with the Czar of Russia by the treaty of Tilsit 1807. This friendship with Russia revived his ambitious plans with regard to the conquest of India. The two potentates agreed to lead an army through Western Asia against India, and Russian and French Agents were busy establishing friendly relations at the Courts of Persia and Afghanistan.

It was to counteract this new danger that Lord Minto sent out three 'Missions', one under Sir Charles Metcalfe to Ranjitsing, another under Mountstuart Elphinstone to the Amir of Afghanistan, and a third under Colonel (afterwards Sir John) Malcolm to the Shah of Persia. The Missions returned without achieving any striking results. The danger of a Franco-Russian invasion also vanished, for the two Emperors could not agree as to the share of each in the partition of Turkey and Napoleon himself was called away by events in Spain and Portugal, and there was peace in Central Asia for the next twenty years. But Lord Minto had clearly foreseen the danger of Russian aggression. He had also realised that the invading

enemy would probably pass through the kingdoms of Kabul and the Punjab as well as through the territories of the several independent Chiefs between Persia and India, and his policy was "to push forward a British Agency as far beyond the Indian frontier and as near the countries from which the enemy was likely to take his departure as possible."*

Commenting upon the significance of the three Missions, Lyall says that they extended the scope of Anglo-Indian diplomacy. Hitherto the English had confined their relations only with the Princes in India. "But now for the first time they entered upon that field of diplomacy in which all the countries of Western Asia, from Kabul to Constantinople, are surveyed as interposing barriers between Europe and their Indian possessions. The independence and integrity of these foreign and comparatively distant States are hence-forward essential for the balance of Asiatic powers and for the security of the Indian frontiers."†

Policy of Lord Auckland.—The danger of Russian invasion was renewed at the advance of Russian Agents to the Courts of Persia and Afghanistan during the regime of Lord Auckland.

The cardinal feature of the policy of Lord Auckland was to replace Dost Mahomed, the hostile occupant of the throne of Kabul, by a strong and friendly ruler, able to check the intrigues of the Russians. "The welfare of our possessions in the East requires that we should have on our Western Frontier an ally who is interested in resisting aggression, and establishing tranquility, in the place of

* "Lord Minto in India" (quoted in Ramsay Muir : 142.)

† Lyall : 245.

Chiefs ranging themselves in subservience to a hostile power and seeking to promote schemes of conquest and aggrandizement.”*

A tripartite treaty was accordingly concluded in 1838 between the English, Ranjitsing, and Shah-Suja—the fugitive Amir for the elevation of the last to the Afghan throne with the help of the first two allies. But before the Sikhs could render any effective help in the enterprise Ranjitsing died (1839) and as permission was refused to the British Army to march through the Punjab, it had to resort to the more circuitous and dreary route through the deserts of Sind, and the progress of the army was rendered at all possible through the good offices of the Amirs of that region. At the advance of the English Army upon Kabul Dost Mahomed the Afghan Ruler fled and Shah-Suja was seated on the throne and it appeared as if the expedition was a great success. But the new ruler was unpopular the whole Afghan country was up in arms against the English army of occupation, the British envoy MacNaughton was killed and in the retreat of the army from Kabul practically the whole force perished with the single exception of Dr. Bryden.

But the hour of vengeance soon came. Lord Ellenborough who had succeeded Auckland, sent an army to Kabul in September 1842 and again the British flag was planted on Bala Hissar. At the same time the folly of Auckland's policy of forcing an unpopular ruler upon the unruly Afghans was realized, and they were left to themselves. Dost Mahomed returned to Kabul and thus was closed this first essay of the English in their frontier policy.

* Persian and Afghan Correspondence p. 299. Quoted in Ramsay Muir.

Annexation of Sind.—Reference must be made to one result that flowed from the First Afghan War. We have already seen how the Amirs of Sind had rendered valuable assistance to the English Army marching upon Kabul. The conciliatory attitude of the Amirs was wholly due to the tact of the English Agent in Sind—Major Outram. But in 1842 he was replaced by Sir Charles Napier—a haughty and querulous Officer.

He easily persuaded himself that the Amirs had acted treacherously in the Afghan War and without difficulty defeated them and annexed their territories—a policy in which Lord Ellenborough quietly acquiesced.

So unjustifiable was this step that even the Directors were dissatisfied with it, and Ellenborough was recalled after only two years of administration.

And Sir Charles Napier himself was not unconscious of his aggressive policy when, in announcing his victory to the Governor-General, he said "*Peccavi*" *i. e.*, I have sinned (Sind).

(14) DALHOUSIE'S POLICY OF ANNEXATION

The Sikh Wars:—The history of the British dealings with the Punjab falls into three periods: The first period closes with the emergence of Ranjitsing; the second covers the reign of that great Ruler; and the third refers to the last years of that Power. It is not necessary to trace here the rise of the Sikh power prior to the days of Ranjitsing; but during his reign on account of internal administration and prudent foreign policy the Sikh power was thoroughly consolidated: the Sikh army particularly which was the mainstay of the State was trained into a formidable

machine by European Officers like—Ventura and Aivable. Successive Governors-General, therefore, *e. g.*, Lord Minto and Lord William Bentinck maintained friendly relations with Ranjitsing whose state thus formed 'a buffer State' between the English possessions in North India and the Afghans. But the security of the N. W. Frontier was jeopardied by the disaster of the First Afghan War and the dissatisfaction that was seething in that country, and also by the anarchy that set in the Punjab after the death of Ranjitsing.

Sher Sing, the son of Ranjit, tried to keep the army under control ; but he was murdered in 1842 and the *Khalsa i. e.*, Sikh Commonwealth resolved to make war upon the English and crossed the Sutlej which was the boundary between the Powers. Not before four pitched battles had been fought in quick succession, was the Sikh power brought to submit. Lord Hardinge was opposed to any plan of annexation. "Once more the policy of leaving a Native State on the frontier was to be tried, and although the Sikh Kingdom could no longer be allowed to be independent, its internal sovereignty was to be left to it."* Accordingly only the country between the Sutlej and the Beas was annexed to British Dominions ; an indemnity of one crore and fifty lakhs of rupees was imposed upon the Sikhs and as it could not be paid, Kashmir was transferred to Gulab Singh, an ally of the English, for half the amount ; The Sikh army was reduced and a Council of Regency was appointed under Henry Lawrence, during the minority of Dulipsing, for the internal administration of the

* Lee-Warner : Vol I, page 148.

70(14) DALHOUSIE'S POLICY OF ANNEXATION

Punjab, and a British force was sent to garrison the province for the term of eight years.

Policy of Lord Dalhousie.—Such was the state of the Punjab when Dalhousie arrived in India. There was prospect of a peaceful administration under the reforming zeal of the brother Lawrences. But suddenly the storm broke. Divan Moolraj, (the Governor of Multan) caused the assassination of two British officers and raised the standard of rebellion. The trouble spread over the whole of the Punjab, and even Dost Mahomed the Ruler of Afghanistan, who had not forgotten the wanton aggression of the English joined the Sikhs. The Sikh army though considerably smaller than in the first War was still unbroken, and only yielded after four bloody battles had been fought. Multan after a protracted siege also surrendered and the Afghans were driven beyond the Indus.

Annexation of the Punjab.—The Punjab now lay prostrate and the question again arose if it should be continued as a 'buffer' Native State though considerably reduced. But Lord Dalhousie was opposed to any such policy. He thought that on account of the proximity of the Afghans, and the widespread dissatisfaction in the Punjab, no Sikh power could be continued there, and as he felt assured of full support from the Home authorities in any course that he might adopt he annexed the whole province (1849). Maharaja Dulip Singh was pensioned off to England where he lived for many years as a country gentleman.

Annexation of Lower Burma.—Lord Dalhousie, three years later annexed Lower Burma as the result of a War waged on account of complaints that had been frequently made by British merchants trading at Rangoon about money unfairly exacted from them.

Doctrine of Lapse.—It was not by conquest only that Dalhousie extended the boundaries of British India. In his zeal to bring as large a part of India as possible within the pale of Western Civilization, he lost no opportunity of adding to the British possessions and he found in his 'Doctrine of Lapse' a powerful weapon for territorial aggrandizement. As he himself said: "I take occasion of recording my strong and deliberate opinion that, in the exercise of a wise and sound policy, the British Government is bound not to put aside or neglect such rightful opportunities of acquiring territory or revenue, as may from time to time present themselves, whether they arise from the lapse of subordinate states, by the failure of all the heirs of every description whatsoever, or from the failure of heirs natural, where the succession can be sustained only by the sanction of the Government being given to the ceremony of adoption according to Hindu Law."

This is the Doctrine of Lapse. Now the ancient law of India allows a Hindu to adopt a son, on the failure of natural heir, and law treats equally the adopted and the natural heir. This right had been recognized by the Mogul Emperors; and even under the Peshwas it was in full operation though it is true that the Peshwas, as overlords, charged heavy *Nazarana* or succession duty, at the time of issuing the *Sanad* or title to adopt the heir, but in no case had they denied the right or annexed the territories of their Jagirdars on the ground of failure of heir.

But upon the settlement of Central India after the Pindhari War, British Government began the practice of refusing sanction to adoption, as in the case of the Angria family of Kolaba in 1840. But such cases

were rare. It was reserved for Lord Dalhousie to adopt this course systematically.

The States that fell victim to this policy of annexation were Satara (where the claims of the adopted heir after the death of the Raja in 1848 were set aside); Sambalpur in the Central Provinces (where the Raja had died childless, without adopting an heir; Jhansi (where the rights of the adopted son of the dying Raja were not recognized); and finally Nagpur (where the heir adopted by the widow of the deceased Raja was set aside).

The policy of annexation followed in the smaller States of Beghat, Udepur, and Karauli, was practically reversed by Lord Canning, and even Lee-Warner admits 'that the case of Karauli must always be considered as the least justifiable of the measures taken by Dalhousie.'*

It would be out of place to enter into the general question of this Doctrine of Lapse or to examine each case separately. The error of Dalhousie lay in systematically applying a right (*i. e.*, of refusing sanction) which though existing in theory, was never exercised in practice. Though the Indian Mutiny was not caused by this policy of Lord Dalhousie, some of its implacable leaders were those who had suffered by this Doctrine. By the reversal of Dalhousie's decisions in two or three minor cases, and by the solemn recognition of the right of adoption given in the Queen's Proclamation after the Mutiny, this avenue at any rate of extending the British Territories was finally closed.

Further annexations.—In addition to annexation by conquest and by lapse, Dalhousie added Oudh (1856)

* Lee-Warner : Volume II, page 171.

on the ground of the protracted state of misgovernment that prevailed there; and he took Berar from the Nizam on lease, as a guarantee of payment of the long-standing arrears on account of the subsidiary force.

(15) REVIEW OF RELATIONS WITH INDIAN STATES
UP TO 1857

Sir William Lee-Warner distinguishes three periods in the development of these relations: (1) the period of 'ring-fence' extending to 1813; (2) that of 'subordinate isolation' which lasted till 1857 and (3) of 'subordinate union' which set in after the Mutiny. The essential element of the policy of the "ring-fence" was the refusal of protection to Native States lying beyond a certain limit, or, in another words, the avoidance of all ties or engagements which might possibly drag the Company beyond its own frontiers. This policy led to confusion and anarchy beyond the ring-fence and Lord Hastings broke down ring-fence and filled in the map of India with "protected" States. He deprived them of all external relations but at the same time he rightly marked off the internal administration of each Prince as outside the sphere of British action. This policy is called that of 'subordinate isolation' and was followed by his successors and was in vogue when Lord Dalhousie came out to India. Dalhousie was bent upon "getting rid of these petty intervening principalities which may be made a means of annoyance, but which can never be a source of strength for adding to the resources of the public treasury, and for extending the uniform application of our system of Government to those whose best

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interests, we sincerely believe, will be promoted thereby."

What the result of the policy of Dalhousie was and how it was reversed after the Mutiny has been already shown. The Queen of England promised to make no more territorial aggrandizement.

In spite of cases of misgovernment, the value of the Native States was appreciated by some of the best administrators of India of the period (1800-1850). *e.g.* Sir Thomas Munro and Sir John Malcolm.

The States afford scope to native talent and industry; they extend patronage to indigenous art and literature; they preserve traditional civilization and culture and make for that variety without which rule in British India would be oppressively monotonous; they also serve as foil to British rule. Views like these triumphed after the great conflagration of the Mutiny and few now question the wisdom of preserving the Native States or deny the very important part which they may play in the progress of India as a whole. At any rate I am personally a great believer in the possibilities of the Native States.

CHAPTER V

ADMINISTRATION OF INDIA UNDER THE E. I. COMPANY

Having considered in the last two Chapters the course of the expansion of British Dominions in India, it will be appropriate now to review the results of the Administration of India by the East India Company, or "John Company" as it was called in derision by its opponents. The Company increasingly assumed a political complexion and after 1833 altogether ceased to be a commercial body. The present Chapter is divided into two Sections. The first deals with the principal Land Revenue Settlements made during the regime of the E. I. Company. The second Section gives a brief account of the State of Finance, Public Works, Education and the Public Services during this period. In the next Chapter will be considered the contribution made to the liberalization of Indian administration by some of the great servants of the E. I. Company.

76 (16) PERMANENT SETTLEMENT OF CORNWALLIS

SECTION ONE

HISTORY OF THE LAND REVENUE SETTLEMENTS

Every acquisition of new territory entailed the establishment of a system of administration therein, and the chief object of administration was the collection of land-revenue. During the whole regime of the Company land revenue was the main prop of Indian Finance. Also the collection of land revenue has always been the primary duty of every Indian Ruler. We must, therefore, carefully examine the various systems of Land Revenue Settlements in Bengal, Madras, Bombay, the North-West Provinces, the Punjab and the Central Provinces.

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Reference has been made (§§ 4, 5) to the experiments in land revenue collection made by the President and Council of Calcutta since the acquisition of Dewani in 1765, and to the reforms of Warren Hastings. The impoverished condition of the Ryots and Zamindars of Bengal as well as the general policy of Warren Hastings attracted great attention in England, and when Parliament passed the Act of 1784 it laid down definite reforms to be carried by the new Governor-General *viz.*, Lord Cornwallis. The most important of the duties was the making of an inquiry into the injustice done to the Rajas, Zamindars, and other land-holders of Bengal, and "the settling, upon principles of moderation and justice, according to the laws and constitution of India, the *permanent* rules by which their tributes, rents, and services shall be in future rendered and paid to the Company."

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The first part of this duty namely the inquiry, was most admirably performed by Sir John Shore and embodied in his Minute of 18th June 1789. Lord Cornwallis, who had no previous knowledge of India, guided himself entirely by the advice of Sir John Shore, and the declared view of the Directors "that a *moderate permanent* assessment was more beneficial both to the State and to the people than a heavy fluctuating one, and that it should be made with the Zamindars."

To revert to the state of things which prevailed at the time of the departure of Warren Hastings: the Collectors had been again appointed and they were rigidly controlled by the Committee of Revenue at Calcutta; the settlement was annually made, and lands were let out to the highest bidder.

The first step in the direction of reform was taken in April 1786 when the shifting *parganas* and *chaklas* were permanently grouped into compact districts, each under a Collector. Full trust was now placed in this officer; the Zamindars were to look up to him for a fair assessment of revenue; the Committee of Revenue at Calcutta were to look up to him for information. The establishment of the Collector as the chief authority in the district, charged with its revenue collection and general administration is the basis of all subsequent administration throughout India.

In June 1786 the Committee of Revenue was reconstituted as Board of Revenue for the general supervision and control of the fiscal operations of the Collectors.

The ground was now prepared for the great reform of Lord Cornwallis.

Three questions were raised:

(a) With whom was the settlement to be made?

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(b) On what basis was the assessment to be made?
(c) What was to be the length of that Settlement?

(a) With regard to the first question, Sir John Shore pointed out that there were three possible alternatives. The Settlement could be made directly with the ryots; it could be made with any persons chosen by the Company for that purpose, who undertook to pay the revenue; or it could be made with the Zamindars. Now in the state of Bengal at that time a settlement with the ryots was inconceivable; and the mischievous and disastrous results of the second method of farming out revenue were so patent that that method also was equally out of question. It was then decided to make a settlement with the Zamindars.

The question immediately arose as to the status and rights of the Zamindars. One extreme view on this subject was that held by James Grant—an able servant of the Company at that time—who maintained that the Zamindar was merely a temporary official, and that the property in land vested absolutely in the State. Opposed to this was the view of Sir John Shore (also shared by Lord Cornwallis) that the proprietary right in land belonged to the Zamindar. "The rents belong to the sovereign; the land to the Zamindar." Sir John thus defined the right of the Zamindars; "I consider the Zamindars as the proprietors of the soil, to the property of which they succeed by the right of inheritance, according to the laws of their own religion, and the sovereign authority cannot justly exercise the power of depriving them of succession, nor of altering it when there are any legal heirs. The privilege of disposing the land by sale or mortgage is derived from this fundamental right and

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was exercised by the Zamindars before we acquired the Diwani”.

(b) Next as to the Principle of Assessment. Here also James Grant and Sir John held opposite views. The former was of opinion that it should be based upon the highest Mogul assessment as it was prior to 1765 (that is before the grant of Diwani); but there were obvious practical difficulties in adopting this standard. Sir John Shore, therefore, took the assessments as they were being actually made during the few years preceding the Permanent Settlement. In the absence of detailed information, it was fixed upon arbitrary grounds, and was fixed as high as possible, in view of its being declared to be permanent.

(c) Finally, with regard to the period of Settlement, there was difference of opinion between Sir John Shore and Lord Cornwallis. The former held that the Settlement should be made initially for a period of ten years. He was opposed to an *immediate* permanent settlement on the ground that the requisite data for such a settlement were lacking. But Lord Cornwallis was so much anxious to give a sense of security to the Zamindars against increase of assessment, that he declared the Settlement made in 1789 permanent, provided only the sanction of the Directors was obtained, which was done within two years. Thus the very first Regulation of 1793 embodied the Permanent Settlement of Bengal.

Criticism.—The most diverse views have been expressed with regard to the merits of the Permanent Settlement. A typically adverse view is that of the biographer of Cornwallis, Mr. Seton Karr. The circumstance that he belonged to the Bombay Service where the *Rayatwari* system prevails, possibly

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accounts for the adverse judgment of Mr. Seton Karr.

“Lord Cornwallis had only the experiments and the legacies of failure to guide him. Pressed for ways and means and anxious for reforms in more departments than one, he committed himself to a policy which in regard to the three interested parties, the Zamindar, the Ryot and the Ruling Power—assured the welfare of the first, somewhat postponed the claims of the second, and sacrificed the increment of the third.”

On the other hand, a very high authority on land revenue administration—the late Mr. R. C. Dutt,—characterised the measure as one that “has done more to secure the prosperity and happiness of British subjects in India than any other single measure of the British Government.”*

A complete discussion of and final judgment upon the Permanent Settlement would involve reference to controversial economic theory which is out of place in a text-book on Administration. But there is no doubt that the class that benefited most by the measure of Cornwallis was that of the Zamindars. Though their share of the rental at the time of the settlement was only 1/10th of the gross rental, competent authorities now reckon it at 75 p. c. of the rental, Government getting only 25 p. c. as land revenue. It was the expectation of Lord Cornwallis that the Zamindars would devote an increasing share of their wealth to the improvement of land. But the general opinion is that they have not improved the land to any considerable extent; but it has to be admitted that the wider

* Dutt : Early British Rule, p. 9.

diffusion of education and the cultivation of literature and art, which we find in Bengal are to be traced to the wealthy and leisured class of Zamindars of that province.

The condition of the ryots changed for the worse, rather than improved, for some years after the Permanent Settlement; for though the State had fixed for ever its own demand on the Zamindars, the latter could take as much as they liked from their tenants. A whole series of laws—known as Tenancy Acts—had to be passed before the advantages of the Settlement reached the ryots. But even with this reservation it is worth while referring here to the testimony of Sir John Malcolm who said “I must ever think it (the Permanent Settlement), one of the most wise and benevolent plans that ever was conceived by Government to render its subjects rich and comfortable.”

That the Permanent Settlement has entailed upon the State an enormous loss of revenue, cannot be gainsaid. It is no answer to this criticism to say that the State can compensate itself for the loss of land revenue of a particular Province by overtaxing other Provinces, or interests other than agriculture in the same Province. It was this loss of revenue that disposed the authorities in England to look askance at the Permanent Settlement. They opposed its extension to other Provinces of India and after a controversy that raged for more than three quarters of a century, rejected it altogether. A word will be said about this controversy at a later stage.

(17) LAND SETTLEMENT IN MADRAS

Condition of the Karnatic.—The protracted struggle between the English and the French had told heavily

upon the condition of the cultivators and the Nawab of Karnatic was a mere puppet in the hands of the Madras Council. He had borrowed extensively from the servants of the Company and made assignments of land-revenue to his British money-lenders who, to recoup themselves, extorted as much money from the people as possible. The misery of the people was increased by the wars with Hyder and Tipu.

To turn next to the condition of the *Northern Sarkars*.—After the acquisition of these Sarkars, a Committee of Circuit was appointed in 1775 as in Bengal to inquire into the condition of these Districts and its enquiries lasted till 1788. It appeared that the lands were principally held by Zamindars who were the descendants of the ancient Hindu Rajas who paid a fixed tribute to the Mahomedan Government. Besides these Zamindars there were certain demesne or household lands of Government known as *Haveli* lands, which, after division into suitable lots were granted out to agents. Both in Zamindari and Haveli territories there existed Village Communities.

With the Zamindars short settlements were made from time to time; the Company's Chief and Council were abolished and Collectors under the control of the Board of Revenue were appointed in 1794, as they had been appointed in Bengal in 1786. By that time the Permanent Settlement had been made in Bengal and it was extended to the Sarkars between 1802-1805 during the regime of Lord Clive, the son of the Victor of Plassey. The Haveli lands also were parcelled out into blocks and sold by auction as Permanent Zamindari Estates between 1812-14.

But this Permanent Zamindari Settlement was confined to the Northern Sarkars alone. When in 1792

the *Baramahals* were taken from Tipu, their administration was entrusted to a group of soldiers headed by Captain Read. One of his assistants was the celebrated Thomas Munro whose name is associated with the Revenue Settlement of Madras, known as the Rayatwari Settlement.

From Baramahal, Munro was transferred to the large tract between the Krishna and the Tungabhadra known as the "Ceded Districts." It was here that during seven long years (1800-1807) Munro perfected himself in the intricate work of making settlements directly with the ryots in an extensive area. In an elaborate Minute submitted to the Board of Revenue, he thus described the principles of the Rayatwari Settlement:

- (1) the Settlement should be made with the *Ryot*.
- (2) every ryot should be at liberty, at the end of every year, either to throw up a part of his land, or to occupy more, according to his circumstances.
- (3) the amount of Settlement should increase or decrease annually according to the increase or decrease in the extent of land which the ryot may have brought under cultivation.
- (4) every ryot as long as he pays the rent of his land, should be considered as the complete owner of the soil, and should be at liberty to let it to a tenant, without any hesitation as to rent, and to sell it as he pleases.
- (5) no remission to be made, on ordinary occasion, for bad crops or for other accidents.
- (6) all unoccupied land should remain in the hands of Government.

- (7) Patil, Curnums and other village servants should remain, as heretofore, under the Collector.*

As the then existing assessments were very high, Munro also proposed that there should be a reduction of 25 p. c. in the survey-rate of assessment on all lands and an additional reduction of 8 p. c. (*i. e.* a total reduction of 33 p. c.) on all lands watered by wells, tanks &c. Thus reduced the assessment was to be declared permanent. But the Madras Board of Revenue did not approve this Settlement. They called it an Herculean task, or rather a visionary project, to fix a land rent—not on each province, district, or village, nor on each estate or farm, but on every separate field in the dominion. They further referred to the tendency of such a settlement 'to dissolve the ancient tie which united the republic of each Hindu village' and to the certainty of its practically abolishing private property in land. In the place of the Rayatwari, they adopted in those districts where no Settlement had yet been made the *Village* or *Mahalwari* Settlement. "It differed from the Rayatwari chiefly in the assessment being fixed on the entire aggregate lands of the village, not on each distinct and separate field, in its being concluded with all the ryots collectively, not with each individually; and in its giving up to the ryots not only the revenues to be derived from the arable land, but that also to be obtained by after exertion from the waste also; in fact, in leaving, in consideration of a contract to pay a given sum as public revenue, the entire internal administration of affairs to the Village Community. The object of this Settlement

* Kaye : 219-20 (condensed.)

was to adapt the revenue administration to the ancient institutions and ancient usages of the country to which the Hindus are proverbially attached; to suit the system to the people and not to attempt to bend the people to the system.”*

It will thus be seen that there were at this time three distinct revenue Systems in Madras: the Permanent Zamindari System in the Northern Sarkars; the Rayatwari System as made by Thomas Munro in Malabar, Canara, Coimbatore, Madura, Dindigul; and the Village System as made by the Board of Revenue at Madras in the Ceded Districts, in Nellore, Arcot, Palnad, Trichinopoly, Tinnevely, and Tanjore.

“For a quarter of a century now under the Madras Government a series of experiments in land revenue had been going on. One system had been displaced to make way for another; each had been tried in turn, and it was alleged that in turn each had failed. They had all failed, more or less, because the lands had been overassessed.”†

The final decision of the Court of Directors to adopt the Rayatwari Settlement was undoubtedly due to the influence exercised on them by Sir Thomas Munro who had gone to England in 1807. At the same time they realized how the land had suffered under over-assessment. When, therefore, Munro returned to India a second time as the Governor of Madras, he was authorized to adopt the Rayatwari Settlement and he made a general reduction of from 25 to 33 p. c. of the original assessment.

The extension of the Rayatwari Settlement in Madras involved the partial or complete wiping out of large classes of landlords who occupied positions

* Kaye: 222.

† Kaye: 224.

corresponding to the Zamindars of Bengal. Thus the hereditary Rajas and Nair Chiefs of the Malabar District; the Zamindars—known as Pattackdars—in the kingdom of Tanjore annexed by Lord Wellesley; and finally the class of Polygars in the Karnatak after its annexation in 1801, were swept aside. In the last case the Polygars—who were always a military and turbulent class—rose into insurrection but were ruthlessly put down, most of them were deprived of their land, and after 1803, Permanent Settlement was made with such of them as had survived the late harsh treatment. But in greater part of the Karnatic, Settlement was made directly with the cultivators.

Not only were the different orders of society reduced to the same level, the Settlement also gave the death-blow to the Village Communities. Though Sir Thomas Munro did all he could to foster them, organized the Panchayats, and revived their judicial powers, this ancient institution declined under the pressure of British Administration.

It should also be noted that an essential feature of the Rayatwari Settlement as conceived by Munro—namely, the permanency of assessment—was not accepted by the Court of Directors. The result was that the Madras ryots steadily deteriorated after the departure of Munro; there were reports of the use of torture for the exaction of assessment; and a debate was raised in the House of Commons in 1854 in which John Bright gave a very harrowing picture of the condition of the Madras ryots. A revision of the Settlement was, therefore, ordered in 1855 with a view to moderate the demand of the State, and safeguard the interests of the ryots.

(18) RAYATWARI SETTLEMENT IN BOMBAY 87

(18) RAYATWARI SETTLEMENT IN BOMBAY

Elphinstone's Proposals.—Elphinstone was appointed Commissioner of the Deccan in 1818 to settle the country of the Peshwa. His '*Report on the Territories conquered from the Peshwa*' is a historical document. He showed how Village Communities were to be found everywhere in the Deccan and described minutely their constitution and internal economy. He distinguished between two kinds of cultivators in the Deccan: those who were proprietors of the soil and those who were more or less tenants-at-will. Pointing to the large class of peasant-proprietors of the first kind known as *Mirasadars*, he said "They are proprietors of their estates subject to the payment of a fixed land-tax to Government; their property is hereditary and saleable and they are never dispossessed while they pay their tax and in case of inability, they have for a long period (thirty years) the right of reclaiming their estates on paying the dues of Government." The other class is that of *Upari* cultivators. Elphinstone also referred to the valuable work of the Village Panchayats and urged that for the pacification and improvement of the country "our principal instrument must continue to be the Panchayat, and that must continue to be exempt from all new forms, interference, and regulation on our part."

When Elphinstone became Governor in 1819, Chaplin was appointed Commissioner and his report on the condition of the Deccan is also equally valuable. Elphinstone's idea was to preserve whatever was valuable and useful in the institutions of the Deccan. His proposal was to settle, after a survey, what each cultivator should pay to the State, and then to realize this from each village through the Patil. By this

means he wished at once to preserve the Village Community as symbolized by the Patil and at the same time to safeguard the fiscal interests of the State. But herein lay the weakness of his proposal. If the share of each cultivator was to be determined by the officers of Government, what was the necessity of keeping up the Patil and the Village Council thus deprived of their most important function of distributing the collective assessment among the cultivators? This weak point was too obvious to escape the notice of the Directors, and they rejected Elphinstone's proposals.

To the ruinous effect of excessive demand of the State testimony is borne by the report of Dr. Francis Buchanan who travelled extensively throughout India and by the Journal of Bishop Heber who made a tour in 1824-25-26.

Settlement Operations.—A preliminary Settlement Survey was commenced by Pringle (1824-28). It was based upon Government share being fixed at 55 per cent. of the net produce of the land. By the 'net produce' was meant the gross produce of a field *minus* the cost of cultivation. Though the principle was sound, it was not properly applied and a fresh survey was undertaken in 1835 by Goldsmidt and Lieutenant Wingate. It proceeded on the simple expedient of ascertaining the average character and depth of the soil, in each field, and classifying it accordingly. This principle based upon the geological examination of the soil, though defective in theory, was applied with moderation by Wingate: The results of this Settlement are embodied in the Joint Report of 2nd May 1847 of Goldsmidt, Capt. Wingate and Capt. Davidson. It explained the principle thus: *firstly*, it was based

upon the assessment of each field separately; and not on holdings or villages collectively; *secondly*, it granted long leases for thirty years instead of the short leases which had preceded; and *thirdly*, it abandoned the basis of produce estimate and substituted the estimated value of lands (from the point of view of depth and colour of soil) as the basis of assessment. Lands were classified according to their depth (which determines the power of imbibing and retaining moisture) and also according to colour and texture. The land of first order was of fine uniform texture, varying in colour, from deep black to dark brown; of second order, of uniform but coarser texture and lighter in colour than the preceding order; third order of land of coarse, gravelly and loose friable texture and colour varying from light brown to grey. The resultant value of land was expressed in terms of annas per rupee.

The demand for the whole District was arbitrarily fixed 'from the past history of the District,' and this was distributed among the fields according to the relative values as determined above. The cultivator had no voice in determining the demand and he was entirely at the mercy of the petty survey officials.

The country suffered great hardships; the village communities declined; the landed aristocracy disappeared. The results were exactly similar to those that were observed in the case of Madras. A reduction of assessment was ordered and 'the revision' was going on at the time when the Company's administration came to a close.

90 (19) LAND SETTLEMENTS IN N.-W. PROVINCE

(19) LAND SETTLEMENTS IN THE NORTH-WEST PROVINCE

First Settlements.—The North-West Province was formed in four stages :

1775—Annexation of Benares and adjoining territory by Warren Hastings.

1801—The 'Ceded Districts' from the Nawab of Oudh, acquired by Wellesley.

1803—The 'Conquered Districts'—the territory between the Ganges and the Jumna, after the Maratha War.

1856—Annexation of Oudh by Lord Dalhousie.

In 1795 Sir John Shore extended to Benares the Permanent Zamindari Settlement and also the Bengal Code.

Immediately after acquisition of the Ceded Districts Marquis Wellesley appointed a Commission of three civilians, and his brother Henry Wellesley as the Lieutenant-Governor and President of the Board. Regarding the settlement of Land Revenue, it was proposed to have two triennial settlements to be followed by a settlement which after a further period of four years was to be declared *permanent*. Thus the Government pledged itself, in a most solemn manner, and as a result of their own Regulations, to a Permanent Settlement after an aggregate period of ten years from the first Settlement of Henry Wellesley in the Ceded Districts. A similar pledge was also given to the land-holders in the Conquered Districts.

On account of the preliminary settlements which were always most exacting, and as a result of the ravages of the Maratha War a terrible famine visited the Ceded and Conquered Districts in 1804 and a

Commission of R. W. Cox and Henry St. John Tucker was appointed to go into the question of the impending settlement, and this Commission was the first to sound a note of warning against a permanent settlement; they said "We submit to Your Lordship in Council our deliberate and unqualified opinion that the measure, considered with relation to the Ceded and Conquered Provinces generally, is at this moment unseasonable, and that any premature attempt to introduce it must necessarily be attended with a material sacrifice of the public resources, and may, in particular cases, prove injurious to the parties themselves, whose prosperity, it is the chief object of the measure to secure upon a durable foundation."

Lord Minto, however, and the members of his Council felt otherwise and they pressed the necessity of a permanent settlement upon the Court of Directors. But the warning of the special Commission was not lost upon the Directors and they in their Despatch of 27th November 1811 wrote "the object of the present despatch is to caution you in the most pointed manner against pledging us to the extension of the Bengal fixed assessment to our newly acquired territories."

Protests were made by Lord Minto, and by Lord Hastings against the injustice of this order. But the Directors were firm as adamant. In their final Despatch of August 1821, they required the Government not only to abstain from making a permanent settlement but "from taking any measure which may raise the expectation that a settlement in perpetuity will hereafter be formed."

Meanwhile short settlements were made with proprietors and pseudo-proprietors and on the whole the old landlords suffered great hardships and losses.

John Briggs' criticism of the early Land Policy of the Company.—From this brief account of the land settlements of Bengal, Madras, Bombay and the early land settlements in the N.-W. Province, it is evident that the theory underlying each was that the State was the *owner* of the land and was entitled to receive all the surplus produce of the land after the bare needs of the actual cultivators had been satisfied. Hence the narrow margin of profits left to the Zamindars, the frequency of settlements and the high pitch of assessment. The system of State land-lordism was the only one with which the British administrators were familiar in their own country. They, therefore, argued that the State was entitled to appropriate the whole of the 'economic' rent of land. This was represented, in theory, by the difference between the gross produce on a field and its cost of production. This theory of State land-lordism and its corollary of the State claiming the whole of the economic rent were accepted by John Stuart Mill, who, on account of his position in the India Office as the Examiner of Correspondence, was able to exercise a decisive influence on the policy of Indian Land Revenue. He maintained that "if the land tax were limited to the rent only, then the revenue system of India would be the best in the world".

The most emphatic protest against this view of the Indian Land Revenue as rent was raised by Lieut.-General John Briggs—the well-known translator of Ferishta, and also a great historian, and administrator. He had excellent opportunities of studying first hand this question of land revenue. His monumental work on "*The Present Land-Tax in India*" was published in 1830. Its main conclusions were: (1) that the

integrity of *private* property in land had been recognized in every Village in India : (2) that Government had no right whatever to the land, but to a share in its produce, that is to a tax, which did not affect the proprietary rights in land; (3) that the Government share or tax was defined and limited both by Hindoo and Mahomedan Law and the Government had no title or precedents (except revolutionary ones) for taxing the people at discretion and no more right to claim the property in land and take its 'rent' than a tithe-owner has to claim another man's property because it pays him tithe; (4) that the Native institutions *e.g.* Village Communities themselves afforded a broad basis for the Administration, on which a durable Empire could be established".*

Summarising the defects of the theory on which the Company proceeded he said "Having assumed that the Government is the sole landlord, it considers the land to be the most profitable source of all revenue; it employs a host of public servants to superintend the cultivation, and it professes to take all the profits. A land tax like that which now exists in India, professing to absorb the whole of the landlord's rent, was never known under any Government in Europe or Asia."

The Mahalwari Settlement.—Brigg's work produced a strong impression upon Bentinck. He drew up a series of Regulations which were sent to General Briggs who was at that time Resident at Nagpur, and they were the foundation of the new settlement in North-West Province. In his extensive tour in North India Lord William Bentinck was struck by the fatal weakness of the Regulation of 1822 namely its

* John Dickinson : page 30.

exorbitant demand of 80 p. c. of the rental. He immediately reduced it to 67. p.c. He also tried to preserve the integrity of the Village Communities in whose behalf Sir Charles Metcalfe had recorded his eloquent Minute of 1830.

The principles of Bentinck's Settlement were embodied in Regulation IX of 1833. The task of applying this Regulation in practice fell upon Robert Mertins Bird who laboured from 1833 to 1843 and whose name is as much famous in the North-West Province as that of Munro is in Madras. Bird's settlement operations were completed by James Thomason who afterwards became the Lieut-Governor of that Province. His "*Directions for Settlement Officers*" was the first complete Code of Settlement compiled in India.

The first step of this settlement was "to introduce a scientific survey of the country, to mark carefully and to record the boundaries of every village, to register the separate possessions, rights, and privileges, and responsibilities of those communities who hold their lands in severalty and of the several interests of those who hold their land in common"* The student will at once recognise here what have now become the familiar operations of a modern Land Revenue Settlement: a scientific survey of the tract: a cadastral or field-to-field survey with a view to ascertaining soil, produce &c., and finally the preparation of a Record of Rights.

James Thomason thus explained the underlying principles of Revenue Settlement:—

"It is the true interest of the Government to limit the demand to what is just, so as to create a valuable

* Kaye: p. 251.

property in the land and encourage its improvement. In order further to encourage this improvement, it is necessary to determine the persons to whom all the benefits belong, which arise out of the limitation of the demand on land. To perform these operations is to make a settlement. Under ordinary circumstances, the prosperity of the country depends on this being justly and perfectly done."

There are evidently two distinct operations in the formation of a Settlement. The one is fiscal, the determination of the Government demand—the other is judicial, the formation of the Record of Rights.

It will be observed that there were in the N.-W. Province as many as three classes of persons whose rights in land had to be carefully defined and safeguarded: *the tenants* (of either peasant-proprietors, village-communities, or large land-owners); the *Village Communities*; and thirdly, the *Talukdars*. Thomason recognized the rights—though they were inferior, such as the right of occupancy, protection against enhancement of rent &c.—of the ryots. As for the Village Communities, he endeavoured to maintain them in tact by making them jointly or collectively responsible for the payment of the Government demand. He thus explained the advantage of collective responsibility thrown upon the Village Community. "It greatly promotes Self-Government, and renders unnecessary that constant interference with the affairs of individual cultivators on the part of Government officers, which must otherwise exist. It saves them from much expense which would otherwise fall upon them, and it facilitates their union for many purposes of municipal economy, which could not otherwise be effected. The efforts of the prosper-

ous and industrious members of community will often be directed to stimulate the idle, to assist the unfortunate, and to give additional value to the labours of their thrifty brethren. Property being minutely divided, and each proprietor clinging with the greatest tenacity to his patrimony, it would be difficult to devise a civil institution better calculated to add to the happiness and prosperity of the people.”*

Finally as to the *Talukdars*. Originally majority of them were farmers or collectors of revenue. But they had succeeded in many cases in depriving the village community of its proprietary rights and reducing it to the position of their tenants. Under these circumstances the Talukdar was virtually the proprietor of the village. In each case Thomason endeavoured to preserve the *status quo*, recognizing the rights of the Community or the Talukdar according to the result of a judicial enquiry. The Talukdar was allowed a certain percentage (about 20%) of the revenue that was collected through him.

Such were the principles of the *Mahalwari Settlement* as established in the N.-W. Provinces by Bird and Thomason.

Bird had intended to fix the assessment for ever in those parts of the province where cultivation had reached the maximum limit. But this intention was disregarded. Again, the Village Patwari—a paid agent—was invested with powers that ought to have belonged to the Village Community; the inevitable result of these two measures was the gradual impoverishment of the ryots and the disruption of the Village Community. As has been well said “The decidedly levelling character calculated so to flatten

* Life of Thomason by Temple, 152-153.

the whole surface of society as eventually to leave little of distinguishable eminence between the Ruling Power and the cultivators of the soil" was not checked.

The completed settlement was approved of by the Directors in their Despatch of August 13, 1851. But it was soon found that the demand of State fixed at $\frac{2}{3}$ of the net assets (*i. e.* the surplus which the estate may yield, after deducing the expenses of cultivation including the profits of stock and wages of labour) was excessive, and therefore when the resettlement of the province commenced with the Shaharanpur District, the State demand was revised by fixing it at 50 per cent of the assets—by the famous Shaharanpur Rule.

In Oudh which was annexed by Lord Dalhousie there was a powerful class of Talukdars. Settlements, were made with them rather than with their tenants. Lord Canning after the pacification of the Mutiny recognized the proprietary rights of the Talukdars and this virtually established the Talukdari Settlement in Oudh.

(20) VILLAGE SETTLEMENT IN THE PUNJAB

History of the Settlement.—A part of the Punjab was annexed as the result of the First and the whole of it as a result of the Second Sikh War (1849). Under the rule of Ranjit Sing, the land tax was theoretically one half of the produce of land; it was collected in kind by powerful military Governors in the more distant and unruly parts of his empire, and by Agents in the more peaceful or settled districts. The system rested on the acknowledgment of private proprietary

98 (20) VILLAGE SETTLEMENT IN THE PUNJAB

right in the land and on the existence of village communities.

At the suggestion of Henry Lawrence the produce tax was converted into money. After the annexation, a Board was appointed with Henry Lawrence as President and John Lawrence as a Member. But as the policy and temperament of the two brothers could not agree, both resigned and Lord Dalhousie, who fell in with the Imperial ideas and narrow views of John Lawrence, made him the President. Under his direction the Village Communities were practically ignored. The Government share was reduced from $\frac{1}{3}$ to $\frac{1}{4}$ and then to $\frac{1}{6}$ of the gross produce of land or to one half of the net rental.

Mill's Description of the Settlement.—The general nature of this settlement has been well described by John Stuart Mill in a paper submitted to Parliament in 1857.

“In the Punjab one and the same man is usually the absolute proprietor and generally the sole cultivator, though he may occasionally lease out a few acres to tenants. He is saddled with no rent. But these men, well maintaining their individuality, do yet belong to the Village Communities. A village is not inhabited by a certain number of ryots each unconnected with the other, but by a number of persons of common descent, forming one large cousinhood, having their own headman and accustomed to joint action and mutual support.

The British Government has from the first decided on levying the tax by money payments assessed for a number of years. The peasant proprietors compound with the State for a fixed period, such assessment and compounding being technically called

(21) SETTLEMENT IN CENTRAL PROVINCES 99

Settlement. But the Proprietors do not individually engage with the Government, but by villages. The brotherhood, through its headmen or representatives, undertakes to pay so much for so many years; and then, having done this, they divide the amount among themselves assigning to each man his quota. Primarily each man cultivates and pays for himself but ultimately he is responsible for its coparceners and they for him and they are bound together by a joint liability. The Punjab system, therefore, is not Rayatwari, nor Zamindari, but the *Village System*.

(21) MALGUZARI SETTLEMENT IN THE CENTRAL PROVINCES

The C. P. were formed at different times. The Raja of Nagpur ceded the Sagar and Narbada Territories in 1817 after the Third Maratha War. In 1849 Lord Dalhousie annexed the State of Sambalpur as the Raja died without an heir; and in 1853 the whole of the territories of the Raja of Nagpur was annexed as the claims of the adopted son were set aside. All the tracts were placed under the Chief Commissioner of Central Provinces in 1861 by Lord Canning.

The Sagar and Narbada Territory suffered so much under excessive and frequent settlements that in 1834 Robert Mertins Bird was appointed to make a special report and as a result of this a twenty years' settlement was made in that year. Short term settlements were made in Nagpur and Sambalpur after their acquisition, but it was not till 1861 that a proper settlement was made. Sir Richard Temple—who had been an assistant of Thomason and Lawrence—was in favour of a Permanent Settlement which, he argued, was good both for the subjects and

the State. The latter would be compensated for the loss of its prospective land revenue by the gradual increase of other branches of revenue. These branches entirely depended upon the wealth of the people and nothing contributed so much to augment that wealth as a Permanent Settlement.

But while this question was being debated, a new settlement was begun in 1863 of which the chief feature was the recognition of the rights of *Malguzars*. The *Malguzars* were farmers of revenue under the Maratha rule. Though their status was far inferior to that of Zamindars or Talukdars, they had acquired certain proprietary rights over the Villages whose revenues they collected. In the Malguzari Settlement (which is a species of Zamindari Settlement) the rights of the ryots or of the villages were ignored in the beginning. The State claimed half of the rental that the Malguzar got from his tenants. The State also undertook to *fix* this rent that the tenants had to pay to the Malguzar. The Settlement was to last for thirty years.

(22) SUMMARY AND CONCLUSION

We have thus passed under rapid review the principal land-settlements made during the regime of the East India Company—namely, those in Bengal, Madras, Bombay, North-West Provinces, the Punjab and (partly) the Central Provinces. We shall give, in a subsequent chapter, the development of the Land-Revenue Policy under the Crown and the technical details of its administration. But the foregoing account shows that the main lineaments of that policy were fixed in the pre-Mutiny period. When the Charter was renewed in 1853 special attention was paid to this

question. The Directors were against the Permanent Settlement but they admitted that the Indian Land Revenue was a *tax* and not a *rent*. Thus in their famous Despatch of December 17, 1856 they said: "The right of the Government is not a *Rent* which consists of all the surplus produce after paying the cost of cultivation and the profits of agricultural stock, but a land-revenue only, which ought, if possible to be so lightly assessed as to leave a surplus or *Rent* to the occupier whether he, in fact, let the land to others, or retain it in his own hands."

The Half-Rental Rule and the 30 years Settlement were also accepted, though, in practice, there were wide and frequent departures from it, particularly in the sparsely peopled parts of India, *e. g.*, the Punjab, the Central Provinces &c.

SECTION TWO

(23) FINANCE UNDER THE COMPANY

We have considered in the 3rd and 4th chapters the territorial expansion of the Company during this period. It would be interesting to examine the effect of this expansion upon the finances of the Company. What the Court of Proprietors in England cared for was a satisfactory dividend; this depended, in its turn, upon a surplus of revenue over expenditure in India. To 'maximise' the revenue, and 'minimise' the expenditure was the Alfa and Omega of the policy of the Directors. In the pursuit of this policy the Directors found themselves exposed to two conflicting temptations. On the one hand they kept on protesting against that expansive tendency of the policy of Wellesley, of Hastings, and of Dalhousie, which involved them in costly wars and thus balked them of their dividend; at the same time it made them reluctant to let go out of their grasp any of the newly acquired territories, as the employment of an increasing number of civil and military officers for their administration gave full play to their exercise of 'patronage'. The revenues of the Company were thus subjected to a double loss—that caused by wars, and that caused by an expensive system of administration, and the net financial result of the career of conquest and expansion which the Directors alternately openly disavowed and secretly desired, was an alarming addition to the debt of the Company. No efforts were spared *e.g.* exactions and tributes from Native Princes, Subsidiary Alliances, fines and forfeitures &c., for getting as large a revenue as possible. But the whole of it was

swallowed by the exigencies of administration, and more was constantly demanded. Kaye gives the following account of this increasing revenue: "Under the administration of Lord Cornwallis 1792-93, the Indian revenue amounted to 8 millions of English Money. Under Lord Wellesley's administration in 1804-05 it had risen to nearly 14 millions. At the close of Lord Minto's period of government in 1813-14 it was set down at 17 millions; under his successor, Lord Hastings in 1821-22 it exceeded 21 millions; in 1852, the gross revenue was estimated at 29 millions." *

But in spite of this continuous increase of revenue the position of the Company went from bad to worse. The Company, paradoxically enough, used to have a *surplus* when the revenue was smaller. But the expensive wars of Wellesley caused heavy deficits and therefore a large Public Debt. The Company had to approach Parliament for assistance, and at the time of the renewal of the Charter in 1813, an important change was made in the system of keeping the accounts of the Company. From 1765 to 1813 the East India Company did not distinguish between its territorial from its commercial expenditure. But the Act of 1813 required a separation of these accounts. Lord Hastings, after attending to the grave situation of the Company's finances, calculated that the acquisition of territory made by him would yield to the Company a net annual surplus of four millions of pounds. But in spite of the additions to territory, the period from 1813 to 1833 ended with an increase of 17 million pounds in the public debt. In that year the Company was deprived of its last traces of commercial monopoly and the Indian Exchequer was saddled with

* Kaye: 107.

the burden of paying more than £600,000 for dividends to proprietors of India Stock. The extension of territory in the period 1833-53 resulted in an enormous addition to the Public Debt which rose from 39.4 million pounds in 1829 to roughly 60 million pounds in 1850.

A natural result of recurring deficits and heavy additions to the debt was the increase and multiplication of taxation.

All the taxes and other sources of revenue produced about $24\frac{1}{2}$ crores of Rupees in 1851-52, out of which, land contributed as many as $14\frac{1}{2}$ crores. On the other hand the total expenditure in the same year was roughly $24\frac{1}{2}$ crores out of which 10 crores was for military purposes alone.

(24) PUBLIC WORKS

From the continued financial difficulties of the Company (as explained in the last section), one will not be wrong in inferring that no considerable outlays were made upon the construction of Public Works during this period. The average annual amount utilised for 'Public Works in India, comprising roads, bridges, embankments, canals, tanks and wells' was about 30 lacs of rupees. In 1837-38 it was 17 lacs; in 1851-52 it was 70 lacs. But in spite of this increase, one must admit "that the amount of money expended on such works is miserably small in comparison with the immense sums lavished on unproductive wars".* As the same authority continues: "that roads have not been made, canals have not been dug, bridges have not been built, in the number and to the extent to which the interest of the country demanded, and the

* Kaye : 316.

benevolence of its rulers desired, was so, solely because the money which was necessary to the construction of such works has been abstracted from the public treasury to meet the expenditure incurred by the ruinous wars in which we have been engaged."

What progress was made was due entirely to the public spirit of Governor-Generals like Hastings and Hardinge, to the lessons taught by the visitations of famine in North India which brought home to the authorities the necessity of constructing Irrigation works, and finally to the labours of Engineers like Colonel Bird Smith and Sir Arthur Cotton.

As soon as some tranquility was established after the wars of Hastings, the attention of that Governor-General was drawn to the extensive system of the Jumna and Ganges Canals constructed by the Mogul Emperors, which had fallen into ruins. The restoration, therefore, of the Western and Eastern Canals of the Jumna, was the first great achievement of the new administration. The name of Colonel Colvin is associated with these works.

The famine of 1838-39 pointed to the restoration of the Ganges Canal—which was sanctioned by Lord Auckland. Lord Ellenborough wished to have the canal mainly for the purposes of navigation, and under such conflicting views, no progress was made until the time of Lord Hardinge. The latter put his heart into the project and thus the great work was accomplished. The Ganges Canal has been described "as one of the most magnificent works in the world."*

In the newly acquired province of the Punjab, the

* Kaye : 301.

development of the country by irrigation was one of the leading ideas of Lawrence from the first. The proposals of Lawrence were cordially approved by Lord Dalhousie and materialized in the Baree Doab Canal.

Commenting upon the material and moral advantages of irrigation, Kaye rightly observes: "To fertilise the land is to civilize the people. It is impossible to conceive anything that will have a greater effect upon the civilization of the inhabitants of Upper India than the great remedial measures which guard them collectively against all the barbarising and demoralising effects of famine, and secure to every man individually his daily bread."*

The question of irrigation in South India—where the physical conditions are different from those of the North was tackled by Sir Arthur Cotton, and he projected and far advanced large schemes in the deltas of the three great rivers in Peninsular India—the Krishna, the Godavari, and the Kavery.

Equally important was the provision of the means of communication—the Trunk Road from Calcutta to Delhi (1423 miles), and Bombay Agra Road commenced in 1840 (740 miles) being the outstanding achievements in this direction.

In spite of these results, the general complaint against the Directors was that they did not apply sufficient funds for Public Works: nor did they allow such works to be undertaken by private agency.

(25) EDUCATION

Under the stress of wars and of territorial aggrandizement no attention had hitherto been paid

* Kaye: 304.

to the condition of the people. The economic drain which increased in volume and ramifications with every increase in the territories of the Company was, if possible, the least evil of the Rule of the Company. Greater harm was done by the complete exclusion of Indians from every post of honour and emolument in the public service of the land. This exclusion was all the more galling when contrasted with the memory of the highest positions—in Civil and Military Departments which they held—and often with distinction—in those Native States which were but recently subverted. Above all nothing had as yet been done to introduce the people of India to that Western Civilization whose superiority in the science of government, in the method of war, in administration, in patriotism, in organization, in discipline, in culture, in education, in science, in art—in every thing, in fact, which makes for success in the great struggle for existence which is going on around us as much among individuals as among nations—whose superiority—I say—was being demonstrated to them with a rapidity and thoroughness that staggered them.

Little attention was paid to the subject of Education before the days of Lord William Bentinck. It is true that the Charter Act of 1813 had allowed the ingress, under restrictions, into India of Missionaries that the latter may introduce useful knowledge and Christianity among the native population; the Act further required one lac of rupees to be set aside every year 'for the revival and improvement of literature and the encouragement of learned natives of India, and for the introduction and promotion of a knowledge of the Sciences among them.'

But in spite of this Parliamentary enactment, and

of what had been done by Warren Hastings for Oriental learning many years before that enactment, little progress was made till 1833. In that year 'a Committee of Public Instruction' was formed to utilise the Fund for the promotion of Education. But this Committee did little more than print Classical books and give stipends to scholars in the Oriental Colleges at Benares and Calcutta. In fact about this time a great controversy was going as to what system of education should be encouraged by Government—the Western or the Oriental. At last the cause of Western Education triumphed, thanks to the labours of the Missionaries, the efforts made by Reformers like Ram Mohan Roy, and to the famous Minute of Lord Macaulay. When he came out to India as the First Law Member under the Act of 1833 he was appointed President of the Committee of Public Instruction. The Members of this Committee were divided on the question of Western *versus* Oriental Education. Macaulay's Minute which made a deep impression upon Lord William Bentinck decided this controversy.

It should be noted, however, that Macaulay's attack was directed against Classical (Sanskrit and Persian) learning. He was entirely for improving the Vernaculars; but as they, in their backward state, could not be a fit medium for conveying Western knowledge, the English language was to be used for that purpose. A number of causes conspired to make the spread of Western learning very rapid. (1) Increased activity of the Missionaries, who established schools and colleges as much for the spread of knowledge as for proselytism. (2) Bentinck displaced the Persian language from the Law Courts and

English was substituted. (3) Freedom of Press was established in 1835. (4) Lord Hardinge made the attainment of Western Education a qualification for entrance into Government Service.

While the Governor-General in Council was labouring to spread Western Education, administrators like Elphinstone, Munro, and Thomason were trying to encourage the spread of knowledge through the vernaculars. Elphinstone found the newly acquired Province of Bombay very backward in education and, therefore, formed "A Society for the Promotion of the Education of the Poor" in 1820 and for 12 years this Society printed books in the vernacular and established schools for the spread of Primary Education. His project to found a College for the spread of higher education was opposed in his Council and did not receive the sanction of the Court of Directors. But though no English School was started in Bombay during Elphinstone's time, one was opened in 1828—the year after his departure, and the great Elphinstone Institution (now the College) was opened in 1842.

Munro derived the inspiration to spread knowledge from Elphinstone. His plan was to establish normal schools for the preparation of teachers who were later on to be placed in the districts for the diffusion of knowledge through books specially designed for the purpose.

What was done for Bombay by Elphinstone, and for Madras by Munro was done for the Agra Province by Thomason. He came to the conclusion that "to produce any perceptible impression on the public mind in the new province, it must be through the medium of the vernacular languages." The labours

of Thomason in the pursuit of this policy were thus eulogised by Dalhousie in 1853: "I desire at the same time to add the expression of my feeling, that even though Mr. Thomason had left no other memorial of his public life behind him, the system of general vernacular education, which is all his own, would have suffered to build up for him a noble and abiding monument to his earthly career."*

Bentinck deputed Mr. William Adam an American Missionary—to enquire into the state of education in Bengal and his report is extremely valuable as throwing light upon the methods and extent of indigenous system of Education as it prevailed there for centuries. He was in favour of extending the vernacular institutions on the lines of Elphinstone and Munro but his proposals were not accepted, and emphasis was laid upon the imparting of higher education through English.

It will thus be seen that though a powerful impetus had been given to the spread of English Education, the Vernaculars were neglected, the network of indigenous schools fell to pieces, and as the funds made available for the promotion of knowledge were, in any case, almost meagre, the progress was imperceptible.

The first step of permanent interest was taken by the Education Despatch of 1854—of Sir Charles Wood, the President of the Board of Control; but the serious execution of the policy adumbrated by that Despatch properly belongs of the next period.

(26) INDIANS AND THE PUBLIC SERVICES

A perpetual problem of Indian Administration has been the extent to which Indians should be employed in the administration of the country. In the beginning they were employed in the Civil Departments as well as in the Army. Indeed it was through them that the duties of Diwani—*i. e.* Revenue Collection and Administration of Justice were discharged. Their exclusion from office begins from the year 1772 when the Court of Directors resolved to 'stand forth' as the Diwan. At that time servants of the Company—Indian as well as European—were tainted with corruption. Cornwallis tried to remove this evil by increasing the salaries of the European servants of the Company and thus putting them above the temptation of receiving bribes. But, as already noted, the weakest point in the reforms of Cornwallis lay in his having systematically ignored the claims of the Indians. Every extension of territory meant employment of more Europeans and an enormous addition to the 'patronage' of the Court of Directors. The way in which they distributed this patronage among themselves has been referred to already. That the general tone of the inferior servants of the Company—and particularly in the interior of the country—was low is now admitted, though there were many honourable exceptions. How jealous the Directors were of their patronage is well brought out by the fate of the Fort William College which Marquis of Wellesley established at Calcutta. The object of the College was to give to the young factors and writers of the Company a knowledge of the Vernaculars and of the history, customs, and institutions of the Indians.

But the Directors ordered the immediate closing of the College. The servants instead got a rudimentary knowledge in the Institution at Hailebury in England prior to their going out to India. The evil effects of the ignorance and inexperience of the English servants and of the exclusion of Natives were well pointed out by Sir Thomas Munro and by Elphinstone; but it was reserved for Lord William Bentinck to be the first to throw open the judicial administration to the sons of the land. This new principle was laid down in the Act of 1833. "No Native of the said territories, nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the said Company." In explaining this clause the Despatch which accompanied the Act (and which has been attributed to James Mill) said "The meaning of the Enactment we take to be that there shall be no governing caste in British India; that whatever other tests of qualification may be adopted, distinctions of race or religion shall not be one of them," and it proceeded to make the extended employment of Indians an argument for "the promotion of every design of education, and the diffusion among them of the treasures of science, knowledge and moral culture." It was Lord Macaulay who ran into raptures at having been one of those who assisted in framing the Act of 1833 which contained that clause—"that wise, benevolent, that noble clause" as he said.

In practice, however, the policy of the Company was one of exclusion. The distinction between Covenanted and uncovenanted service was put forward as an excuse for this exclusion. The Act of 1793

reserved all principal offices in India to the 'Covenanted' servants (*i. e.* those who had entered into a Covenant or agreement that they would not trade or accept presents etc.) of the Company. But the covenant became meaningless when the Company ceased to be a commercial body in 1833. Yet the distinction was maintained and the exclusion of Indians continued.

In 1853 the Directors were deprived of their patronage and the Civil Service of India was thrown open to competition to all natural born subjects of Her Majesty. But as the competitive examination was held in London, it meant the exclusion of most of the Indian candidates. The assurances contained in the Queen's Proclamation did not materially improve matters. The subsequent history of this question will be taken up in a later Chapter.

CHAPTER VI

SOME GREAT ADMINISTRATORS UNDER THE COMPANY

(27) JUDICIAL REFORMS OF CORNWALLIS

We considered in the first Chapter how, thanks mainly to the resourcefulness and energy of Clive, British power was firmly established in Madras as against the French, and in Bengal as against the Nawab of that Province. The misrule that ensued in Bengal attracted the attention of Parliament which by the two Acts described in the second Chapter, established control over the affairs of the Company. The first Parliamentary Governor-General to be sent to India was Lord Cornwallis—a nobleman, statesman, and soldier and, therefore, peculiarly qualified to deal with the very pressing questions of revenue settlement and judicial administration in Bengal. Some account has already been given of his Permanent Revenue Settlement. In the administration of justice he followed the lines laid down by Warren Hastings. It should be remembered in the first place that the 'District' had been made a unit of administration under the 'Collector' in 1781. But the revenue and judicial work had been combined in the hands of the Collector. The first reform of Cornwallis consisted in separating these two functions, all revenue matters being placed in the hands of the Collector, and all judicial (so far as they were civil) matters being placed in the hands of 'District Judges' who were now appointed in each District. There were also

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established in large towns. "*Munsif's Courts*" and "*Ameen's Courts*" (to try cases of the value of Rs. 50 and under) and "*Registrar's Courts*" (for cases not exceeding Rs. 200 in value). Appeals against the Munsif's and Registrar's Courts lay to the District Court mentioned above. The District Court consisted of the Judge, a *Kazi* and a *Pandit*. Appeals from the District Judge lay to the *Provincial Courts* of which four were established at Calcutta, Patna, Moorshidabad, and Dacca respectively. In each there were three European Judges, a Registrar, a *Kazi* and a *Pandit*. In all cases of less than Rs. 1000, their decisions were final. In more valuable cases an appeal lay to the '*Sudder Diwani Adalat*' at Calcutta presided over by the Governor-General in Council.

Criminal Courts.—The lowest Criminal Courts were those of the Magistrates' Courts held by the various Justices of the Peace in the District (the District Judges, and Registrars, and *Ameens* being all Justices of the Peace). These Courts could award sentences up to 15 days imprisonment or fine up to Rs. 200. Above these Courts were the Courts of Circuit, presided over by the Judges of the Provincial Courts (mentioned above). They were four in number and went from District to District. Their Jurisdiction was original in all cases sent up to them by the Magistrates' Courts and appellate in decisions of the same Courts. Above the Courts of Circuit was the *Sudder Nizamat Adalat* presided over by the Governor-General in Council.

Police.—The police arrangements were altered at the same time. The private establishments of the Zamindars were abolished, and a connected Police

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service was established, having a *Daroga* in charge of each District.

Thus the salient features of the reforms of Cornwallis were (a) a complete separation of revenue from judicial administration; and (b) the provision of a regular system of appeals from lower to higher Courts. Cornwallis, however, was not satisfied with a mere reform in the machinery of administration. He had seen how entirely the Native inhabitants were exposed to the unchecked jurisdiction of the officers of the Company. He was eager to give to the helpless inhabitants some means of redress against the officers. He made all the officers amenable for the Courts of Law. "We have resolved, likewise, that the Collectors of revenue and their officers, and indeed all the officers of the Government, shall be amenable to the Courts for acts done in their official capacities, and that Government itself, in cases in which it may be a party with its subjects in matters of property, shall submit its rights to be tried in the Courts under existing laws and Regulations."

Cornwallis also turned his attention to systematic codification of the Regulations. As has been already explained the power of passing such Regulations was conferred on the Governor-General in Council by the Regulating Act. But they had not been systematically collected or arranged: some were not even printed. Cornwallis ordered that all such Regulations should be numbered, arranged, printed, and circulated for the guidance of all concerned.

The chief defect in this work of Cornwallis was the entire exclusion of Indians from a share in the administration of their own country. The lamentable

(28) REFORMS OF LORD WILLIAM BENTINCK 117

results of this policy balked his reforms of the success to which they were otherwise fully entitled.

Half a century of territorial expansion had to intervene before the work of Cornwallis was resumed by Lord William Bentinck.

(28) REFORMS OF LORD WILLIAM BENTINCK

Judicial Reforms.—"Of all the Governors who succeeded Cornwallis Lord William Bentinck most resembled that benevolent and upright statesman. As Cornwallis was a reformer, so was he. He had abundant time to devote himself to measures of domestic improvement, for no miserable war was sitting like a curse upon his arm and paralysing his administrative energies.*

Cornwallis had made justice cheap and accessible; he had also provided wide powers of appeal. But this only increased litigation. Also the English Judges, in their eagerness to adhere to the letter of the Regulations, were very slow in deciding cases and, as a result, there was frightful accumulation of work.

The first reform of Bentinck was the abolition of the Provincial Courts which were also Courts of Circuit. They had become "the resting places for those members of the service who were deemed unfit for higher responsibilities." The dilatoriness of these courts as courts of justice was particularly notorious and inflicted great hardships upon the accused and the witnesses. Some relief was given by the establishment at Allahabad of a separate Court of Appeal for the newly created North-West Province. The same result was produced by the employment of

* Kaye : 345.

Indians in the more important posts in the Judicial administration. This was one of the greatest reforms of Bentinck. Hitherto the Judges were Europeans and those who were too old or unfit for revenue work were made Judges. They were ignorant of the language of the people and of their legal and social Institutions. They were also too much given to 'artificial technicalities of law.' On account of these causes judicial administration was fast falling into a chaos and the desirability of entrusting a substantial part of it to Indian agency to clear off the heavy arrears, if for no other reason, had been repeatedly admitted by the Court of Directors. But no step had been taken in that direction. The powers of the Sadar Ameens and the Munsifs which were the only two classes of service open to Indians—were very limited. Bentinck established in 1831 a higher grade of Judicial Offices known as "Principal Sadar Ameens" who were authorised to try cases involving property of any amount. An appeal lay from them to the European Judges.

The reform of the Criminal Branch of Judicial administration was not so easy. Here Bentinck took a retrograde step. He transferred the duties of the Provincial Courts (abolished by him) *i. e.* of holding Sessions for criminal trials to the District Judges. The Magisterial powers of the Judges were taken away from them and retransferred to the Collectors. The Collectors thus became at once Collectors and Magistrates. This combination of functions proved unsatisfactory. His other measures were (1) the appointment of uncovenanted servants as Deputy Magistrates (in 1843) in any district, at the discretion of the Bengal and Agra Governments, and armed with

full Magisterial powers; and (2) improvement in the pay and status of the 'Daroga' to enable this officer to discharge his Police functions properly.

Other Reforms.—The labours of Bentinck were not confined to judicial administration alone. He was thoroughly imbued with the Liberal spirit that swept over England and the Continent about this time. "He was nearer to the *beau ideal* of what a Governor-General ought to be than any man that held that office. There have been several good men and several great men in the same position, but there has been none like him. A paramount sense of duty to the inhabitants of India and a desire to do them good inspired all his words and actions."*

He had received definite instructions from the home authorities to effect retrenchment in expenditure which had grown enormously on account of the wars of Lord Hastings—and with the help of two specially appointed Committees he made large economies in Civil and Military Departments. He reformed the currency, and rupees with the head of the British Sovereign were struck and made equivalent to a tenth part of the pound. He also overhauled the Opium Department.

In administration he was the first to grasp the necessity of employing Indians in the higher posts of the Public Service. "He clearly saw in this far-sighted view of Policy that through the path of gradual enlistment of the intellectual ability and ambition of the Natives in the permanent service of their own land, lay our only reasonable or definite prospect of retaining an ascendancy therein."†

* Torrens : 303.

† Torrens : 303.

His Social Reforms consisted in the abolition of *Sati* and the suppression of *Thaggi*. He was dissuaded from interfering with the customs of the people by Oriental scholars like H. H. Wilson. But he persevered and abolished the evils.

We have already considered in Chapter five his Land Revenue Policy and his Educational Policy.

On the whole we may concur with the tribute paid to him by his colleague in the Council, Sir Charles Trevelyan: "To Lord William Bentinck belongs the great praise of having placed our dominion in India on its proper foundation in the recognition of the great principle that India is to be governed for the benefit of the Indians, and that the advantages which we derive from it should only be such as are incidental to and inferential from that course of proceeding."

(29) MUNRO AND ELPHINSTONE

The Reforming Movement.—As Prof. Ramsay Muir points out* the Reforming movement in India associated with the name of Lord William Bentinck was in part stimulated by the Liberal movement that set in Europe after the overthrow of Napoleon. This new spirit showed itself in two ways. On the one hand there was a far more respectful study and appreciation of Indian law and custom than had been shown since the days of Warren Hastings. Metcalfe, Elphinstone, Munro and Malcolm—each one of this great quadrilateral of administrators—was an admirer of the village communities of India. The primary aim of these great men was to maintain and strengthen whatever was good in the self-governing institutions

* Ramsay Muir : 282—283.

of the people. Along with this eagerness to understand and preserve what was old, there was an equally strong anxiety to introduce the civilization of the West into India. Dalhousie represents this type.

Their attitude towards the Village Communities.—As examples of the first tendency a few extracts from different authorities describing the village communities may be given here.

Elphinstone in his report had drawn attention to these village communities. "In whatever point of view we examine the Native Government in the Deccan, the first or most important feature is the division into villages or townships. These communities contain in miniature all the materials of a State within themselves, and are almost sufficient to protect their members, if all other Governments are withdrawn. Though probably not compatible with a very good form of Government, they are an excellent remedy for the imperfections of a bad one; they prevent the bad effects of its negligence and weakness, and even present some barrier against its tyranny and rapacity.

"Each village has a portion of ground attached to it which is committed to the management of its inhabitants. The boundaries are carefully marked and jealously guarded. They are divided into fields, the limits of which are exactly known; each field has a name and is kept distinct, even when the cultivation of it is long abandoned. The villagers are entirely cultivators of the ground with the addition of the few traders and artisans that are required to supply their wants. The head of each village is the Patil who has under him an assistant called the Chaugula and a clerk called Kulkarni. There are besides 12 Village officers, well-known by the name of Bara Baloti.....the

Patil is head of the Police and of the Administration of Justice in his village, but he need only be mentioned here as an officer of revenue. In that capacity he performs on a small scale what a Mamlatdar or Collector does on a large; he allots the land to such cultivators as have no landed property of their own and fixes the rent which each has to pay; he collects the revenue for Government from all the ryots; conducts all its arrangements with them, and exerts himself to promote the cultivation and the prosperity of the village. Though originally the agent of the Government, he is now regarded as equally the representative of the Ryot and is not less useful in executing the orders of the Government than in asserting the rights or at least in making known the wrongs of the people."

Sir Charles Metcalfe.—In his famous Minute of 1830 also wrote:—The village communities are little Republics, having nearly everything that they want within themselves and almost independent of any foreign relations...The union of the village communities—each one forming a separate little state by itself,—has, I conceive, contributed more than any other cause to the preservation of the people of India through all revolutions and changes which they have suffered and it is in a high degree conducive to their happiness and to the enjoyment of a great portion of freedom and independence. I wish, therefore, that the village constitutions may never be disturbed and I dread everything that has a tendency to break them up. I am fearful that a revenue-settlement with each individual ryot, instead of one with the village community through their representatives, the head men, might have such a tendency. For this reason,

and for this only, I do not desire to see the Rayatwari Settlement generally introduced into the Western Provinces."

Views of Sir Thomas Munro.—Munro's Views on Indian Administration are contained in his well-known Minute of 31st December 1824 which Mr. R. C. Dutt described as "perhaps the most thoughtful and statesmanlike Minute ever recorded in India since the time of Cornwallis".* Some of those views may be summarised here.

(1) *On the employment of Indians in Administration.*—Munro deplored that no confidence was placed in the Natives and that they were excluded from all offices; he was convinced that mere spread of education would not raise the people; "our books alone will do little or nothing; dry, simple literature will never improve the character of a nation. To produce this effect, it must open the road to wealth, honour, and public employment. Without the prospect of such a reward, no attainments in science will ever raise the character of the people." Munro also held that the employment of Indians was also desirable on the ground of getting accurate information from them regarding their laws and customs and for the making of new laws for them.

(2) *On the Advantages and Disadvantages of British Rule.*—Though British Rule has secured India from the calamities of foreign war and internal commotion it has also brought about the exclusion of the people from any share in legislation or administration; this necessarily leads to a lowering of the character of the people.

* Dutt : Early British Rule page, 160.

“One of the greatest disadvantages of our Government in India is its tendency to lower or destroy the higher ranks of society, to bring them all too much to one level and by depriving them of their former weight and influence to render them less useful instruments in the internal administration of the country.”

(3) *On the Future of India.*—“There is one great question to which we should look in all our arrangements; what is to be their final result on the character of the people? Is it to be raised or is it to be lowered? Are we to be satisfied with merely securing our power and protecting the inhabitants, leaving them to sink gradually in character lower than at present or are we to endeavour to raise their character and render them worthy of filling higher situations in the management of their country and devising plans for its improvement? It ought undoubtedly to be our aim to raise the minds of the Natives and to take care whenever our connection with India might cease, it did not appear that the only fruit of our dominion there had been to leave the people more abject and less able to govern themselves than when we found them...Various measures might be suggested which might all probably be more or less useful (in improving their character): but no one appears to me so well calculated to ensure success, as that of endeavouring to give them higher opinion of themselves by placing more confidence in them, by placing them in important situations, and perhaps by rendering them eligible to almost every office under the Government..... When we reflect how much character of Nations has always been improved by that of Governments and that some, once the most

cultivated have sunk into barbarism, while others, formerly the rudest have attained the highest point of civilization, we shall see no reason to doubt that, if we pursue steadily the proper measures, we shall in time so far improve the character of our Indian subjects as to enable them to govern and to protect themselves."

N. B. :—*For his Views on Education and his Land Revenue Administration see Chapter Five.*

Elphinstone as an Administrator.—Elphinstone came to India as a young lad of 17 in 1796 and served in the capacity of a Private Secretary under Arthur Wellesley—the future Duke of Wellington. He was Resident at Nagpur from 1804 to 1808 and there he obtained intimate knowledge of Maratha affairs. A Mission to Kabul enabled him to write a history of Afghanistan and on his return in 1811 he was appointed Resident at Poona and was witness of the last stages of the Peshwa's rule. After the over-throw of that rule he was appointed Commissioner of the Deccan in January 1818 and Governor of Bombay in 1819.

His fame as a liberal Administrator rests mainly on his work in three directions.* His first endeavour was to codify the Law. He framed the Bombay Code consisting of 27 Regulations and he also had the idea of preparing an exhaustive digest of laws and customs of the different castes of the Hindus. His second object was to confer on the people of India as large a share in the work of administration as possible. In this respect the maxim of Elphinstone was this: "our object ought to be to place ourselves in the same relation to the Natives as the Tartars are to the

* Dutt : India under Early British Rule.

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Chinese: retaining the Government and military power, but gradually relinquishing all share in civil administration, except that degree of control which is necessary to give the whole an impulse and direction." His third and last purpose was to spread a sound system of education, about which something has been said in the preceding chapter.

Conclusion.—It is impossible to mention here all the great names of this period or to specify their work, but the student of this period of Indian administration is easily convinced that at no time—either before or after this period—were there so many able servants of the Company labouring for the good of the people. Sir John Shore, John Sullivan, Sir John Malcolm, Thomason, R. M. Bird, Colvin, Cotton, Briggs, Todd, Grant Duff are famous names. As R. C. Dutt observes,* "Never did Englishmen of any generation show higher literary culture and talent in India, never did they show a truer sympathy with the people."

(30) LORD DALHOUSIE AS AN ADMINISTRATOR

Passing over a period of twenty years from Lord William Bentinck we come to Lord Dalhousie. He is the consummation of the work of the East India Company. His thirst for territorial expansion and his anxiety to introduce material and moral elements of Western civilization into India, illustrate the weakness and strength respectively of the Rulers of India of the first half of the Nineteenth Century. Not only, however, does he sum up in himself the characteristics of the preceding era, he foreshadows the development of the succeeding period. He is thus

* Dutt : India under Early British Rule p. 428.

(30) LORD DALHOUSIE AS ADMINISTRATOR 127

a transitional figure. His views have been set out most clearly in his well known Minute of 28th February 1856 in which he took a review of his long administration.

Each item mentions what he achieved or proposed to achieve regarding the various problems of administration.

1. Securing the peace of the Frontier by friendly treaties with Kashmir, Khelat, and Kabul.
2. Conquest of the Punjab and Burma.
3. Annexations of the kingdoms of Nagpur and Oudh, the principality of Satara, the Chiefship of Jhansi, and the acquisition of Berar.
4. Increase in the revenue from 26 million pounds in 1847-48 to 30 million pounds in 1855.
5. Setting up of strong Civil Governments in the provinces newly acquired, particularly in the 4 kingdoms of Punjab, Burma, Oudh and Nagpur.
6. Separation of Bengal, and its administration by Lieut-Governor as required by the Act of 1853.
7. The establishment of the Legislature of India as distinct from the Executive Council of the Governor-General. Its procedure was fixed; its debates were printed and published.
8. Reorganization of the civil service after it had been thrown open to competition, by setting up Departmental examinations as tests of efficiency and promotion.
9. Appointments of Inspectors of Prisons in the N.-W. Provinces and Bengal, and in Madras and Bombay for establishing prison discipline.

10. Extension of the system of primary education as it was established by Mr. Thomason in the N.-W. Provinces and the establishment of the Presidency College of Calcutta.

Giving effect to the orders contained in the famous Education Despatch of 1854.

A Department of Public Instruction under a Director was established: provisional rules for grants-in-aid were drawn up; and a Committee appointed to frame a scheme for the proposed Universities. Also special attention was paid to Female Education.

11. The first introduction into the Indian Empire of three great engines of social improvement which the sagacity and science of Western times had previously given to the Western Nations namely Railways, uniform Postage, and the Electric Telegraph.

Railways—A system of trunk lines connecting the interior of each Presidency with its principal port and connecting the several presidencies with each other, projected and begun.

Post.—A special Commission laid down the following principal rules underlying the postal system (1) the institution of the post office throughout India as a distinct department, superintended by the Director-General, under the immediate control of the Government of India. (2) A uniform rate irrespective of distance, throughout India. (3) The substitution of postage stamps for cash payments. (4) The restriction of the privilege of official franking to as few officers as possible.

Telegraph.—About 400 miles of Electric Telegraph were brought into operation.

(30) LORD DALHOUSIE AS ADMINISTRATOR 129

12. (a) The successful execution and completion of the Ganges Canal.
- (b) The Bari-Doab canal in the Punjab.
13. Works for improving the general communications of the Country.
 - (a) Internal navigation by steam-ship flotillas in the Ganges, the Indus, and the Irrawady.
 - (b) Improvements in the ports of Calcutta, Bombay, Karachi, Rangoon and the new port of Dalhousie on the Bassein River.
 - (c) Construction of roads—particularly the Grand Trunk Roads, and bridges &c.
14. Finally the practice of requiring the Provincial Governments to submit annual Reports of important occurrences in their Provinces was begun by Dalhousie.

Retrospect.—With this chapter the administration of India by the East India Company comes to a close. It appeared as though the possessions of the East India Company in India were never left in a stronger or more enduring state than when Lord Dalhousie left the country. But Dalhousie built upon treacherous foundations. His work—and along with it the work of his predecessors—received a rude shock when the great Mutiny broke out. There was something fundamentally wrong with the System of Double Government introduced by Pitt's Act of 1784. We shall conclude this Part by examining the working of this faulty arrangement in the next chapter.

CHAPTER VII

HOME ADMINISTRATION (1784-1858)

(31) PARLIAMENTARY LEGISLATION DURING THE PERIOD

The periodic renewal of the Charter of the Company afforded to Parliament excellent opportunities to hold inquests into the affairs of the Company and to modify or restrict or altogether abrogate its privileges. It is proposed to review here the legislation thus occasioned. An *Act of 1786*, chiefly at the instance of Lord Cornwallis who was appointed to succeed Warren Hastings, empowered the Governor General to override the majority of his Council and act on his own responsibility. The *Charter Act of 1793*, which was passed when Pitt was at the height of power and his friend Dundas was the President of the Board of Control, made no important change. It provided for the payment of the members and staff of the Board of Control out of Indian revenues. It continued for a further period of twenty years the territorial possessions and exclusive privileges of trade enjoyed by the Company. Passing over a number of minor enactments during the interval 1793-1813 we come to the *Charter Act of 1813*. It was preceded by a searching enquiry by a Committee of the House of Commons into the financial affairs of the Company and its labours are embodied in the famous Fifth Report which Ilbert describes as "a standard authority on Indian land tenures, and the

best authority on the judicial and police arrangements of the time".* Fierce controversy raged about the continuance of the trade monopoly of the Company and the ingress into India of British subjects for purposes of trade and religious propaganda. The proposals of Government were embodied in thirteen Resolutions which were accepted by Parliament and formed the basis of the Act of 1813. Though the Charter was renewed for a period of twenty years, the import and export trade with India was thrown open to all British subjects, the Company retaining only the monopoly of trade in tea with India and of trade with China. Hitherto the Company had not kept its accounts in such a way as to show its political and territorial expenditure distinct from its commercial expenditure. This led to confusion. The new Act required the Company to show the accounts separately. It confirmed the patronage of the Court of Directors subject to the approval of the Crown in the case of higher appointments and of the Board of Control in the case of certain others. It also limited the number of King's troops the Company was required to maintain in India at its own expense. Finally it allowed British subjects to go out to India as traders or missionaries and to settle there under a system of license. The Act also marks the beginning of the ecclesiastical establishment in India and provided for a lac of rupees being set apart every year for "the revival and improvement of literature and the encouragement of the learned native of India, and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories in India".

* Ilbert; Historical Introduction p. 73.

Charter Act of 1833.—Passing over once again minor enactments during the twenty years following 1813 we come to the Charter Act of 1833. This Act was passed by the Reformed House of Commons. Macaulay who was then in Parliament was Secretary to the Board of Control and James Mill was Examiner of India Correspondence at the India House. To James Mill is attributed the famous Despatch of 1834 which is an illuminating Commentary upon the Act of 1833.

Lord Morley characterised this Act as “certainly the most extensive measure of Indian Government between Mr. Pitt’s famous Act of 1784 and Queen Victoria’s assumption of the Government of India.”* To appreciate this high praise we must recall the changed circumstances—both in India and in England—under which that measure was enacted. The wars of Wellesley and Hastings had added enormously to the territories under British Rule, and to the difficulties of administration in India. In England, on account of reform of Parliament, liberal principles were in the ascendant; (1) there was a clamour for freedom of trade with India; (2) for the unrestricted immigration of Europeans into India; (3) for a reform of the laws of India; (4) and for an improvement in the state of Education prevailing in India.

In response to the first demand the last traces of the commercial monopoly of the East India Company were abolished, and the Company thenceforward became a purely political body.

To satisfy the second demand all restrictions upon the immigration of Europeans into India were removed; they could now settle in any part of India

* Speech (Keith Volume II, 95).

that was in British possession, without the requirement of a license.

The unrestricted ingress into India of Englishmen rendered the reform of the Indian Law almost imperative. Macaulay well pointed out the danger of exposing the Indian population to the tyranny and insolence of the conquering race. As he put it, "India has suffered enough already from the distinctions of castes and from the deeply-rooted prejudices which those distinctions have engendered. God forbid that we should inflict on her the curse of a new caste, that we should send her a new breed of Brahmins, authorized to treat all the native population as Pariahs."*

The dangers of the situation were increased by the very insufficient power of law-making that was enjoyed by the Governor-General in Council. Hitherto his Regulations had been made with special reference to the Indian population and to the servants of the Company. Nor could the Regulations have any jurisdiction over the Supreme Court which owed its origin to a Royal Charter. The first thing to do, therefore, was to increase and extend the legislative power of the Governor-General in Council so as to reach European settlers. He was, accordingly, empowered "to make laws and regulations for all persons (British, Foreigners, or Natives), and for all Courts (*i. e.*, the Courts of the Company and the Supreme Court)." Such laws were not required to be registered in the Supreme Court and forthwith became Acts of the Governor-General in Council.

A reform of the machinery for the making of laws was required on another ground also—namely the chaotic state into which laws and Regulations had

* Speech July 1833 (Keith).

fallen about 1833. At the time of considering the judicial reforms of Warren Hastings reference was made to the triumph of Hastings in his struggle against the Supreme Court as to the laws that were to be applied to the Indian subjects of the East India Company. The Act of 1781 laid down that in suits between Natives within the jurisdiction of the Supreme Court regard should be paid to the personal law of the parties and it likewise prescribed that no act committed in consequence of a rule or law of caste in Native families should be held to be a crime, although it might not be justifiable under the laws of England.

But though it now became possible for the personal law of the Hindus and Mahomedans to be developed, the principle was neither universal nor satisfactory; (a) thus, there were many communities, numerically small but socially and politically of increasing importance, *e.g.*, the Parsees, the Jains, the Portuguese, the Armenians etc., which were outside the pale of Hindu or Mahomedan Law: (b) again there were large areas of modern life for which neither the Hindu nor the Mahomedan law could have made any provision; (c) further, as the Mahomedan Law was applied in criminal trials, it inflicted great hardships upon the non-Mahomedans; (d) nor were some of the punishments prescribed by the Native Law *e.g.* mutilation, in consonance with modern views.

A practical difficulty in the application of the personal law arose from two further causes; (1) the Mahomedan Law was contained in the Koran and other texts; the Hindu Law in the Shastras and Commentaries thereon. It was not easy to interpret the texts or reconcile conflicting authorities. (2) In actual

practice, the laws—as contained in the texts—were modified by custom.

The arduous task of adapting the laws and customs of the population to changed circumstances was sought to be accomplished by the decisions of the judicial tribunals. But there were different tribunals, independent of each other, which administered the law. There were Courts established by Acts of Parliament (*e. g.* the Mayor's Courts), by Royal Charters (the Supreme Court,) and Courts of the Company (the Sadar Courts). Each put its own interpretation and even the Judges of the same Court did not always agree.

The power of making Regulations was given to the Governor-General in Council of Bengal, and to the Provincial Governors in Council by the Acts of 1773 and 1781. But the Regulations were of the nature of official instructions and explanations rather than of legislative enactments. Thus they embodied the Land Revenue Settlements and the judicial administration. Lord Cornwallis took great pains to systematize the Regulations. "He gave them permanent expression and substantial shape, for the guidance alike of those who were to administer and those who were to appeal to them. The Regulations were to be numbered, arranged, printed and circulated. They were to have a home in every Government Office and to be transmitted to the Authorities in England".* Lord Cornwallis arranged these Regulations in 1793 in the Bengal Code; similar collections of the revised Regulations were made for Bombay by Elphinstone, and for Madras by Sir Thomas Munro.

But these Regulations had defects of their own :

* Kaye : 339.

they were the work of practical administrators and not of skilled draftsmen, they were voluminous, and obscure, and contained a great deal of matter that was obsolete or repealed; above all, as they emanated from different sources, they often contained conflicting instructions.

On the top of the Regulations stood the Acts of Parliament that were made applicable to India. (a) Thus the Charter of 1726 given by George I introduced into India the English Statute Law as it stood in that year. (b) English Statute Law passed after 1726 was applicable in India if it was expressly extended to any part thereof.

It would be clear from this brief survey of the state of laws and judicial tribunals in British India, that the time had come for great reform. Macaulay suggested 'codification of the laws' as the only remedy to remove uncertainty, and recommended the appointment of a Law Commission for that purpose. "The work of digesting a vast and artificial system of unwritten jurisprudence is far more easily performed and far better performed by few minds than by many, by Government like that of Prussia or Denmark, than by a Government like that of England. A quiet knot of two or three veteran jurists is an infinitely better machinery for such a purpose than a large popular assembly divided, as such assemblies almost always are, into adverse factions. This seems to be, therefore, precisely that point of time at which the advantage of a complete written Code of laws may most easily be conferred on India. It is a work, which cannot well be performed in an age of barbarism, which cannot without great difficulty be performed in an age of freedom. It is a work which especially belongs to a

Government like that of India—to an enlightened and paternal despotism” The great principles of codification were three, as put forward by Macaulay: *uniformity* where you can have it, *diversity* where you must have it, but in all cases *certainty*.

The provisions of the Charter Act of 1833 so far as they bore upon the machinery for the making of Laws for India were three: The Act deprived the Governors in Council of Bombay and Madras of their independent powers of law-making: it vested this power in the Governor-General in Council of India; and it added to the Council, for the satisfactory work of legislation, a fourth member (called the Law Member) who was to be an English Barrister.

The Charter Act also provided for the appointment of a Law Commission for codification, and Macaulay, the first Law Member under the new Act, was appointed the President of this Commission.

So far, however, as actual results were concerned, the Law Commission was a failure. Its activity languished after the departure of Macaulay. The draft of the Indian Penal Code made by Macaulay was no doubt a solid achievement: but though begun in 1835 it did not become an Act for nearly 20 years. The Commission, no doubt, collected a vast amount of information, but did not proceed beyond that; and it cost India about 17 lacs of rupees.

The provisions of the Act of 1833 with respect to Education and the employment of Indians in the Public Services have been referred to in Chapter five.

The Despatch of 1834 offered important advice as to the relations of Central Government with the Provincial Governments and the Act provided for the creation of a new Presidency of Agra. The

significance of the Act as marking the growth of centralization will be referred to in the next Chapter.

Charter Act of 1853.—Parliamentary legislation during 1833-53 was of a minor character. But when in 1853 the Charter was renewed it simply provided that the Indian territories should remain under the Government of the Company, "in trust for the Crown, until Parliament should otherwise direct." The Act reduced the number of Directors of the Company from twenty-four to eighteen and provided that six of them should be appointed by the Crown. It authorized the Court of Directors and the Board of Control to appoint a Lieutenant-Governor of Bengal. Its provision regarding the enlargement of the Executive Council of the Governor-General for legislative purposes will be referred to in another connection. It took away the patronage from the Court of Directors and the Civil Service of India was thrown open to competition. An *Act of 1854* provided for the appointment of Chief-Commissions to minor provinces in India. Finally comes the Act of 1858 which gave the death-blow to the rule of the E. I. Company, about which more will be said presently.

(32) SUPREMACY OF THE PRESIDENT OF THE BOARD OF CONTROL

Having reviewed Parliamentary legislation during 1784-1858 it becomes necessary now to examine the nature of the Double Government set up by Pitt's Act and the difficulties and defects of that system of Government. The Regulating Act proceeded on the theory that Parliament could *directly* control the actions of the Governors of the East India Company in India by sending out Englishmen as members of their

Councils or as Judges of the Supreme Court. But as this experiment led to disastrous consequences—particularly to the weakening of the Executive in India—it adopted a different method—namely that of *controlling* the policy of the Court of Directors in England, so far, of course, as it related to the political affairs of the E. I. Company, leaving the Directors the entire management of their commercial monopoly as well as their patronage. This was the principle underlying Pitt's India Act which created the Board of "six Commissioners for the affairs of India." But, soon, on account of various causes, all political power gravitated into the hands of the President of the Board of Control and the Directors were reduced to mere figure-heads satisfied with the 'patronage'. It is necessary to see how this was brought about.

One cause was the changes effected in the composition of the Board from time to time. Under the Act of 1784 it consisted of 6 Members who were to be Privy Councillors. The Chancellor of Exchequer and two Secretaries of State were *ex-officio*, and other three were to be nominated. The inclusion of the two Secretaries and the Chancellor provided for the business of the Board being brought, when necessary, under the view and within the control of the Cabinet. But the active and practically the sole control of affairs rested with the nominated Commissioners whose salaries were chargeable to the revenues of India. By the Act of 1793 the First Commissioner was called the President of the Board of Control; the other two Commissioners might be appointed from outside the Privy-Council, and the Secretary of the Board might be a Member of Parliament so that his office became a party appointment. Under this change

the collective action of the Board became a mere fiction, and all power came to reside in the hands of the President who derived additional importance from his being a member of the Cabinet. This process of concentration of power was completed when the number of Commissioners came to be successively reduced and after 1841 the Board consisted only of the President, the first to hold office under the new conditions being Ellenborough.

Though the Board was given full powers of control over the political affairs of the Company it had no power to correspond with India independently of the Court of Directors. All correspondence had to pass through the Court of Directors. The Board was given full access to all the records and correspondence of the Company; the Court of Directors were required to supply copies of all orders and despatches sent to India within eight days of sending them and all despatches from India immediately on their receipt. No order could be sent to India without being first submitted to the Board for approval; full power was given to the Board to make alterations in the despatch, which the Court were bound to send in its altered form after, if they so desired, an exchange of opinion thereon; and if the Court failed to frame despatches within fourteen days, the Board might itself frame despatches which the Court was bound to send on. Further, a Secret Committee (limited in practice to the Chairman and Deputy Chairman of the Court) was constituted and sworn to secrecy; through which Committee the Board used to send secret orders to the Government of India, which the Secret Committee was bound to transmit as from themselves. Similarly, any despatches

from India marked 'secret' were to be recorded at the India Office in the Secret Committee and delivered to the Board without being seen by the Directors.

The tendency of the President of the Board to domineer over the Directors was emphasized by the procedure followed for the carrying on of correspondence with India. The method of correspondence was this: Every despatch that came from India went to the Examiner's Department, and the Chairman, his Deputy and the Senior Merchant, with the help of the Examiner framed the draft of the reply. It was then *privately* discussed between the Chairman of the Court and the President of the Board, any difference of opinion being removed at this stage, which was known as that of "previous communication." The draft—as now finally settled—was sent to the Committee of the Court to which it belonged. The Committee suggested changes in the draft, but they were practically of no avail. The draft was then discussed in the whole Court, and then forwarded to the President as an official communication from the Court. It will be thus seen that the President settled the draft *before* availing himself of the knowledge and experience of the Directors. When it is further remembered that he, as well as the Secretary of the Board were members of a political party and came in and went out of office according to the fate of their party, and that both were generally ignorant about the conditions of India, one can realise how the administration of India became entirely irresponsible. Nor could the Directors be an effective check over the President. Though six out of the twenty-four Directors were to be annually elected all formed a close circle. Re-election was the rule and most enjoyed a pretty long tenure of office.

It was not the salary of £300 per annum that made them stick tenaciously to their post. Their real remuneration consisted in the exercise of patronage which was distributed as follows: Every year the number of appointments to be made in India was first ascertained, and it was divided into twenty-eight equal parts. Two were assigned to the Chairman and Deputy Chairman of the Court, two to the President of the Board, and the remaining twenty-four to the 24 Directors. It has been calculated that the value of each share of patronage was about £15,000. This patronage system produced two fatal results upon the position and tone of the Court of Directors. (1) It made them entirely subservient to the President, lest he should, by his Parliamentary influence, deprive them of their patronage, as Fox once threatened to do. (2) The system also made them grasping at every increase in the revenues, and at every extension in the territories, of India, for both increased their patronage and, therefore, power.

While thus the whole authority of superintendence, direction, and control of Indian affairs was passing into the hands of the President (who, of course, was a member of the Ministry), his irresponsibility to Parliament was being increased by a silent change in the attitude of the House of Commons towards Indian questions. Before Pitt's Act, the House of Commons, thanks to the frequent financial embarrassment of the Company and to the interest of Members like Fox and Burke, was well-informed about the state of affairs in India. In fact, as the monopoly of trade enjoyed by the East India Company was galling to the interest of those who were excluded from that monopoly, no opportunity was lost of

criticising the actions of the Court of Directors or of their servants in India. But after the Act of 1784 it became the constant anxiety of the Ministry of the day to keep the affairs of India away from the gaze of the House of Commons. This was found to be the more easy, as the commercial monopoly of the E. I. Company was partially relaxed in 1813 and wholly abolished in 1833. No doubt at the time of each renewal of the Charter, Committees were appointed, and very valuable evidence collected regarding administration in India; but the interest of Parliamentary debates was confined to the commercial monopoly of the Company. Little or no notice was taken of the great measures *e. g.* land-revenue settlements, public works, judicial administration, &c. that were being adopted in India by the servants of the Company.

The controlling hand of the President was more heavily felt in foreign affairs than in matters of internal administration. In fact it should never be forgotten "that the whole foreign policy of the E. I. Company was regulated by the President of the Board—that in the solution of the most vital questions—questions of peace and war—affecting the finances of the country, and therefore, the means of internal improvement, the Court of Directors had no more power than the Mayor and Aldermen of any Corporation Town. The happiness of the people of India was dependent less upon the will of a deliberative body of four and twenty English gentlemen, a large majority of whom had studied India under an Indian sky—who, as a body, had no connection with Party, no dependence on the fate of ministries, whose official lives did not hang upon an adverse vote, and who could therefore pursue from year's end to year's end

a consistent course of administrative conduct—than upon the caprice of a single man who may be gone to-morrow, who may preside over the India Board and govern India for a fortnight, and then be suddenly deposed by some gust of Parliamentary uncertainty, by the mistaken tactics of an unexperienced Party leader, or the neglect of an inefficient whip.”*

That the autocracy of the President—though it involved India in costly, unfruitful, and aggressive wars on the frontier, and though it led to the adoption of measures of doubtful legality and justice for territorial expansion at the cost of the Native States, did not, in practice, lead to serious political trouble was due (1) to the efficiency of some of the earlier incumbents of this office; (2) to the moral support, which the President was compelled to enlist, of the Cabinet as a whole for measures of importance; (3) to the vigilant check which many Directors who were also Members of Parliament exercised upon him from their seats in the two Houses; (4) and above all to the diligence with which harmony of views and methods was maintained by means of ‘Private Correspondence’ between the President in England and the Governor-General in India.

(33) DEFECTS OF DUALISM

It must have been seen that the Double Government had many defects. A certain division of authority between those who govern in India and those who control in England is, of course, inevitable in the governance of a distant Dependency. But under the Double Government,

* Kaye : Page 133 (Slightly changed.) Read John Dickinson : Chapters II, III, VIII.

there was a further division of power between the President of the Board and the Court of Directors. There were perpetual squabbles between the two regarding the financial affairs of the Company, the maintenance of the King's army in India, the enjoyment of trade monopoly, and above all, the exercise of patronage. The highest officers in India were appointed by the Court but they could be recalled by the Crown. The position of the Governor-Generals particularly, appointed during this time, was very precarious as they had to serve two masters at home, and they managed to please the President by private correspondence. Lord Curzon in his *British Government in India* gives pathetic account of the trials and trepidations of these Governor-Generals. Speaking of Double Government he says* "Had a Committee been assembled from the padded chambers of Bedlam, they could hardly have devised anything more extravagant in its madness, or more mischievous in its operation". Thus the greatest defect of this system was its irresponsible character. There were as many as three authorities between which that responsibility was divided: the Court of Directors who could appoint officers and initiate policies; the President who could recall officers and thwart the actions of the Court; and the Governor-General who, on account of his great distance from either, could afford to set at naught the views of both and do things in his own way.

Such an arrangement was bound to prove harmful to the interests of the people of India and it was opposed to the fundamental principle of the British Constitution. As Lord Palmerston, in introducing the

* British Government in India Vol. II. p. 69

Government of India Bill of 1858, said "A principle of our political system is that administrative functions should be accompanied by ministerial responsibility—responsibility to Parliament, responsibility to public opinion, responsibility to the Crown." The Directors were responsible only to the Court of Proprietors and not to the people or Parliament of England, nor was the President of Board, though a member of the Ministry strictly responsible to Parliament through it.

A second defect was the cumbrous and dilatory method of administration. It involved an incredible amount of correspondence between England and India, with the inevitable result that a great deal of work was really done by those whom Burke called the "tyrants of the desk". Commenting upon this defect Palmerston said, "Before a despatch upon the most important matter can go out to India it has to oscillate between Cannon Row and India House....and its adventures between these two extreme points of the metropolis were often as curious as the familiar *Adventures of a Guinea*".

A further defect was the indifference of the House of Commons to the affairs of India. As Macaulay complained: a broken head in Cold Bath Fields produced a greater sensation among Members of Parliament than three pitched battles in India.

Nor finally, was the Government of a large country containing many Ruling Princes by a mercantile Company free from absurdity and anomaly.

In fact, though there was considerable diversity of detail as to the suggested remedy, all critics of the old system of Government agreed that it should be abolished and that the administration of India should be transferred from the Company to the Crown.

**(34) TRANSFER OF THE GOVERNMENT OF INDIA
TO THE CROWN**

When the Charter of the Company was renewed in 1853, Parliament, as if prescient of the impending catastrophe of the Mutiny, provided that the Indian territories should remain under the Government of the Company "in trust for the Crown until it should direct otherwise." The Indian Mutiny of 1857 gave the deathblow to the old system. It was argued by many that the question of abolishing the East India Company should not be raised in Parliament until peace was restored in India. But the House of Commons resolved to take up that question without delay and two Bills were successively introduced. It appeared at one time as likely that they would be made the subject of party strife. The House of Commons, therefore, resorted to the procedure of adopting certain Resolutions embodying the principles of the two Bills. A third Bill based upon these Resolutions finally became "The Act for the good Government of India" of 1858. It in no way interfered with the details of Indian Government. It confined itself to the improvement of the machinery by which the Indian Government was to be thenceforward superintended and controlled *in England*.

Great apprehension was expressed at the time of the passing of the Act about the danger of the Government of India falling into the hands of the Ministers of the Crown. It was felt that there should be some check over the exercise of authority by them, and it was contended that the House of Commons, on account of its other preoccupations, would not be an effective check. The partisans of the East India Company said that an independent body like the

148 (35) EXCERPTS FROM QUEEN'S PROCLAMATION

Court of Directors was a better check than the House of Commons. In the Petition (framed by John Stuart Mill) that was submitted to Parliament on behalf of the East India Company,* this position was well argued. The administration of India cannot be vested in a Minister of the Crown without the adjunct of a Council composed of statesmen experienced in Indian affairs. Such a body should not only be qualified to advise the Minister but also, by its advice, to exercise a moral check over him. The Minister was likely to be influenced by private or public pressure. The Council ought to be a barrier also against the inroads of self-interest and ignorance to which he is exposed. If the Council was not a check, it would be a screen. In any case, a new Council would not have that authority which an established body like the Court of Directors possessed. But Mill's Petition proved of no avail to the Company. Its specious arguments and the misdeeds of the Company in India were exposed by Sir George Cornwall Lewis in a scathing speech made in the House of Commons. The Act of 1858 abolished the Court of Directors and the Board of Control altogether, transferred the Government, territories and revenues of India from the Company to the Crown, declared that India was to be governed by and in the name of the English Sovereign, authorized the appointment of an additional Principal Secretary of State and created the Council of India.

(35) EXCERPTS FROM THE QUEEN'S PROCLAMATION

This Part of the book will close fittingly with a few excerpts from the Queen's Proclamation:

* Keith : Vol. I, pages 298-319.

(35) EXCERPTS FROM QUEEN'S PROCLAMATION 149

Now, therefore, we do by these presents, notify and declare that, by the advice and consent aforesaid, we have taken upon ourselves the said Government.

And we do hereby constitute and appoint him, the said Viscount Canning, to be our first Viceroy and Governor-General in and over our said territories, and to administer the Government thereof in our name, and generally to act in our name and on our behalf, subject to such orders and regulations as he shall, from time to time, receive through one of our Principal Secretaries of State.....

We hereby announce to the native princes of India, that all treaties and engagements made with them by or under the authority of the East India Company are by us accepted, and will be scrupulously maintained, and we look for the like observance on their part.

We desire no extension of our present territorial possessions; and, while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others.

We shall respect the rights, dignity, and honour of native princes as our own; and we desire that they, as well as our subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government.

We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fill.

Firmly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, we disclaim alike the right and the

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desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure that none be in anywise favoured, none molested or disquieted by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.

And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability and integrity duly to discharge.

We know, and respect, the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State; and we will that generally, in framing and administering the law, due regard be paid to the ancient rights and customs of India.

When, by the blessing of Providence, internal tranquility shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer the Government for the benefit of all our subjects resident therein. In their prosperity will be our strength, in their contentment our security and in their gratitude our best reward. And may the God of all power grant to us, and to those in authority under us, strength to carry out these our wishes for the good of our people.

PART III.

BUREAUCRATIC GOVERNMENT

SECTION ONE

CENTRALIZATION

CHAPTER VIII

✓ PARLIAMENTARY CONTROL

(36) A CENTRALIZED BUREAUCRACY

When the Crown assumed in 1858 direct responsibility for the Government of India, all powers—financial, legislative, and administrative—came to be centralized in the Secretary of State for India in Council on behalf of the Crown. In India also, as a necessary result, power came to reside in the hands of the Governor-General in Council who exercised rigid control over the local Governments in the Provinces. We may distinguish four tiers in the officialdom which now managed the affairs of India. At the top was (1) the Secretary of State for India in Council responsible to Parliament for the administration of India. (2) Below him was the Viceroy and Governor-General of India in Council who was at the head of the administration in India and who was “the man on the spot.” (3) Below him was a number of Provincial (or, as they were also called, Local) Governments or administrations under Governors, Lieutenant-Governors

or Chief Commissioners. These Governments did not enjoy any independent powers of their own but were the agents of the Governor-General in Council. (4) Finally, within the provinces a more or less uniform system of administration came to be established, the unit of which was the District, and the chief executive officer in which was the Collector-Magistrate or the Deputy Commissioner. The resulting form of administration may be best described as a 'Centralized Bureaucracy'. In this form administration is carried on by a hierarchy or gradation of officers, the lower officers being the agents of, and therefore entirely responsible to, those above them. The wishes of the people are never constitutionally consulted. This form of Government might be inevitable under certain conditions; nor need it necessarily be antagonistic to the interests of the governed. Its essence lies in nothing being done by the people, though a set of officials may presume to do a great deal of what they think to be for the good of the people.

The defects of this centralized Bureaucracy became patent even before the process of centralization was completed. They were partially removed by (1) adopting the converse process of Decentralization as between the Central and Provincial Governments, (2) the institution of Local Self-Government within the provinces, and finally, (3) by the establishment of Legislative Councils. An inquiry into the results accomplished or anticipated in each of these directions will form a proper introduction to the study of Responsible Government which is the subject of the Fourth Part of this book.

✓ (37) THE SECRETARY OF STATE IN COUNCIL

We now take up for consideration the Secretary of State in Council, who stands at the top of the Indian Bureaucracy. The duties and powers of the Secretary of State in Council were comprehensively defined as all those duties and powers which were exercised by the East India Company and the Board of Control in England, and by the servants of the Company in India. In particular he was charged with the "superintendence, direction, and control of all acts, operations, and concerns which in anywise relate to the Government or revenues of India."

The position of the Secretary of State for India differed from that of the other four Secretaries of State (Home, Foreign, Colonial, and War) in the British Cabinet in two respects. (1) His salary and that of his Parliamentary and Permanent Under-Secretaries was placed on the revenues of India, and (2) he was given a Council which he was expected always to consult and in certain cases whose decisions were binding upon him.

That the Secretary of State should have a Council becomes obvious when it is remembered that generally he had no sufficient knowledge and experience to discharge duties so various and complicated as those connected with the administration of India. But the exact composition of the Council and its relation to the Secretary of State gave rise to great difference of opinion. The Council was not meant to be a screen as the Court of Directors were in the past. Neither was it to be the master of the Secretary nor a mere puppet in his hands. Its real position was that of advisers and for that purpose its members were to

possess the three requisites of intelligence, experience, and independence.*

The Council under the act of 1858 consisted of 15 members of whom eight were appointed by the Crown and seven were elected, in the first instance, by the Directors and subsequently by the Council itself. They held office during good behaviour but were removable on an address by both Houses of Parliament. They were debarred from sitting in Parliament. It was feared that otherwise they would become party men and their relations with the Secretary of State would be strained, especially after a change of Ministry.

The function of the Council was to conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India.

As the full responsibility for the Government of India was fastened upon the Secretary of State it was natural to arm him with the power of overriding his Council. But to check an abuse of this power two qualifications were imposed upon it: when the Secretary of State acted in opposition to a majority of his Council he was to state and place on record the reasons why he set aside their opinion; similarly any Councillor whose advice was not adopted could also place on record the reasons which induced him to give that advice. (2) The Secretary of State was bound to call his Council at least once a week.

In two cases the Secretary was bound by the majority of his Council; (a) in the case of the election of members to his Council, and (b) in the matter of expenditure of the revenues of India. Regarding the

* Keith : Vol. II, Lord Derby's Speech.

(38) INDIFFERENCE OF PARLIAMENT 155

transmission of correspondence there were two exceptions to the general rule that all despatches to and from India should be laid before the Council: *viz.*, the Secretary of State might, if he thought fit, issue orders on *urgent* matters without calling the Council together, in which case he was to place those orders before their next meeting; similarly he might send out orders and instructions in *secret* matters without previously communicating those orders to the Council. The secret matters related to the carrying on of war, or diplomatic arrangements with the Native States.

From these main provisions of the Act of 1858 it is easy to infer what the intentions of Parliament were as to the relative positions of the Secretary of State and his Council, and the relations of both with the Government of India. Parliament did not wish to disturb the legislative and administrative powers that then rested in the Governor-General in Council. It imposed a Council of India as a check over the authorities in India and also over the Secretary of State; and over all these three authorities Parliament, in the absence of any representative institutions in India, was to exercise a close and constant supervision.

(38) INDIFFERENCE OF PARLIAMENT

As a matter of fact, however, Parliament did not exercise a close and constant supervision over Indian affairs. It left everything to the Secretary of State as its agent. In theory its authority over the Indian Government is supreme.*

It is open to Parliament to exercise control either by means of direct legislation, or by requiring its approval to Rules made by the Secretary of State or

* M. C. Report : para 33.

the Governor-General in Council under delegated powers of legislation; it may control the revenues of India; finally it might exert its very wide powers of calling the responsible Minister to account on any matter of Indian administration. In practice, however, Parliament legislates for India only on two occasions; to make amendments in the constitution of India, and to authorise loans raised by the Secretary of State. Nor does Parliament directly control Indian revenue (apart from loans raised by the Secretary of State); or Indian expenditure (apart from military expenditure incurred beyond the Indian frontiers); As the salaries of the Secretary and the Under-Secretaries were paid out of the Indian revenues they did not furnish an occasion for discussion and criticism of their Indian policy. In fact, once a year, statement of the revenues and expenditure of India together with a "Moral and Material Progress Report" was submitted to Parliament. The Report was a cumbrous compilation and the interest of Parliament in the budget debate was nil. As Mr. Ramsay Macdonald admitted, "Parliament has not been a just or watchful steward. It holds no great debates on Indian questions; it looks after its own responsibilities with far less care than it looked after those of the Company; its seats are empty when it has its annual saunter through the Indian budget."*

Nor finally does Parliament avail itself to the fullest extent of the other means of making its opinion felt on matters of Indian administration *e.g.*, by questions, by amendments to the Address, by motions to adjourn, by resolutions, or by motions of no confidence. On the whole the Authors of the Montford

* R. Macdonald : p. 44.

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Report had no hesitation in saying that the interest shown by Parliament in Indian affairs was neither well-sustained nor well-informed. Before 1858 Parliament held regular inquests in Indian administration prior to each renewal of the Charter; but after 1858 it ceased to exercise control at the very moment when it acquired it. The Montford Report regarded this omission on the part of Parliament to institute regular means of reviewing the Indian administration as much responsible as any one cause for the failure to think out and work out a policy of continuous advance for India.

(39) SUBORDINATION OF THE COUNCIL TO THE SECRETARY OF STATE

The indifference of Parliament enabled the Secretary of State to reduce his Council to subordination. Instead of being a check over him, it became a tool in his hands. This was brought about in three ways: (a) in the matter of its composition, (b) its powers and (c) method of transacting business.

(a) By an Act of 1869 the Secretary got the right of filling all vacancies in the Council, and the tenure was changed from tenure during good behaviour to tenure for a term of ten years, further reduced to seven years by an Act of 1907. This had the effect of making the members subservient to the Secretary of State.

(b) Again though the Act of 1858 required the concurrence of a majority of votes at a meeting of the Council for incurring expenditure in India, this power of "Financial veto" was, as a matter of fact, of little moment. The Secretary of State would always have the moral support of the whole Cabinet for every important

proposal involving expenditure and the Council was bound to yield to the Cabinet. Further the circumstance that the Secretary of State could issue orders in secret or urgent matters without consulting the Council augmented his powers.

(c) The method of transacting business in the India Office and in the Council of India also tended in the direction of increasing the importance of the Secretary of State. In the India Office, work was divided among various Departments.

There was a permanent official at the head of each Department who was appointed by the Secretary of State. He having worked up a case placed it before a Committee of the Council. The Council worked through Committees corresponding to the Departments in the India Office and many Councillors served on more than one Committee. They were appointed on the Committees by the Secretary of State. It was before such a Committee that the head of the Department placed his file. The Committee then recorded their opinion on the file which was next sent on to the Permanent Under-Secretary of State. He took it to the Secretary of State who allowed him to issue orders on it or issued them himself, or allowed the Parliamentary Secretary to do so, or ordered the file to be taken before a full meeting of the Council. Only important work is taken before a regular meeting of the Council. On many matters the papers are simply kept for a period of days in the Council Reading Room and are taken to be approved if no member protests. Every despatch is signed by the Secretary of State alone and not by the members of his Council who form only an advisory, and not an executive, Body.

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(40) MINUTE CONTROL OVER THE GOVERNMENT OF INDIA

The indifference of Parliament and the subordination of the Council left the Secretary of State master of the field. He came to exercise complete control over the entire range of Indian Administration. This control was based upon the theory, previously mentioned, that the supremacy of Parliament over the affairs of India was absolute.* A few examples will show how this theory was established. (a) In 1870 Lord Mayo's Government as a whole protested at being required to pass the Bills which ultimately became the Contract Act and the Evidence Act. At that time a Law Commission was sitting in London to frame drafts of Bills and Codes which were then sent on to the Legislative Council of the Governor-General for adoption. The Secretary of State required the Government of India to accept the two Bills in the shape in which they had been recommended by the Law Commission. The Government of India protested on the ground that such Codes deprived the Legislative Council of all liberty of action. The Home Government though admitting the possible inconvenience and embarrassment said, "that the risk of serious embarrassment would become much greater if a clear understanding were not maintained as to one great principle which from the beginning has underlaid the whole system. That principle is that the final control and direction of the affairs of India rest with the Home Government, and not with the authorities appointed and established

* M. C. Report S. 34

by the Crown, under Parliamentary enactment, in India itself.

“The Government established in India is (from the 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.”

(b) Again when Lord Northbrook attempted to assert the independence of his Government in fiscal matters, Mr. Disraeli's Government were equally decided in affirming their constitutional rights. “It is not open to question that Her Majesty's Government are as much responsible to Parliament for the Government of India as they are for any of the Crown Colonies of the Empire.....It necessarily follows that the control exercised by Her Majesty's Government over financial policy must be effective also.”

Indeed the Government of India Act required the Governor-General in Council to pay due obedience to such orders as he may receive from the Secretary of State in regard to the Civil and Military Government of India. The Government of India was merely an *agent* of the Secretary of State. What power the Governor-General exercised in India was exercised on sufferance: it was due to his being “the man on the spot” and the head of an extensive system of administration removed by 6000 miles from the real seat of authority. It is true that the Governor-

General exercised great powers and functions as the successor of those Native Rulers whom he had superseded. The exercise of such powers was not derived from English Charters or Parliamentary enactments. In spite of this, however, the Secretary of State exercised a rigid control over the Government of India in matters of Legislation, Finance, and Administration.

In Legislation.—The Indian Councils Act of 1861 gave to the Crown the power of veto over the Acts of Indian and Provincial Councils. But the Secretary of State required all bills to be introduced in the Indian and Provincial Councils to be submitted to him for his previous sanction. This was clearly laid down in the controversy between Lord Mayo and the Duke of Argyll, who was then the Secretary of State, over the Punjab Drainage and Canal Act. The Duke of Argyll declared that the prerogative of the Secretary of State was not limited to a veto of the measures passed in India. He said "the Government of India were merely Executive officers of the Home Government who hold the ultimate power of requiring the Governor-General to introduce the measure and of requiring also all the official members to vote for it."

Not only was every measure to be introduced in the Central or Provincial Legislative Council to be previously submitted to the Secretary of State for sanction, but every important alteration in the measure in its passage in the Legislature was to be similarly communicated for approval. Previous intimation to the Secretary of State was dispensed with in the case of unimportant or urgent matters. Such was the net result of the controversy between Lord Northbrook and Lord Salisbury in 1874 which was merely a

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continuation of that between Lord Mayo and the Duke of Argyll. But when in 1875 Lord Northbrook passed the Tariff Act imposing a duty of 5 p. c. on imported cotton goods without referring the matter to the Secretary of State on the ground that it was urgent he was censured by Lord Salisbury who required telegraphic intimation to be given to the Secretary of State in the case of urgent legislation. This of course led to the resignation of Lord Northbrook. But the effect of the orders of Lord Salisbury was to deprive the Government of India of all initiative in and control over legislation in Central or Provincial Councils of India.

In Finance.—The Government of India Act of 1858 placed all financial powers in the Secretary of State and every project for novel or large expenditure, every revision of the pay of or increase in the establishments, every change in Imperial or Provincial Taxation, in fact every departure from the established policy had to be referred to the Secretary of State for information and sanction.

The control was equally minute in details of *Administration.*

Lord Minto complained in a private letter: "I used to imagine that the Secretary of State aimed only at directing great principles of Indian policy, and that the administration of the country rested with the Government of India, but there has been interference in everything. It only results in intense worry to the Viceroy, for, do what he will, the Secretary of State can not administer India." *

* Quoted in Sir Malcolm Seton's *India Office*, p. 81.

CHAPTER IX

CONTROL OF THE GOVERNMENT OF INDIA OVER THE PROVINCIAL GOVERNMENTS

(41) FORMATION OF THE PROVINCES

Turning next to examine the relations of the Government of India with the Provincial Governments, let us first of all consider the formation of the provinces. It is unnecessary to go over once again the ground covered in the two Chapters on the territorial expansion of the East India Company. The different systems of provincial administration that came to be established were closely bound up with the course of that expansion. We may distinguish three stages in the growth of the provincial system. (1) Right up to the year 1833 the form of Government consisting of the Governor and his Council was the approved type, and the Act of that year proposed to provide the North-West Province which was then to be separated from the Presidency of Fort William with a Governor and Council. (2) The Directors, however, proposed to appoint a Lieutenant-Governor to the North-West Province and an Act of 1835 gave effect to the proposal. Bengal continued to be under the Governor-General of India, and its administration suffered on account of the prolonged absences of the Governor-General, all power falling into the hands of Secretaries appointed by him. The Act of 1853 authorised the Court of Directors to appoint either a Governor in Council for Bengal or ask the Governor-General in Council to appoint a servant of the

Company of more than 10 years' standing to be the Lieut.-Governor. The latter alternative was adopted. Unlike the Governors, the Lieut.-Governors were appointed by the Governor-General in Council from among the servants of the Company and they had no Executive Council. (3) The Act of 1854 provided for a still simpler form of provincial government. It empowered the Governor-General in Council, with previous sanction of the Home Authority, to take by proclamation under his immediate authority and management any part of the Company's territories and provide for its administration. In practice, Chief Commissioners were appointed who were technically under the immediate authority of the Governor-General in Council and to them were delegated such powers as were not required to be reserved to the Central Government. The status of the Chief Commissioner was lower than that of the Lieutenant-Governor.

The three types being thus established and the Governor-in-Council form being confined to the old Presidencies of Madras and Bombay, the remaining provinces were given or deprived of one form or the other according as they gained or lost in territory as a result of territorial expansion or administrative redistribution. Thus the Punjab was at first placed under a Chief Commissioner; but when, after the Mutiny, the Delhi territory was added to it, it became a Lieutenant-Governorship. In Burma the amalgamation of the conquests made by First and Second Burmese Wars led in 1881 to the whole province being placed under a Chief Commissioner. Upper Burma was annexed in 1886, and in 1897 Upper and Lower Burma were united and raised to the status of a Lieutenant-

Governorship. The Kingdom of Oudh, after annexation in 1856, was placed under a Chief Commissioner. In 1877 it was merged into the Lieutenant-Governorship of the North-West Province and the name of the two Provinces was changed into the United Provinces of Agra and Oudh by Lord Curzon in 1902. The Central Provinces formed in 1861 continued to be under a Chief Commissioner throughout though Berar was amalgamated with them in 1903.

The latest instance where redistribution of territories was made ostensibly for the purpose of better administration was the Partition of Bengal in 1905. To the old Presidency of Fort William, Assam had been added in 1826. It was separated from Bengal and placed under a Chief Commissioner in 1874. In 1905 the still unwieldy province of Bengal under a Lieutenant-Governor was divided into two Lieutenant-Governorships. The Western half retained the old name of Bengal and the old seat of Government at Calcutta, whilst the Eastern half was augmented by the addition of Assam, previously under a Chief Commissioner, and styled Eastern Bengal and Assam with its capital at Dacca.

One can see the tendency towards centralization operating throughout this period in the creation of Lieutenant-Governorships and Chief Commissionerships for provincial administration. Also the provinces were grouped and regrouped under military, political or administrative exigencies or conveniences of the moment, often against the wishes of the people. Administrative efficiency and not the wish or interest of the people or province concerned was the deciding factor.

(42) LOCAL GOVERNMENTS BEFORE THE REFORMS

As a result of the changes described in the preceding section British India, before the Reforms, consisted of nine major Provinces and six lesser charges. Each of these 15 charges was called a Local Government. All alike were under the superintendence and control of the Governor-General in Council. But important differences existed between the status of the several classes of Local Governments. We may gather the Local Governments into five categories.

(a) *The Three Presidencies.*—Historically they were even prior to the Government of India. Madras and Bombay have always enjoyed the privilege of the Governor-in-Council form of Government. Bengal after many vicissitudes also came to have the same form after 1912. The Governors were appointed by the Crown, being usually persons of rank and experience in England. In an emergency the Governor can overrule his colleagues but otherwise decisions are those of a majority. Presidency Governments still enjoyed some relics of their former independence; they were Extraordinary Members of the Governor-General's Council if meetings of the Council should happen to be held in the Presidency; they had the right to correspond direct with the Secretary of State unless financial issues were involved; they could appeal to him against orders of the Governor-General in Council; they had full discretion in selecting for important offices under them; and they were less liable to supervision than other provinces in the administration of their revenue and their forests.

(b) *The Four Lieutenant-Governorships.*—They were constituted by acts of Parliament. N.-W. Province (1835,) Bengal (1854), Punjab (1859). Fresh powers to constitute Lieutenant-Governorships were given by the Indian Council's Act 1861. Under this Statute, Burma was raised to this status in 1897 and each of the two halves of partitioned Bengal in 1905. Lieutenant-Governors were appointed by the Governor-General subject to the approbation of the Crown. They must have served for at least 10 years in India. The extent of their authority may be declared by the Governor-General in Council. The maximum salary was fixed by Act of Parliament. Though the oldest and the heaviest charge (the U. P.) had no Executive Council, the newest province of Behar and Orissa had one. But the Executive Council did not materially alter the relation of the Lieutenant-Governor with the Government of India.

(c) *Central Provinces and Assam.*—They came next. In theory the Chief Commissioner administered the province as a delegate of the Governor-General who was competent to give all necessary orders and directions for its administration. But, in practice, the powers entrusted to him were often as wide as those of the Lieutenant-Governor and with the creation of the Legislative Council in Assam and in Central Provinces any distinction in administrative methods vanished.

(d) *Baluchistan and North-Western Frontier Province.*—These two form a group by themselves. They are administered by Chief Commissioners who are also Agents to the Governor-General in respect of political relations in the adjoining tribal territories; they are in fact more directly than any of the foregoing provinces under the control of the Government of India, acting

through its Foreign and Political Departments, both because political questions are of preponderant importance and also because they lack the financial resources and powers which the more settled provinces enjoy. Of the two, British Baluchistan was formed out of the territory extending for the most part over the tableland beyond the mountain range which forms the North-West boundary of India. The nucleus of this Province was the district of Quetta occupied in 1876 and purchased from the Khan of Khilat. To this were added certain districts acquired from Afghanistan in 1879 by the Treaty of Gandamuck and other adjacent vast territories. The whole was formed into a Chief Commissionership in 1887. The 2nd namely the North-West Frontier Province was created by Lord Curzon in 1901, for purposes of political security by detaching certain Punjab Districts.

(e) *Minor Administrations.*—Under this category come Coorg annexed in 1834 and administered by the Resident in Mysore; Ajmere—ceded in 1818 is similarly administered by the Agent to the Governor-General in Rajputana. Andaman and Nicobar Isles—are administered by the Superintendent of the Penal Settlement of Port Blair as Chief Commissioner; Delhi—comprises a small tract enclosing the new capital.*

(43) FUNCTIONS OF THE GOVERNMENT IN INDIA

Having considered how the provinces were formed let us next consider the diverse duties of Government in India. "Government" means much more to the people in India than it means in the West. It is a paternal government. At a time when a great

* M. C. Report a. 121—23.

controversy was going on in England as to the functions of government, and when writers like Mill and Herbert Spencer were opposed to any extension of the sphere of State-intervention in the affairs of the individual, a system of Government was established in India which touched the people almost at every point. The British administration had to do many things here which in England are done by private effort and organization. A passage in the Report of the Decentralization Commission describes the multifarious functions of Government in India.

“The Government (in India) claims a share in the produce of land, and save where, as in Bengal, it has commuted this into a fixed land-tax it exercises the right of periodical re-assessment of the cash value of its share. In connection with its revenue assessments it has instituted a detailed cadastral survey, and a record of rights in the land. Where its assessments are made upon large landlords, it intervenes to prevent their levying excessive rents from their tenants, and in the Central Provinces it even takes an active share in the original assessment of landlords' rents. In the Punjab, and some other tracts, it has restricted the alienation of land by agriculturists to non-agriculturists. It undertakes the management of landed estates when the proprietor is disqualified from attending to them by age, sex, or infirmity or occasionally, by pecuniary embarrassment. In times of famine it undertakes relief works and other remedial measures upon an extensive scale. It manages a vast forest property and is a large manufacturer of salt and opium. It owns the bulk of the Railways of the country and directly manages a considerable portion of them and it has constructed

and maintains most of the important irrigation works. It owns and manages the postal and telegraph system. It has the monopoly of note-issue and it alone can set the mints in motion. It acts, for the most part, as its own banker, and it occasionally makes temporary loans to Presidency Banks in times of financial stringency. With the co-operation of the Secretary of State it regulates the discharge of the balance of trade as between India and the outside world, through the action of the Indian Council's drawings. It lends money to Municipalities, Rural Boards, and agriculturists, and occasionally to the owners of the historical estates. It exercises a strict control over the sale of liquor and intoxicating drugs not merely by the prevention of unlicensed sale, but by granting licenses for short periods only, and subject to special fees which are usually determined by auction. In India, however, the direct responsibilities of Government, in respect of Police, Education, Medical and Sanitary operations, and ordinary Public Works are of a much wider scope than in the United Kingdom. The Government has further very intimate relations with the numerous Native States, which collectively cover more than one-third of the whole area of India, and comprise more than one-fifth of its population. Apart from the special functions narrated above, the Government of a sub-continent containing nearly 1,800,000 square miles and 300,000,000 people is itself an extremely heavy burden and one which is constantly increasing with the economic development of the country and the growing needs of populations of diverse nationality, language, and creed."

(44) CENTRALIZATION

It is obvious that the functions enumerated above cannot be discharged by a single organization. In every considerable country there are, in addition to the Central Authority, what are called Local Governments, and the relations between the two parts of Government present some of the most difficult problems of practical administration. Now the student must grasp that from the beginning no attempt was made to draw a line of demarcation between the functions belonging to the Government of India and those belonging to the Local Governments. Though some *e.g.* defence, foreign and political relations, currency and mint, customs, posts and telegraphs were managed by the Government of India, the latter exercised a rigid control over the provinces in the administration of subjects that were entrusted to them.

It was inevitable that in the absence of any clear division of functions between the Central and Provincial Governments, all authority should tend to concentrate in the hands of the Central Government. Let us glance at the history of this process. The three Presidencies were independent of each other up to 1773. The Regulating Act of that year gave the Governor-General of Bengal the right of controlling the two remaining Presidencies, and the Acts of 1793 and 1813 extended and emphasized this right. But on account of the difficulties of communication the Governments of Bombay and Madras enjoyed a very large measure of independence in administration and also exercised the right of correspondence with the Home Authorities. The

question as to the proper functions of the Government of India assumed importance with the extension of the territories of the Company and received special notice in the Charter Act of 1833 and the celebrated Despatch of the Court of Directors which is an exposition of the Charter Act. This Despatch pointedly refers to the difficulty of drawing a line of demarcation between the functions of a Central and Local Government. "It is impossible for the Legislature, and it is equally so for us in our instructions, to define the exact limits between a just control and petty, vexatious, meddling interference."

Circumstances tending towards Centralization.—In view of the inherent difficulty of drawing a precise line between these relations the Despatch of 1834 relied upon the practical good sense of the Governor-General in Council to determine it. But on account of the following circumstances the tendency towards centralization gained the upper hand*: (a) The natural tendency of strong Secretariats to absorb functions more appropriate to subordinate authorities. (b) The increasing ease, rapidity and volume of postal and telegraphic communication. (c) The spread of the English language, and the growth of solidarity and of a national feeling, among the educated classes in the various provinces. (d) The material development of the country, the vast improvement in the means of communication within India itself and with the outside world, and the high standards to which her administration was expected to conform. (e) The increasing interest taken by Parliament in the details of Indian Administration, which necessarily

*Report of the Royal Commission on Decentralization, para 47.

tends to a closer check over the actions of the Local Governments and of the Government of India itself.

Control in Practice.—Let us examine how the powers of superintendence, direction and control were, in practice, exercised by the Government of India over the provinces in matters of Finance, Legislation and Administration.

Finance.—The entire revenues of the country were vested in the Governor-General in Council by the Act of 1858 and the Provincial Governments could raise or spend not a single rupee on their own account. Though under the system of Provincial Settlements (begun by Lord Mayo in 1870, and perfected by Lord Hardinge in 1912) larger powers were given to the Provinces, their tutelage to the Government of India was still considerable.

The whole theory of the provincial settlements was based not on what a province collected by way of revenue, but on what the province required for expenditure to keep up a certain standard of administration. Whatever surplus revenue the Central Government received from the more productive provinces it spent upon the administration, development, or defence of the unproductive provinces like the Frontier Province, Burma etc. The ultimate responsibility of the Government of India for the solvency of each of the Provincial Governments made them very exacting in their control over provincial expenditure and their interest in the revenue collected by a Provincial Government made them equally watchful of the success or otherwise with which the province played the part of a tax-gatherer on their behalf. There were various ways of exercising this financial control: (a) all provincial budgets were

carefully scrutinised and required sanction; no province could budget for a deficit, or could go below a minimum cash balance which it was always required to maintain with the Central Government. (b) Again, in matters of expenditure, the spending authorities were bound by a series of financial Codes of Instructions such as the Civil Service Regulations, the Civil Account Code, the Public Works Code etc. The Provincial Governments could not create new appointments or raise emoluments beyond a certain narrow limit; (c) a Provincial Government could not impose a new tax without the previous sanction of the Central Government; (d) nor could it borrow money, either in England or in India, for capital expenditure. The Government of India advanced money to the Provincial Governments if at all the latter wanted to borrow.

In Legislation.—The absolute subordination of the Government of India to the Secretary of State in this matter has been referred to already. The control over provincial legislation followed as a corollary from that position. We shall trace in a subsequent Chapter the rise of the Legislative Councils in the Provinces of India. It is sufficient to state here that as between the Governor-General's Legislative Council and the Provincial Legislative Councils there was no definite line of demarcation like the one we find in the federal form of Constitution. Though the Provincial Council was theoretically competent to range over the whole field of legislation, its powers were restricted, in practice, in two or three ways. (1) In the first place the majority of the Councils were of later origin and growth. A great part of the legislative field, therefore,

was occupied by the enactments of the Central Legislative Council. Particularly a large body of laws dealing with important subjects like crime, marriage, succession, contracts, transfer of property, business, and industries, and public health, was codified by the Central Council. (2) Though the Central Council generally did not consider laws of a Provincial application, its power of concurrent legislation was undoubted and was frequently exercised. Thus it passed the Deccan Agriculturists' Relief Act (Bombay) 1879; the Bengal Tenancy Act 1885; the Madras Civil Courts Act 1887; the Allahabad University Act 1887; the Lower Burma Court's Act 1900; and the Punjab Alienation of Land Act 1900. Not only could thus the Central Legislative Council encroach upon the Provincial field, but (3) every project of legislation in a Provincial Council had to be submitted to the Government of India and the Secretary of State for previous sanction; every important change in the Bill made during the passage of the Bill in the Council had to be similarly communicated and got approved of; and no Provincial Bill could become an Act before it was assented to by the Governor-General.

In Administration.—Here the control was too general and extensive to be described in a few simple propositions. In part the control was the direct result of the financial control which has been previously mentioned; in part it was due to the necessity of keeping administration uniform in a vast country like India. The Public Services which administered in the Provinces were recruited in England by the Secretary of State and the conditions of pay, promotion, leave, pensions etc. of them were fixed by that authority. Similarly in matters of business and

industry, as the Provinces were brought into very close contact uniformity was demanded in such matters as statistics, patents, copyright, insurance, income-tax, explosives, mining etc.

Further, as the Provincial Governments were mostly occupied with the routine work of administration it became the distinct duty of the Government of India to lay down policies of reform and progress in the shape of Resolutions. These often were based upon the Reports of Commissions or Committees appointed from time to time by the Supreme Government to investigate the working of Departments with which the Provincial Governments were primarily charged. Often a Commission recommended the appointment of advising or inspecting Officers at Head-quarters to co-ordinate the results of Provincial Administration. Lord Curzon was particularly fond of appointing such officers and often they were got from England. In addition to these occasions of interference which were common to all Provinces, the Supreme Government frequently exercised the right of issuing instructions to particular Local Governments in regard to matters which may have attracted their attention from the numerous reports and returns which each Government was required to submit to them. And finally, considerable interference resulted from the Central Government having to attend to the appeals made to them by persons dissatisfied with the action or orders of a Provincial Government.*

From this account of the relations between the Central and Local Governments it is abundantly clear that these relations were in no way the result of a

* Report of the Decentralization Commission; chapter II.

precise definition of the spheres of Central and Local Governments which obtains in a Federal Constitution. As the Decentralization Commission admitted; * "the present discrimination between the functions of the Imperial and the Local Governments, and the extent of the control normally exercised by the former over the latter, are the results of gradual administrative evolution." The Government of the country was one; the Provinces, in spite of the considerable powers they enjoyed, were strictly the 'agents' of the Central Government. The justification for this minute and multifarious control of the Secretary of State over the Government of India and of the latter over the Local Governments was that there was no constitutional *popular* check over the Central and Provincial Governments *in India* itself. Parliament, therefore, as the custodian and guardian of the Indian people was compelled to exercise through the Secretary of State a detailed control over Indian affairs in discharge of its own responsibilities.

Evil Effects of Centralization.—To the evil effects of over-centralization testimony is borne by many writers on Indian Administration. Sir O'Moore Creagh said that the state of affairs was bad enough in 1909 when he joined the Government of India and became infinitely worse in 1914 when he left it.† And this, in spite of the recommendations of the Royal Commission on Decentralization! But such was bound to be the case. In the absence of clear definition of the relations between the Government of India and the Local Governments, the extent of

*Report of Decentralization Commission : para 45.

† Indian Studies.

interference depended entirely upon the personality of the Governor-General and the amount of control exercised over him by the Secretary of State. The Governor-General may demand information upon any subject, and as the test of efficiency lay in its immediate production, the Departments perpetually called upon the Provincial Governments to submit information on all imaginable subjects, great and small.

CHAPTER X

CENTRALIZATION WITHIN THE GOVERNMENT

(45) THE GOVERNOR-GENERAL IN COUNCIL

Having considered in the last Chapter how responsibility to Parliament resulted in detailed control over Indian administration we shall now examine how *within* each Government, Central as well as Provincial, there was a tendency for all power to concentrate in the hands of the head of the Administration.

Let us first consider the Governor-General and his Executive Council. The Governor-General of India had always a Council associated with him in the transaction of business. In fact the Governors of the Presidencies in India and of most English Colonies in other parts of the world had Councils of their own. But there are two points about the development of the Council of the Governor-General which distinguish it from similar Colonial Councils *e. g.*, in America (1) The Colonial Councils, consisting mainly of the Heads of the Departments were of an advisory character with the result that the orders of the Colonial Government were described as the orders of the Governor and not of the Governor-in-Council. In India the Council was not only advisory but also executive so that the orders of the Governor (and of the Governor-General) are described as the orders of the Governor (or Governor-General) in Council. (2) In the

Colonies there was a second Council for the purposes of legislation. In India the Council of the Governor-General, (and of the Governor) *itself* was invested with the power of making Regulations. The importance attached to the law-making function of the Executive Council was small in the beginning; but it came to be emphasized with the growth and complexity of administration and the extension of territories. The interesting result was that the Executive Council *expanded* into the Legislative Council—a process which will be described fully in another Chapter.

Character of the Council up to the Councils Act of 1851.—

The history of the Council in its executive capacity dates from the Regulating Act. The defect of the Regulating Act which made the vote of the majority of the Council binding upon the Governor-General, (who had only a casting vote), was removed by the Act of 1786, chiefly at the insistence of Lord Cornwallis. That Act empowered the Governor-General to override the majority of the Council in special cases and to act on his own responsibility. This completely changed the character of the Council. From a set of obstructionist colleagues it was transformed into a body of submissive advisers. As the Members of the Council were generally servants of the Company who had long served in India and who, therefore, possessed intimate knowledge of Indian affairs which the newly-arrived Governor-General usually lacked they gave him their opinion on matters that came before them. And though the Governor-General was not bound to accept that opinion and act accordingly and though he was individually and effectively responsible for every act of the Government, the Members collectively exercised a useful check over the Governor-General.

But in course of time a change occurred which greatly modified this character of the Council. The change was due to the abandonment of the earlier method of transacting business. At first all papers were submitted to all members of the Council in the order of their seniority and, therefore, first to the Governor-General. The inconvenience of this procedure became intolerable when every extension of territory added to the work of the Council and the Governor-General had to be absent from his capital for months together on account of the distracted state of the country. There were no roads, or railways, or telegraphs, and either there was an inconvenient accumulation of public work or the Governor-General transacted it without consulting his Council. The Council was thus reduced to second-rate importance and the situation became so impossible that Lord Dalhousie proposed radical changes in the procedure of the Council. It was, however, reserved for his successor, Lord Canning, to carry them out.

Introduction of the Departmental System.—The principle of specialization had been already introduced into the Council by the appointment, in 1834, of an expert member for law, and in 1859 for finance. It was along this line of specialization and departmentalization that Lord Canning proceeded. When the Act of 1861 gave the Governor-General power "to make rules and orders for the more convenient transaction of business", he introduced what in effect became the 'Portfolio System'. Each Member was placed at the head of one or more Departments, and made responsible to the Governor-General. The Act of 1861 also raised the number of members to five. In 1874 a *sixth* Member (for Public Works purposes)

was added, but for a number of years after 1880 this post was left vacant. It was Lord Curzon who created a new Department for the promotion of Commerce and Industry in charge of a new Member (now again the sixth Member). During his time also another change took place. Before that time the Military Department was placed in charge of an Ordinary Member of the Council—always a soldier but precluded from holding a command in the army during term of office—and distinguished soldiers like Sir George Chesney had held the office. The Military Member remained at Head Quarters and was the constitutional adviser of the Viceroy on questions relating to the Army. The Commander-in-Chief was responsible for promotions and discipline and movement of troops, but many times his duties prevented him from attending regularly in Council. He had to submit his proposals through the Military Department. Lord Kitchner when he came out to India in 1902 did not like this arrangement and proposed to create a new Army Department of which he was to be the head and responsible for the whole Military administration. Lord Curzon protested that this proposal had the tendency to concentrate military authority in the hands of the Commander-in-Chief and to subvert the authority of the Civil power by depriving it of independent Military advice. But no heed was paid to the protests of Lord Curzon and he, therefore, resigned in 1905.* Since then the Commander-in-Chief who is at the head of the Indian Army also represents the Army Department in the Executive Council of the Governor-General.

* Sir Thomas Raleigh; Introduction to the speeches of Lord Curzon.

Internal Working of the Council.—We get an insight into the internal working of the Council from the writings of those who had first-hand experience *e.g.* Sir William Hunter, Sir John Strachey, Sir John Chesney and Lord Curzon. Thus Sir William Hunter says in his *Life of Lord Mayo*: “All routine and ordinary matters were disposed of by the Member of the Council within whose Department they fell. Papers of greater importance were sent, with the initiating Member’s opinion, to the Viceroy, who either concurred in or modified it. If the Viceroy concurred, the case generally ended and the Secretary to the Department worked the Member’s note into a letter or Resolution to be issued as order of the Governor-General in Council. But in matters of weight the Viceroy, even when concurring with the initiating Member’s view, often directed the papers to be circulated either to the whole Council or to certain of the Members whose views he might think it expedient to obtain on the question. In cases in which he did not concur with the initiating Member’s views, the papers were generally circulated to all the Members or the Governor-General ordered them to be brought up in Council. Urgent business was submitted to the Governor-General directly by the Secretary of the Department under which it fell; and the Viceroy either initiated the order himself or sent the case for initiation to the Member of the Council at the head of the Department to which it belonged.”

Substantially the same picture is presented by Lord Curzon:* “An immense amount of administrative work of the routine type does not go before the

* *British Government in India* Vol. II, p. 123-24.

Council at all. It is discharged on his own responsibility by the Member of the Council who is the head of the Department concerned. If he is convinced of its special importance, he refers it to the Viceroy either personally, or through the Secretary of the Government in his Department who sees the Viceroy once a week and takes his orders. The Viceroy can, if he please, circulate the papers and refer the case to the Council, with or without his recorded opinion, and the matter is then brought up at the next meeting. Where two or more Departments differ about a case in which they are involved a similar reference is invariably made. The Secretary attends, states the case, takes the orders of the Council and is responsible for seeing to their execution." It will be seen that the Departmental Secretary is a Secretary to Government and not to the Member in charge of the Department. His position was thus described by the Decentralization Commission.* "It corresponds very much to that of the Permanent Under-Secretary of State in the United Kingdom, but with these differences that the Secretary is present at Council Meetings; that he attends on the Viceroy, usually once a week, and discusses with him all matters of importance arising in his Department; that he has the right of bringing to the Viceroy's special notice any case in which he considers that His Excellency's concurrence should be obtained to action proposed by the Departmental Member of Council; and that his tenure of office is usually limited to three years. The Secretaries, the Deputy Secretaries, and Under-Secretaries are generally Members of the Indian Civil Service."

* Report of the Decentralization Commission ; para 20.

Councillors become mere Departmental Heads.—It is clear from these extracts that the Council from being at one time a collective check over the Governor-General became in course of time a group of Departmental Heads. The Members of the Council found their position assailed from two opposite directions. On the one hand, the growth of centralization added to the strength of the Secretaries who had access to the Viceroy independently of the Members. The Viceroy, on the other hand, freely interfered with business in all Departments at all stages. Thus between the Viceroy above them, and their Secretaries below them, the Members lost a great deal of their initiative and power. Many writers agree in the view that the Governor-General dominated over his Council and interfered with the working of Departments to an extent which made the responsibility of the Members of the Departments a mere farce.

(46) THE VICEROY AND GOVERNOR-GENERAL

We must now explain how the Governor-General came to exercise such wide powers in his Council. When India was transferred to the Crown in 1858 the Governor-General became the "Viceroy," appointed by Royal Warrant, his term of office being fixed at five years. As Mr. Ramsay Macdonald, Labour Premier for the second time, says*, the Viceroy performs three great functions. He personifies the Crown, he represents the Home Government, and he is the head of the Indian Administration.

The first is now his proper function. He is the Crown visible in India, the ceremonial head of the

* The Government of India : p. 57.

Sovereignty, the Great Lord. He is the seat of justice and catches up in himself, by virtue of his office, the historical traditions and sentiments of rulership."

His position as the Viceroy—in which capacity he deals with the Ruling Princes of India—should be distinguished from his position as the Governor-General in which capacity he is the representative of the Home Administration, and the Head of the Government of India. Lord Curzon thus comments upon the double appellation of Viceroy and Governor-General.*

"The distinction is held to be that where the Governor-General is referred to as the statutory head of the Government of India he is designated Governor-General: where he is regarded as the representative of the Sovereign he is spoken of as Viceroy. The latter title however has no statutory sanction, and is the result merely of usage and convention."

As the representative of the Home Government he is bound to carry out the views of the Ministry on all important questions, *e. g.*, Fiscal Policy, Frontier Policy, Foreign Relations, Constitutional Reform. He resigns in case of disagreement with the Home Government on such vital issues. Thus Lord Northbrook had to resign because he would not carry out the Fiscal and Foreign Policy of the Home Government. Lord Curzon had to resign because his views regarding the constitutional position of the Commander-in-Chief of India did not find support with the Home Authorities.

The varied and onerous functions of the Viceroy and Governor-General have been described in glowing

* British Government in India Vol. II p. 49.

terms by Lord Curzon*: "The Viceroy very soon finds out that the purely Viceregal aspect of his duties is the very least portion of them, and the Court life, in which he is commonly depicted by ignorant people as revelling, occupies only the place of a compulsory background of his every-day existence. He soon discovers that he is the responsible head of what is by far the most perfected and considerable of highly organized governments in the world.

He is the head, not merely of the whole Government, but also of the most arduous Department of Government, *viz.* the Foreign Office. There he is in the exact position of an ordinary Member of the Council, with the difference that the work of the Foreign Department is unusually responsible, and that it embraces three spheres of action so entirely different and requiring such an opposite equipment of principles and knowledge as to the conduct of relations with the whole of the Native States of India, the management of the Frontier Provinces and the handling of Frontier tribes, and the offering of advice to His Majesty's Government on practically the entire Foreign Policy of Asia, which mainly or wholly concerns Great Britain and its relation to India.

But the Viceroy, though he is directly responsible for this one Department, is scarcely less responsible for the remainder. He exercises over them a control which is, in my judgment, the secret of efficient administration".

Though the Viceroy is no longer the President of the Indian Legislature he has often, in public utterances, to defend the policy of Government. He is

* British Government in India Vol. II. p. 112-14.

expected by the public to have a policy on every subject *e. g.*, Finance, Railways, Education, to reform every branch of administration, to redress every grievance, real or imaginary, and be accessible and sympathetic to all. In addition, he has to be on tour through British India and visit Indian States and reply to the addresses of various Bodies, Chambers and Associations. All this imposes a heavy burden of work upon the Viceroy.

As to the qualifications a Viceroy should have to discharge such multifarious duties Lord Curzon says: * "Apart from strength of character, courage and sympathy with the people committed to his care, the principal desiderata in a Viceroy are undoubtedly some familiarity with public affairs, some experience in public administration, and some power of speech."

Lord Curzon has narrated the intrigues and controversies that used to take place when the appointments to the Governor-Generalship of India were made in former times. Things seem to be better now. Usually the Crown makes the appointment on the recommendation of the Prime Minister who consults such of his colleagues as he chooses: The viceroy would seem to be less dependent now upon the Home Government than formerly, and need not resign because of a change of Ministry in England. As Lord Curzon says †: "It is a matter of congratulation that, whereas in earlier times, and indeed as recently as the days of Lord Northbrook and Lord Lytton, a Governor-General was apt to resign when a Government of different political complexion from that by which he had been appointed came into power, we are

*British Government in India Vol. II. p. 55.

†British Government in India Vol. II. p. 95.

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now familiar with the spectacle of the Viceroy, as a great public servant, superior to the political passions of the hour, remaining at his post and serving faithfully the Home Government, from whichever party it may be drawn."

(47) HIS DOMINATION OVER THE COUNCIL

It is now easy to see how the Viceroy should come to have a preponderating influence over his colleagues. Consider first the colleagues. They are appointed by His Majesty on the recommendation of the Secretary of State who would naturally consult the Viceroy. This made the Ordinary Members entirely subservient to the Governor-General to whom they owed their recommendation and to whom they looked up for further promotion. Further as the majority of the Ordinary Members was drawn from the Indian Civil Service, obedience to superior authority was their ingrained characteristic. Sir O'Moore Creagh, Commander-in-Chief of India (1909-1914) said "the mental attitude of the Members of the Council to the Governor-General is one of obsequious respect, which causes them—with rare exceptions—to treat his slightest wish as a Khati-Sherif, to be disregarded at their peril. When such a wish is prefaced in the Council, as is frequently the case, by the announcement, that the proposal under discussion emanates from the Secretary of State there is rarely any opposition to it, no matter how impolitic it may be. I do not think that individuality or independence are wanted in the Council."* Next to the Members drawn from the Indian Civil Service there was the practice of one or two Members being

* Sir O'Moore Creagh : Indian Studies, 101.

appointed from the Civil Service in England. Though such Members were expert in their own work *e.g.* Finance, Commerce &c., their ignorance of Indian conditions and the jealousy with which they were regarded by their Anglo-Indian confreres made them habitually look up to the Governor-General for support. The Indian element of the Council also was not particularly known for independence of view and action. As the tenure of office was for five years only, the expectation of promotion and other jobs *e. g.* a place in the Council of the Secretary of State or Lieutenant-Governor or Chief Commissionership, operated in the same direction.

From the composition of the Council let us turn to the method of transacting business in the Council.

(1) The Rules and Regulations for the convenient transaction of business in the Council made, under Section 8 of the Act of 1861, by the Governor-General are kept absolutely secret and are liable to change at the will of the Governor-General alone. He thus exercises an enormous amount of discretion as to the mode of distributing work among the Departments and of assigning the Departments to the Members of the Council.

(2) Again the Governor-General could appoint any place within British India for the meeting of the Executive Council, and he and *one* Ordinary Member formed the legal quorum for the transaction of business. This very small quorum was fixed at a time when there were only three Members of the Council of the Governor-General; but it was not changed though the number of Councillors had increased to six or seven. It thus became possible for the Governor-General to consult one or two selected

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Members of his Council and claim to have consulted his whole Executive Council. Properly speaking, however, such "surreptitious meetings" as Sir O'Moore Creagh characterised them, ought to be distinguished from formal meetings of the Council for which a convening notification in the prescribed form has to be sent to all Members. Lord Curzon strongly condemned the practice of some of the recent Viceroys to supersede the corporate character of their Councils by habitually consulting only a few of their trusted colleagues.

(3) Further as all orders and other proceedings of the Governor-General in Council are expressed to be made by the Governor-General in Council and signed by a Secretary to the Government of India, it is impossible to say whether they are the result of deliberation and decision in the full Council, or of consultation between the Member in charge and the Governor-General or of the Secretary acting on his own initiative.

The difficulty of knowing whether the order was the view of the Member in charge, or of the Member in Charge and the Governor-General, or of the Governor-General in Council as a whole was increased by indiscriminate use of the expressions "Governor-General in Council" and "Government of India" as equivalent in meaning. It is not possible to say from the designation "Government of India" in telegraphic or private correspondence whether and with what result the Council was consulted.

It will thus be seen that the Indian Council's Act of 1861, by giving to the Governor-General the power to make rules for the distribution of work among the Departments, by allowing him to appoint the place

and time of meetings of the Council and to regulate the procedure of transacting business therein, reduced the Executive Council to a state of weakness.

Nor were individual Members of the Executive Council free from the interference of the Governor-General. It was impossible to say when and at what stage the Viceroy would interfere for, as Sir O'moore Creagh put it, it depended upon his ability, leisure, or how the spirit moved him. His interference was consequently erratic and disconcerting to those nominally in charge of Departments, for he dealt with matters small and great, local or Imperial, of which it was quite impossible he could have any sufficient knowledge.*

The scope for interference is vastly increased by the peculiar position of the Secretaries of the Departments. They are appointed by the Governor-General and have access to him, independently of the Member in Charge. We must now refer to two more causes operating *outside* the Executive Council that helped the concentration of power in the hands of the Governor-General. Consider first his relation with the Secretary of State. He is in the fullest confidence of the Ministry and in constant communication with the Secretary of State. He also receives such correspondence as is "urgent" or "secret." His knowledge, therefore, of the views and opinions of the Home Authorities, and his personal acquaintance with and influence upon them give him an authority in his Council which his colleagues can never hope even to approximate. Indeed the 'private' Correspondence between the Secretary of State and the Viceroy, both by letters and cablegrams, reached

* Indian Studies: 119.

dangerous proportions at certain times. The whole of this correspondence is removed when the persons leave their office and the public knows nothing about it. Such correspondence undermines the corporate influence of the Councils of the Secretary of State and the Governor-General, and tends to throw the whole power in the hands of these two functionaries. Sir Tej Bahadur Sapru commenting upon the specially confidential relations between the Secretary of State and the Governor-General remarks* that considering the heterogeneous composition of the Executive Council there is little room for surprise if the Governor-General should observe a special degree of caution in the disclosure of communications to his colleagues.

Nor could the Local Governments offer any effective resistance to the encroachments of the Governor-General for prior to the Reforms there was no clear-cut division of Central and Provincial subjects.

Conclusion.—There can be thus no comparison between the position which the Governor-General held with regard to his Council in the days of the Company and that which he came to occupy since the Act of 1858. To quote once again the words of Sir O'moore:—"The whole tendency of all Acts of Parliament previous to the transfer of the Government of India to the Crown was to associate the Governor-General with a Council of trained Administrators, who had that good knowledge of India in which he himself was deficient, and who, being in an independent position, would be capable of informing, guiding, and—to a reasonable extent—controlling him, but who

* The Indian Constitution : p. 63.

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would not be in a position to thwart or obstruct him. It was never intended that the Governor-General should be a man of open mind and balanced judgment who would initiate as well as adjudge. He has now become the Agent of the Secretary of State, the independence of his Council is gone, and the Indian Empire is entrusted solely to their combined ignorance of India and is virtually handed over to a despotism."* Chailley also says "that the Executive Council of the Viceroy has become an assembly of specialists who hold office for five years. The theoretical equality with the Viceroy has, in practice, disappeared and the responsibility is becoming more and more concentrated in the hands of the Secretary of State and the Viceroy."†

✓ (48) IS THE GOVERNOR-GENERAL'S COUNCIL A CABINET

Before proceeding to consider the process of centralization within the Provincial Government it will not be inappropriate to make a digression here upon the question—whether Governor-General's Council is a Cabinet? Both Sir John Strachey and Sir George Chesney put forward the view that the Governor-General and his Council formed "a Cabinet of administrative heads of Departments." Lord Curzon also said‡ that Canning laid the foundation of Cabinet Government in India: "each branch of the administration having its official head, who was responsible for its administration and defence". An examination of this view would clearly bring out the actual position of the Governor-General's Council.

* Indian Studies ; 100. † Chailley : p. 392.

‡ Br. Govt. in India : Vol. II. p. 122.

Professor H. D. Traill has defined the Cabinet as "a body consisting of (a) members of the legislature; (b) of the same political view and chosen from the political party possessing a majority in the House of Commons; (c) prosecuting a concerted policy; (d) under a common responsibility signified by collective resignation in the event of Parliamentary censure; and finally, (e) under a common subordination to one Chief Minister *viz.*, the Prime Minister."

Now we may look at the Cabinet from two points of view—the political *i. e.*, in its relation to the House of Commons, and the administrative. It is in the latter respect that considerable likeness may be discerned between the English Cabinet and the Executive Council. Both consist of Heads of Departments; both transact important business in meetings; both have Secretaries and Under-Secretaries who belong to the Permanent Civil Service. But here the resemblance stops. The contrast between the Cabinet and the Council is even more impressive when both are considered as executives related to their legislatures. Indeed, as Mr. Ramsay MacDonald points out,* the use of the word Cabinet to describe the Executive Council requires a "warning that its strict employment is in connection with Parliamentary Government, and not with a bureaucracy of Civil Servants and Crown appointees". The English Cabinet is the peculiar growth of Parliamentary Government in England. It is through the Cabinet that one or the other of the two great Parties in England which happens to have a majority in the House of Commons governs the country. Thus it is through the Cabinet that the people of the United Kingdom realise and

* The Government of India : page 62.

enjoy the fullest measure of Responsible Government. The Leader of the dominant party is called the Premier and he is the keystone of the arch of the Cabinet. He selects his colleagues from amongst his followers and directs their policy and is responsible to Parliament for the whole Cabinet. Confidence of the House of Commons is the very breath of the nostrils of the Cabinet; above all, the whole system of Government by the Cabinet is based upon conventions and understandings and not upon Acts of Parliament.

Now the Council of the Governor-General has nothing to do with Responsible Government in India. In fact the Government of India was entirely responsible to Parliament and not to the people of India. Consequently they could always depend upon the official votes in the Governor-General's Legislative Council, which were always in a majority (before the Reforms). Members of the Executive Council did not represent any political party; the majority of them were members of the Indian Civil Service and all held office for five years; though they followed a concerted policy they might not all hold the same or similar political views. They were not called upon to, and generally did not, resign if their advice was not followed by the Governor-General. The Prime Minister in England generally appoints his own colleagues. The Governor-General has often to work with those who are already there and he can only recommend names to fill up vacancies. There is a wider gulf between the Viceroy and his colleagues than there is between the Prime Minister and his colleagues. Finally, the Governor-General in Council is a body created by the Statute; its procedure is bound by Rules and Regulations; and every Member

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places on record his views. In fact the practice of recording minutes on every subject that comes before the Council is regarded by many as the greatest safeguard against irresponsible and slipshod exercise of authority by that body. No records are kept of the proceedings of the Cabinet and its meetings and methods of business are altogether of a flexible type.

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A process similar to the one described in the preceding sections took place in the Provinces. All power came to reside in the provincial Head, whether he was a Governor, or a Lieutenant-Governor or a Chief Commissioner. Indeed in the last two types of Local Governments there did not exist even the nominal check of an Executive Council.

In view of the diversity of status that prevailed among the Local Governments before the Reforms it is difficult to give a generalized account of Provincial administration. But a rough picture of administration in one province may be given which is broadly true of another. The Local Government administered through its Secretariat. For the purposes of revenue-administration in every province except Bombay there existed a Board of Revenue or its equivalent, a Financial Commissioner. In Bombay the Secretariat dealt directly with the Commissioners and Collectors. The easiest way of understanding the organization of administration in a province is to think of the latter as composed of districts which, in all provinces except Madras, are combined into groups of usually four to six districts, called Divisions, each under a Commissioner.

Divisional Commissioners.—In the earlier stages of administration they were invested with very large powers in revenue and judicial matters. The growth of Secretariats and Departments has deprived them considerably of their former importance. Their position is yet great in Bombay though it has been very much circumscribed in Burma and Central Provinces.

A Commissioner is primarily concerned with the administration of Land Revenue, and acts as a Court of Appeal in revenue matters. His functions are advisory in connection with the settlement of Land Revenue, but in connection with collection he has powers of suspension and remission. The Decentralization Commission had no doubt that the general status of the Commissioner had deteriorated and needed material strengthening. It was opposed to the abolition of Commissioners as that would lead to increased centralization. He should not be a mere inspecting officer but a real administrative head of his Division. He should be consulted and have power of control over special Departments such as Public Works, Police, Forests, Education and Excise which affect general administration and he should co-ordinate their actions. His control over the Police is much less than before but he should be promptly informed as to the state of the districts and he should bring to the notice of the District-Magistrate or the Inspector-General of Police any defects. He should tour in his Division and be in close touch with the Collectors whom he might periodically assemble for discussion of matters of common interest.

The Decentralization Commission has well pointed

out* that in the case of Commissioners "their dissociation from judicial functions; the constitution and growth of specialized departments; the development of postal and telegraph system; the tendency to codify into Acts, Rules or Standing Orders matters which would in old times have been left to the discretion of individual officers; the growing tendency to appeal to head-quarters against local decisions; and the fact that legislation has often led to the Commissioners' powers being undermined, have all, to a large extent, inevitably diminished the powers and position of the Commissioners."

Collector-Magistrate.—The principal unit of administration is the District. Each district is under a Collector who is the local representative of Government in its general dealings with the people, and is also the District Magistrate. As Collector, he is not merely responsible for the collection of most branches of revenue, but is concerned with the manifold relations existing between Government and the agricultural classes, which represent two-thirds of the total population of British India. Thus he is concerned with questions relating to the registration, alteration, relinquishment or partition of land-holdings which pay revenue direct to Government, and in the greater part of India, has to deal in these respects with an immense number of petty peasant proprietors. He is likewise, in most provinces, concerned with the adjudication of disputes between landlords and tenants, and also with the administration of estates taken under the management of the Courts of Wards. He has to keep a careful watch over the general circumstances of his district, and, in times

* Report of Decentralization Commission, para 482.

of famine or severe agricultural distress he is responsible for the administration of relief and other remedial measures. He also deals with grant of loans to agriculturists, and with the preparation of agricultural and other statistics; and he has a general control over the working of the Forest Department in his district, in so far as this touches on matters affecting the economic or other interests of the people.

His association with and control over the working of District and Taluka Boards was much more intimate formerly. He has to furnish information on all important occurrences in the district, and he is called upon to advise on any general schemes affecting it which may be under consideration.

As District Magistrate, he is responsible for all matters affecting the peace of the district, and exercises a general supervision over the local police officers, while he controls the working of subordinate Criminal Courts, and has himself a certain amount of original and appellate criminal work.

As Mr. Ramsay MacDonalld puts it :* "He is the eye of the Government and its tongue. He has to put his finger on the pulse of his District, and nothing of any importance is supposed to happen without his knowledge. A sparrow ought not to fall without the incident coming to his ears". In another picturesque phrase he says : † "The District Officer is indeed the tortoise which supports the elephant upon which Indian Government rests".

The causes that have operated to reduce the powers of the Commissioners have produced a similar effect upon the position of the Collectors. The multiplication of Departments *e. g.* Police, Excise,

* The Government of India: p. 97.

† page 98.

Forests, Education, Irrigation, Public Works, has made serious encroachments upon the ample sphere of activity that he at one time enjoyed. His control over the Police has been reduced, as a result of the recommendations of the Police Commission of 1902-3. In passing orders upon this subject the Government of India observed: "Since the District Magistrate is, and must continue to be, the chief executive authority in the district, and in that capacity is responsible for the peace and good order of his charge, the police must be completely under his control and direction, and he must, subject to the usual control of the Commissioner and the Government, have unquestioned power to employ them as he thinks best for the maintenance of law and order, and the detection and suppression of crime". But the Collector does not interfere with the internal matters of organization and technical discipline that are left to the Superintendent of Police in each District who is subordinate to his Departmental Superior, the Inspector-General of Police. But in the matter of the detection and prevention of crime, and the preparation of cases etc., the Superintendent of Police works in close co-operation with the District Magistrate.

We need only refer to the Sub-divisions into which a district is divided for administrative convenience. The Sub-divisional officials (or their subordinates) are also Magistrates with powers inferior to those of the Collector-Magistrate.

Combination of Executive and Judicial Functions.—

From the summary of revenue and judicial administration in the District as given above, it is apparent how the executive and judicial powers have been combined in the hands of the Collector-Magistrate

and his subordinates. This combination has been the most controversial subject of Indian administration and has a long history. The earlier part has been already traced in connection with the work of Warren Hastings, Cornwallis and Bentinck. It was Bentinck, as we saw, who again invested the Collectors with the Magisterial powers. In 1837 a Committee was appointed to inquire into the police system in Bengal, and on the recommendations of this Committee Lord Auckland proceeded, with some misgiving, to appoint separate Magistrates and Collectors in most districts.

There was now a reaction against this policy of separation, led by Lord Dalhousie. He complained how the Collectors, on account of revenue administration being reduced to a routine, had not enough work; and how, on the other hand, the Magistrates—who were young and raw officers—did not prove equal to the task of maintaining peace in the District. Proposals for uniting the two offices were, therefore, again put forward by Sir Frederick Halliday—the first Lieutenant-Governor of Bengal—and approved of by Lord Canning. After the suppression of the Mutiny, orders for the combination of functions, as recommended by Lord Canning, were issued by the then Secretary of State, Lord Stanley.

The recommendations of the Police Commission that was appointed in 1860 to reorganize the Police were in the same direction. This Commission recommended the appointment of a European Superintendent of Police for each district, responsible for the internal discipline and management of the police force to the Inspector-General of Police, but bound to obey the orders of the District Officer in all

matters relating to the prevention and detection of crime, and the preservation of the peace of the district. The Commission recommended the general separation of police and judicial functions, the only exception being in the case of the District Officer. Act V of 1861 embodying these recommendations was passed for Bengal and similar Acts were passed for the other provinces. The whole controversy of combination and separation of functions was once again raised in 1872, when the Code of Criminal Procedure was being amended, but thanks to the views of the then Law Member Sir James Stephen, the combination was retained.

Thus the Collector-Magistrate continued to remain the most important official in the District, a symbol of the power of the Provincial Government.

The subsequent history of the controversy will be resumed in § 55.

(50) BUREAUCRATIC GOVERNMENT

We considered in the last Chapter how the Government of India came to be subordinate to the Secretary of State for India and how the Government of India, in their turn, excessively interfered with the Provincial Governments. In the last section we saw how the Collector-Magistrate was set up in each District for the discharge of multifarious duties on behalf of the Provincial Government. It would be worth our while to review the growth of this centralized and bureaucratic system, to study some of its tendencies, to expose its inherent defects, and to visualize its proper place in the progress of a people.

It was natural that when the country began to pass under British Rule, the new-comers should attempt to

make their system of Government as much like the old system as possible. Now a prominent feature of Mogul Administration was the delegation of large powers to the local Subha in the exercise of which he was not much hampered by the Central Authority on account of his distance from the capital and also on account of the difficulties of communication. But though the Subha combined in himself Revenue, Judicial, and Magisterial functions he left the Village Communities and the local Zamindars in the undisturbed enjoyment of their customary powers.

The first step towards centralization of authority under British Rule was taken when the "Collector," armed with powers as extensive as those of his Mogul prototype, was appointed in each District. But, unlike the Mogul Officer, the Collector directly managed Revenue and Judicial functions—and the Village Communities and Panchayats being deprived of their *raison de tre* soon fell into desuetude.

The Collector continued to exercise plenary powers for many years. He moved among the people, personally heard their complaints, and dealt out justice on the spot. He had few occasions to refer to his superiors: and the absence of roads left him unfettered in the exercise of his powers. Those were the golden days of the Civil Service. But soon a change came over his position. Railways, Post and Telegraphs vastly improved communication. Parties aggrieved by the action of the District Officer or his subordinates could now make use of their wide powers of appeal. At the same time a host of Inspecting Officers began to tour the country. The District Officer thus found himself deprived of a large part of his former freedom, and more and more bound down by Rules and Directions

which the Local Government began to issue on the recommendation of its Inspecting Officers. At the same time functions which were formerly discharged by the Collector *e.g.*, irrigation, public works, agricultural improvements, forests, police etc., came to be taken out of his hands and entrusted to separate Departments. Thus between constant inspection on the one hand and departmentalization on the other the District Officer was losing that extensive power which he originally possessed, and being increasingly absorbed in mere desk work, had fewer opportunities of coming in contact with the people. All power came to be centered in the hands of the Secretariat at the Provincial Head-quarters. "The real power, the sceptre of authority, lies with the Secretariats, and the Heads of Departments under whose standing or special orders the District Officers move and act like marionettes, dancing to strings pulled by an unseen hand. And now the metamorphosis is complete. The Government is a bureaucracy. Impersonal has superseded personal absolutism—the absolutism of a machine, that of the man."* Mr. Ramsay MacDonald traced one of the causes of political discontent in India to the growth of bureaucratic centralization. "When communication was difficult and Indian conditions resisted centralization, the individual had freer play. He was a human being in touch with human beings, but, though that may still be retained, too many officers become wheels in a mechanism working by rule and regulation. The machine reduces its parts to mechanisms. The tendency has been to centralize the working, and that was the fundamental part of Lord Curzon's rule. The

* Houghton : 18.

machine of Government has become a thing apart, and by separating itself from the organic life of India it has over-emphasized the fact that India is ruled by foreigners."

In fact the growth of Secretariats at the cost of the other limbs of Government is a feature of all bureaucracies. They thrive upon correspondence. That they had succeeded in sucking the District Officers dry of all real power was well pointed out by the late Mr. Gokhale.

He deduced the following defects from the weakening of the Collector's position; (a) owing to excessive Secretariat control the Collector was unable to grant redress on the spot; (b) owing to multiplication of Departments harassing departmental delays became inevitable in the disposal of matters which properly speaking ought to be disposed of on the spot under the authority of the Collector; (c) owing to the spread of English education in the country and other causes, there was not that mastery of Indian languages attempted by Collector which he used to acquire formerly; (d) the writing work of the Collector increased enormously; he was tied largely to his desk, and therefore unable to acquire that acquaintance with the requirements of the people which his predecessors were able to acquire; (e) his back was stiffened by the growth of the political agitation in the country, and he was, so to say, driven more within himself.

While this change in the position and powers of the Collector was going on in India, another change was silently proceeding with respect to the classes of society from which candidates for the Civil Service came to be recruited in England. In the days of the Company, under the system of 'patronage',

members of a limited number of families that had a traditional connection with India came out to serve the Company. But when the Indian Civil Service was thrown open to competition in 1853, a subtle change was perceptible. Not family connections or aristocratic traditions but mere intellectual qualities became the sole test for entrance into the Civil Service. Now the system of recruiting officials on a competitive basis has many undoubted advantages and has been adopted in most Western countries. But it has its defects which are likely to be more prominent in a country like India where the ideas of the people about 'Government' are still old-fashioned. Here qualities of heart—rather than those of head—make a 'successful' administrator, and they are the very qualities which no competitive examination can test. Some critics of Indian administration have found in this difference between the old and the new type of the I. C. S. one explanation of the rise of discontent in India.

The Provincial and the Central Secretariats were almost wholly recruited from the Members of the Civil Service after they had had a few years' experience of direct administration in the districts. Indeed a constant flux and reflux between the two classes of officers was always maintained. A similar interchange of officers took place between the Government of India and the Provincial Governments. All were held together by the tie of the Indian Civil Service. "The Indian Civil Service is more than a collection of individuals. It is a bureaucracy with a corporate life, a machine, a free masonry. It moulds the raw recruit into its own image. It has to work as

a whole.”* And now it is easy to realise the full significance of the oft-repeated complaint that the whole Government of India was ridden by the Members of the “Heaven-born” Service, that, in fact, *they* were the Government of India. Interesting sidelight is thrown upon the power and position which they had built for themselves. The young Civilians, as soon as they landed in India found themselves the members of a sacrosanct body. Their natural inclination to remain aloof from the people was not now corrected by the former salubrious practice of moving among the people, but was rather strengthened by the desk-work to which they were condemned, and by the evidence of skill in which they were promoted. Easy communications, the amenities of ‘Dak Bungalows’ when on tour, and their frequent transfers to and from the Secretariats to “life in the plains” completed the process of alienation. The practice of the annual migration or exodus to the Hills contributed as nothing else did to this estrangement. From their “Olympian heights” the Official community could afford to look down upon the vast mass of the people on the plains. They ceased to have a living touch with the new aspirations and ideals that were steadily growing among the people as a result of the spread of education.

But in addition to the alienation of the sympathies of the people, the great evil of a bureaucracy is its dwarfing influence upon the personal and national ideals of the people. “Nations advance, a people becomes great not through docility and submissiveness, but by the free play of aspiration and thought, the liberty to advance along all lines of

* I. Ramsay MacDonald; page 101.

legitimate progress in self-respecting independence of spirit. That is the very antithesis of the bureaucratic ideal. Efficiency of the machine, not the living organic growth of a people; progress, if such there be, on the initiative of the Government, not progress on the initiative of the people; such are its watchwords."*

In fact, it is necessary to carefully bear in mind the true role of a Bureaucratic Government in the political progress of a people. "It finds its true function in the provision of a kind of training school to bridge over the gap between autocracy on the one hand, and some popular Government on the other, to form a nexus, as it were, between the barbaric pomp of the mediæval monarch and the sober institutions that characterise democracy. For the arbitrary rule of one it substitutes ordered rule and precedent. In place of the perplexities and fierce uncertainties that dog the steps of even the most brilliant autocrat, it enables men to forecast with safety the future and to earn their living in confidence and quietude. It provides the smooth and well-oiled machinery essential for those social inquiries and ameliorations which the modern conscience so insistently demands. In a word, it is the portal to modern democracy." †

That the Anglo-Indian Bureaucracy, in spite of the many hard things said against it, admirably succeeded in giving to the country a perfect administrative machine must be admitted. But too much emphasis was laid upon the promotion of mechanical efficiency, and little upon the participation of Indians in the machinery of government. This great danger

* Houghton : 58.

† Houghton : 163-69.

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of the bureaucratic form of government was realized by Lord Minto, as it was realized before him by Lord Ripon. Both tried their best to mitigate that danger, but with little success. Bureaucracy was stronger in the days of Minto than it was in the days of Ripon. Yet when everything has been said against the Bureaucracy we must maintain that the Bureaucracy laid those foundations upon which the structure of Responsible Government is now to be raised, and in the raising of that structure also the Bureaucracy will undoubtedly play an important part.

SECTION TWO

DECENTRALIZATION AND ASSOCIATION

CHAPTER XI

DECENTRALIZATION

(51) DEFECTS AND LIMITATIONS OF A CENTRALIZED BUREAUCRACY

We saw in the preceding pages how after the British possessions in India had been consolidated, a rigid bureaucratic form of administration *i. e.*, "an administration by officials, conducted with the aid of official light, and under merely official control"* came to be established. Efficiency was the watchword of Administration. Even here, however, too much centralization leads to exorbitant correspondence and unpardonable delay in the despatch of public business. It has even more radical defects, all resulting from the exclusion of people's voice from the management of their affairs. They are these :

- (a) The decadence of the indigenous institution of self-government—the Village Panchayat.
- (b) Grouping of Provinces without regard to racial or linguistic affinities.
- (c) Enormous growth in public taxation and expenditure; particularly the growth of military expenditure.

* Gokhale ; 482.

- (d) Backwardness of what are called nation-building activities of the State *e. g.*, Education, Sanitation, Temperance, Co-operation, etc.
- (e) Industrial backwardness; agricultural stagnation; Extreme poverty leading to and aggravating the effects of famines and epidemics.
- (f) Attempts to thwart political agitation by restrictions upon freedom of press, speech, and movement; increase in sedition and anarchist crime; repressive measures.

Gokhale's verdict.—The inevitable failure of a Bureaucracy to attain *real* efficiency was thus pointed out by the late Mr. Gokhale:—

“The efficiency attained by a foreign bureaucracy uncontrolled by public opinion, whose members again reside only temporarily in the land in which they exercise official power, is bound to be of a strictly limited character, and it can never compare with that higher and true efficiency which is possible only under a well-regulated system of self-government. The present form of administration in India is a strongly centralized bureaucracy in which the men at the centre hold office for five years only. They then leave the country, carrying away with them all the knowledge and experience of administrative matters acquired at the expense of the country, and their places are taken by new men, who, in their turn retire similarly after five years. As things are, there is no one ever in the Government who is permanently interested in the country as only its own people can be interested. One result is that the true well-being of the people is systematically subordinated to militarism and

service interests of English mercantile classes; and though under such a system peace and order may be maintained, and even a certain amount of efficient administration secured, the type of efficiency is bound to remain a low one always. Moreover, it is clear that even such efficiency of administration as has been attained in the past by the existing system, is bound to suffer more and more, owing to the growing antagonism of the governed to that system. No man for instance, ever laboured more strenuously for mere efficiency than Lord Curzon, and yet, never was discontent deeper and more wide-spread than when he left India, and no Viceroy of recent times has had to succeed to a greater legacy of difficulties than Lord Minto."

✓ (52) DECENTRALIZATION

It would seem then that the advent of Lord Minto and Lord Morley into the orbit of Indian Administration marked the dawn of a new era. Many events conspired to give point to the transition. Lord Curzon's failure meant the failure of the Bureaucratic form of Government. The Liberal party came into power about the same time with Morley as the Secretary of State and India had a sympathetic Viceroy in Lord Minto. In his speech in the House of Lords Morley said † : There are two rival schools of thought, one of which believes that better government of India depends on efficiency, and that efficiency is in fact the end of British rule in India. The other school, while not neglecting efficiency, looks also to what is called political concessions." As a preliminary to

* Gokhale : 989.

† Keith : *Speeches and Documents* Vol. II. p. 88.

the grant of some concessions, Morley and Minto appointed a Royal Commission to enquire into the causes of and suggest remedies for Centralization.

Limited Scope of the Decentralization Commission.—The Royal Commission had very limited terms of reference. It was expressly debarred from enquiring into the relations between the Secretary of State and the Government of India and thus the main and sole cause of centralization remained untouched by them. Further, the Commission was not to go into questions of a purely political nature, questions of general policy, and questions such as the separation of judicial and executive functions. The Commission was simply to report whether the existing relations between the Central and Provincial Governments could be simplified and improved by measures of decentralization and “the system of government better adapted both to meet the requirements and promote the welfare of the different provinces, and without impairing its strength and unity to bring the executive power into closer touch with local conditions.”

It will be seen that the underlying principle of the Decentralization Commission was *administrative* and not *constitutional*. It wanted to simplify administration and not to give autonomy to the Provinces.

The Commission urged * the following *considerations for decentralization* :

(1) The difficulties of administering a vast sub-continent from a single head-quarters, and the inevitable failure in statesmanship and efficiency which must result from a Central Government attempting this task.

* Report : para 48.

(2) The fact that the various Provinces contain diverse nationalities with different languages, traditions and interests, and are often on separate planes of development.

(3) The desirability of creating a larger sense of responsibility in *Provincial and local authorities*. (Mark, not in the *people*.)

(4) The importance of strengthening the administration and educating the people by interesting the latter more largely in public affairs.

(53) FINANCIAL DECENTRALIZATION

It was in the sphere of Finance that the Commission suggested many reforming measures which were adopted later on by the Government of Lord Hardinge. To appreciate these measures let us first of all trace the *history of Provincial Settlements*.

Sir John Strachey, to illustrate the utter dependence of the Provinces upon the Central Government for funds, wrote: "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 wages of 10 shillings a month, the matter had to be formally reported for the orders of the Government of India."*

This continued right up to the year 1871. The provinces having no independent resources of their own and expecting to get whatever they wanted from the Government of India, had no motives for economy in expenditure or care in the collection of revenue and there was an amount of friction between them and the Central Government over trifling details. The first step in Decentralization was taken by the Government

* Strachey : 113.

of Lord Mayo. Certain heads of expenditure *e. g.*, Jails, Registration, Police, Education, Medical Services, Printing, Roads, etc., were transferred to the control of the local Governments with the revenue under the corresponding heads, to be supplemented by a *fixed annual* Imperial grant. By this measure a certain decree of fixity in Imperial finance was secured and the local Governments were given absolute freedom for allotting the Imperial grant as they liked.

But this arrangement did not offer an effective inducement to the Provinces to develop the revenues collected in their territories and to secure economy. Lord Lytton's Government, therefore, chiefly as the result of the recommendations of Sir John Strachey, made the following improvements in 1877-78 :—

(1) Certain additional heads of expenditure *e. g.*, 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 services, instead of making an increase in their permanent grants, a share in the revenues realized under certain heads was assigned to them *e. g.*, Excise, Stamps etc.

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

This led to annual bargaining between the Central and Provincial authorities, and as the fixed grant

formed a considerable portion of the resources of the provinces, the resources could not increase with sufficient elasticity. In the days of Lord Ripon, therefore, his Finance Minister Major Baring (afterwards Lord Cromer) (a) instead of making settlements annually, kept them in force for five years; (b) instead of making up the provincial deficit by an Imperial grant, a certain percentage of Land Revenue was made over to the Provinces. Thus the annual bickerings were stopped and provincial revenues made more elastic. Settlements on these lines were made in 1882, 1887, 1892 and 1897. Though the Provinces were now better off than they were thirty years previously, their position was most unsatisfactory. "In 1900-1901, out of a total gross revenue of £75 millions, the provincial Governments were entrusted with the expenditure of £18 millions. From this income they had to provide for the greater part of the expenditure incurred in the various Departments of the Civil Administration entrusted to them, for the collection of land revenue, for the Courts of Justice, Jails, Police, Education, Medical Services, civil buildings and roads, and for a multitude of other charges."*

It was the practice of the Government of India to resume, at each time of the revision of the settlement, whatever surplus revenue accrued to a province during the period. This killed any motive for economy, as the Provincial Governments knew that if they economized in one direction to accumulate money for other needs their savings were imperilled, while their reduced standard of expenditure would certainly be taken as the basis for the next settlement.

* Strachey : 115.

The Government of Lord Curzon, therefore, made the settlements *quasi-permanent* in 1904. As at that time the Central Government was having a series of surpluses, it diverted a part of this surplus, in the shape of special grants, to the Provincial Governments for the improvement of Police, Agriculture, Education, Local Self-Government, etc.

The final step in the history of these settlements was taken in 1912 when Lord Hardinge's Government declared the settlements to be permanent. At the same time certain improvements were made in these settlements. (a) Though the burden of famine relief was thrown entirely upon the provinces the Government of India showed willingness to consider the grant of assistance to a province in the event of grave embarrassment. (b) Fixed grants assigned to the provinces to make up their deficits were, wherever possible, replaced by growing revenues. (c) Special grants of a non-recurring character were to be continued as before, but care was to be taken to see that they did not unduly interfere with the Local Governments and that they were given with due regard to the wishes of the Provincial Authorities. (d) Minor adjustments were made to ensure that each province got its proper share of revenue. Thus Forest revenue and expenditure were made wholly provincial in all provinces, Excise was wholly provincialized for Bombay, and to the extent of three quarters in the Central Provinces and the United Provinces. Land revenue was made half provincial in the Punjab and $\frac{5}{8}$ provincial in Burma.

Though by this arrangement the Provinces got larger revenues and greater freedom in their application certain restrictions upon them were still continued.

Thus they could not budget for a deficit, and they had to maintain a minimum cash-balance with the Government of India. Nor had they powers of taxation or borrowing.

(54) ADMINISTRATIVE DECENTRALIZATION

Very little was done by way of removing the restrictions upon the legislative powers of the provincial councils and it may be said that the provinces continued to be the agents of the Central Government with slightly increased powers in financial matters.

Some measure of decentralization was brought about *within* the province by (a) reform in administration and (b) the institution of Local Self-Government. We may mention the following recommendations of the Decentralization Commission as following under the former head:—(1) Thus the Commission was in favour of appointing Governors in place of Lieutenant-Governors and Chief Commissioners and giving them Executive Councils. It pointed out the *administrative* advantages of this reform: it affords (a) provision for suitable distribution of work, and relief to the head of the Province. (b) Greater continuity of policy, collective consideration of important questions, increased public confidence, and consequently less necessity for outside official control. (c) The introduction of a fresh mind, possessed by a Governor whose position and antecedents would command the deference and support of his colleagues. (d) Greater efficiency of the Provincial Governments in relation to their Legislative Councils.

Among other measures recommended by the Commission of a purely administrative nature we may mention the following:

(2) Proper definition of the powers and functions of Inspector-Generals attached to many Departments of the Government of India *e. g.*, The Director General, Indian Medical Service; Sanitary Commissioner with the Government of India; Director General of Education; Inspector-Generals of Forest, Agriculture, Irrigation, Excise and Salt etc. Though these Imperial Officers were regarded as useful in their own way as supplying information to the Government of India, and some of them as carrying on research, they were not to interfere with provincial administration.

(3) The Commission recommended the abolition of the Boards of Revenue where they existed and transferring their work to members of Executive Councils and to Divisional Commissioners.

(4) It was in favour of retaining the Divisional Commissioners as a measure of decentralization.

(5) Within the District, it recommended the development of the sub-divisional system as it obtains in the Madras Presidency. The sub-division consists of a group of Taluks or Tahsils. The Tahsildar should be under the Sub-divisional Officer and the latter should be under the Collector and both should be made to feel as fully responsible for the good administration of their charges as the Collector is for that of the whole district. For this purpose their powers should be enlarged. The Commission described the Tahsildar (corresponding to the Mamlatdar in the Bombay Presidency) as "the non-commissioned officer of the administration. He is the person in closest contact with the people, and to him the Collector and the Sub-divisional Officer on the one hand, and the ryots on the other, look most for information. He is not responsible merely for revenue and criminal work

but has to take a large share in other matters as well." The Commission was* "emphatically of opinion that the sub-divisional system ought to be universally applied, as bringing the executive officers of Government into more immediate local contact with the people, and as the most obvious instrument of efficient decentralization."

(55) SEPARATION OF EXECUTIVE AND JUDICIAL FUNCTIONS

A measure of administrative decentralization which the Royal Commission on that subject was debarred from considering but which has always stood in the forefront of controversial politics in India is the separation of judicial functions from the executive officers in a district. We have already seen that the Collector and his subordinates also exercise magisterial powers (of the first, second or third class as the case may be) and are responsible for the maintenance of peace and order in the district, and for that purpose control the police. For purposes of internal discipline and equipment the police is under the control of its departmental head, the Inspector-General of Police, but it is employed by the Collector for the prevention and detection of crime in the district. The Collector-Magistrate is thus "a strange union of constable and magistrate, public prosecutor and criminal judge, revenue collector and appeal court in revenue cases."

The history of this union of functions has been already traced up to the year 1870 in section (28) of this book. We there found how the combination was continued, chiefly owing to the reactionary view of

* Report : para 582.

the then Law Member, Sir James Stephen. He declared that "the maintenance of the position of the district officers is essential to the maintenance of the British Rule in India and that any diminution in their influence and authority over the natives would be dearly purchased even by an improvement in the administration of justice."

Such a strong statement of the case was bound to give a fresh impetus to the agitation against combination of functions. It was led by two Bengalis, Manmohan Ghose and Romesh Chundra Dutt, and an influential memorial was submitted to the Secretary of State in 1899. It led to no immediate results. But when, with the advent of Lord Morley and Lord Minto to the helm of India affairs, there was a favourable reaction and the rigour of bureaucracy was slightly relaxed the question of separation was mooted in the Indian Legislative Council in 1908, and the then Home Member, Sir Harvey Adamson, made an official pronouncement on the subject.

The main objections urged against separation were two:

- (1) That the separation of the executive and judicial functions will involve considerable additional expenditure.
- (2) That the District Magistrate can not be deprived of his judicial powers without loss of prestige and influence over the people.

The financial difficulty can not be ignored though it is not insuperable. To the second objection Sir Harvey Adamson made the following reply which, on account of its weight and philosophic insight, bears quotation *in extenso*,

"Those who are opposed to a separation of functions are greatly influenced by the belief that the change would materially weaken the power and position of the District Magistrate and would thus impair the authority of the Government of which he is the chief local representative. The objection that stands out in stronger relief is that prestige will be lowered and authority weakened if the officer who has control of the police and who is responsible for the peace of the district is deprived of control over the Magistracy who try police cases. Let me examine this objection with reference to the varying stage of the progress of a community. Under certain circumstances it is undoubtedly necessary that the executive authorities should themselves be the judicial authorities. The most extreme case is the imposition of martial law in a country that is in open rebellion. Proceeding up the scale we come to conditions which I may illustrate by the experience of Upper Burma for some years after the annexations. Order had not yet been completely restored and violent crime was prevalent. Military law had gone and its place had been taken by Civil law of an elementary kind. District Magistrates had large powers extending to life and death. The High Court was presided over by the Commissioner, an executive officer. The Criminal law relaxed, and evidence was admitted which under the strict rules of interpretation of a more advanced system would be excluded. All this was rendered absolutely necessary by the condition of the country. Order would never have been restored if the niceties of law as expounded by lawyers had been listened to, or if the police had not gone hand in hand with the judiciary. Proceeding

further up the scale we come to the stage of a simple people, generally peaceful, but having in their character elements capable of reproducing disorder, who have been accustomed to see all the functions of Government united in one head, and who neither know nor desire any other form of administration. The law has become intricate and advanced, and it is applied by the Court with all the strictness that is necessary in order to guard the liberties of the people. Examples would be easy to find in India of the present day. So far I have covered the stages in which a combination of magisterial and police duties is either necessary or is at least not inexpedient. In these stages the prestige and authority of the Executive are strengthened by a combination of functions. I now come to the case of a people among whom very different ideas prevail. The educated have become imbued with Western ideals. Legal knowledge has vastly increased. The lawyers are of the people, and they have derived their inspiration from Western Law. Anything short of the most impartial judicial administration is contrary to the principles which they have learnt. I must say that I have much sympathy with Indian lawyers who devote their energies to making the administration of Indian law as good theoretically and practically as the administration of English law. Well, what happens when a province has reached this stage and still retains a combination of magisterial and police functions? The inevitable result is that the people are inspired with a distrust of the impartiality of the judiciary. You need not tell me that the feeling is confined to a few educated men and lawyers and is not shared by the common people. I grant that if the

people of such a province were asked one by one whether they objected to a combination of functions, ninety per cent. of them would be surprised at the question and would add that they had nothing to complain of. But so soon as one of these people comes into contact with the law his opinions are merged in his lawyer's. If his case be other than purely private and ordinary, if for instance he fears that the police have a spite against him or that the District Magistrate as a guardian of the peace of the district has an interest adverse to him, he is immediately imbued by his surroundings with the idea that he can not expect perfect and impartial justice from the Magistrate. It thus follows that in such a province the combination of functions must inspire a distrust of the magistracy in all who have business with the Courts. Can it be said that under such circumstances the combination tends to enhancement of the prestige and authority of the Executive? Can any Government be strong whose administration is not entirely above suspicion? The answer must be in the negative. The combination of functions in such a condition of society is a direct weakening of the prestige of the Executive."

Apart from the question of prestige there are certain fundamental objections to the combination of functions in the same functionary. First, as Mr. Ramsay MacDonald points out,* the judicial and executive mind are at enmity. "The executive officer makes up his mind about a man not on proof alone, but on what seems to him to be likelihood or possibility. His business is not to adjudicate upon what has been done or what has happened, but upon what

*The Government of India ; p. 198-199.

is likely, in his opinion, to be done or to happen. The Judge knows but little of likelihood. He has to make up his mind about evidence and he has to interpret and apply the law. He has to approach a case with a mind free from all impressions regarding it which must be stamped deeply on the mind of the executive officer. His outlook and function make him regard society as static; the outlook and function of the executive officer make him regard society as dynamic. Thus, apart from any taint of corrupt dealing or of any desire on the part of the executive to rule tyrannically or to use the judiciary as its tool, ... the executive and judicial mind are at enmity."

Again it is no argument to say that the Collector has rarely time to try cases himself, and he merely supervises the subordinate magistrates. The existence of the powers gives rise to suspicion and thus saps the foundations of justice. As Sir Harvey said: "The inevitable result of the present system is that criminal trials affecting the general peace of the district are not always conducted in the atmosphere of cool impartiality which should pervade a court of justice. Nor does this completely define the evil, which lies not so much in what is done, as in what may be suspected to be done, for it is not enough that the administration of justice should be pure; it can never be the bedrock of our rule unless it is also above suspicion."

One minor argument in favour of the union of functions is that thereby the members of the Civil Service get a thorough training in administration, and after a period of probation, each selects the judicial or the executive line according to the bend of his mind, and that if a separation of functions was

effected from the first and rigidly maintained, it would be difficult to get Europeans of the proper legal qualifications to fill the posts of Judges; and the quota of High Court Judges recruited from the Civil Service would to that extent suffer in quality. This argument had some force when there was difficulty in getting Indians to fill the judicial posts. But it is not so now. And there are positive disadvantages in making the members of the Civil Service shift from the judicial to the executive side and *vice versa*. The District Judge—trained in the executive field during his earlier years and often found unsatisfactory for that kind of work—does not possess those legal attainments or that judicial frame of mind and detachment of view which are essential for an impartial administration of justice. The fact is India has outlived those conditions when a combination of functions was necessary. This was so when there was no efficient Bar in India, no critical opinion, and when there was one man in the midst of a great district which he had to govern of his own will. In each respect things have changed now and the combination of function is a mischievous anomaly.

Under the Reformed Constitution the interest of this controversy has shifted from the Central to the Provincial Legislatures and measures in the direction of separation are being adopted as funds permit.

(56) LOCAL SELF-GOVERNMENT

Important recommendations were made by the Decentralization Commission for the encouragement of Local Self-Government. Here the process is not that of mere transfer of authority from higher to lower officials but that of handing over the

management of local affairs to local bodies. This involves the association of the people in the administration of local affairs. Local Self-Government thus combines both the principles of decentralization and association.

We shall first briefly trace the *Development of Local Self-Government*.

Presidency Towns.—The development of local self-government in its present form commenced in the three Presidency towns which were the earliest to come under British Rule. A Corporation was established in Madras as early as 1687 by a Royal Charter on the model of similar institutions then existing in England, and similar Corporations were later on established in Bombay and Calcutta. The Charter Act of 1793 empowered the Governor-General to appoint Justices of the Peace for the Presidency Towns who were authorized to levy taxes on houses and lands to meet the cost of scavenging, police, and maintenance of roads. It should be noted, however, that the Justices of the Peace were British servants of the Company or other British inhabitants, and not Indians.

Mofussil Municipalities.—Outside the Presidency towns there was no Local Self-Government in the towns till 1850 when an Act was passed for the whole of India enabling Towns Committees to levy indirect taxes. A few municipalities were established in the N.-W. Province and in Bombay. Meanwhile the growth of towns and the insanitary conditions prevailing in them attracted the notice of the Royal Army Sanitary Commission of 1863 and as a result Towns Improvement Acts were passed in different provinces by which Commissioners were appointed to discharge municipal functions in several towns.

Meanwhile self-government was begun in the rural areas by an Act of 1865 which authorized the imposition of a cess on land and a tax on houses for local purposes.

Lord Mayo's Resolution.—The progress made was negligible and the first considerable step was taken by Lord Mayo's Government in connection with their scheme of financial settlements with the provinces. Municipal activities were extended and the elective principle was introduced. At the same time many municipalities were relieved partly or wholly of their expenditure on police. The value of local self-government was thus pointed out in the Resolution issued on the subject: "Local interest, supervision, and care are necessary to success in the management of funds devoted to education, medical charity, and local public works. The operation of this Resolution in its full meaning and integrity will afford opportunities for the development of Self-Government, for strengthening Municipal institutions, and for the association of Natives and Europeans to a greater extent than heretofore in the administration of affairs."

Advance under Lord Ripon.—It was in Lord Ripon's time that the decisive step was taken in respect of Local Self-Government by placing it on its true basis, "not merely as a means of devolution of authority in administration and in decentralization of financial resources, but as a means of popular and political education by which alone progressive communities could cope with the increasing problems of Government."*

As Lord Ripon explained, in advocating the extension of Local Self-Government and the adoption

* Iyengar: 118.

of that principle in the management of many branches of local affairs, he did not suppose that the work would be in the first instance better done than if it remained in the sole hands of Government District Officers. It was not primarily with a view to improved efficiency in administration that the principle of Local Self-Government was put forward and supported. It was chiefly desirable as an instrument of political and popular education. Lord Ripon himself had no doubt that in course of time, as local knowledge and local interest were brought to bear more freely upon local administration, improved administration would in fact follow. Every year the task of administration became more onerous and His Excellency-in-Council argued that it was a sheer waste of power not to utilize the growing class of intelligent public-spirited men in the land. He attributed the failure of local institutions in the past to their being "over-ridden and practically crushed by direct, though well-meant, official interference."

(1) Regarding the mode in which Local Boards were to be generally constituted, the Resolution laid down the principle "that while maintaining and extending, as far as practicable, the plan of municipal government in the cities and towns of each province, the Local Governments will also maintain and extend throughout the country, in every District where intelligent non-official agency can be found, a net-work of Local Boards, to be charged with definite duties and entrusted with definite funds." The area of jurisdiction allotted to each Board was in no case to be too large. It was to be such as would ensure local knowledge and local interest, and as such the Taluka was recommended as a suitable unit. The Taluka

Boards, may, in their turn be combined under a District Board.

(2) In the composition of Boards—both rural and urban—"preponderance of non-official members" was advocated. The principle of election was to be followed wherever practicable, to be supplemented by a system of choice *i. e.*, nomination. The Chairmen of the Boards were to be, as far as possible, non-officials elected by the Boards.

(3) Regarding the control to be exercised over the Local Bodies, the Resolution laid down the principle "that the control should be exercised from without rather than from within." The Government should revise the acts of Local Bodies but not dictate them. The Government should have two powers of control. In the first place, their sanction should be required in order to give validity to certain acts, such as the raising of loans, the imposition of taxes, alienation of municipal property etc. In the second place, Government should have power to interfere either to set aside altogether the proceedings of the Board in particular cases, or, in the event of gross and continued neglect of any important duty, to temporarily suspend the Board.

(4) The primary functions of the Municipal Boards were the following:—

(a) The construction, upkeep and lighting of streets and roads, and the provision and maintenance of public and municipal buildings; (b) public health, including medical relief, vaccination, sanitation, drainage and water-supply, and measures against epidemics; (c) education, especially primary education.

The services entrusted to Rural Boards were similar to those made over to municipalities, the

principal being communications, education and sanitation, and occasionally, famine relief.

(5) The principal sources of revenue of municipalities came to be—(a) Octroi, principally in Northern India, Bombay and the Central Provinces; (b) taxes on houses and lands in Madras, Bombay, Bengal, Burma and the Central Provinces; (c) a tax on professions and trades in Madras and the United Provinces; (d) road tolls in Madras, Bombay and Assam; (e) taxes on carts and vehicles and (f) rates and fees for services rendered in the shape of conservancy, water supply, markets and schools, in all.

The main income of rural boards was derived from a cess on land, which was collected by Government agency along with the land revenue, the proceeds being subsequently adjusted to the credit of the Local Boards. In some provinces a portion of the cess was utilized for provincial purposes.

Decentralization Commission on Local Self-Government.—The recommendations of this Commission were responsible for a further development of Local Self-Government. In regard to municipalities it was recommended that they should ordinarily contain a substantial elective majority and should usually elect their own Chairmen, that they should have full powers in regard to taxation within the limits of the laws, and that they should have complete control over their budgets subject to the maintenance of prescribed minimum balances. Similar financial privileges were extended to the Rural Boards.

The Commission strongly recommended the establishment of village panchayats. Reference has been made to the autonomous character of village communities in India. Though they had survived

every political revolution in the past, they declined under the pressure of British administration. As the Commission explained,* the village lost part of its autonomy and some of its characteristic features owing to "the establishment of local Civil and Criminal Courts, the present revenue and police organization, the increase of communications, the growth of individualism and the operation of the ryotwari system which is extending even in the north of India." Though the village continues to be the unit of administration for revenue purposes, and in many provinces it maintains its own police, it has ceased to be a unit of administration for purposes of Local Self-Government. The Commission strongly urged the desirability of reviving the Village Panchayats in the following terms:†

"We are of opinion that the foundation of any stable edifice which shall associate the people with administration must be the village, as being an area of greater antiquity than administrative creations such as the tahsils, and one in which the people are known to one another and have interests which converge on definite and well-recognised objects, like water-supply and drainage. It is probable indeed that the scant effort hitherto made to introduce the system of rural Self-Government is largely due to the fact that we have not built up from the bottom."

Review of Local Self-Government upto 1915.—Having reviewed the main recommendations of the Commission let us examine the position of Local Self-Government about this time. In this respect the Presidency Towns stand in a class by itself. *Bombay* has always served as the model for the other Presidency Towns.

* Report: para 696.

† Report: para 699.

Its first Corporation consisted of a Municipal Commissioner (a Government Official) and nominated Justices of the Peace who were entirely under his influence. It was in 1872 that for the first time, and as a result of the suggestions of Mr. (afterwards Sir) P. M. Mehta, the Corporation came to consist of members half of whom were elected by the rate-payers, the other half being made up of J. P.'s and nominees of Government. The Act of 1888 increased the number of elected members to 72 of whom only 16 were nominated by Government, the rest being elected by rate-payers, the J. P.'s, the University and the Chambers of Commerce. The Corporation had a Standing Committee of 12—eight elected and four nominated—with an elected President under whose directions the work of administration was carried on by the Municipal Commissioner who was a nominated official belonging to senior rank in the Indian Civil Service.

The *Calcutta* Corporation was remodelled on the Bombay pattern in 1876 when it came to consist of 48 elected and 24 nominated Commissioners. But the nominated President possessed preponderating power. Lord Curzon reduced the number of Commissioners to fifty of whom 15 were nominated by Government, the rest being elected by the rate-payers, the Chambers of Commerce and the Port Trust. This Corporation also had a Standing Committee of its own but it was not at all quite as powerful as that of Bombay.

The principle of election by rate-payers was introduced in the *Madras* Corporation by an Act of 1878. An Act of 1904 increased the number of Corporators to 36 and created a Standing Committee with a President.

In addition to these Corporations the Presidency Towns had two other Bodies for specific purposes, the Improvement Trusts—for the purpose of reclamation of land, road widening, improvement of tenements of the labouring classes, etc., and the Port Trusts for the improvement of the Ports. In 1911 the aggregate income of the Municipalities of Bombay, Calcutta, Madras and Rangoon was $2\frac{1}{2}$ crores. The incidence of taxation per head was highest in Rangoon, 11·61 Rupees, 10 Rupees in Bombay, $8\frac{1}{2}$ Rupees in Calcutta and 3 Rupees in Madras.

Municipal and Rural Boards.—Turning to Municipal and Rural Boards, we find that there were in 1911, 713 Municipalities, 197 District Boards and 517 Sub-district Boards. The population in municipal areas was about 16 millions *i.e.* about 7 per cent. the remaining 93 per cent. being entirely rural. The taxation per head in Municipal areas was about two rupees in Bombay, Punjab, Burma, and the North-West Frontier, $1\frac{3}{4}$ Rupees in the Central Provinces, a little over $1\frac{1}{2}$ in the United Provinces and Bengal, and only $1\frac{1}{2}$ in Madras. In Bombay, the United Provinces, the Punjab and the Central Provinces, a large part of the Municipal revenue was derived from Octroi. In other provinces there was no Octroi. There was in Madras, however, a toll levied on roads, and Bombay and Assam also levied it. The principal revenue in Madras and Bengal was derived from taxes on houses and lands, Bombay, Central Provinces and Burma also levying such taxes. In some provinces there were taxes on professions and trades, and in all, on carts and vehicles.

The Municipal Boards had powers of taxation within certain limits with the previous sanction of the

Local Government. The Rural Boards had no powers of taxation. Their sole source of income was the one-anna cess on Land Revenue and came to about $2\frac{1}{3}$ crores, for the whole of British India. Another $2\frac{1}{2}$ crores was received from various other sources including a small grant from Government. Thus, the incidence of taxation was about 4 annas per head. Even of this cess all the Local Boards did not get the whole amount. Some of them *e.g.*, those in the United Provinces, the Central Provinces, the Punjab, etc. had to make contributions to the Provincial Governments for special services.

Review and Criticism.—The Taxation Enquiry Committee has pointed* out two features of the development of Local Self-Government in British India: "In the first place the process has been, not that of a federation of smaller units into a larger unit to deal with common interests which they can not deal with individually, but the much more difficult process of devolution of powers by the larger unit to the smaller ones. In the case of the towns, Local Self-Government began in the big cities, to be followed later by extension to the larger towns in the mofussil, and later to village unions or notified areas. In rural areas the original unit was the District Board. When it was found that that was unwieldy and had a tendency to divert its attention too much to the head quarters, some of its powers and funds were transferred to bodies representing portions of districts, known in some provinces as Local and in others as Taluk Boards. Even these were found too large to be of use to the villages, and during the last few years there has been a tendency for the revival of the Village Panchayat."

* Report of Taxation Enquiry Committee 1924 ; paras 394-95.

Secondly, self-governing bodies in India have been severed from all connection with police functions. In Europe these functions form an important part of the local administration and in India also they did so in former times. But as local bodies grew in power they were relieved of these functions, partly because of their lack of funds and partly because of the policy of centralization.

Turning next to the extent of progress made by Local Self-Government during fifty years (1865-1915) it is clear that it was very small. The funds that were allotted to the Local Boards were inadequate for the many functions for which they were made responsible. The Bureaucracy did not appreciate the value of these Boards. The District Officers—who were generally the Chairmen of the Rural Boards—had everything in their own way. The proportion of ex-officio and nominated members was very large. Further, the Boards had very limited financial powers. They could neither tax nor borrow on their own account. The question of Local Self-Government received some attention when a special Department was created about 1908 to deal with it and entrusted to a Member of Executive Council of the Governor-General. Also special grants—though of a non-recurring character—were made to Local Bodies for the improvement of water-supply, sanitation etc. and the Government of Lord Hardinge, in a comprehensive Resolution that was issued in 1915, and embodying the views of the Government of India on the Report of the Decentralization Commission, assumed a most sympathetic attitude towards Local Self-Government. After going over the various obstacles that had prevented the development of Self-Government in the past and

after indicating the lines on which the Municipal Boards, the District and the Taluka Boards, and the Village Panchayats and Unions were to advance in future, the Resolution declared that its object was to mark a definite advance in devolution and political education. The Resolution was framed in 'a spirit of prudent boldness, calculating risks but not afraid to take them in the cause of progress.'

The advance of Local Self-Government after the Announcement of August 1917 will be dealt with in a subsequent chapter.

CHAPTER XII

ASSOCIATION

(57) APPOINTMENT OF INDIANS TO IMPORTANT POSTS

It must have been seen that Decentralization as a means of mitigating the defects of a Bureaucracy has very serious limitations. Its essence lies in the shifting of authority from higher to lower officials with a view to obtaining simplicity, smoothness and despatch in administration. Of itself it does not give an increased share in administration to the *people*. Extensive decentralization is compatible with the complete exclusion of the people from a voice in the conduct of Government. Hence the principle of decentralization had to be combined with that of Association. Association was brought about by (a) the establishment of Local Self-Government as explained in the last Section, by (b) the appointment of Indians to responsible posts in administration, and most important of all, by (c) the inauguration of Legislative Councils containing a popular element.

Even prior to the introduction of the Reforms, Lord Morley had appointed two Indians to his own Council. Similarly Indians were appointed to the Executive Councils of the Governor-General and of the Governors of Madras, Bombay, and Bengal. In this way Indians were allowed to enter the very citadel of Bureaucracy. But even there they were hopelessly outnumbered by their European colleagues

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and could not do much more than represent the Indian point of view.

Similarly the need of introducing more Indians in the Public Services was admitted but as no appreciable progress was made in this direction, it will be better to take up the whole subject of the Indianization of the Services in connection with Responsible Government.

We, therefore, turn to the remaining form of Association *viz.*, the establishment of popular Councils.

'(58) LEGISLATIVE COUNCILS UP TO 1909

Let us then consider the Association of Indians in the making of laws. We have already seen how the Governor-General in Council and the Provincial Governors-in-Council used to make laws known as Regulations prior to 1833. The Charter Act of that year, as explained in Section 31 of this book, brought about an important reform in the state of laws and the legislative machinery. It gave to the country its first rudimentary legislature consisting of the Governor-General in Council with the addition of a Law Member. The despatch of 1834 reiterated the first principle of legislation that 'no law, except one of an occasional kind, or arising out of some pressing emergency, should be passed without having been submitted to mature deliberation and discussion'. The Provincial Governors-in-Council were deprived of their power to make Regulations. But the Governor-General-in-Council was advised to take into consideration drafts of laws submitted by the Provincial Governments and suggestions coming from well-informed and influential persons, official as well as non-official, for the improvement of laws. In practice the concentration of

all legislative power in the Governor-General in Council was found to have defects of its own. The members of the Council were mostly drawn from the Bengal Service and had little knowledge of conditions in Bombay and Madras and could not satisfactorily handle laws for these two Presidencies. To Lord Dalhousie belongs the credit of differentiating the Legislative Council much more decisively from the Executive. The Act of 1853, for which he was in great part responsible, placed the "fourth Member" on the same footing with the "ordinary" members of the Council, and the Council, for legislative purposes, was enlarged by the addition of 6 members, namely the Chief Justice and one Puisne Judge of the Supreme Court at Calcutta, and 4 official representatives of the Local Governments of Madras, Bombay, Bengal and North-West Province.

The Act of 1853 recognized another requisite of sound legislation, namely, publicity. All projects of laws, and the debates of the Council upon them were to be given wide publicity. Thereby the people get the opportunity of criticising legislative measures. Proper deliberation *within* the Council, and wide publicity *outside* the Council are necessary for satisfactory legislation.

The Indian Councils Act of 1861.—But it was soon clear that even Lord Dalhousie's improvement did not suffice to meet the needs of the time. (1) Madras and Bombay still complained of the preponderance of voice which Bengal exercised; (2) the huge extent of territory for which a single Council legislated made it impossible for matters to be handled with adequate local information and experience; (3) moreover, as Sir

Charles Wood bitterly complained afterwards, the Council became a sort of Debating Society or Petty Parliament, and arrogated to itself the right of inquiry into and redress of grievances. (4) Above all, the terrible events of the Mutiny brought home to Government the dangers arising from the entire exclusion of Indians from association with the legislation of the country.

It was to remove these defects that in 1861 was passed what Chailley has called "the primary Charter of the present Indian Legislatures"* as the result of much correspondence between Lord Canning and Sir Charles Wood. The legislative power was restored to the Councils of Bombay and Madras and new Councils were allowed to be established in other provinces. This was done for Bengal (1862), for North-Western Province (1886), for Burma and the Punjab (1897), and for Eastern Bengal and Assam in 1905. Thus the first step was taken in the direction of legislative decentralization. But there were rigid restrictions placed upon the powers of the Provincial Councils. Formerly the laws enacted by the Local Councils had been complete in themselves and came into operation of their own force. From 1861 the previous sanction of the Governor-General was made requisite for legislation by the local Councils in certain cases, and all Acts of the local Councils required the subsequent assent of the Governor-General in addition to that of the Governor. The Governor-General thus became the head of all legislative authority in British India.

The third defect—namely the inconvenient interference of the Council established by the Act of

* Chailley : 385

1853 with the acts of the Executive Government—was removed by strictly confining the functions of the new Councils to legislation.

The fourth defect (exclusion of Indians) was removed by reinforcing the Central Council with additional members—not less than six and not more than twelve—*nominated* for two years, of whom not less than half were to be *non-officials*. It is well to fully appreciate the meaning of this step. Sir Charles Wood's speech in the House of Commons on the Indian Councils Act of 1861 is worthy of perusal even now. There are, he said, two modes of legislation: one in which the Executive alone makes laws and the other in which laws are made by a representative body. Though the former was too primitive to be adopted, the latter had difficulties of its own. "Every one who considers the condition of India will see that it is utterly impossible to constitute a representative body in that country. You can not possibly assemble at any one place in India persons who shall be the real representatives of the various classes of the Native population of that Empire." In the absence of representative bodies, the Executive Council of the Governor-General was to be *enlarged* by the addition of a few *non-officials*—Indians as well as European. It was not easy to get, in the then state of education, Indians familiar with Western methods of Government. The kind of leaders the Act had in view were Indian Rajas, or their Dewans, or great Land-holders or retired officials of high rank. But none of these dreamt that the Councils in which they sat would become in course of time more and more representative of the Indian population and would claim a measure of control over the Executive.

The student will find it convenient to follow the subsequent history of the Councils by considering (a) changes in their Constitution and (b) expansion of their Functions. Under the first, he should consider (1) the total membership of the Councils, (2) the proportion of official and non-official members, and (3) the method of appointment of members. Under the second, he should consider how the Functions of the Councils came to be enlarged in course of time.

The Indian Councils Act of 1892.—Before long the Councils established under the Act of 1861 proved inadequate. The newly established Universities had given an impetus to higher education and the number of Indians qualified by education and experience of public affairs to take part in the Councils was fast increasing. Also the demand of the educated classes began to find expression since the inauguration of the Indian National Congress in 1885. People wanted something more than a Council that was small in size and circumscribed in functions. The question of the reform of the Councils, therefore, began to engage the attention of the Government of Lord Dufferin. Finally the Indian Councils Act of 1892 was passed. Mr. (afterwards Lord) Curzon who was then the Under-Secretary of State explained that the object of that Act was to widen the basis and expand the functions of Government in India; and to give further opportunities than then existed to the non-official and Native elements in Indian society to take part in the work of Government, and in that way “to lend official recognition to that remarkable development both of political interest and political capacity that had been visible among higher classes of Indian

society since the Government of India, was taken over by the Crown in 1858."

Though as a result of this Act the total membership of the Councils was increased, there was great opposition to the principle of election being introduced in them. Lord Cross, the then Secretary of State, said "It would be unwise to introduce a fundamental change of this description without much more positive evidence in its favour than was forthcoming." But the Government of Lord Lansdowne urged that they should not be precluded from resort to some form of election where conditions justified its trial; and they asked for power to make rules for the appointment of additional members by nomination or otherwise. They had their way. The compromise between the conservative principle of nomination and the radical method of election was embodied in the so-called "Kimberley Clause" (due really to Lord Northbrook). This clause empowered the Governor-General in Council, with the sanction of the Secretary of State in Council, to make regulations as to the conditions of nomination of the additional members to the Council. The intention of Parliament, in conferring this rule-making power on the Government of India, was explained to be as follows:—

"Where Corporations have been established with definite powers upon a recognized administrative basis (*e. g.*, Municipalities and District Boards), or where Associations have been formed upon a substantial community of legitimate interests, professional (*e. g.*, Universities), commercial (*e. g.*, Chambers of Commerce), or territorial (*e. g.*, Land-holders etc.), the Governor-General and the local Governors might find convenience and advantage in consulting from time to time such

bodies, and in entertaining at their discretion an expression of their views and recommendations with regard to the selection of members in whose qualifications they might be disposed to confide."

Technically, the function of the nominating bodies was to be that of recommendation only: but the political sense of the Government of India told them that it would be impracticable either to insist on selection from a panel of names proffered, or to reject individual nominations at discretion. This course was bound, in course of time, to lead on to election pure and simple.

So far about widening the basis of the Councils. The Act of 1892 also enlarged their functions. The Councils were allowed, in addition to their legislative function, to hold a discussion on the annual financial statement, and also to ask questions under prescribed conditions and restrictions.

(59) MORLEY-MINTO REFORMS

The next stage of reform is associated with the name of Lord Minto and Lord Morley. The final proposals were contained in the Despatch of November 27th, 1908. The Parliamentary Act embodying the changes received Royal assent on 25th May 1909. It is in the direction of further enlarging the Councils, and of making them more representative and effective that the value of the Reforms lies.

We may, as before, consider the changes made by the Act of 1909 under the heads of (A) Constitution and (B) Functions.

The constitution of the Councils was changed in *three* respects. (1) Numbers, (2) Proportion of official

and non-official members, (3) Methods of appointment or election.

✓ *Numbers.*—These, as they were laid down under the Act of 1892, were as shown in column 2 of the Table below. The numbers were doubled or more than doubled under the Act of 1909 as can be seen from columns 3 and 4 of the same Table.

Serial Number	PROVINCE	Maximum number of Additional Members under the Act of 1892.	Maximum number of Additional Members under the Act of 1909.	Total Strength under the Regulations of 1912. (d)	Strength of the Councils under the Regulations 1912.								Majority. (g)
					Ex-officio. (c)	Nominated.					Elcd.		
						Law Officers.	Other Officials.	Total Officials. (e)	Experts.	Non-officials.	Total Nominated. (f)	Non-officials.	
1		2	3	4	5	6	7	8	9	10	11	12	
1	India	16	60	68	8	..	28	36	..	5	33	27	Officials 4
2	Madras	20	50	48	4	1	16	20	2	5	24	21	N.-O. 6
3	Bombay	20	50	48	4	1	14	18	2	7	24	21	10
4	Bengal	20	50	58	8	..	16	19	2	4	22	28	13
5	Bihar Orissa	(a)	50	44	3	..	15	18	1	4	20	21	7
6	United Province	15	50	49	..	..	20	20	2	6	28	21	7
7	Punjab	15	80	26	..	..	10	10	2	6	18	8	4
8	Burma	15	80	17	..	..	6	6	2	8	16	1	8
9	Assam	20(b)	80	25	..	..	9	9	1	4	14	11	6

Notes—(a) There was no Bihar and Orissa Province before 1912.

(b) Between 1905-1912 Assam was joined to Eastern Bengal, both being called Eastern Bengal and Assam.

(c) Ex-officio members here mean members of the Executive Council and in the case of Madras and Bombay the Advocate-General.

(d) In the totals the head of the Province is excluded.

(e) i. e., nominated and ex-officio, columns 5 + 7.

(f) Official and Non-Official, columns 6 + 7 + 9 + 10.

(g) Difference of columns 10 + 12 minus 8.

✓ *Proportion of Official and Non-official Members.*— Under the Act of 1861 at least one half of the additional members of the Legislative Councils of the Governor-General and of Madras and Bombay, and at least one-third of the members of the other Legislative Councils had to be non-officials. An official majority was not required by Statute, but in practice was always maintained before the Act of 1909 in all the Provincial Councils except Bombay.

Under the Regulations of 1909 and 1912 there was to be an official majority in the Governor-General's Legislative Council and a non-official majority in all other Legislative Councils. The proportion as fixed by those Regulations is given in the above statement.

The significance of the distinction between the official and non-official members arose out of the constitutional view that all official members were bound to vote with the Government on all Government measures. The Provincial Governments were strictly subordinate to the Government of India and the latter to Parliament through the Secretary of State. Whatever legislative measure Government introduced in the Legislative Council was in accordance with the instructions of the Secretary of State or with the decision of the Executive Council. Not only the members of the Executive Council, therefore, but the nominated official members were bound to support the legislative measure and oppose any amendments which were not in conformity with the plans of Government. This was clearly laid down by Lord Elgin in the debate on Cotton Duties Bill which took place in the Indian Legislative Council in December 1894.

He said that official members can not enjoy freedom of speech or vote in the Council so long as they are responsible to the Government which nominated them. "Only in an entirely irresponsible body can members act entirely as their inclination leads them. In every legislative body a man must sit, unless he has an hereditary right, by what in modern parlance is called a mandate, and that mandate must be given by some authority. I need not remind you that in a Parliament a man is not free to act exactly as he pleases, he is distinctly subject to the mandate he has received from his constituents, and practice has shown that even this is not sufficient, but to make Parliamentary Government effective, it has been found necessary to introduce party management, and the bonds of party, in the present day, certainly show no sign of being relaxed. Here we have no election and, I am glad to say, no party, but every man who sits here sits by the authority and sanction of Parliament, and to say that he can refuse to obey the decisions of Parliament would be absurd." Thus discipline required the official members to vote according to the dictates of Government. Now an official majority was retained in the Council of the Governor-General because Lord Morley laid it down that the Governor-General's Council "in its legislative as well as executive character should continue to be so constituted as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes, and must always owe, to his Majesty's Government and to the Imperial Parliament". On the other hand an official majority was not insisted upon in the Provincial Councils because of certain safeguards that were available to the Governor or Governor-General.

Thus there was the power of veto that could be exercised on occasion; there were certain statutory restrictions upon the powers of the Provincial Councils; and, in any case, the Legislative Council of the Governor-General possessed concurrent powers of legislation.

3. *Methods of Appointment or Election.*—Under the Act of 1861 all the “additional” members were nominated, the only restriction being the requirement to maintain a due proportion of non-official members.

The Act of 1892 recognised the principle of indirect election as contained in the ‘Kimberley’ clause. The Regulations under the Act enabled certain recognized bodies and associations to recommend candidates, who, though there was no obligation to accept them, were rarely refused in practice.

Under the Act of 1909 the additional members must include not only nominated members but also members elected in accordance with Regulations made under the Act.

With regard to the principle of representation, Lord Minto’s Government came to the conclusion that (1) election by the wishes of the people is the ultimate end to be secured, whatever may be the actual machinery adopted for giving effect to it, that (2) in the circumstances of India representation by classes and interests is the only practicable method of embodying the principle in the constitution of the Legislative Councils. Sir Charles Aitchison, a member of the Executive Council in 1892, was quoted to the effect “the division of the people into creeds, castes, and sects with varying and conflicting interests rendered representation in the European sense an

obvious impossibility." It was therefore decided that for certain limited interests (Corporations of Presidency Towns, Universities, Chambers of Commerce, Planting Communities and the like) limited electorates must exist as they then existed. Difficulties began when one went beyond these limited electorates and had to deal with large and widespread interests or communities such as the landholding or professional classes; or with important minorities such as Mahomedans in most province in India, and Sikhs in the Punjab. No uniform system was possible throughout India. Class electorates were to be created where that was practicable and likely to lead to good results, and in their failure or defect, it might be necessary to have recourse to nomination. Accordingly, separate representation was given to the Mahomedans, and to the large land-owning interests. The remaining constituencies for the Provincial Councils—which constituted the only means of representation of the people at large—were constituted out of Municipalities and District Boards voting in groups. Thus in the case of the legislative Council of the Governor-General, the 27 elected members were returned as follows: 13 by the non-official members of the Provincial Councils; 6 by the landholders of Madras, Bombay, Bengal, U. P., B. and O., and C. P.; 5 by the Mahomedans of the preceding provinces except C. P.; 1 by the Mahomedan landholders the U. P., or the Mahomedans of Bengal in alternate years; and 2 by the Bombay and Calcutta Chambers of Commerce.

The composition of the Provincial Councils under the Regulations of 1912 is given in the following Table:—

Name of the Council	Ex-officio	Additional										Total
		Nominated		Elected								
		Official.	Non-Official.	Corporation.	Mun. & Dist. Boards.	University.	Landholders.	Planting Community.	Mahomedans	Ch. of Com.	Indian Commerce.	
Madras ...	4	16	5	1	9	1	5	1	2	1	1	48
Bombay ...	4	14	7	1	8	1	3	..	4	2	2	48
Bengal ...	3	16	4	1	10	1	4	1	5	2	1	Miscel. 3 53
B. and O....	3	15	4	..	10	..	5	1	4	..	..	1 44
U. P. ...	..	20	6	..	13	1	2	..	4	1	..	49
Punjab ...	..	10	6	..	6	1	..	..	..	1	..	26
Burma ...	..	6	8	..	..	..	..	..	..	1	..	17
Assam ...	..	9	4	..	4	..	2	3	2	..	..	25
C. P. ...	..	10	7	..	5	..	2	..	..	..	..	25

Changes in the Functions of the Councils.—Not less important than these changes in the constitution of the Councils were the changes in their functions. As has been already pointed out, by the Act of 1861 the Councils were confined strictly to legislation. The Act of 1892 gave members power to discuss the budget but not to move resolutions about it or to divide the Council. It became the practice accordingly to allot annually one or two days to the discussion of a budget already settled by the Executive Government. Lord Morley's Act empowered the Councils, (1) (a) to discuss the budget at length before it was finally settled; (b) to propose resolutions upon it; and (c) to divide upon those resolutions. Not only on the budget, however, but (2) on all matters of general public importance resolutions might henceforth be proposed and divisions taken. The resolutions were to be expressed and to operate as recommendations to the Executive Government. On certain questions, among which may be mentioned matters affecting Native States, no resolutions could be moved. Any resolution might be disallowed by the Head of the Government without his giving any reason other than that in his opinion the resolution could not be moved consistently with the public interest. (3) At the same time the right to ask questions of the Government was enlarged by allowing the Member who asked the original question to put a supplementary one.

Criticism.—The Morley-Minto Reforms though a great improvement upon the Act of 1892, soon failed to satisfy the aspirations of the people. The reasons are not far to seek. The Councils were defective in their constitution and circumscribed in their functions. They were not properly representative of the whole

population. Narrow franchises and indirect elections failed to encourage in Members a sense of responsibility to the people. The Councils had no real powers in legislation and finance. Power remained with Government and the Councils were left with no functions but criticism. The subordination of the Provincial Governments to the Government of India and of the latter to the Secretary of State was not relaxed. The Councils in no sense were a step towards Responsible Government. Indeed Lord Morley openly declared that he would have nothing to do with the Reforms if they were construed as a step to the establishment of a Parliamentary system in India. In fact the Morley-Minto Reforms were an attempt to graft the principle of constitutionalism upon the former autocracy of British rule. They are the final outcome of the old conception which made the Government of India a benevolent despotism which might as it saw fit for purposes of enlightenment consult the wishes of its subjects. People were soon disillusioned.

PART IV

RESPONSIBLE GOVERNMENT

CHAPTER XIII

PROVINCIAL DEVOLUTION

(60) GESTATION OF THE MONTAGU-CHELMSFORD REFORMS *

Having considered in the last two Chapters how neither the principle of Decentralization nor of Association succeeded in modifying the character of Indian Bureaucracy to the extent demanded by public opinion, it is now time to turn to the Reforms associated with the names of Mr. Montagu and Lord Chelmsford. The Reforms merely carry forward the work of the last sixty years of direct British administration in India; for, as was profoundly remarked by the late Mr. Gokhale, one of the peculiar conditions of the peculiar position of the British Government in this country is that it should be a continuously progressive Government.† Nor have the people of India stood still. "The political philosophy and axioms of the West have become an essential part of Indian life, and when its Education came to India it brought with it the politics of Nationality, Liberalism, Freedom." ‡ Indian aspirations were quickened by the

* Horne : chapter III.

† Speeches : 443.

‡ Ramsay MacDonald : 2.

outbreak of the Great War. It became a foregone conclusion that some great step in political advance of the country was inevitable in the near future though nobody could tell its exact nature. Political theorists, therefore, began to adumbrate schemes of their own. One of the first was that of Mr. Gokhale, elaborated at the instance of Lord Willingdon and published posthumously in 1917. Next came the scheme of Mr. Curtis of the Round Table. This is an Organization founded in 1910, with branches in all parts of the British Empire, and having for its object the dispassionate study of Imperial problems. The account given by Mr. Curtis of the origin and development of the scheme of 'Dyarchy' is specially interesting in as much as the essential feature of that scheme was adopted in the Act of 1919. Mr. Curtis felt that "Responsible Government" was the *sine qua non* of the success of political Reform in India, and a sketch was prepared of the kind of new Government that was proposed to be set up in a province to give effect to Responsible Government. The proposal was "that for departments (of the Provincial Government) in which it can be done safely some form of responsible as distinct from merely representative government should be instituted forthwith, while the remaining departments would continue to be administered under the present (*i. e.*, pre-Reforms) system, the functions of constitutional ruler in the one case and of actual administrator in the other being united in the person of the Governor.....

The suggestion is that for such of the departments of Government as were made over to it, the (provincial) Legislature should be really supreme, and should be administered by an Executive chosen from its own

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members and responsible to it." As will be presently seen, this is Dyarchy.

Reference should also be made to the Scheme prepared by Nineteen Members of the Viceroy's Legislative Council, which was subsequently adopted by the Congress and the Muslim League in December 1916. Its main features were (a) direct elections to the Provincial Councils; (b) Resolutions of the Provincial Councils to be absolutely binding upon the Governor; (c) a 4/5 majority of elected members in the Central Legislature; (d) complete provincial autonomy; (e) half the number of members of the Executive Councils—Provincial and Central—to be Indian and to be elected by the elected members of the Legislature concerned.

(61) THE ANNOUNCEMENT OF 20TH AUGUST 1917

The discussion of these and other schemes made the political atmosphere tense with expectations when Mr. Montagu made his Announcement in the House of Commons.

"The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing 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.....I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they

must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

✓ The Act of 1919.—Mr. Montagu's Announcement was followed by his visit to India. The Viceroy and the Secretary of State toured all over the country and their proposals were published in July 1918 in the Report that has since become popular under the name of "Montford" Report. The Report was preceded and followed by an enormous amount of preliminary work in the Provincial and Central Secretariats for being utilized by various Committees. The Report indicated three Committees for that purpose: the Franchise Committee and the Functions Committee presided over by Lord Southborough, and the Committee on the Home Administration of India under the presidency of Lord Crewe. The Government of India in their turn addressed a series of Despatches to the Secretary of State in Council on the subject of the Reforms. It was generally agreed that the net result of the modifications suggested by the Government of India would have been a "whittling" down of the original proposals of the Montford Report.

The Government of India Bill, based on all this material, was introduced in the House of Commons on 2nd. June 1919, and after its second reading was referred to a Joint Select Committee of both the Houses. The Report of this Joint Committee is a document of very great importance. The Bill, amended in accordance with the Committee's recommendations

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and passed by both the Houses, received Royal assent on 23rd December 1919.

Meaning of the Announcement.—Coming back to the Announcement of August we may say that, in the words of Lord Chelmsford, it had three features. (1) The progressive realization of Responsible Government was given as the key-note and objective of British policy in India; (2) substantial steps were to be taken in that direction at once; (3) that policy was to be carried out by stages; or shortly “the gradual transfer of responsibility to Indians.” The Announcement definitely abandoned the conception of the British Government as a benevolent despotism and substituted in its place the conception of British Government as a guiding authority whose role it would be to assist the steps of India along the road that in the fulness of time would lead to complete Self-Government within the Empire. As His Majesty said in the Proclamation announcing the Reforms of 1919: “There is one gift which yet remains, and without which the progress of a country can not consummated—The right of her people to direct her affairs and safeguard her interests. The defence of India against foreign aggression is the duty of common Imperial interest and pride. The control of her domestic Concerns is a burden which India may legitimately aspire to take upon her own shoulders. The burden is too heavy to be borne in full until time and experience have brought the necessary strength; but opportunity will now be given for experience to grow and for responsibility to increase with the capacity for its fulfilment.”

(62) DEVOLUTION OF AUTHORITY

The next question is how and where to introduce Responsible Government in India? Is it to be introduced in the Central or Provincial Government? Now the Government of India cannot be made "responsible" to the Indian people unless its responsibility to British Parliament is relaxed. Parliament had hitherto performed the duty of controlling and criticising the Government of India in the interests of the Indian people. Parliament must delegate, little by little, from itself to the people of India the power to criticise and control the Government. Then and to that extent alone can the Government of India be responsible to the Indian people. The more of such power is given to the people of India the less will be left in the hands of the British Parliament.

"But this process of relaxation cannot go on at the same pace on all levels. The Secretary of State's relaxation of control will be retarded, if for no other reason, by the paramount need of securing Imperial interests; that of the Government of India by their obligation of maintaining the defence of India, and of the Provincial Governments by the securing of law and order. As we go upwards, the importance of the retarding factor increases, and thus it follows that popular growth must be more rapid and extensive in the lower than in the upper levels."*

On these general considerations the M. C. Report laid down four formulæ: (1) There should be, as far as possible, complete popular control in Local Bodies, and the largest possible independence for them of outside control.

* M. C. Report : 188.

(2) The Provinces are the domain in which the earlier steps towards the progressive realization 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 provinces the largest measure of independence, legislative, administrative, and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.

(3) The Government of India must remain wholly responsible to Parliament, and saving such responsibility, its authority in essential matters must remain indisputable, pending experience of the effect of 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 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 the Provincial Governments must be relaxed.*

(63) STANDARDIZATION OF PROVINCES AS GOVERNORS' PROVINCES

Before proceeding to consider the various measures for the relaxation of superior control over the Provinces we must first point out that the Provinces have been levelled up and standardized as "Governors' Provinces". Before the Reforms there were, as we have already seen, three kinds of Provinces according as they were under Governors, Lieutenant-Governors or Chief Commissioners. The Royal Commission on

* M. C. Report : paras 188-191.

Decentralization was in favour of setting up Executive Councils in those provinces where they did not exist and it pointed out the advantage of this measure. An important stage in the growth of the provincial system is marked by the transfer of the Imperial Capital from Calcutta to Delhi announced at the historic Coronation Durbar of 1911.

The correspondence between the Secretary of State and the Government of Lord Hardinge on the subject of the transfer shows that larger and deeper considerations than the mere removal of a cause of popular agitation regarding Bengal Partition were at the root of the proposed change. The transfer of the Capital from Calcutta was urged on two grounds—(a) The anomaly and inconvenience resulting from its being the Capital of the Imperial and Provincial Governments. (b) The peculiar political situation arising in Bengal since the Partition made it desirable to withdraw the Government of India from its provincial environment. The advantages of the Capital being transferred to Delhi were urged to be three:—(a) Political: “The maintenance of British Rule in India depends on the ultimate supremacy of the Governor-General in Council and the Indian Councils’ Act of 1909 itself bears testimony to the impossibility of allowing matters of vital concern to be decided by a majority of non-official votes in the Imperial Legislative Council. Nevertheless it is certain that in the course of time, the first demand of Indians for a larger share in the Government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the Supreme Authority of the Governor-General in Council. The only probable solution of

the difficulty would appear to be gradually to give provinces a larger measure of self-government, until at last India would consist of a number of administrations autonomous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in cases of misgovernment, but ordinarily restricting its functions to matters of Imperial concern. In order that this consummation may be attained, it is essential that the Supreme Government should not be associated with any particular Provincial Government. The removal of the Government of India from Calcutta, therefore, is a measure which will, in our opinion, materially facilitate the growth of local self-government on sound and safe lines. It is generally recognised that the Capital of a great Central Government should be separate and independent, and effect has been given to this principle in the United States of America, in Canada, and in Australia. Other advantages of Delhi might be more briefly stated thus; (b) its central position and splendid communications, its good climate for seven months of the year and its proximity to Simla would make the annual migration to the Hill Station less costly and tedious; (c) its great historical associations under Hindu and Mahomedan Rules.

The transfer of Capital to Delhi was availed of to rectify the error of the Bengal Partition: the five Bengali-speaking districts *viz.*—the Presidency, Burdwan, Dacca, Rajshahi, and Chittagong were formed into a Presidency under a Governor-in-Council. (2) Bihar, Chota Nagpur, and Orissa were formed into a new province under a Lieutenant-Governor with a Legislative Council at Patna. (3) Assam was restored to a Chief Commissionership.

Similarly the power given by S. 3 of the Government of India Act 1854 was exercised in 1912 to transfer the city of Delhi and part of the Delhi District to the immediate authority of the Governor-General in Council to form it into a Chief Commissionership to be known as the Province of Delhi. The intention was to make the site of new Capital and its surroundings an *enclave* occupying the same kind of position as Washington and the District of Columbia in the United States.

The transfer of the Capital to Delhi prepared the way for the Provinces being put upon a uniform basis with an Executive consisting of a Governor-in-Council and Ministers and a Legislative Council.

But though each Province is to have a Governor the status of all Governors is not the same. There are three features which distinguish the Governors of the Presidencies of Madras, Bombay and Bengal from the remaining Provincial Governors.

(a) *Appointment.*—Governors of the older Provinces are appointed by His Majesty and previous consultation with the Governor-General is not essential; and they are generally drawn from the ranks of British Peers or politicians. In appointing the Governors to the other Provinces the Governor-General has to be consulted, for most of them are to be drawn from the senior ranks of the Indian Civil Service. A Governor drawn from the Civil Service has first-hand knowledge of Indian conditions and practical experience of administration; but there is little or no chance, in his case, of a wider outlook and more sympathetic insight being brought to bear upon problems of administrations. Indian opinion, therefore has never received with approval

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the policy of appointing Governors from the Civil Service.

(b) The New Governors do not enjoy the privilege of direct access to the Secretary of State (a remnant of the former independence of the two Presidencies of Madras and Bombay).

(c) Finally, their pay is smaller than that of their older confreres.

(64) APPROACH TO PROVINCIAL AUTONOMY

With the Provinces standardized, the next step is to give them "the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities", in other words to give them 'provincial autonomy'. No expression is so freely used in current political discussion as Provincial Autonomy. And yet no principle is more difficult to understand or to put into actual operation. Sir Frederick Whyte, the first President of the Legislative Assembly, well points out * that it is used to describe two separate conditions of Provincial Government. "In current political controversy it wrongly covers *both* the freedom of a Provincial Government from external control by the Government of India *and* the internal political conditions of representative and responsible government. The true meaning of the word lies in the former interpretation. A province may enjoy provincial autonomy without what are commonly called free institutions. That is to say, in its true meaning provincial autonomy tells us nothing of the condition of domestic government prevailing in any particular province or state". This is clearly brought

* India: a Federation ? pages 36-37

out by the fact that even before the advent of the principle of Responsible Government demand for provincial autonomy was made by statesmen like Gokhale and it formed a cardinal feature of the famous Durbar Despatch of Lord Hardinge. But it is important to note that provincial autonomy was then advocated more as a palliative to the worst defects of bureaucratic centralization than as a condition of Responsible Government. The Reforms Act emphasized the latter aspect. "Whereas concurrently with the gradual development of Self-Governing institutions in the provinces of India it is expedient to give to those provinces in provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities." The two questions of Responsible Government in the provinces and provincial autonomy were joined together by the Act and no progress was possible in the former unless there was a substantial attainment of the latter.

But though it is natural to mix up the two ideas of provincial autonomy and responsible Government in the provinces and though one is a condition for the realization of the other the expression should be always used to connote provincial independence of the Government of India in matters of administration, finance and legislation.

The extent of independent powers conferred upon the Provinces in matters of finance, legislation and administration has been carefully defined in what are known as "Devolution Rules". They have been framed under various sections of the Government of India Act and cannot be changed by the Indian Legislatures or the Government of India. They form an

integral part of the Reforms scheme as put into force in 1919.

We have already seen that nothing led to the imposition of greater restrictions upon the powers of the provinces than the responsibility of the Secretary of State for everything that pertained to the Government, either of India as a whole or of any province. Excessive interference with provincial matters was facilitated by the absence of any clear line of demarcation between the spheres of the Central and Provincial Governments. The first step to provincial autonomy, therefore, consists in a definition of the spheres of the two Governments. In practice this meant a classification of the functions of Government into 'Central' and 'Provincial'. The task of classification was entrusted to the Functions Committee and the lists as finally settled are given in Appendix A.

The principle of classification was broadly this: where a subject was of all-India extent or importance it was 'centralized'; where the subject was of predominantly *local* interest, it was 'provincialized'. But it should be noted that the line of division is not as rigid as is to be found in 'federal' constitutions. Functions not specifically provincialized belong to the Central Government. Where any doubt arises as to whether a matter does or does not belong to a provincial subject, the Governor-General in Council is to decide it and his decision is final. Further, the Central Legislature has not been precluded from dealing with provincial subjects. The proviso "subject to Indian Legislation" in the list of provincial subjects means, that legislation on that subject, in whole or in part, or any powers reserved thereunder to the Governor-General in Council are recognised as an all-India

subject. Provinces can legislate upon them only with the previous sanction of the Governor-General-in-Council.

Finally, the Government of India may use the provinces for the discharge of certain "agency" functions *e. g.*, collection of all-India revenues etc.

(65) FINANCIAL DEVOLUTION

Having divided the Functions into "Central" and "Provincial" our next step is to consider how larger powers have been given to the provinces in matters of Finance, Legislation, and Administration.

We may consider the subject of Financial Devolution under the following heads:—

(a) Provincial contributions to the Government of India.

(b) Relaxation of control over the Provinces.

Provincial Contributions.—We traced in an earlier section the growth of the system of Provincial Settlements. We there found how certain heads of revenue were "Indian", others were "Provincial", and the remaining were "Divided" *i. e.* the proceeds were shared by both the Indian and Provincial Governments. Land Revenue, Stamps, Excise, Income-tax, and Irrigation belonged to the last category. This system gave to the Government of India many opportunities of exercising control over provincial finance. The first step towards minimising this control was a complete separation of the Indian and Provincial sources of revenue which meant the abolition of the "divided heads". Certain proposals in this respect were contained in the Montford Report but as they were found to be inadequate a special Committee under Lord Meston was appointed to go into this whole question.

It recommended the provincialisation of Land Revenue, Excise, Irrigation, and Stamps and it recommended that the whole of Income-tax should go to the Central Government. Under such a redistribution of revenue-heads it was found that the Government of India would have to suffer a deficit of 10 crores of rupees. As it was impossible to raise the amount by increased taxation resort was had to the method of provincial contributions to the Central Government.

The guiding principles which the Meston Committee laid down with regard to the contributions were these: Though provincial contributions were inevitable for the first few years, any permanent financial arrangement which involved them was unsatisfactory, and the Central Government, therefore, should so direct its policy as to reduce those contributions with reasonable rapidity, and with a view to their ultimate cessation. (2) Though the initial contributions of each province must, in any case, be arbitrary, in view of the diversity of revenue and expenditure of each province and its past financial history, any such contribution ought to be regarded as temporary and provisional and steps ought to be taken to fix a standard and equitable scale of contributions towards which the provinces should be required to work by stages. (3) The initial contributions to be paid by each province in the year 1921-1922 were to be fixed arbitrarily.

Taking first the initial contributions the Meston Committee calculated that the Government of India would suffer a deficit to the extent of 983 lacs of Rupees in 1921-1922 and the provinces would gain about 1850 lacs of Rupees under the new arrangement. The Committee assessed the initial contribution on

the "increase in spending power" of each province, taking the case of each on its own merits. The initial contributions were fixed as shown in the second column of the following Table.

Province	Recommended contribution in 1921-1922; (in lacs)	Percentage of initial contribution to the total contribution	Percentage of standard contribution to the whole contribution	Standard percentage as finally accepted by the Government of India
Madras ...	348	35½	17	17/90
Bombay ...	56	5½	13	13/90
Bengal ...	63	6½	19	19/90
United Pro.	240	24½	18	18/90
Punjab ...	175	18	9	9/90
Burma ...	64	6½	6½	6½/90
Bihar and Orissa ...	—	—	10	—
Central Pro.	22	2	5	5/90
Assam ...	15	1½	2½	2½/90
Total ...	983	100	100	90

To proceed next to the Standard Contribution. The ideal basis for determining the standard contribution was the capacity of each province to contribute which, in its turn, depends upon the economic position of the province. After considering all available evidence, the Meston Committee recommended the percentage of the deficit shown in the 4th column as the standards for the various provinces. The standard was to be reached within seven years by regular gradations so that each province might have

sufficient time to adjust its finances to the growing burden.

The Meston Committee had to deal with a most difficult problem. They had to satisfy the Government of India without displeasing the provinces. The latter did not submit to the proposed percentages of contribution without violent protests. Some relief was granted to them by the Joint Parliamentary Committee. (a) Thus instead of making the whole of Income-Tax Central, it assigned to the Provinces three pies per rupee of additional income assessed after the Income-Tax Act of 1921. (b) Meston Committee contemplated that some provinces *e.g.*, Bombay, Bengal, Bihar and Orissa, and Central Provinces might pay more than their initial contribution in course of time. But the Joint Committee laid down that in no case should the initial contribution payable by a province be increased.

In case of an emergency the Governor-General in Council has the right of demanding a contribution from a province in excess of that fixed under the preceding rules. The contributions, further, are a first charge upon the provincial revenue and are not subject to the vote of the Provincial Council. The provincial contributions have been now remitted. The basis on which the initial contributions were calculated proved to be wrong. The finances of the Central and Provincial Governments were upset by the abnormal conditions that followed the war. The contributions without appreciably improving the position of the Central Government imposed a serious handicap in the provinces. Bengal got remission from the beginning. Madras protested against its excessive initial contribution. Bombay protested against the loss of revenue

under Income-Tax. The United Provinces and the Punjab had their own grievances. The Government of India, therefore, began the policy of reducing or remitting the contributions in individual cases as soon as their own budget became a balanced budget and the last contributions were remitted in 1927-28.

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 almost complete freedom has been given to the provinces in the preparation of their budgets. Only the Government of India has to be supplied with certain information about (a) withdrawals from the provincial balances; (b) any loans that the Provincial Government may require from the Central Government; (c) the opening and closing balances of the Famine Insurance Fund; and (d) the paying off of the Provincial Loan Account.

Over Powers of Taxation.—An enlargement of the taxing powers of the province is a necessary complement of the new financial arrangements. Of course as the Central Government has a vital interest in the financial position of the provinces it cannot relax its control with any degree of finality. But there are many taxes of a strictly provincial or local incidence the imposition of which cannot affect the resources in which the Government of India have interest. Accordingly the taxing power of the Provincial Council has been enlarged by doing away with the requirement of the previous sanction of the Governor-General for bills imposing certain Scheduled taxes. Thus a Provincial Council may impose a tax mentioned in Schedule I, for the purpose of the Local Government, without the previous sanction of the Governor-

General *i. e.*, (1) a tax on land put to uses other than agricultural; (2) a tax on succession or acquisition by survivorship in joint family; (3) tax on any form of betting or gambling permitted by law; (4) a tax on advertisements; (5) on amusements; (6) on any specified luxury; (7) a registration fee; (8) a stamp duty other than duties the amount of which is fixed by Indian Legislation. Previous sanction of the Governor-General is also not required to allow a Local Authority *e. g.*, a Local Board or Municipality to impose a tax mentioned in Schedule II. *i. e.*, (1) a toll; (2) a tax on land or land values; (3) on buildings; (4) on vehicles or boats; (5) on animals; (6) on menials or domestic servants; (7) an octroi; (8) a terminal tax; (9) a tax on trades, professions, and callings; (10) a tax on private markets; (11) a tax imposed in return for services such as a water rate, a lighting rate etc.

The Governor-General in Council may, at any time, by order, make any addition to the taxes enumerated in Schedules I and II.

Over Provincial Borrowing.—Freedom in this is a necessary part of the above programme. Before the Reforms the Central Government did all the borrowing for the Provincial Governments, who, in their turn, lent to the Municipalities and Local Boards and the agriculturists. Provincial borrowing was opposed on the ground that the Indian money market was very limited and if provinces competed with each other the rate of interest would go very high. But during recent years the number of the 'investing' public is increasing, and there are local sources of borrowing which are open only to local authority.

Devolution Rules accordingly provide that a Local Government may raise loans on the security of

revenues allotted to it—for meeting capital expenditure on constructions 'of lasting public utility' if the expenditure is so large that it cannot reasonably be met from current revenues, and if the Governor-General in Council is satisfied that the projected construction is likely to yield a prescribed return of interest. The Provincial Government may also borrow for expenditure on Irrigation Works for Famine Relief, for the financing of the Provincial Loan Account etc. For each Provincial Loan the sanction of the Governor-General in Council—specifying the amount of loan, the rate of interest, and the mode of repayment—must be obtained. The Government of Bombay was the first to take advantage of these borrowing powers, the Bombay Development Scheme and the Sukkar Barrage Scheme being undertaken on the strength of borrowed capital.

Provincial Loan Account.—Each Province, before the Reforms, used to borrow money from the Central Government, for the purpose of making advances to Agriculturists. These Provincial Loan Accounts were closed by Bengal, Punjab, Central Provinces, and Assam immediately, and others closed them by the end of 1925. A Provincial Loan Fund was created from which the Provinces are now allowed to borrow.

Advances to Local Governments by the Government of India.—The provinces, in addition to borrowing in the market, may receive advances from the Central Government for expenditure on Irrigation Works etc. The terms as to interest and repayment of such advances are to be determined by the Government of India.

Cash Balances.—Before the Reforms the revenues of the whole of India were treated as one and each

province was required to keep a minimum cash balance. Such balances were useful under the old system, because the Central Government was the banker of all public funds and it took precautions against withdrawals of funds which might disturb its often fine-drawn calculations of ways and means. After the Reforms the provincial revenues are paid into the public account of which the Governor-General in Council is the custodian, but under the Devolution Rules greater liberty has now been given to the provinces to draw upon their balances, provided due notice is given of the time and amount of withdrawal.

Famine Assignments.—The frequency and magnitude of famines in India have often thrown Indian Finance into disorder. A wide-spread famine means shrinkage of revenue at the very time when considerable outlays have to be made on famine relief or construction of protective works. The problem resolves itself into so distributing the loss of revenue and additional expenditure as would not throw out of gear either Provincial or Central finance. About 1917 Famine Relief Expenditure was made a divided head, the outlay being borne by the Central and Provincial Governments in the proportion of 3 to 1. Under the Reforms the expenditure has been provincialized and a Famine Insurance Fund has been inaugurated in each: the sum fixed for each province is as follows:—

	In thousands of Rupees.				
Madras	661
Bombay	6360
Bengal	200
United Provinces	3960
Punjab	381

	In thousands of Rupees.			
Burma	67
Bihar and Orissa...	1162
Central Provinces	4726
Assam	10

This annual grant is not to be expended except upon the relief of famine, or upon the construction of protective irrigation works or other works for the prevention of famine. Any portion of the grant which is not so spent is to be transferred to the Famine Insurance Fund. If this Fund exceeds six times the annual assignment, the latter might be temporarily suspended. This Fund could be further utilized for the grant of loans to the cultivators. It is to form part of the general balances of the Central Government who is to pay interest on it.

(66) LEGISLATIVE DEVOLUTION

In an earlier section we considered how control was exercised over provincial legislation. No legislative proposal could be introduced in a Provincial Council without the "previous sanction" of the Governor-General. This prevented the Councils from dealing with their peculiar social and local problems which vary in such a striking manner from province to province in India.

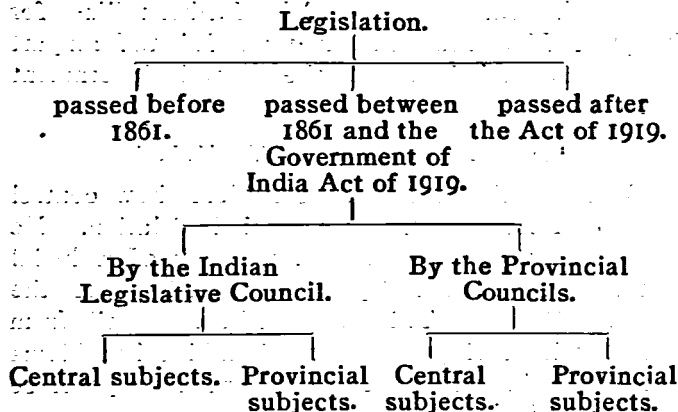
As a preliminary to the removal of the old restrictions, there was made a clear demarcation of powers between the Central and Provincial Legislatures closely following the division of subjects between the two authorities.

Section 80-A defines the powers of Local Legislative Councils. A Local Legislature of a

province may make laws for the "peace and good government" of the province. No previous sanction is required to legislate upon provincial subjects. It is required to make or take into consideration any laws mentioned in 80-A (3).

The problem of legislative devolution became difficult and complex because they had not a clean slate on which to write. A mass of legislation had been passed in the past by the Central and Provincial Councils on a variety of subjects ranging over the whole gamut from strictly parochial to Imperial matters.

We may classify that mass of legislation thus :



Now considering legislation from this chronological point of view, let us see how control over provincial legislation has been relaxed. 'Previous sanction' of the Governor-General is *not* required except in the following cases :—

(a) To make or take into consideration any laws mentioned in 80-A (3) of the Government of India Act.

(b) To repeal or alter laws passed before 1861 except those which the Governor-General in Council has by notification in the Gazette of India declared to require no previous sanction. (See Appendix C.)

(c) For repealing or altering laws passed between 1861-1919 which again have been mentioned in the published Schedule. If the provinces had been entirely free to make laws on subjects which though provincial had also an interprovincial or all-India aspect, the general framework of the laws of the country, as laid down in the Acts and Codes regulating commercial and business relations, might have been seriously changed and grave confusion might have ensued. It was to avoid this that important Acts of an interprovincial nature were included in a Schedule published in the Gazette of India. (See Appendix D.)

(d) Since 1919, (1) for legislating upon any Central subject, or (2) upon those Provincial subjects which are, in whole or part, "subject to Indian legislation."

An authentic copy of every Act to which the Governor has given his assent has to be sent to the Governor-General and the Act has no validity until the Governor-General has assented to it and that assent has been signified to and published by the Governor.

When the Governor-General withholds his assent from any such Act, he has to signify to the Governor in writing his reasons for so withholding his assent.

An authentic copy of every Act assented to by the Governor-General is to be sent to the Secretary of State and it is lawful for His Majesty in Council to signify his disallowance of the Act.

280 (67) ADMINISTRATIVE DEVOLUTION

(67) ADMINISTRATIVE DEVOLUTION

Much need not be said about this process which is the necessary result of the greater powers in finance and legislation conferred upon the provinces. Numerous orders have been passed—mostly of a technical nature—which have the effect of ridding the Provincial Governments of control in administration.

CHAPTER XIV

✓ DYARCHY

(68) DYARCHY IN THE PROVINCES

The provinces are the domain where the first substantial steps towards Responsible Government were to be taken. As Mr. Montagu said in the House of Commons: "The only possible way of achieving devolution and making the unit responsible for the management of its own affairs is to make the government of that unit responsible to the representatives of the people. Now in order to realize Responsible Government and in order to get devolution you must gradually get rid of Government by the Agents of Parliament and replace it by Government by the Agents of the representatives of the people. In other words you have to choose your unit of Government and you have got in that unit to create an electorate which will control the government. Now under present circumstances this unit cannot be the one for Local Self-Government...The Reforms of Lord Morley have emphasized the importance of the Provincial Councils and these latter have awakened the appetite for Responsible Government. We must, therefore, go to the provinces as the units of Responsible Government." In this form of Government, administration is carried on by Ministers. The Ministers must have the confidence of the representatives of the people in the Council. Their responsibility to the members of Council (and

through them to the electorates) consists in their being liable to be dismissed as soon as confidence in them disappears. In a Parliamentary constitution this responsibility can be enforced by various methods *e. g.* vote of censure, vote of non-confidence, reduction in the salaries of the Ministers, snap divisions, finally withholding of supplies.

Now though the idea of Responsible Government is quite familiar to the Western mind, it is an exotic in India. Hence it has to be introduced under special conditions. The Authors of the Reforms, therefore, took two precautions against possible dangers of trying this form of government: (1) In the first place they excluded altogether the Central Government from this experiment; and (2) even within a province, only a part of the administration was made responsible.

Meaning of Dyarchy.—The reasons that were alleged for this over-cautious policy were the backwardness of the people in education and the prevalence of religious or communal differences; at the same time substantial responsibility had to be given forthwith if the Reforms were to have any value. These conflicting objects were accomplished by the device of Dyarchy *i. e.*, by making a division of the functions of Provincial Government between those which are to be made over to popular control and those which for the present must continue to remain in official hands *i. e.*, between Transferred and Reserved subjects. The Governor-in-Council is in charge of the Reserved subjects, and the Governor acting with the Ministers of the Transferred subjects. The division of the sphere of Government between two authorities, one amenable to Parliament and the other responsible to the electorates is known as Dyarchy.

Division of Provincial Subjects into "Reserved" and "Transferred."—The guiding principle of this division as laid down in the Montford Report was this: "to include within transferred list those Departments which afford most opportunities for local knowledge and social service, those in which Indians have shown themselves to be keenly interested, those in which mistakes that may occur though serious would not be irremediable, and those which stand most in need of development. But Departments primarily concerned with law and order, and matters which vitally affect the well-being of the masses who may not be adequately represented in the new Councils, such as the question of land-revenue or tenant rights, should not be transferred."

Lists of provincial subjects for transfer were drawn up by the Functions Committee and after further examination were finally adopted. (See Appendix B.)

(69) STRUCTURE OF THE PROVINCIAL EXECUTIVE

To turn now to the two halves of the Provincial Executive: the Governor-in-Council, and the Governor acting with his Ministers. There has been no change with regard to the former. The maximum of four Councillors under the old Act was retained; but the Joint Committee remarked: "In view of a large part of the administration being transferred to Ministers, the normal strength of an Executive Council, especially in the smaller provinces, need not exceed two Members, of whom only one need have been in the service of the Crown in India for at least twelve years, the other being, by convention, an Indian: but if, in any case, the Council includes two Members with service qualifications neither of whom is by birth an

Indian, it should also include two non-official Indian Members." The Executive Councillors are not responsible to the Provincial Legislature (in the sense that they could be removed from office by it). They are appointed by His Majesty; their pay is fixed by Schedule under the Act of 1919; their period of service is for five years. Thus neither their appointment, tenure of office, or pay depends upon the vote of the Council.

The administration of the Transferred Subjects was entrusted to Ministers who were to be nominated by the Governor from among the elected members of the Provincial Council and to hold office during his pleasure. Their salary is to depend upon the vote of Provincial Legislature.

As a matter of fact in the Provinces of Bengal, Bombay, and Madras four Executive Councillors and three Ministers, in Bihar and Orissa three Executive Councillors and two Ministers, and in the remaining provinces two Councillors and two Ministers were appointed.

Before the Reforms the whole administration was carried on, even in the larger provinces, by an Executive Council of three Members. It is true that the Reforms made the administration more complex. Also the protracted sessions of the Council and its thirst for information added to the work of the Executive. But even then it is generally felt that the administration has become top-heavy and expensive.

(70) GOVERNOR AND DYARCHY

We have next to consider how the Governor brings together the two halves of his Executive. That the problem was full of difficulties goes without

saying. It depended for its solution upon two axioms: (1) that the ordinary agency of administration will serve with equal loyalty and honesty the two halves of Government, and (2) that the Governor will be the link between the two halves. In fact the over-shadowing influence of the Governor over the two halves has been at once the cause of the success and failure of Dyarchy. Not only is he responsible for the distribution of Departments among his Councillors and Ministers, but he makes a number of "Rules for Executive Business" which are kept strictly confidential and which are equally binding upon both halves of Government. Again the permanent Heads of Departments—the various Secretaries—have direct access to the Governor, and they keep him closely informed of whatever is going on in each Department. It is by means of such 'unseen' strings that the Governor manages to yoke the Councillors and the Ministers to the chariot of provincial administration and to drive it.

But we shall explain some of the outward measures that have been prescribed for the Governor to keep the two halves together.

It should first be remembered that the two halves of Government are responsible to two different masters for two distinct fields of administration and the responsibility of each half for its own field is to be kept distinct. The people must not be kept in doubt as to what acts are done by the Governor on the advice of his Executive Council and what acts are done by him on the advice of his Ministers. Any confusion of responsibility would not only be unfair to the Councillors and the Ministers but it would prevent the electorates from judging about the acts

or policy of their Ministers in the Council. Thus Responsible Government would lose its real educative value which consists in the ability to form accurate judgments about men and measures.

But in spite of this distinctness of responsibility, the two halves must have one policy. They should be brought together through the Governor. He is personally responsible for the proper administration of his entire province. He is the keystone of the arch of provincial Government. The Joint Committee thus envisaged his part in Dyarchy. The Committee were alive to the difficulties and dangers of "Dyarchy" but they saw no reasons why the relations of the two halves should not be harmonious and mutually advantageous. They regarded it as of the highest importance that the Governor should foster the habit of free consultation between both halves of his Government and indeed that he should insist upon it in all important matters of common concern. He will thus ensure that the Ministers will contribute their knowledge of the people's wishes and susceptibilities, and the Members of his Executive Council their administrative experience, to the joint wisdom of the administration. In another place of the Report the Committee gave a picture of the manner in which they thought that the Government of a province should be worked. "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 between 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 this mutual consultation should not be allowed to obscure the responsibility of each half of Government for its own field of administration and it will be for the Governor to decide upon debatable questions of the jurisdiction of the two parts of administration.

(71) GOVERNOR AND MINISTERS

Under Dyarchy the administration of Transferred Subjects is left to the Governor acting with the Ministers. It is worth our while to examine more closely the relations of the Ministers with the Governor and the extensive powers with which the latter is armed to get over the difficulties of Dyarchy.

With regard to Transferred subjects he is much more than the mere constitutional head of that half of Government. It is he who appoints Ministers and they hold office during his pleasure. But the element of responsibility was introduced to this extent that the Ministers must be appointed from among the *elected* members of the Legislative Council and their pay depended upon the vote of the Council.

The Joint Parliamentary Committee laid down important principles to guide the Governor in the selection of Ministers and the extent to which he should support their acts or policies. Regarding the first point they said:

"The Committee are of opinion that the Ministers selected by the Governor to advise him on transferred subjects should be elected members of the Legislative Council, enjoying its confidence and capable of leading

it. A Governor will have the ordinary constitutional right of dismissing a Minister whose policy he believes to be either seriously at fault or out of accord with the views of the Legislative Council. In the last resort the Governor can always dissolve his Legislative Council and choose new Ministers afresh after a fresh election; but if this course is adopted the Committee hope that the Governor will find himself able to accept such views as his new Ministers may press upon him regarding the issue which forced the dissolution."

It will be observed that in the administration of the Transferred Subjects the Governor was expected to keep constantly before him the views of the Council and to regard the Ministers as agents for the carrying out of that will in practice. The Ministers were to be dismissed as soon as they lost the confidence of the Council. On the other hand the Governor was expected to yield if a new Council reaffirmed its confidence in the dismissed Ministers.

In the day-to-day administration of the Transferred Departments the Governor was expected to allow the views of the Ministers to prevail. As the Joint Committee said "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 only be in circumstances roughly analogous to those in which he has 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."

The Joint Committee anticipated that the Ministers would generally act together. The experience of Responsible Government in England pointed in the direction of the cabinet system. "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."

Two principles emerge from the foregoing views of the Joint Committee: that the Ministers should have the confidence of the majority in the Council and that they should act together. We shall see in the Chapter on the actual operation of the Reforms that the provincial Governors made extensive departures from both the principles and in doing so reduced Ministerial responsibility to a farce. He appointed Ministers who had not the confidence of the House and retained them when they had lost it. Sometimes he found it impossible to have any Ministers at all, on account of the attitude of obstruction and non-co-operation on the part of some Councils. He was then called upon to exercise certain powers for the temporary administration of Transferred Subjects with which he was armed under the Act. The "Transferred Subjects (Temporary Administration) Rules" provide that in cases of emergency when owing to a vacancy, there is no Minister in charge

of Transferred Subject, the Governor (a) shall, if another Minister is available and willing to take charge of the subject, appoint such Minister to administer the subject temporarily or, (b) may, if the vacancy cannot be provided for in the manner aforesaid, himself, temporarily administer the Subject. 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 is *temporary* administration in an *emergency* by the *Governor in person* that must be carefully noted. The Governor-in-Council has nothing to do with the Transferred Subject. Nor can he re-transfer Transferred Subjects to the Reserved category.

It will be observed that this is a temporary arrangement. If the Ministerial vacancy or vacancies are likely to last long Rules provide that "the Governor-General in Council, by notification in the *Gazette of India*, with the previous sanction of the Secretary of State in Council, revoke or suspend for such period as he may consider necessary the transfer of any provincial subject in any province, and upon such revocation, or during such suspension, the subject shall not be a Transferred Subject." The re-transfer of a Transferred Subject to the Reserved half is a confession of the failure of Dyarchy.

(72) POWERS OF THE GOVERNOR WITH REGARD TO THE DIFFICULTIES OF DYARCHY

Seeing that the Governor is the pivot of Dyarchy we shall now proceed to consider the special powers with which he has been invested to enable him

to discharge his responsibilities both with regard to the Reserved and Transferred Subjects.

1. Power to define spheres of jurisdiction.—An initial difficulty will be about the jurisdiction of the two halves of Government. Though careful lists of Reserved and Transferred Subjects were drawn up, it was not always clear whether a particular question belonged to one or the other half of Government. "It will not, however, always be clear otherwise than in a purely departmental and technical fashion, with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of an informal arbitrator between the two parts of his administration; and it will equally be his duty to see that a decision arrived at on one side of his government is followed up by such consequential action on the other side as may be necessary to make the policy effective and homogeneous."

Devolution Rule 9 accordingly provides that in the case of disagreement between the Executive Councillors and Ministers regarding jurisdiction, "it shall be the duty of the Governor, after the consideration of the advice tendered to him, to direct in which Department the decision as to such action shall be taken; provided that, in so far as circumstances permit important matters on which there is such a difference of opinion, be considered by the Governor with his Executive Council and his Ministers sitting together."

2. Power to allocate Funds to the two Halves.—To turn next to his financial responsibility in connection with both subjects. This is the problem of allocation of funds between the two halves. The Reserved

subjects, vitally concerned with the peace and tranquillity of the province, must be guaranteed sufficient revenue for efficient administration and this in spite of the possible opposition of the Ministers. On the other hand, the Transferred Departments of Education, Sanitation, etc. crying for and capable of almost unlimited improvement must not be starved on the specious plea of the more pressing needs of the Reserved Subjects. Such is the problem before the Governor.

The Montagu-Chelmsford Report proposed that the allocation of funds between the two halves should be considered by the Government as a whole; provincial contributions and Interest (which are a first charge upon provincial revenue) having been provided for, the supply of the Reserved Subjects should have a priority; then the needs of the Transferred Subjects should be taken into account; and if funds be insufficient, the Ministers and they alone should face the Council with proposals of fresh taxation.

Thus though the M. C. Report favoured a "Joint Purse" for the province, it sacrificed the Transferred Subjects which were made to remain satisfied with what was left after the Reserved Subjects had had their fill; and it cast upon the Ministers the disagreeable necessity of proposing additional taxation. The Government of India, in their celebrated Despatch of 5th March 1919, proposed a "Separate Purse" for each half of Government. In addition to the defects mentioned above, they argued that, (a) under the Joint Purse it was not impossible for Ministers to starve the Reserved Subjects by refusing fresh taxation, and by insisting upon a certain revenue for their own departments; (b) the Joint Purse had the incurable

fault of being impracticable. It would cause endless friction in the division of the provincial balances and of the proceeds of fresh taxation, in the raising of loans, and in paying interest for them; (c) further the Joint Purse would not give any incentive to either half to improve its resources. Under the pooling system, any improvement which either half of Government can effect goes into hotchpot, and there is no direct advantage from it, possibly no advantage at all.

The rival scheme of "Separate Purse" proposed by the Government of India pre-supposed a complete separation between the resources of the two halves of Government, each having its own balances, revenues, powers of taxation and of borrowing, and a separate budget. It was claimed to be free from the defects of the Joint Purse: but its greatest merit was said to be that it would remove the "official" Government from the undue influence and control of the Ministers, by depriving the latter of any opportunity to meddle with the "budget" of the Reserved half. Lord Meston—the then Finance Member of the Government of India—argued that the success of the new experiment of Dyarchy required that each half of government should have its own work and should be allowed to do it unfettered by control exercised by the other half; and the contention of the Government of India was that the Joint Purse would place in the hands of the popular half of Government, through their handling of the purse-strings, a very large measure of control over the policy in regard to subjects which were not under their administrative control and consequently for which they were not responsible. It was feared that if, at the time of the preparation of the Budget, there

was no automatic barrier between the two classes of revenue like the one which the Separate Purse provided, the popular half would encroach upon the revenues of the other and that the Governor would not be able to prevent this encroachment.

Such were the arguments for and against the Joint Purse brought forward by the Government of India. Now it became sufficiently clear in the course of the controversy that some scheme of allocation of revenues between the two halves of Government had to be made. As the division between the "Reserved" and "Transferred" Subjects was not made on fiscal considerations, the assignment of the revenues accruing under Reserved Subjects to the Reserved half, and under Transferred Subjects to the Transferred half was absurd. The Transferred Subjects in any case required to be subsidized by the Reserved Subjects. Thus the real issue between the Joint and the Separate Purse did not at all turn upon financial grounds: The problem of distributing a limited revenue between various items of expenditure of more or less urgency and usefulness has to be solved by all governments, as it has to be solved by all private individuals also. A reasonable man so distributes his income as to get the maximum benefit out of each item of expenditure; and given reasonable Councillors, reasonable Ministers and a reasonable Governor, it was difficult to see why the Joint Purse should prove unworkable.

Dictum of the Joint Committee.—Such was the view taken by the Joint Committee. They said that they had given much attention to the difficult question of the principle on which the provincial revenues and balances should be distributed between the two

halves of Government. "They are confident that the problem can readily be solved by the simple process of common sense and reasonable give and take, but they are aware that this question might, in certain circumstances, become the cause of much friction in the provincial government, and they are of opinion that the rules governing allocation of these revenues and balances should be so framed as to make the existence of this friction impossible. They advise that if the Governor, in the course of preparing either his first or any subsequent budget, finds that there is likely to be serious or protracted difference of opinion between the Executive Council and his Ministers on this subject, he should be empowered at once to make an allocation of revenues and balances between the Reserved and Transferred Subjects which should continue for at least the whole life of the existing Legislative Council. The Committee do not endorse the suggestion that certain sources of revenue should be allocated to Reserved, and certain sources to Transferred Subjects, but they recommend that the Governor should allocate a definite proportion, say by way of illustration, two-thirds to Reserved and one-third to Transferred Subjects, and similarly a proportionate though not necessarily the same fraction of the balances. If the Governor desires assistance in making the allocation, he should be allowed, at his discretion, to refer the question to be decided to such authority as the Governor-General shall appoint. Further the Committee are of opinion that it should be laid down from the first that, until an allocation has been made by the Governor, the total provisions of the different expenditure heads in the budget of the

province for the preceding financial year shall hold good."

Devolution Rules about Allocation of Funds.—Effect has been given to this dictum of the Joint Committee by Devolution Rules made under the Act which are to the following effect. They first lay down that "expenditure for the purpose of the administration of both Reserved and Transferred Subjects shall be a charge on the general revenues and balances of the province"; that their distribution between Reserved and Transferred Subjects shall "be a matter for agreement" between the two halves; that the Governor, if he is satisfied that there is no hope of agreement between the two halves within a reasonable time, may, "by order in writing make the allocation by specifying the fractional proportions of the revenues and balances to be assigned to each half; that the Governor may refer the matter to an authority to be appointed by the Governor-General in this behalf on the application of the Governor; every such order to remain in force for a period specified in the order (which will not be less than the duration of the then existing Council, and not exceed by more than one year, its duration;) that if an increase of revenues accrue during the period of the order on account of the imposition of fresh taxation, that increase, unless the Legislature otherwise directs, shall be allotted to that part of Government by which the taxation is initiated. Regarding proposals of borrowing or taxation, they will be considered "by both halves or Government sitting together"; but the decision shall thereafter be arrived at by the Governor-in-Council, or by the Governor and Ministers, according as the proposal originated with the former or the latter.

Every contingency has thus been provided for. When the two halves of Government fail to agree and when the Governor also has failed to allot the moneys the budget is to be prepared on the basis of the budget of the year about to expire and under no circumstances will the wheels of administration be brought to a standstill because of difficulties in the allocation of funds.

Advantages of the Joint Purse.—Sir Sankaran Nair (who was a member of the Executive Council of the Governor-General when the Reforms were being shaped) was from the first a great opponent of the Separate Purse and an advocate of the Joint Purse. The former, he said, by depriving the popular half of any real voice in the settlement of the budget as a whole would substantially reduce the value of the Reforms. The Joint Purse, on the other hand, would minimize the drawbacks of the dual system of Government introduced in the province, and give both halves of Government opportunities of sympathetically influencing each other's discussions to the advantage of both, and of the people of the province. The Governor too will be in a better position to discharge his duties as head of the whole Government and promote friendly relations between the two halves. The knowledge that Ministers with their responsibility for Transferred Subjects have also been a party to the allotments made for Reserved Subjects is calculated to induce in the Legislative Council a conviction of the necessity of those allotments and to minimize the chances of their seeking to cut them down. This will be of great moral value as it will curtail the necessity of the Governor's making use of his power of certification which cannot but cause friction and

conflict between him and his Executive Council on the one hand and the Ministers and the Legislative Council on the other. The financial disposition of each year can be made with reference to the particular requirements of that year, there will be a much-needed and most useful element of elasticity imparted to the financial arrangements, and when a proposal of fresh taxation is made in the Council in these circumstances, the Legislative Council will easily persuade itself to accept it and support Government than it can be expected to do under a system of the "Separate Purse."

But the Devolution Rules seriously detracted from the advantages of the Joint Purse by keeping the portfolio of Finance in the hands of a Member of the Executive Council. The Ministers thus had to look up to him and his Department for all schemes of expenditure. In the financial powerlessness of the Ministers is to be found the chief cause of the failure of Dyarchy.

(3) *His Duty to the Public Services.*—But the difficulties of Dyarchy are not confined only to the hybrid Cabinet. The position of the Public Services has been profoundly altered under the Reforms. So far as the Transferred Departments are concerned the Services (a) must serve under Indian Ministers, and (b) instead of initiating policies, must carry out the policies of the Ministers and the Council. Many members of the Services looked with disfavour upon the Reforms not only because their personal position and prospects were adversely affected by them, but also because they doubted the wisdom of the change. The duty of keeping the servants satisfied has been cast upon the Governor. "The

(Joint) Committee think that every precaution should be taken to secure to the public servants the career in life to which they looked forward when they were recruited. If friction occurs, a readjustment of persons and places may often get over the difficulty, and the Governor must always regard it as one of his most important duties to establish a complete understanding between his Ministers and the Officers through whom they will have to work."

Section 96-B of the Act and Rules made thereunder safeguard the interests of public servants. Servants appointed by the Secretary of State who do not get satisfactory redress of their grievances from their official superiors are to complain to the Governor and obtain justice. Again, no order adversely affecting the emoluments or pensions, no order of formal censure, or of effecting the transfer of officers can be passed without the personal concurrence of the Governor. The Instrument of Instruction issued to the Governor upon his appointment emphasizes his duties in this connection.

It happened, however, that even in spite of all these precautionary measures, many public servants could not continue their service under the changed environment of the Reforms. They were allowed to retire prematurely from the service on a proportionate pension. On the other hand the Ministers complained of their absolute lack of voice in the appointment of or control over their servants in the Transferred Departments. The whole position was carefully considered by the Lee Commission whose Report will be considered in connection with the criticism of Dyarchy. Powers of the Governor in connection with the Budget and Legislation will be considered

in the next chapter dealing with the Provincial Councils.

Instrument of Instructions to the Governor.—The responsibilities of the Governor with regard to Dyarchy and his overshadowing influence are well brought out in the Instrument of Instructions with which he is furnished on his appointment as Governor.

In a general way he is called upon 'to further the purposes of the Government of India Act 1919 to the end that the institutions and methods of Government therein provided shall be laid upon the best and surest foundations, that the people of the Province shall acquire such habits of political action and respect such conventions as will best and soonest fit them for Self-Government'.

He is next exhorted to maintain standards of good administration, to encourage religious toleration, co-operation among all classes and creeds, to ensure the probity of public finance and solvency of the Province; to keep clear and distinct the responsibility of each half of Government for its proper sphere; to encourage the habit of joint deliberation between them; to assist Ministers in the administration of Transferred Subjects and advise them in regard to their relations with the Legislative Council; in considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, to 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.

In addition to these general instructions the Governor is specially required to see (a) that necessary measures are taken for maintaining safety and

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tranquillity of all parts of the Province; (b) that due provision is made for the advancement and social welfare of small or backward or ill-organized Communities; (c) that all members of the Services are safeguarded in the legitimate exercise of their functions and in the enjoyment of all recognized rights and privileges; and (d) that no monopoly or special privilege which is against the common interest, is established and no unfair discrimination is made in matters affecting commercial or industrial interests in the Province.

(73) CONTROL OF THE SECRETARY OF STATE AND THE GOVERNOR-GENERAL IN COUNCIL OVER THE PROVINCIAL GOVERNMENT

We saw in the last Section how the Governor was armed with extensive power to carry on administration under Dyarchy. Further restrictions upon the powers of the popular half of Government resulted from the control which the Governor-General in Council and the Secretary of State continued to exercise over the Provincial Governments in spite of the devolution of greater authority upon the latter. We have already considered the rules regarding 'previous sanction' for legislation in the Provincial Councils; reference has also been made to the restrictions upon the financial powers of the provinces. Here we are concerned with the restrictions imposed upon provincial expenditure. Though the control of the Provincial Councils over the expenditure has been augmented official control is still there. We may consider official control under the following heads:—

- (a) Control by the Secretary of State in Council and the Governor-General in Council.

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(b) Control by the Finance Department.

(c) Control by the Audit Department.

(a) *Control by the Secretary of State in Council.*—

This control will vary according as the subject is Transferred or Reserved. Regarding expenditure over Reserved Subjects, the Joint Committee thought it unnecessary and undesirable to prescribe by statutory Rules under the Act of 1919 the extent to which the Secretary of State in Council was to delegate his powers of control to the Provincial Government. But in purely Provincial matters where the Provincial Government and Legislature were in agreement regarding the desirability of incurring expenditure on them he may allow the Governor in Council to dispense with his previous sanction if he so desires. But all such delegation must be by executive orders of the State Secretary and not by Rules under the Act.

It is otherwise with regard to the Transferred Subjects. In connection with them the Joint Committee rightly drew attention to the intention of the Act of 1919 that such expenditure should be, with the narrowest possible reservations, left within the exclusive control of the Provincial Legislature. But though the widest freedom is desirable the Secretary of State in Council must have some control over expenditure on Transferred Subjects. The occasions for control are defined in Devolution Rule 27. The Governor-General in Council has no independent powers of control now left to him. This is particularly true of Transferred Subjects. Regarding Reserved Subjects, all applications for the previous sanction of the Secretary of State in Council are in the first instance to be made to the Governor-General in Council who may either agree with them or disagree

with them. In all cases the provincial applications have to be forwarded to the Secretary of State in Council.

The result of Rules framed with regard to expenditure on provincial Reserved and Transferred Subjects is briefly this:—

Previous sanction of the Secretary of State is necessary, in Reserved Subjects, for (a) the creation or abolition of a post ordinarily belonging to the All-India Services; (b) to the creation of permanent posts with a salary exceeding Rs. 1,200 p. m. and (c) temporary posts with salary exceeding Rs. 4,000 p. m. (d) the granting of pensions, annuities etc., to deceased servants of Government, under certain circumstances; (e) to incurring expenditure upon public works affecting the interests of more than one province, or costing more than 50 lacs of Rupees; (f) to the revision of a permanent establishment costing five lacs of rupees a year and other minor items.

The rules regarding the Transferred Subjects are of the same tenor and in addition have reference to expenditure on the purchase of imported stores or stationery.

(b) Official control exercised through the *Finance Department* must be next considered. The Finance Department has extensive powers of advice and control in all matters bearing upon provincial finance. It is in the hands of a Member of the Executive Council. Its functions have been thus enumerated by Devolution Rule 37. It is (a) to be in charge of the account relating to loans granted to the Local Governments, and advise on the financial aspects of all transactions relating to such loans; (b) to be responsible for the safety and proper employment of the Famine

Insurance Fund; (c) to examine and report upon all proposals for the increase or reduction of taxation, and (d) of borrowing; (e) to be responsible for seeing that proper financial rules are framed for the guidance of other Departments and that suitable accounts are maintained by them; (f) to prepare an estimate of the total receipts and disbursements of the Province; (g) to assist in the preparation of the Budget; (h) on the receipt of a report from the Audit Officer to the effect that expenditure is being incurred for which there is no or insufficient sanction, to take steps to obtain sanction or to immediately stop the expenditure; (i) to lay the Audit and Appropriation Reports before the Committee on Public Accounts; (j) to advise Departments responsible for collection of revenue regarding the methods of collection.

(c) An effective and independent control by the *Audit Department* has been secured by making the latter a Central Subject, and thus outside the purview of the Provincial Government altogether.

Control over Administration.—Though superior official control has been considerably relaxed it can not be altogether eliminated. The Provinces cannot be made independent of the Government of India so long as the latter is held responsible to Parliament for the whole of India. The control of the Secretary of State therefore, must continue, though to a defined and diminished extent. The Joint Committee came to the conclusion that "there was no necessity of disturbing the then existing state of relations, except to the extent to which the Secretary of State relaxes his powers of direction and control over Local Governments. To that extent the Government of India also will withdraw from intervention; but India is not yet

ripe for a true federal system and the Central Government cannot be relegated to the functions of mere inspection and advice. The Committee trust that there will be an extensive delegation, statutory and otherwise, to Provincial Governments of some powers and duties now in the hands of the Government of India ; and they trust also that the control of that Government over provincial matters will be exercised with a view to preparing the provinces for the gradual transfer of power to the Provincial Government and Legislature."

Now having regard to the circumstance that provincial matters will be henceforward of two kinds—Reserved and Transferred—it is necessary to examine further the purposes for which the Central Government might interfere with them, for it is evident that the occasion and extent of intervention must depend upon whether the particular subject was Reserved or Transferred.

In the case of Transferred Subjects, Government of India and the Secretary of State can interfere only for specific purposes. Thus Devolution Rule 49 lays down "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 :—

- (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 any agreement.

- (3) To safeguard the due exercise and performance of certain powers and duties imposed upon the Governor-General in Council by the Act, or by Rules made thereunder.

The case for Reserved Subjects is not so simple. Here the intervention cannot be limited to specified occasions. The general principle is "that an official Provincial Government must remain amenable to the Government of India, the Secretary of State and Parliament in matters in which it is not amenable to the Local Legislature." The Joint Committee accordingly laid down: "The relations of the Secretary of State and of the Government of India with Provincial Governments should, in the Committee's judgment, be regulated by similar principles, so far as the Reserved Subjects are concerned. It follows, therefore, that in purely provincial matters which are reserved, where the Provincial Government and Legislature are in agreement, their view should ordinarily be allowed to prevail, though it is necessary to bear in mind the fact that some Reserved Subjects do cover matters in which the Central Government is closely concerned." Commenting upon the Rules made to give effect to this principle, the Joint Committee say: "The Committee consider that no statutory divestment of control except over the Transferred field, is either necessary or desirable. It is open to the Secretary of State to entrust large powers, administrative and financial, to the Governor-General in Council and the Provincial Governors in Council; and he will no doubt be largely influenced in deciding whether or not to require reference to himself in any given case or whether to interpose his orders where reference has been made,

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by the attitude of provincial public opinion as expressed in the Provincial Legislative Council. But these matters cannot be regulated by statutory rules and any authority which the Secretary of State may decide to pass on to the official Government in India will be a mere delegation of his own authority and responsibility, for the discharge of which in relation to the Central and Reserved Subjects he must remain accountable to Parliament."

With regard both to Transferred and Reserved Subjects the Provincial Governments must supply information and returns in the form required by the Central Government.

✓ *Minto Morley Reforms*
CHAPTER XV
REFORMED PROVINCIAL COUNCILS

(74) THEIR CONSTITUTION

The underlying principle of the Morley-Minto Reforms was that of greater *association* of the people with the discussion and decision of public questions *e. g.*, in the Legislative Councils. But the Councils though they exercised influence over the administration did not in the least control it, for the latter continued to remain essentially responsible to Parliament. Lord Morley expressly repudiated that his Reforms were a step towards Responsible Government. But the principle of "Association" has its limits which were nearly reached under the Morley-Minto Reforms. Association is merely a means to an end and as such is incapable of becoming the goal of political ambition. That goal is Responsible Government and Association was a period of probation for it.

Now the grant of a substantial instalment of Responsible Government in the Provinces being the cardinal feature of the Montford Scheme, the Legislative Councils had to be reformed—both with regard to their Constitution and Functions—in conformity with that principle. Bearing upon the change in their constitution the M. C. Report laid down the following comprehensive formula: "We propose that there shall be an *enlarged*

Legislative Council, differing in size and composition from Province to Province, with a *substantial elective* majority, elected by *direct* election, on a *broad* franchise, with such *Communal* and *Special* representation as may be necessary." What we have now to do is to show how the vital questions here so briefly mentioned have been dealt with in the Act or by the Rules framed under it.

(I) *Numbers*. Even the maximum strength under the old Rules (50 in the major Provinces) was very small, considering the extent and population of the provinces. In many provinces the actual numbers fell far short of the statutory maximum. The maximum had to be low, as a substantial proportion of the members consisted of officials, and the number of officials that could be withdrawn, for the purposes of the Councils, from the administration without serious inconvenience to it became the upward limit to which or about which non-officials could be "added" to the Councils.

But such a requirement of official strength or majority is inconsistent with the Reforms. A few officials—in addition to the Executive Councillors who are ex-officio members, might be appointed but their *raison-de-tre* is not the furnishing Government with official votes but rather the stabilizing influence which they will bring to bear upon the debates in the Council on account of their first-hand and living touch with administration. As for non-official representation, the guiding principle was that all interests and communities should have a fair and equal chance. Nor should the Councils be, on the other hand, unmanageably large. The minimum as laid down in

the Act is given in the Table. It will be noted that as the Morley-Minto Act prescribed the *maximum* strength of the Councils, it was possible for the Executive to have fewer members than the maximum. The Act of 1919, however, prescribes a *minimum*, and by the Rules made under this Act, it will be observed that in each province there are more members than the Statutory minimum.

The Composition of each Council established under the Rules

PROVINCE,	Total (<i>Ex-officio</i> ,) (nominated and elected.)	Nominated.				Total (elected.)	Elected.			
		Total (Nominated and <i>Ex-officio</i>)*	Officials (Nominated and <i>Ex-officio</i> .)	Non-Officials.	By Special electorates.					
					Total.		University.	Landholders.	Commerce and Industry including mining & planting.	
1. Madras ...	127	29	23	6	98	13	1	6	6	
2. Bombay ..	111	25	20	5	86	11	1	3	7	
3. Bengal ...	†139	26	20	6	†113	†21	†1	5	15	
4. United Provinces ...	123	23	18	5	100	10	1	6	3	
5. Punjab ...	93	22	16	6	71	7	1	4	2	
6. Bihar and Orissa ...	103	27	20	7	76	9	1	5	3	
7. Central Provinces ...	†70	16	10	6	54	7	1	3	3	
8. Assam ...	53	14	9	5	39	6	...	...	6

as finally made is shown in the following Table.

Elected.										REMARKS.
By Communal Electorates						By General Electorates				
Total.	(Rural)		(Urban)		Sikhs.	Total.	(Rural)		Minimum under the Act of 1919.	
	Mahomedans.	Mahomedans.	Europeans.	Anglo-Indians.			Indian Christians.	Non-Mahomedans		
20	11	2	1	1	5	65	56	9	118	* This column shows the maximum number of officials who may be nominated under the rules. It is open to the Governor to nominate fewer officials with a corresponding increase in the number of nominated non-officials shown in the next column.
29	22	5	2	...	...	46	35	11	111
46	33	6	5	2	...	46	35	11	125	
30	25	4	1	...	...	60	52	8	118
44	27	5	...	...	12	20	13	7	83
19	15	3	1	...	...	48	42	6	98
7	6	1	...	...	...	40	31	9	70
12	12	...	...	...	...	21	20	1	53

number of nominated non-officials shown in the next column.

† There will later be an additional elected seat for the Dacca University with consequent increases of one in the figures shown in these columns. This has taken place.

‡ Members to be nominated as the result of elections held in Berar have been shown as elected. *Vide* sect 72 (2) (c) of the Act.

§ This seat (Shillong) is filled by a general electorate including Mahomedans, there being no separate Mahomedan Urban constituency.

(2) *Proportion of officials and non-officials.*—In an earlier section we considered the theory of official voting. In the old Provincial Councils, the officials were not in a majority, for it was felt that there were sufficient safeguards against non-official opposition. No non-official could introduce a private Bill without “previous sanction.” Non-official opposition to a Bill proposed by Government could be got over by getting the Bill passed in the Legislative Council of the Governor-General which had concurrent powers of legislation where an official majority was always handy; and as regards Resolutions, even if non-officials succeeded in carrying one in the teeth of Government opposition—which was not a rare phenomenon—the Resolution was of a purely recommendatory character. As regards the Budget the powers of the Local Council were more illusory than real. Thus, as in any case, the powers of the Councils were nominal and limited, a non-official majority in them did not matter much. But though an official majority was unnecessary, an official *bloc* was felt to be indispensable. The officials had freedom neither of speech nor of vote, and the non-officials were irritated by their apparently meaningless opposition which widened the cleavage between the Government and the people. Again though the non-officials were in a majority, their influence was compromised by certain factors. A non-official majority was not the same thing as an elective majority. The former contained nominated European and Indian non-officials most of whom voted with Government. Thus the non-official majorities proved largely illusory and the unreality of the Councils caused disappointment and dissatisfaction.

In the new Councils “not more than 20 per cent.

of the members can be officials and at least 70 per cent. must be elected members."

It will be seen that the power of the Governor to nominate non-officials is restricted to only 10 per cent. of the total strength. Out of these he must nominate some to represent interests of classes mentioned in the Rules under the Act. Thus in the case of the Bombay Council the Governor is required to nominate members to represent the Anglo-Indian Community, the Indian Christian Community, the labouring classes in Bombay, the Depressed Classes, and the Cotton trade in Bombay. He has full discretion only as regards the remaining five members.

In addition to the nominated officials and non-officials, the Governor has the right of nominating one or two persons "having special knowledge or experience of the subject matter of a Bill which has been introduced into the Council, as expert members."

(3) *Method of Appointment.*—We considered in an earlier section the defects of the state of representation before the Reforms. In the first place the electorate was very restricted and secondly as the election was indirect there was no real connection between the primary voter and his representative in the Council. This lack of connection deprived the franchise of its political value and educative influence and left no room for the principle of Responsible Government.

But as it is upon this principle that the whole edifice of Provincial Government is raised, its proper application requires direct election and low franchise. In framing the constituencies and defining the franchise, however, we must remember that about 90 per cent. of the population is illiterate and rural in its

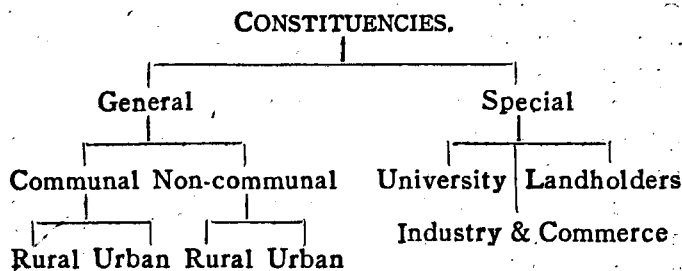
habits; that education is unequally distributed among various communities, is too much literary, and imparted in an unsatisfactory manner; further, as the authors of the M. C. Report say, "the politically-minded educated Indians, though they have done a great deal for the political and social improvement of the masses, have not yet identified their interests with those of the masses. Nor can we be blind to the division of Indian society by races, creeds, and castes. In spite of these real difficulties, however, the experiment of responsible government must be tried. It will be agreed that the character of political institutions reacts upon the character of the people. This fact, that the exercise of responsibility calls forth the capacity for it is the best ground for confidence in the working of Self-Government in India."*

The detailed work of defining constituencies and franchise was done by the Franchise Committee of Lord Southborough. For purposes of "rural" representation it took the District as a convenient unit each sending one or more members according to its size or population. The larger and more industrialized towns were given "urban" representation. This distinction between rural and urban constituencies was unknown in the old Councils. But towns are assuming a new importance in India. As the Government of India said in their Despatch "After religion and race, the boundary between the town and the country is the greatest dividing line that runs through the Indian people. It corresponds closely with the division between progress and conservatism, between English education and Vernacular; between experience of Self-Government and lack of such experience;

* M. C. Report : s. 130.

between the existence of newspapers, professions, bar-libraries, and societies, and their absence. It is roughly the difference between the old India and the new, the forces that are forcing us forward and the forces that are holding us back."

But uniform constituencies based upon territory though well-suited to politically advanced countries like England or the United States, are unsuited to Indian conditions. They have been supplemented by constituencies designed to represent particular communities, or special interests *e. g.*, the Universities; European and Indian Commerce, and Land-holders. We may classify the constituencies thus:



Disputable Matters of Representation.—Thus the problem of the representation of the Indian population is one of peculiar complexity. The Joint Committee laid down important principles in this respect in connection with their comments upon Section 72A (4) (c). We shall take them in order, and first, Communal Representation.—So far as the Mahomedans were concerned their claim for separate representation was beyond revocation, as they were in enjoyment of that privilege in the old Councils. The non-Mahomedans—particularly the Hindus, in their turn, had not only acquiesced in that concession but solemnly given

their approval by what is known as the "Lucknow Compact" of 1916. By this agreement the Mahōmēdāns were allowed to have Mahomedan Members equal to fifty per cent. of the total elected Indian Members in the Punjab, thirty per cent. in the United Provinces, forty per cent. in Bengal, twenty-five per cent. in Bihar and Orissa, fifteen per cent. in the Central Provinces, fifteen per cent. in Madras, and thirty-three per cent. in Bombay.

This Lucknow Compact was taken by the Franchise Committee as the basis for determining the number of Mahomedan seats in each Provincial Council.

It was not thought wise to go behind the Lucknow Compact which was taken as a proof of the growing understanding between the two great communities of Indian society.

Considering the question of Communal Representation on its merits, we may say that its advantages are the following :—

It better protects the interests of the particular community; secures better representation of that community; it welds the community more closely; and affords it greater opportunities of education and service.

On the other hand there are grave disadvantages. As the M. C. Report pointed out, Communal Representation will not carry India towards Responsible Government. (1) It is opposed to the teaching of the history of all self-governing countries which shows that in each the territorial principle has vanquished the tribal, and blood and religion have ceased to assert a rival claim with the State to a citizen's allegiance. (2) Again, communal representation perpetuates class divisions and thus retards the

growth of that citizen-spirit which is superior to the partisan spirit of a narrow community or religion. (3) A minority which is given special representation owing to its weakness and backwardness is positively encouraged to settle down into a feeling of satisfied curiosity, it is under no inducement to educate and qualify itself to make good the ground which it has lost compared with the stronger majority. On the other hand the latter will be tempted to feel that they have done all that they need do for their weaker fellow-countrymen and that they are free to use their power for their own purpose. The give and take which is the essence of political life is lacking.”*

Some other disadvantages might be here pointed out. (4) The concession is contagious. It is impossible to stop when once you give concession to one community, before giving it, in fairness, to all. (5) Many communities in India are not homogeneous. There are divisions and sub-divisions and communal representation would accentuate this fissiparous tendency. (6) Again, in India communal representation may be viewed with intense suspicion as a Machiavellian device to widen existing lines of cleavage, to check the growing sense of nationality and to secure the position of the British Government by the application of the principle of “divide and rule.” (7) A separate representation given to the less progressive communities is certain to affect the calibre of the Councils during the period of transition.

In spite of these drawbacks this concession has been continued to the Mahomedans in all provinces, and conferred afresh on the Sikhs in the Punjab, the Indian Christians in South India, and the Europeans

* M. C. Report : 227—230

in Madras, Bombay, and Bengal. It was no doubt an irony of fate that the publication of the M. C. Report with its strong presentation of the case against communal representation should have witnessed the recrudescence of the communal feeling with a strength and sharpness that were impatient of reasoning and that succeeded in gaining the concessions mentioned above.

A less objectionable method of securing the representation of minorities is that of *Reservation of Seats* in plural-member constituencies. The superiority of the device of reservation to communal representation is this that it does not deepen existing differences, it admirably secures the object which it has in view, it is simpler in operation, and it is a concession that can be revoked with greater ease and facility than communal representation when it has done its work. It is by this means that the Non-Brahmins in the Madras Presidency and the Marathas in the Deccan have been represented in the Local Councils. So far as the Deccan Marathas were concerned 6 seats were reserved for them in each of the plural-member constituencies of Bombay (South), Thana, Ahmednagar, Nasik, Poona and Ratnagiri Districts. The Sholapur, Kolaba and the West Khandesh District is to elect a Maratha member to the first, second, and third Councils respectively and to succeeding Councils in the same rotation. It was not felt necessary to reserve a seat in the Satara District because it was thought that the Maratha element in it was sufficiently strong to return a Maratha to the Council with certainty. Both the communities had pressed their claims for separate representation before the Franchise Committee but their claims were not favourably

entertained. The Non-Brahmins in Madras are in an overwhelming majority in that province, though backward in education. Experience has shown that the Non-Brahmins can organize themselves well for entry into the Councils. In the Madras Council they are in a majority and in the Bombay Council the Marathas form an important group.

Representation of Special Interests.—Next to the problem of communal representation comes the one of the representation of Special Interests. Here the qualification is based not on the elector's belonging to a particular community in a town or district, but rather upon his representing a special interest *i. e.*, of the Landholders, of a University or of Industry and Commerce. Such special electorates are non-territorial in their nature and the vote or votes thus exercised are in addition to that based upon the territorial qualification.

The Landholders—the historic aristocracy of the country—had special representation in the old Councils and they are sufficiently distinct from the vast mass of cultivators who are either their tenants or peasant proprietors. In the Bombay Presidency the Gujarat Sardars and Inamdars, the Deccan Sardars and Inamdars, and the Sind Jagirdars and Zamindars—paying not less than Rs. 1000 per year by way of land revenue, are given one member each in the Legislative Council.

The Universities also, on the analogy of the Universities of Oxford and Cambridge, enjoyed special representation in the old Councils. They safeguard the interests—not of the educated classes—but of University Corporations. The franchise extends to all

graduates of the University of more than seven years standing.

Indian and European commercial and industrial interests have been given special representation, *e.g.*, the Planting interest in Madras, Bihar-Orissa and Assam; Mining interest in Bengal, Bihar-Orissa and the Central Provinces; European Chambers of Commerce in Bombay, Bengal, Madras, and the United Provinces; Indian Chambers of Commerce in Bombay, Bengal, and Madras; Mill Owners' Association in Bombay, etc.

Nomination.—But there are sections of Indian population to whom the devices of communal representation, of reservation of seats, or special representation cannot be conveniently applied. In such cases nomination pure and simple was found most suitable. It is even simpler and more elastic than reservation. There are minorities which are too small or unorganized to be protected by a seat being reserved for them but which are sufficiently important to have their claims acknowledged. Nomination serves the purpose well in such cases. Rules under the Act require the Governor of each Province to secure the representation of certain interests or communities by this method of nomination; for example the Depressed Classes in many provinces; Anglo-Indians; Indian Christians; similarly the Cotton trade in Bombay; "excluded tracts", in Madras, Central Provinces and Assam; and the wage-earners in the city of Bombay.

The case of the Wage-earners is specially interesting. They are sufficiently important and organized in Bombay for instance. But the Joint Committee felt that election would not secure for

Labour the best and most useful representative that was available. They, therefore, went in for nomination rather than election.

At the same time it must be admitted that the position of the Nominated members in the Councils is far from enviable. They are viewed with suspicion both by Government and by the elected members. Perhaps Nomination is inconsistent with full Responsible Government.

Proportional Representation.—It is obvious that devices like communal representation etc., can have no permanent place in a perfect franchise scheme. Though useful as transitional and preparatory measures they are bound to make room in course of time for more scientific methods of election which have been found useful in Western countries. The problem of the representation of the minorities is in no way peculiar to India. In advanced countries it has been successfully solved by ingenious methods of election. One of them—Proportional Representation—was strongly advocated by Dr. R. P. Paranjpye as well suited to Indian conditions. He rightly claimed that it would facilitate the progress of India towards Responsible Government by gradually obliterating communal differences. The Joint Committee accepted the suggestion and recommended that the method might be tried if the Local Council of a province passed a Resolution in favour of its adoption.

(75) ELECTORAL QUALIFICATIONS AND OTHER RULES FOR THE PROVINCIAL COUNCILS

Detailed rules were framed to define the qualification of voters for the different Provincial Councils and for the conduct of elections. They were first

published in the *Gazette of India*. They have been arranged and explained in an excellent handy volume called *Electioneering in India* by the Honourable Mr. Hammond of the Indian Civil Service.

It is unnecessary to reproduce them here. Their general nature will be gathered from the following summary.

In a *general urban constituency* the qualification is based upon (a) residence in that constituency for a period of time (which is not the same in the different provinces); (b) ownership or occupation of a house of which the minimum rental value or the capital value is prescribed. This value is not the same in all the provinces, and not even the same in a particular province. It is higher in the presidency towns than in the other larger towns in the province. (c) payment of Municipal taxes of which the minimum is prescribed; (d) assessment to income tax and (e) receipt of a military pension.

In a *general rural constituency*, the qualification is of a twofold nature due to the fact that the towns that have not been defined as separate *urban* constituencies have been merged in the rural constituencies. Therefore in the case of those who reside in such towns the qualification is based upon residence, ownership or occupation of houses, or payment of municipal taxes as in an urban constituency. The strictly rural qualification is based upon the holding of land as owner, occupant or tenant and paying a prescribed minimum land revenue to the state, or rent to the owner.

In a general constituency, it should be recalled, certain communities enjoy separate communal representation. In such cases, a person who has any of the qualifications mentioned above and belongs to

the particular community has the communal vote. It should be clearly understood that a person can have only *one* vote in a general constituency. The communal vote is not an additional vote.

Special Constituencies.—The qualifications have been already mentioned in a general way.

Explanatory Remarks.—With regard to qualification for voting it should be noted that the Joint Parliamentary Committee desired that the Franchise as settled by Rules under the Act should not be altered for the first ten years and that it should be outside the power of the Legislative Councils to make any alterations in it. The case of woman-suffrage where such a change has been allowed is to be regarded as exceptional and as not forming any precedent in respect of proposals for other alterations.

An elector to the Local Council must be a male British Subject, of sound mind, and over 21 years of age. The question as to whether the franchise should be extended to subjects of Native States was much discussed at the time and received favourable consideration at the hands of the Southborough Committee. But as some Local Governments were opposed to the enfranchisement of the subjects of the Native States, the question was left to the discretion of each Local Government. Not one of them has extended the privilege to them.

Similarly with regard to female suffrage, though there was an overwhelming case in its favour, the Joint Committee felt that the question went too deep into the social system and susceptibilities of India, and therefore, left it to be settled in accordance with the wishes of the Indians themselves as constitutionally expressed *i. e.*, by a recommendatory Resolution

in its favour in the Local Councils. That popular opinion in some Provinces is genuinely in favour of extending the franchise to women is clear from the fact that Resolutions in favour of removing the sex-disqualification were passed in Madras and Bombay, and also in the Legislative Assembly. But in some provinces *e.g.*, Bengal, Bihar and Orissa, similar Resolutions failed.

Residence for a specified period of time *e.g.*, one year in the constituency is required in the case of each elector.

It will be seen that the qualification for voting is based upon the possession of property as evidenced by the holding of land, occupation of house, payment of Municipal Taxes, Income Tax etc. The qualification is not the same for all the Provinces nor is it uniform throughout a Province. It is generally higher in the urban area than in rural area. Even in urban areas it is specially high in towns like Bombay and Karachi, and in rural areas specially low for poor districts like Ratnagiri and the Panch Mahals. But within a given constituency it is the same for all voters. The qualifications defined by the first Electoral Rules conferred the franchise upon about 5.3 million people out of a population of 247 millions. The property qualification must be pronounced as unduly high in a poor country like India.

Qualifications for Candidates.—A person is not eligible for election as a member of the Council if such person (a) is not a British Subject, (b) is a female, or (c) is already a member of the Council or of any other legislative body constituted under the Act, or (d) is dismissed or suspended from legal practice, (e) is of unsound mind, (f) is under 25 years of age,

(g) is an undischarged solvent, (h) is a discharged solvent with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

Again a person against whom a conviction by criminal court involving a sentence of transportation, or imprisonment for a period of more than six months is subsisting, unless the offence of which he was convicted has been pardoned, is ineligible for five years from the date of expiration of the sentence.

In addition to these general qualifications a candidate is required to belong to the "special" constituency or, in the case of communal representation, to the community he proposes to represent. A further qualification of residence for six months within the constituency is required in some provinces.

Corrupt Practices.—Direct elections and low franchise open the door to all sorts of irregularities at the hands of candidates or their overzealous agents. Stringent rules have been drawn up to prevent such practices. Corrupt practices include bribery, undue influence, personation, publication of false statements etc. The best method of checking such practices is to have a proper scrutiny of election-expenditure of each candidate. The candidates are, therefore, required to keep a careful record of receipts and expenditure in connection with the election and submit it to the Returning Officer. As a further check over such practices the declarations of election expenses made by the candidates and lodged in the office of the Returning Officer, are open to inspection on payment of a prescribed fee. Conviction for a corrupt practice would disqualify a candidate from standing for election for five years from the date of conviction.

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Other Electoral Rules.—It is unnecessary to reproduce here the detailed rules made for the purpose of preparing the electoral roll, nomination of candidates, the holding of elections, and the publication of results etc. Nominations are made by a fixed date; they are officially scrutinized; the Collector is the Returning Officer for the District. The polling booths are scattered throughout the District and polling takes place on the same day throughout the District, and throughout the Presidency for the matter of that. Different days are fixed for urban and rural voting, and for Mahomedan and Non-Mahomedan voting. Votes are given by ballot and in person. In plural-member constituencies every candidate has as many votes as there are members to be elected though he may accumulate all of them upon any one candidate.

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If we throw a glance at a fully developed democratic body like the House of Commons we find that all matters relating to its composition, duration, methods of business, privileges, etc., are settled by itself. It has cost the House of Commons many a protracted struggle with the King and his Council before it succeeded in establishing the valuable privileges. In fact it is in the exercise of these inestimable privileges that its real sovereignty consists. Parliament does not derive the rights from any authority higher than itself, for it itself is the highest authority.

But there can be no comparison between the House of Commons "the Mother of Parliamentary Institutions" and an Indian Provincial Council. The latter is a creation of the former can have, therefore, no inherent rights of its own.

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Accordingly important matters with regard to the Councils have been laid down in the Act itself or in Rules made under the Act. The Rules are as much binding as the Act itself, for they were, in the first instance, framed by the Governor-General in Council with the sanction of the Secretary of State in Council and then approved by Parliament. They can not be repealed or altered by the Indian Legislature or by the Provincial legislature.

Such matters as are not provided for in the Rules are provided for by the Standing Orders. The first Standing Orders were made by the Governor-General in Council with the approval of the Secretary of State, but they can be amended by the Local Legislature.

Let us then visualize the procedure in the Council with the help of the relevant Sections 72-D (6) & (7) of the Act, the Rules made thereunder and the Standing Orders.

Duration of the Council.—The Act requires the Governor to fix the time and place of holding the sessions of the Council and he has the power to prorogue it. The normal life of a Council is three years though it may be dissolved sooner by the Governor. In that case he must call a fresh Council within six months of the dissolution of the old Council.

Presidency of the Councils.—In the old Councils the Head of the Administration *i. e.*, the Governor or Lieutenant-Governor was the President. This was quite in keeping with the historical fact that the Legislative Council was an expansion of the Executive Council. But the Councils have now become assemblies of legislator and their new role required a corresponding change in their Presidents. By the

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Governor ceasing to be a member of the Legislative Council (though he has the right of addressing it and of requiring the attendance of members for the purpose), he has been withdrawn into a convenient Olympian height from which he can watch and control, so far as seems advisable or possible, the proceedings of the Legislature.

The Councils also have benefited by the absence of the Governor. The presence of the Head of the Province in the Council had a stifling influence upon the Honourable Members who then could not make full use of their none-too-wide powers of putting Questions or moving Resolutions. If, therefore, the Councils were to develop the freedom and dignity of Parliamentary bodies as in other countries, they had to be removed from the stunting influence of the presence of the Governor at their deliberations.

The Joint Committee considered carefully this question. They were of opinion that the Governor should not preside and they advised that, for a period of four years, the President should be appointed by the Governor. Wherever possible it would be a great advantage if some one could be found for this purpose who had had Parliamentary experience. The Legislative Council should itself elect a Deputy President, and at the end of four years the nominated President would disappear and the President and Deputy President would be elected by the Council. The Joint Committee attributed the greatest importance to this question of the Presidency of the Councils. "It will, in their opinion, conduce very greatly to the successful working of the new Councils if they are imbued from the commence-

ment with the spirit and conventions of Parliamentary procedure as devised in the Imperial Parliament."

At the commencement of each session of the Council is elected a panel of four chairmen any one of whom presides over the Council in the absence of the President or Deputy President. The President decides all points of order which may arise and his decision is final. He may even ask a member to withdraw from the Council if the member's conduct appeared to him to be grossly disorderly; or finally, he may *suspend* the sitting of the Council for a specified time in the case of grave disorder arising in the Council.

A *session* of the Council is *prorogued* by the Governor, and a *meeting* of the Council is *adjourned* by the person presiding. On the termination of a session by prorogation all pending notices of business lapse and fresh notices must be given for the next session. But Bills introduced in the Council are not dropped. They are carried over to the pending list of business of the next session and are taken up at the stage at which they were left in the preceding session. The effect of an adjournment is to suspend the transaction of current business.

Quorum and Voting.—A certain quorum is required in each Council. It is 30 in Madras, 25 in Bombay, Bengal, U. P. and B. & O., 20 in C. P., 15 in the Punjab and 12 in Assam. All questions are determined by a majority of votes of the members present. The President has and must exercise a casting vote in the case of an equality of votes. Votes are taken by voices or by division. The procedure is this: when the President states the question to be voted upon, those who are in favour of

it say 'aye' and those against, say 'no'. According to the apparent preponderance of the voices he declares whether the 'ayes' or 'noes' 'have it'. If the President's opinion is challenged a regular division of votes is taken, the 'ayes' and 'noes' going into separate 'lobbies' for the purpose.

Closure.—In all deliberative bodies there is some provision for cutting short protracted discussion and bringing the debate to a definite vote. This is usually done by applying for 'closure'. In the course of a debate any member may move 'that the question be now put' and unless it appears to the President that the request is an abuse of the Rules or Standing Orders or an infringement of the right of a reasonable debate the motion for closure is immediately put. If the motion is carried, the original motion to which the closure was applied is put to the vote of the Council without further discussion. Whether the request for putting the question should be granted has been left to the discretion of the President.

List of Business.—Much depends upon the way in which the time of the Council is allotted to the consideration of the the business before it—both official and non-official. It is a recognized principle that in this matter Government has a preponderating voice. In the Provincial Council, for instance, the Governor allots days for the business of non-official members and on those days their business has precedence. When non-official business has precedence, Bills have precedence over Motions to amend the Standing Orders, and the latter over Resolutions, though the President has the discretion of giving priority to any item of such business. It is the duty of the Secretary of the Council to prepare a List of Business that is

before the Council from day to day and to circulate the list as well as other papers to the members of the Council.

Language.—An indication of the truly representative character of the Councils which may contain members from rural areas and of the backward classes, is furnished by the permissive use of the vernaculars in them. As Mr. Curtis says "In India the official and political classes both incline to think as though the progress of India towards Responsible Government depended on training Indians to the work of Ministers, Legislators, and Officials. But it really depends upon training electorates to a real understanding of the questions at issue, and to a habit of recording conscious decisions upon them. Such training will not begin in any real sense except in so far as provincial business is transacted and discussed in a language the people at large understand."

(77) FUNCTIONS OF THE COUNCIL

Having considered so far the general procedure in the Council, let us next turn to its Functions. They can be conveniently grouped under four heads.

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|-------------------|---|-----------------|
| (1) Interrogatory | | (3) Legislative |
| (2) Deliberative | { (a) Resolutions
(b) Motion for adjournment | (4) Financial |

(1) *Interpellations.*—The right of asking Questions was first conferred by the Act of 1892 and extended by the Act of 1909. But in the old Councils many Questions were disallowed and the information supplied was often of no value. This right of putting Questions is generally regarded as a useful check upon the vagaries of the Executive. If a member

wants an oral answer to a question he puts a star against the question when he gives notice of it. If a question is not starred, the answer to it is printed and placed before the Council. A supplementary question cannot arise in connection with answers to unstarred questions.

No Question can be asked in regard to the following subjects:—

(i) Any matter affecting the relations of His Majesty's Government or of the Government of India, or of the Governor or Governor-in-Council, with any foreign State.

(ii) Any matter affecting the relation of any of the foregoing 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 the territory of any such Prince or Chief.

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

The President's decision on the point whether any question is or is not within the above restrictions is final. Any member may put a supplementary question for the purpose of elucidating any matter of fact regarding which an answer has been given. Ten clear days' notice is required for the asking of a Question. A period of one hour is made available for the asking and answering of Questions at the commencement of every meeting of the Council.

(2) *Deliberative Functions.*—(a) *Resolutions.*—The right of moving Resolutions was regarded, even in the old Councils, as a valuable means of bringing the policy of Government more in accord with popular

views and of ventilating popular grievances. Fifteen days' notice is required for a Resolution which must be clearly and precisely expressed and raise a definite issue. Amendments to a Resolution (for which a day's notice has been given) may be moved with the consent of the President. Every Resolution is in the form of specific recommendation addressed to the Government, and the same restrictions which apply to the subject matter of questions also apply to the resolutions.

It is important to understand why a Resolution cannot but be purely recommendatory in the present stage of the Councils. Even an all-powerful body like the House of Commons does not make use of Resolutions to control the Executive. It has other methods of doing it *e.g.*, a debate on the Address, interpellations, motions to adjourn, budget debates or, finally, motion of no confidence. The result of pressing a Resolution to division with a view to defeat Government would certainly lead, in England, to a change of Government. In India, however, we have, in the province, the Governor-in-Council who is irremovable by a popular vote. There is no constitutional means of making a Resolution binding upon him.

(b) *Motion for Adjournment.*—This was a new feature of the Councils. In parliamentary countries motion for adjournment is a means for raising debate upon a question of urgent public interest. It furnishes an occasion for criticising the act or omission of a Department of Government. The President must be first satisfied about the definiteness, urgency and public importance of the question to be discussed. The Standing Orders require that leave to make a

motion for adjournment for the purpose of discussing a resolution on a definite matter of urgent public importance must be asked after Questions and before the business of the day is entered upon. Leave will be given if more than thirty members are for it. In that case the motion is taken up at 4 p. m. or earlier (if the business of the Council terminates earlier) on that day. At the end of the debate the President puts the question "that the Council do now adjourn". If this motion is carried it amounts to a vote of censure on the Department whose action came up for discussion. If the debate does not terminate before 6 p. m. the question cannot be put and the matter is automatically dropped. The right to move motion for adjournment is subject to the following restrictions.

- (i) Not more than one such motion can be made at the same sitting.
 - (ii) Not more than one matter can be discussed on the same motion, and the motion must be restricted to a specific matter of recent occurrence.
 - (iii) The motion must not revive discussion on a matter which has been discussed in the same session.
 - (iv) The motion must not anticipate matter which has been previously appointed for consideration, or with reference to which a notice for motion has been previously given.
 - (v) The motion must not deal with matter on which a Resolution could not be moved.
- (3) *Legislative Procedure.*—A Bill *i.e.* a project of law may be introduced either by Government or by a private member. A private member must give notice of 15 days if the Bill referred to a Transferred

Subject and of one month if it referred to a Reserved Subject, and submit along with the notice a copy of the Bill and a full statement of its objects and reasons. If the Bill requires under the Act the previous sanction of the Governor-General, a copy of such sanction must, also be attached to the notice. If leave to introduce the Bill is given by the Council, the Bill must, as soon as possible, be published in the Gazette, in English as well as in the vernaculars of the province. If it be a Government Bill the Governor may direct its publication together with its object and reasons, in the Gazette even though no motion has been previously made for leave to introduce it.

Every Bill must be read three times and if the motion for any reading is not carried, it is to be regarded as dropped and can not be reintroduced within a period of six months from the date of rejection.

At the *first reading* of the Bill the principle of the Bill and its general provisions may be discussed but no details can be discussed, nor can any amendments to the Bill be moved at this stage.

On the introduction of the Bill the mover may move for (i) the consideration of the Bill by the Council either at once or on some future day to be then appointed, or (ii) its reference to a Select Committee to be composed of such members of the Council as he may name in his motion or (iii) its circulation for the purpose of eliciting public opinion thereon.

A Select Committee is appointed for the consideration of a Bill. The mover of the Bill, Member in charge of the Department to which the Bill refers, and the Law Member are generally members of the Select Committee and in addition, there are others appointed by the House. The Committee goes through

the Bill clause by clause and may amend it if it thinks fit. It may hear expert evidence and representatives of special interests affected by the Bill. The Select Committee stage is an important stage of the Bill as the latter is in a very plastic form. The Committee must submit its report within two months of the reference of the Bill to it.

The report of the Committee is presented to the House by the member in charge of the Bill. No debate is allowed at this stage. The report and the Bill as amended must be published in the Gazette. The member in charge may move for (i) the consideration by the House of the Bill as reported by the Committee (ii) or its recirculation for the purpose of obtaining further opinion thereon or (iii) for its recommittal to the Select Committee with or without instructions to make particular changes in the Bill.

The Bill enters upon its *Second Reading* if the motion that the Bill as reported be taken into consideration is carried. At this stage any member may propose an amendment of the Bill. If a number of amendments are proposed they are taken in the order of the clauses of the Bill to which they refer. The President submits the Bill clause by clause and when the amendments relating to it have been dealt with, he puts the question 'that this clause (as amended) stand part of the Bill'.

When the Bill has been thus dealt with and if no amendments have been made the Bill may be read for the *third time* and passed at once. But if the Bill has been amended and a member objects and the President allows the objection then it cannot be read the third time at once. It must be brought in again on a subsequent day. At this stage only formal

or verbal amendments can be moved. After the third reading the Bill is said to have passed; it is then signed and certified by the President and submitted to the Governor by the Secretary of the Legislative Department for his assent.

Budget Procedure.—By the “Budget” is meant the statement of estimated revenue and expenditure of the financial year. We may distinguish four operations in connection with it. (1) Preparation of the budget; (2) the voting of the budget; (3) execution of the budget; (4) the enforcing of accountability.

(1) *Preparation of the Budget.*—As the financial year in India begins on the first of April, operations in connection with the budget have to begin as early as the preceding September. Various stages have to be gone through. Heads of Offices prepare estimates for expenditure which are then scrutinized by special controlling officers, by the Accountant’s Department, and then by the Finance Department. Any new items of expenditure are scrutinized by the Finance Committee of the Legislature. The estimates as now revised and corrected are then considered collectively by the Government, and finally submitted to the Legislature.

(2) *Voting of the Budget.*—The functions of the Council with respect to the Budget have been importantly enlarged under the Reforms. Formerly it could only hold a general discussion upon it or move Resolutions which were purely recommendatory. Now the Council votes upon the Budget item by item, as all Parliamentary bodies do. After the Budget has been presented to the Council by the Finance Member on the appointed day, it proceeds to deal with it in two stages: (a) general discussion, and (b) voting of

demands for grants. On a day appointed by the Governor subsequent to the day on which the Budget is presented, and for such time as the Governor has allotted for this purpose, 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.

The second stage begins with the voting of grants. A separate demand is made in respect of the grant for each Department of Government. Demands affecting reserved and transferred subjects are shown separately. Each demand must contain, first, a statement of the total grant proposed and then a statement of the detailed estimates under each grant, divided into items. 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 Council cannot make motions to increase or alter the destination of a grant. Only the Governor can do that. But the Council can move motions either to omit or reduce any grant or any item in the grant.

A demand for *excess grant* is presented to the Council if money has been spent on a service beyond the amount granted by the Council. Similarly a demand for *Supplementary grants* or additional grants is made if the money already granted falls insufficient. The Council must exercise great vigilance in passing such grants for they weaken its control over the budget. By a change in the Rules the Government were allowed to present an estimate for an additional

grant 'in respect of any demand to which the Council has previously refused its assent or the amount of which the Council has previously reduced.' This change in the Rule has practically nullified what control the Council had over the budget. Refusal or reduction of a grant becomes a farce if subsequently the amount is made good by a supplementary grant.

(78) COMMITTEES OF THE COUNCIL

Committee on Public Accounts.—Superior official control over the budget has been partially relaxed in order that there should be greater scope for control left to the Council. Voting upon the budget is a way of exercising some control. But as the budget discussion lasts only for a few days the Council ought to have some means of watching the financial doings of the Executive throughout the year and of getting rectified any irregularity in or departure from strict adherence to the budget arrangements that it might come across. For this purpose, in each Council, at the commencement of the financial year, a Committee on Public Accounts is appointed. Its object is "to deal with the Audit and Appropriation accounts of the Province and such matters as the Finance Department may refer to the Committee." Two-thirds of the Members of this Committee are appointed by the non-official members of the Council, the remaining being nominated by the Governor. The Finance Member is the Chairman of the Committee. It is the duty of the Committee to satisfy itself that the money *voted* by the Council was spent within the scope of the demand *granted* by the Council. It is also the duty of the Committee to bring to the notice of the Council every departure from the budget arrangement which

it may have detected or which the Finance Department may bring to its cognisance. The Committee on Public Accounts should be distinguished from the Standing Finance Committee which deals with *new* schemes of expenditure. The Finance Committee deals with *projects* of expenditure, the Committee on Public Accounts deals with expenditure *after* it has been incurred. It will be noted that only the accounts of the money *voted* by the Council are brought to the scrutiny of the Public Accounts Committee and not the whole expenditure of the Provincial Government.

Other Committees of the Council.—As it is impossible for the whole Council to attend to every business that comes before it, the practice has been established of appointing various Committees for various purposes. In this respect the Indian Councils are simply copying the methods adopted by Parliamentary bodies in the West. Reference has been made to two Committees: the Committee on Public Accounts and Select Committees appointed to consider Bills. A Select Committee may also be appointed to consider amendments to the Standing Orders of the Council.

Then there are various Standing Committees attached to the different Departments. The Joint Parliamentary Committee recommended: "It may greatly assist the political education of India if Standing Committees of the Legislative bodies are attached to certain Departments of Government." The suggestion has been extensively carried out in Bengal for in that province there are Standing Committees attached to the Police, Judicial and Jails, Local Self-Government, Medical and Public Health, Education, Commerce and Marine, Public Works

(Roads and Buildings), Irrigation, Agriculture, Excise and Land Revenue Departments. Each Standing Committee consists of the Member or Minister in charge of the Department and of four non-official Members. The latter are appointed by the Governor 'after consideration of the names of the persons' elected for the Committee by the Council. All major questions of departmental policy, all schemes involving large expenditure, annual departmental reports are brought before the Committee. Cases concerning appointments are not brought before the Committee. The Departmental Secretary acts as Secretary to the Committee and he explains the case to the Committee and takes part in the discussion. The powers of the Standing Committees are advisory only and their proceedings are confidential.

Council Secretaries.—By means of such Committees Members of Council are given opportunities to get an insight into the details of administration and the intricacies of Parliamentary procedure. Not only would such insight make their criticism at once sober and effective, but it would train at least some of them to fill with distinction the role of Ministers in course of time. S. 52 (4) provided another method of bringing this about. It gave the Governor the discretion of appointing from among the non-official Members of his Council, Council Secretaries who hold office during his pleasure and discharge such duties in assisting Members of the Executive Council and the Ministers as he may assign to them. The pay of the Council Secretaries, however, was to depend upon the vote of the Council. Their position was analogous to that of Parliamentary Under-Secretaries in England. But this power was not much used in practice. Only

in two or three provinces *e.g.*, Madras, Central Provinces, and the Punjab, it would seem, such appointments were made. Perhaps the association of such non-official members with administration is not quite easy during the present transitional period.

(79). SPECIAL POWERS OF THE GOVERNOR WITH REGARD TO LEGISLATION AND THE BUDGET

In describing the functions of the Council we dealt with the normal course of legislation and the voting of grants. But difficulty may arise with regard to both as the Governor has to face a Council with an elected majority. Let us therefore consider the special powers with which the Governor has been armed to get over the difficulties just mentioned.

Powers in the matter of Legislation.—Here his powers are both positive and negative and have reference to essential and non-essential legislation.

Essential Legislation.—In as much as the Governor is responsible to Parliament for the reserved half he must have adequate power to secure the necessary legislation. As the Councils have been greatly enlarged and as they contain a substantial elective majority every Government Bill may not pass. The M. C. Report discussed various alternatives for securing "essential" legislation and in the end it recommended the use of a "Grand Committee." If a Bill failed to pass in the Council, and if the Governor thought the Bill "essential" then he was to refer it to the Grand Committee of the Council which was so composed as to have a majority of *nominated* members and which, therefore, would not oppose the Bill. But this proposal as to Grand Committee was totally rejected by the Joint Parliamentary Committee. They did

so because, in their opinion, the Grand Committee did not give the Governor the power of securing legislation in a crisis in respect of those matters for which he is held responsible, and because, in respect of ordinary legislation about Reserved subjects, it perpetuated the system of securing legislation by what is known as the "official bloc" which was the cause of great friction and heartburning in the Morley-Minto Councils. "The responsibility for legislation on Reserved Subjects is with the Governor-in-Council, and when the official bloc has been put into operation, it has been put into operation by him, and is merely an indirect way of asserting his responsibility. The Committee think it much better that there should be no attempt to conceal the fact that the responsibility is with the Governor-in-Council, and they recommend a process by which the Governor should be empowered to pass an Act in respect of any reserved subject, if he considers that the Act is necessary for the proper fulfilment of his responsibility to Parliament. He should not do so until he has given every opportunity for the matter to be thoroughly discussed in the Legislative Council, and as a sensible man he should, of course, endeavour to carry the Legislative Council with him in the matter by the strength of his case. But, if he finds that that cannot be so, then he should have the power to proceed on his own responsibility."

Effect has been given to this recommendation of the Joint Committee by 72-E which declares a Bill (rejected by the Council) to have passed on the Governor certifying "that the passage of the Bill is essential for the discharge of his responsibility for the subject."

As a safeguard against the abuse of this affirmative power of legislation, every such Act has to be reserved, an authentic copy being sent to him, by the Governor-General for the signification of His Majesty's pleasure, who may be advised by the Secretary of State, and the Act has to be laid before both Houses of Parliament. Provision has been made in the Act, however, for the avoidance of delay in case of a grave emergency by giving the Governor-General power to assent to the Act without reserving it, though this, of course, does not prevent subsequent disallowance by His Majesty in Council.

Non-essential Legislation.—To turn next to the Governor's powers with regard to non-essential legislation. Relaxation of "previous sanction" will encourage the introduction of many Bills in the Council and they may be amended in manner which the Governor may not approve. In such cases, power of certification has been given to the Governor under 72-D (5) which should be carefully distinguished from the certification procedure of affirmative legislation mentioned above. In the former case a Bill or any clause or amendment thereof (introduced but not passed) certified by the Governor as affecting "the safety or tranquillity of his province, or any part of it or of another province" cannot be proceeded with.

A Bill may be not only introduced in the Council but passed by it. Then the Governor has either to assent to it or veto it. A frequent use of the veto-power is undesirable. The Governor can resort to an intermediate procedure of Return and Reservation—under S. 81 A (a). He may return such a Bill for reconsideration with any amendments that he may

recommend or, (b) he may reserve the Bill for the consideration of the Governor-General. Reservation is either compulsory or optional according to rules mentioned below. (c) Within six months of such reservation the Governor may again return the Bill for further reconsideration, with the consent of the Governor-General. A Bill thus reaffirmed with or without amendments, may be again presented to the Governor; (d) If a Bill, reserved for the consideration of the Governor-General, is not assented to by him within six months, it lapses, unless it has been, in the meanwhile, returned to the Council for reconsideration.

Reservation is *compulsory* for Bills (not previously sanctioned by the Governor, but passed by the Council) containing provisions (a) affecting the religion or religious rites of any class of British Subjects in British 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 construction or management 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 subject, or (c) to affect the interests of another province.

A Bill after it has been assented to by the Governor and presented to the Governor-General for

his assent or veto, may be reserved by the Governor-General for the signification of His Majesty's pleasure.

The procedure of Reservation enables the Governor to ascertain the views of the Governor-General on important legislative projects, and the Governor-General also has the opportunity of examining the Bill at an intermediate stage.

The following Table will help the student in understanding the various stages at which the Governor can deal with the career of a Bill.

<i>Before Introduction of a Bill:—</i>	1 Previous Sanction §80 A (c). 2 Certification under 72 E (1).
<i>Before Passage by Council.</i>	1 Certification 72 D (5). 2 „ 72 E (1).
<i>Before Assent by the Governor.</i>	1 Return for reconsideration 81 A. 2 Reservation to the G. G. (compulsory or optional.) 81 A-2. 3 Return <i>after</i> reservation 81 A (2) a. 4 Veto by the Governor.
<i>Before Assent by the G. G.</i>	1 Reservation for H. M's signification 72 E (2). 2 Veto by the G. G. 81 A (3).

Powers in the matter of the Budget.—The procedure of the voting of demands by a popular Council may give rise to difficulties and precautions have been taken to get over them. (a) In the first place certain charges of a special or recurring character mentioned in Section 72 D (3) *e.g.*, provincial contributions,

interest and sinking fund charges, salaries of officers appointed by the Secretary of State, Judges etc. are exempt from submission to the vote of the Council.

(b) The Governor has the power to authorize such expenditure as may be in his opinion necessary for the safety or tranquillity of his province. (c) Finally, in the case of a grant refused or reduced by the Council, the Governor has the power of restoring it. If the grant related to Reserved Subjects, and if it is reduced or not assented to by the Council, and if the Governor certifies "that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject" he can restore it. The Joint Committee made it perfectly clear that this power of restoration was real and its exercise should not be regarded as unusual or arbitrary. "Unless the Governor has the right to secure supply for those services for which he remains responsible to Parliament, that responsibility cannot justly be fastened upon him." If the grant related to Transferred Subjects, and if it was reduced or refused by the Council, the Governor, if he was so advised by the Ministers, would be justified in re-submitting the demand to the Council for a review of their former decision. Generally of course the opinion of the Council in the matter of transferred expenditure will be much more decisive than that regarding Reserved Subjects. (d) With regard 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.

Cases of the restoration of grants that were either refused or reduced by the Councils were not rare.

CHAPTER XVI

RESPONSIBILITY TO PARLIAMENT

(80) GOVERNMENT OF INDIA RESPONSIBLE TO PARLIAMENT

Having dealt with the operation of Dyarchy in the Provinces, let us pass on to the Reforms in the Central Government. The Government of India and the Secretary of State are still responsible to Parliament for their administration. Their essential responsibility to Parliament and not to the Indian Electorates is the key-note of the changes—or of the absence of change—in the Government of India and the Secretary of State in Council. All modifications (or their absence) in the old order can be shown to be implicit in this fundamental principle of responsibility to Parliament.

The reason for this cautious policy was mentioned in the Third Formula in the M. C. Report and was thus enlarged upon by the Joint Committee: "The problem enunciated by the Announcement of 20th August 1917 was to design the first stage in a measured progress towards Responsible Government. Any such stage, if it is to be real advance, must, as the Committee conceive it, involve the creation of an electorate, and the bestowal of some share in the work and responsibilities of Government on those whom the electorate chooses to represent its interests. In the present circumstances of India, the electorate must at the outset be small and the administrative experience of its representatives must be limited. Before,

(81) THE EXECUTIVE COUNCIL OF G. G. 349

therefore, the policy of His Majesty's Government can be fulfilled, the electorate must grow and practical experience in the conduct of public affairs be enlarged. During this period the guardianship of the peace of India cannot be withdrawn from the care of the official agency which Parliament at present charges with the duties of the administration, and the Committee regard it as an essential feature of the policy of His Majesty's Government that, except in so far as he is released from responsibility by the changes made under this Bill, the Governor-General in Council should remain in undisturbed responsibility to Parliament and fully equipped with the necessary powers to fulfil that responsibility.

But from the beginning the people must be given an opportunity, and all political wisdom points to its being a generous opportunity, of learning the actual business of government and of showing, by their conduct of it, to some future Parliament that the time has come for further extension of power."

(81) THE EXECUTIVE COUNCIL OF THE G. G.

We considered in an earlier section (§ 45) the strength and working of the Executive Council of the Governor-General before the Reforms. It consisted of six ordinary Members and one extraordinary Member. On account of the growth of centralization a host of officials worked under the Members of the Council. The phalanx of Secretaries, Joint Secretaries, Additional Joint Secretaries, Deputy Secretaries, Additional Deputy Secretaries, Under-Secretaries &c., of each Department had added enormously to the size of the Imperial Secretariat. Some reductions were made as a result of the process

of Provincial Devolution, and a redistribution of Departments also was thought necessary. As the Montagu-Chelmsford Report indicated* "The changed relations of the Government of India with Provincial Governments will in themselves materially affect the volume of work coming before the Departments, and for this reason alone some redistribution will be necessary. We would therefore abolish such statutory restrictions as now exist in respect of the appointment of members of the Governor-General's Council so as to give greater elasticity both in respect of the size of the Government and the distribution of work". The Report also recommended the appointment of one more Indian to the Executive Council. The Joint Select Committee of Parliament accordingly recommended that the limitation in the strength of the Executive Council should be removed, that only three of them should have service qualifications and that the legal qualifications required for the fourth member may be gained in India as well as in the United Kingdom and that not less than three members of the Council should be Indian. The change in legal qualification meant that eminent Indian pleaders and Advocates would become eligible for appointment; also with the progressive Indianization of the Civil Service, the members of the Council drawn from the ranks of public servants will more and more likely be of Indian rather than of European extraction.

One of the last official acts of Lord Chelmsford was the preparation of a scheme for redistributing the Departments in the Government of India. It was given effect to, with modifications, by his successor,

* Report : para 271.

Lord Reading by an order dated April 11, 1923. There are at present nine Departments.

- (i) Foreign and Political, (ii) Railways and Commerce, (iii) Industries and Labour, (iv) Education, Health and Lands, (v) Army, (vi) Home, (vii) Legislative, (viii) Finance and (ix) Ecclesiastical.

The distinction between ordinary and extraordinary members has been abolished and at present there are seven members of the Council. As the Viceroy manages the Foreign and Political Department and as the Ecclesiastical Department has been tacked on to the Railways and Commerce Department, each of the remaining six Departments is entrusted to a Member.

An account has already been given of the method of business in each Department. A few more particulars are added to show how the classification of subjects into Central and Provincial and the introduction of the Reforms generally have affected the old practice. There has been no change in the *Foreign and Political Department*. It continues under the Viceroy and is the most important and laborious of all Departments. As for the *Army Department*, reference has been made to the view of Lord Curzon that the Army Department should be represented on the Council by a Civilian. That view was not accepted then; nor was it endorsed by the Army in India Committee (also known as the Esher Committee). It continued the existing arrangement under which the Commander-in-Chief has a dual capacity; he is at the head of the Army and represents the Department in the Executive Council. The Army Department transacts all business connected with the adminis-

tration of the Army, the formulation and execution of the military policy of the Government of India, the responsibility for maintaining every branch of the Army, combatant and non-combatant, in a state of efficiency and the supreme direction of any operations based upon India. It is also concerned with the administration of the Royal Indian Marine and the Royal Air Force in India.

The Executive Council has a general control over the Army Department as it has over other Departments. But as in the last resort the Secretary of State for India and His Majesty's Government are liable for the protection of India in an emergency, special responsibility attaches to them with regard to the military administration. For this purpose the Secretary of State for India has a Military Secretary recruited from the Indian Army and there is also a Military Member on his India Council.

The Commander-in-Chief has a Secretary who is a Civilian and who has access to the Viceroy like other Secretaries. He represents the Army in that Chamber of the Indian Legislature of which the Commander-in-Chief does not happen to be a Member. The Commander-in-Chief has a Military Council for purposes of consultation and advice.

The Home Department deals with all business connected with the internal administration of British India. As most of the subjects dealt with by this Department are under the administration of Provincial Governments, the work of this Department is that of supervision, direction and control. *The Legislative Department* prepares the drafts of all Bills introduced in either Chamber of the Indian Legislature, assists other Departments with legal advice and examines

Bills in the Provincial Councils when referred to it and scrutinizes all Acts of the Provincial Councils. The Department of *Railways and Commerce* deals with railways, shipping, tariffs, statistics, life-insurance etc.

The *Department of Industries and Labour* is concerned with labour legislation, interprovincial migration, Factories Act, International Labour Organization, Petroleum and Explosives Act, patents designs and copyrights, steamboiler and electricity legislation, stores, geology and minerals, printing and stationery, civil aviation, meteorology, development of industries (Central), Posts and Telegraphs, Public Works and Irrigation. The *Department of Education, Health and Lands* deals with education, land revenue, civil veterinary, agriculture, forests, central research on above subjects, botanical survey, famine, control of food stuffs, external emigration, Survey of India, Medical services and Public Health, Zoology, Local Self-Government, libraries and records, archæology and Museums. The *Finance Department* is concerned with the administration of Central finance; with some supervision of provincial finance; with questions relating to the salaries, leave and pensions of public servants, audit and accounts, currency, banking, exchange, Mints and the Public Debt of India. A separate branch of this Department, known as the Military Finance Department, deals with all matters relating to Military Finance. Subjects like customs, salt, opium, excise and stamps are administered by a Board of Central Revenue working as a branch of this Department.

Nothing needs to be added to what has been said in §§ 45-48 regarding the nature of the Executive Council and the position of the Viceroy and Governor-

General in it. No change has taken place in it as a result of the Reforms except the introduction of two more Indians into it. The Members are in no sense responsible to the Indian Legislature to the composition and functions of which Body we turn in the following section.

(82) THE INDIAN LEGISLATURE

Under the Reforms of Lord Morley the Governor-General's Council was so constituted in its executive and legislative character "as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes and must always owe to His Majesty's Government and to Imperial Parliament." This meant an official majority in the Indian Legislative Council. But the experience of the disadvantages of an official majority was so patent that the authors of the M. C. Report came to the definite conclusion that no Council, the composition of which was conditioned by the necessity of maintaining an official majority, would possibly be truly representative of the interests of the entire country. On the other hand, the institution of an assembly with a large elected majority raised the question of enabling the executive government to secure essential legislation and supplies. How to secure these conflicting objects was the problem which the authors of the Reforms Scheme had to solve. They rejected the suggestion of setting up a Grand Committee in the Assembly, and finally hit upon a *bicameral* legislature for British India. In most Western countries the legislatures have two Chambers—the Upper and the Lower—and there are great advantages in having two Houses. A better representation of all the interests in the country—

particularly those of capital, land, nobility of birth etc.—is secured, and the Upper Chamber serves the additional useful purpose of being a 'brake' upon hasty or erratic legislation in the Lower or democratic House.

The M. C. Report, therefore, recommended that there should be two Chambers in the Indian Legislature—The Indian Legislative Assembly as the Lower Chamber and the Council of State as the Upper Chamber. But the M. C. Report did not propose to give to the Council of State the full status of an Upper Chamber. "We do not propose to institute a complete bicameral system, but to create a Second Chamber, known as the Council of State, which shall take its part in ordinary legislative business and shall be the final legislative authority in matters which the Government regards as essential."* Thus the Council of State was to be merely a Chamber that could be brought into effective play for the purpose of passing, on the strength of its official majority, what the Government of India thought to be essential legislation. It was to play the kind of part which the proposed "Grand Committee" was to play in the Provincial Council. Now we have already examined the considerations that led to the rejection of the Grand-Committee procedure in the Local Councils. The same considerations prompted the Joint Committee to oppose the idea of using the Council of State for securing, on the strength of its official majority, essential legislation.

If not a Grand Committee, what then was to be the status of the Council of State in relation to the Legislative Assembly? To answer this question we

* M. C. Report : para 277.

must first of all consider the nature and extent of control which the Secretary of State will continue to exercise over the Government of India. It is obvious that if the principle of responsibility to Parliament was to be narrowly interpreted then the problem of the composition of the Indian Legislature loses half its difficulty and importance. That Legislature cannot be anything more than a mere recommending and registering body, and to the extent to which the Legislative Assembly was made stronger and more elective, to that extent the Council of State was required to be made a narrow and official Body as a counterpoise to it. But if the Government of India were to enjoy as large a measure of independence as was yet compatible with their responsibility to Parliament then the Indian Legislature may occupy an important and unique place under the Reformed regime and the Council of State need not be in that case a mere glorified Grand Committee. Accordingly the official majority has been dispensed with in the Council of State though, of course, care has been taken to see that the forces that make for conservatism are far stronger in the Council of State than they are in the Legislative Assembly. In most matters the powers of the Council of State are co-ordinate with those of the Assembly. The Council of State is to be a true Second Chamber, its useful function consisting in compelling the Assembly to bestow more reflection and care upon legislative measures. For this purpose it was to be so formed as to secure the services of the best men and as to be invested with all the dignity and position of "a body of elder statesmen." It has been also described as a "correcting" Chamber.

Composition of the Council of State.—The M. C. Report

proposed that the Council should consist of 50 members with an official majority. But in order to be a true Second Chamber its strength has been increased and the official majority has been dispensed with. It is to consist of 60 members as a maximum, of whom not more than twenty are to be Officials, and at least thirty must be elected members. (§ 63 A of the Act).

Composition of the Assembly.—The principles upon which the Lower Chamber of the Indian Legislature was to be formed were soon recognised. It was to be representative of the people throughout British India, with a substantial elective majority. Its members were always to bring an all-India point-of-view to bear upon all problems that came before it for consideration. Provincial or parochial narrowness and communal jealousies were out of place in that Chamber which is to be the symbol of the unity of the Indian nation.

The Act (§ 63 B) laid down 140 as the minimum strength of the Assembly. This number may be increased by Rules made under the Act, provided at least $\frac{5}{7}$ of the members are elected members, and at least $\frac{1}{3}$ of the other (*i. e.*, nominated) members are non-officials. As a matter of fact the actual strength of the Assembly is 143. The compositions of the two Chambers are given in the two following tables.

Statement showing the Constitution of the Council of State, (excluding the President)

	NOMINATED MEMBERS.			ELECTED MEMBERS					Grand Total
	Officials	Non-officials	Total	General	Muslim	Sikh	European Commerce	Total	
Government of India ...	12	::	12	::	::	::	::	::	12
Madras ...	1	1	2	4	1	::	::	5	7
Bombay ...	1	1	2	3	2	::	1	6	8
Bengal ...	1	1	2	3	2	::	1	6	8
United Provinces ...	1	1	2	3	2	::	::	5	7
Punjab ...	1	2	3	1	1 $\frac{1}{2}$	1	::	3 $\frac{1}{2}$	6 $\frac{1}{2}$
Bihar and Orissa ...	1	::	1	2 $\frac{1}{2}$	1	::	::	3 $\frac{1}{2}$	4 $\frac{1}{2}$
Burma ...	::	::	::	1	::	::	1	2	2
Central Provinces ...	::	::	::	2	::	::	::	2	2
Assam ...	::	::	::	$\frac{1}{2}$	$\frac{1}{2}$	::	::	1	1
Delhi ...	1	::	1	::	::	::	::	::	1
TOTAL ...	19	6	25	20	10	1	3	34	59

Statement showing the Constitution of the Legislative Assembly, (excluding the President)

	NOMINATED MEMBERS.			ELECTED MEMBERS.								REMARKS
	Officials	Non-officials	Total	General	Muslim	Sikh	Land owners	Europeans	Indian Commerce	Total	Grand Total	
Govt. of India ...	12	...	12	...	...	...	...	...	...	...	12	
Madras ...	2	2	4	10	3	...	1	1	1	16	20	
Bombay ...	2	4	6	7	4	...	1	2	2	16	22	
Bengal ...	2	3	5	6	6	...	1	3	1	17	22	
United Provinces ...	2	1	3	8	6	...	1	...	...	16	19	
Punjab ...	1	1	2	8	3	2	1	...	...	12	14	
Bihar and Orissa ...	1	...	1	3	1	...	1	...	...	5	6	
Central Provinces...	1	...	1	2	1	...	...	1	...	4	5	
Assam ...	1	...	1	3	...	...	...	1	...	4	5	
Burma ...	1	...	1	...	...	...	...	...	...	...	2	
Berar ...	...	2	2	...	...	...	...	...	...	...	1	
Ajmere ...	...	1	1	...	...	...	...	...	...	...	1	
Delhi ...	...	...	...	1	...	...	...	...	...	1	1	
TOTAL ...	25	15	40	51	30	2	7	9	4	103	143	

The Legislative Assembly.—From an account of the composition of the two Chambers of the Indian Legislature we pass on to consider the method of appointment of the members. The method of indirect election that obtained in the old Indian Legislative Council was rejected. The work of the Central Legislature requires a wider outlook and higher standard of intelligence than those required in the Provincial Councils. The members of the Assembly must therefore be drawn from a wider electorate with a higher franchise. Thus in the place of the district (which is a convenient constituency for the Local Council), a Division (which is a group of districts) has been substituted for the Assembly and the franchise has been correspondingly raised. It is not the same in all the provinces. The distinction between urban and rural constituencies obtains, for the Presidency Towns and towns in the U. P. have separate representation. Also the principle of Communal Representation is there. Similarly Industry and Commerce and Landholders have got special representation. As an example, the representation of the Bombay Presidency in the Assembly is as follows.

Name of Constituency	Class of Constituency	Extent of Constituency	No. of Members
1. Bombay City (Non-Mahomedan)	Non-Mahomedan urban.	City of Bombay.	2
2. Sind (Non- Mahomedan)	Non-Mahomedan Rural.	Sind	1
3. Bombay—N. D.	"	N. D.	1
4. Bombay—C. D.	"	C. D.	2
5. Bombay S. D.	"	S. D.	1
6. Bombay City Mahomedan.	Mahomedan. urban.	City of Bombay.	1
7. Sind Mahomedans.	Mahomedan Rural.	Sind	1
8. Bombay Europeans.	European	Bombay Pre- sidency.	2
9. Indian Merchants' Chamber and Bureau.	Indian Commerce.	Non-territorial.	1
			12

List of constituencies entitled to representation in rotation

Sind (Mahomedan)	}	I	N. B.—The first constituency in the bracket elects at the 1st, 3rd, and 5th election, and the second constituency at every even election.
Northern D. Mahomedan			
C. D. Mahomedan	}	I	
S. D. Mahomedan			
Sind Jagirdars & Jamindars	}	I	
Gujrat & Deccan Jagirdars			
Bombay Mill Owners	}	I	
Ahmedabad Mill Owners			
		4	

The Council of State.—It is always a difficult problem to devise a scheme of franchise that would give to the Upper Chamber members who represent interests sufficiently different from those represented

in the Lower Chamber. This difficulty is not confined to India. In all Western countries that have got a bicameral legislature precautions are taken to sufficiently differentiate between the two Houses. In England, for instance, the Upper House (of Lords) represents the hereditary landed aristocracy in the country. In America, on the other hand, the Senate (the Upper House) represents the individual States and is thus constituted upon the Federal principle.

In the Council of State neither the principle of heredity nor of federation has been adopted. A possible alternative of the representation of the Rulers of Indian States was rejected, firstly on the ground that they had recently formed a separate Chamber of their own, and secondly on the ground of keeping the affairs of British India separate from those of the Indian States. In the end, diversity of composition was secured by keeping the franchise sufficiently high to secure the representation of the hereditary aristocracy and the mercantile aristocracy. The franchise is also based upon special personal qualifications *e. g.* past or present membership of a Legislative Body; past or present tenure of office on a Local Authority; *e. g.* President or Vice-President of Municipality or District Board; past or present University distinction; Honorary or Ordinary Fellow of the University; the tenure of office in a Co-operative Banking Society (*e. g.* Chairmanship); the holding of a title for literary merit *e. g.* Mahamahopadhyaya and Shams-ul-ulma. The property qualification in the form of payment of land revenue or assessment to income tax is not same for all the Provinces though it is much higher than for the Assembly.

The following table gives the representation of the Bombay Presidency in the Council of State.

Constituency	Description	Extent	No. of Members.
Bombay (Non-Mahomedan). Mahomedans ...	Non-Mahomedan ... Mahomedan	Presidency ... Presidency exclu. Sind	3 1
Sind Mahomedan	Mahomedan	Sind ...	1
Chamber of Commerce.	European ...	Non-Territorial ...	$\frac{1}{6}$

The differential franchise for election to the two Chambers is not the only point of contrast between them.

(1) Thus in the matter of duration, the Council of State lasts for five years, but the Assembly for three years. This secures a proper check over violent changes in the personnel of the Indian Legislature, makes for continuity of policy, and by giving longer tenure to the Members of the Council of State augments their independence.

(2) *Presidency.*—The President of the Council of State is appointed by the Governor-General from amongst the Members of the Council and he will generally be an official. The first President of the Lower Chamber, for the first four years, was appointed by the Governor-General. The Joint Committee recommended that the first President should be qualified by experience in the House of Commons and by a knowledge of Parliamentary procedure, conventions, and precedents. The M. C. Reforms

cannot be said to have fallen upon propitious times, but one of the few things in which they proved particularly fortunate was in the Legislative Assembly's having secured as its first President an eminent Parliamentarian like Sir Frederic Whyte. He has been worthily succeeded in the chair by the elected president the Hon. Mr. V. J. Patel.

(3) The title of Honourable is confined to the Members of the Upper House, those of the Lower House being styled M. L. A's, and those of the Provincial Councils M. L. C's.

The powers of the two Chambers with regard to Legislation and Finance will be taken up in the following section.

(83) FUNCTIONS OF THE INDIAN LEGISLATURE

In considering these functions we shall follow the same plan of classification which was found suitable in the case of the Provincial Councils.

(1) Interrogatory (3) Financial

(2) Legislative (4) Deliberative { Resolutions
Motion to adjourn.

The procedure, in either Chamber, with regard to the putting of questions, the moving of resolutions, or of motions to adjourn, is very nearly the same as in the Provincial Council and need not be gone over again. With regard to legislation and the Budget, however, important differences exist on account of the duality of the Indian Legislature, which must be carefully explained.

Legislation.—The proposal to use the Council of State as an organ of Government legislation having been totally rejected, its powers are co-ordinate with those of the Assembly. A Bill, therefore, is normally

deemed not to have been passed by the Indian Legislature unless it has been agreed to by both the Chambers without amendments, or with such amendments as are acceptable to both. A Bill might be introduced in either Chamber either by Government or, after due notice (one month), by a private member.

The normal procedure of legislation is as follows: A Bill passed by the originating Chamber is sent to the other Chamber and copies of the Bill are laid on the table at the next following meeting of that Chamber. After the receipt of the copies notice to take the Bill into consideration is given, and three days after, the Bill is taken into consideration. At this stage discussion is confined to explain the general provisions of the Bill; but the details of the Bill are not further discussed. Then the Bill is generally referred to a Select Committee. After receipt of the report of the Select Committee the Bill is again taken into consideration and passed without amendments (if possible,) and a message to that effect is sent to the originating Chamber. After being passed by both the Chambers the Bill is submitted to the Governor-General for his assent.

To expedite the passage of a particular Bill, it may be (instead of being referred to the Select Committee of the originating Chamber, and later on, again to the Select Committee of the other Chamber) referred to a *Joint Committee* of both the Chambers if they agree to resort to this procedure by a formal resolution. To such a Joint Committee each Chamber nominates an equal number of members; the Committee electing its own Chairman.

It is essential to understand the exact meaning of this procedure by reference to a Joint Committee. It

is merely a device which enables the Chamber in which the Bill did not originate to take part by its representatives in a discussion on the Bill at a very early stage of its progress. Such a procedure is resorted to even in the British Parliament when a peculiarly technical or important matter is under consideration *e. g.*, the Government of India Bill was thus referred to a Joint Committee of the two Houses. After consideration in the Joint Committee the Bill is again dealt with separately in each Chamber as if it had been a Bill committed to and considered by its own Select Committee. The Bill, when passed by the originating Chamber, then goes to the other Chamber and is there passed, amended, or rejected in the usual way by that Chamber. The Joint Committee procedure is thus merely a device to save time. It does not commit either Chamber to what happened in the Joint Committee. Neither does it presuppose any difference of opinion between the two Chambers.

But if there be such a difference of opinion, the two Chambers may agree to have a *Joint Conference* "for the purpose of discussing a difference of opinion that has arisen between them." At a Joint Conference each Chamber is represented by an equal number of members, and the time and place of the Conference are fixed by the President of the Council of State.

Should the Joint Conference fail to remove the difference, the originating Chamber, disagreeing with the amendments made by the other Chamber, might again return the Bill to it intimating its disagreement with the amendments and proposing further amendments of its own. If these are not accepted by the other Chamber and it insists upon its original amendments, it returns the Bill to the originating

Chamber with the intimation that it insists upon the amendments to which the originating Chamber has disagreed. The originating Chamber then may either report the fact of the disagreement to the Governor-General or allow the Bill to lapse.

At this stage it is, that is, when the Bill is passed by one Chamber but not passed by the other within six months of its passage in the originating Chamber, that the Governor-General can intervene to compose the difference between the two Chambers. He can, at his discretion, refer the matter to a '*Joint Sitting*' of both the Chambers. The President of the Council of State presides at this Joint Sitting. The Members present at a Joint Sitting may deliberate and then vote together upon the Bill as last proposed by the originating Chamber, and upon amendments which have been proposed by one and not accepted by the other Chamber. If such amendments are affirmed by a majority of the Members present at a Joint Sitting, they are taken as carried, and the Bill also with the amendments, if similarly affirmed, is deemed to have been duly passed by the Chambers.

Budget Procedure.—To turn next to the Budget. The way in which budgets are prepared has been already described. In the case of the Government of India, the Accountant-General after examining the estimates as prepared by the Finance Department, issues what is called the '*First Edition*' of the Budget. It is then considered by the Government as a whole. A '*Second Edition*' of the budget is then prepared containing all changes made by the Government.—The Budget is then ready for submission to the Assembly.

The budget is presented to the Assembly and the

Council of State on a day fixed by the Governor-General. It is presented simultaneously in both the Chambers, by the Finance Member in the Assembly, and by the Financial Secretary in the Council of State.

There is no discussion of the budget on the day on which it is presented. After about a week of the presentation of the budget, the Assembly enters upon the First Stage *i. e.*, of a general discussion, usually lasting for two days. Only the main principle but not details of the budget can be discussed at this stage. The Governor-General who has the discretion of abolishing the distinction between votable and non-votable expenditure for the purposes of a general discussion only usually communicates his permission in the form of a Message to the Assembly.

After the general discussion commences the Second Stage of the budget *i. e.*, of voting of grants. A maximum of 15 days is allowable, though in practice not more than a week has been given. The discussion on any one demand is limited to two days. If the voting is not finished by a day previously fixed, the President is required to put forthwith at 5 p. m. on that day every question necessary to dispose of all the outstanding matters in connection with the demands for grants.

Non-votable items in the Budget.—Certain items, referred to in § 67A (3) of the Government of India Act, are excluded from the vote of the Assembly. The alarmingly rapid growth of the military expenditure induced the Assembly to adopt a Resolution in January 1922 that the non-votable heads of expenditure also should be submitted to the *vote* of the Assembly. The wording of § 67A is slightly ambigu-

ous and legal opinion in England had to be consulted. The upshot of the consultation was that though the Governor-General may, at his discretion, allow a *discussion* on non-votable items, no authority but that of Parliament could transfer expenditure from the non-votable to the votable class. About half the expenditure is votable and the remaining half is non-votable.

The Finance Bill.—In addition to the general discussion on the budget as a whole and the voting of grants, the Legislature has also to consider the 'ways and means' *i. e.*, the programme by which the Finance Member proposes to provide for the expenditure. It is the custom to embody all proposals of fresh taxation in a single Bill called the Finance Bill and leave to introduce it is obtained on the very day on which the budget is submitted to the Assembly. The Finance Bill has to follow the procedure of any other Bill. After leave to introduce it has been granted there is a general discussion, and then the Bill is taken into consideration clause by clause and finally the schedules of taxes are considered in detail. A general discussion on the Bill as a whole finishes this part of the Budget. The Finance Bill is then sent to the Council of State whose powers are co-ordinate with those of the Assembly regarding Legislation.

Powers of the Two Chambers with Regard to the Budget.—As in all Parliamentary countries the Lower Chamber is, in all matters of finance, supreme. In the case of conflict between the two Chambers the Upper must yield to the Lower Chamber in the end. Thus the Council of State cannot propose an amendment to the Finance Bill which is unacceptable to the Assembly. For a difference between the two Chambers can be

removed by one of two ways only *viz.*, negotiation or by a Joint Sitting. But the latter falls out of question in the case of a Finance Bill, because the Governor-General can intervene and call a Joint Sitting for the purpose of solving the deadlock only after the lapse of six months after the failure of either Chamber to pass a Bill. A Finance Bill cannot stand for such a length of time (for otherwise taxes cannot be gathered) and, therefore, the Council of State must always assume a compromising attitude. Similarly, though the Council of State has a right of general discussion of the budget, the voting of grants is the peculiar right of the popular Assembly alone.

(84) COMMITTEES OF THE LEGISLATURE

It is not enough that the Assembly merely pass the budget. It must see to it that the budget was strictly adhered to in practice. This is brought about by (a) the statutory position of the Auditor-General, and (b) the institution of the Committee on Public Accounts.

(a)—Great importance is attached to an independent audit. In India the Auditor-General is appointed under § 96 (D) 1 of the Act. He is appointed by the Secretary of State in Council and holds office during His Majesty's pleasure. He is thus independent of the Executive in India.

(b)—The Committee on Public Accounts of which the Finance Member is the Chairman consists of not more than 12 members, of whom eight are elected by the non-official members. It is to scrutinize the audit and appropriation accounts of the Governor-General in Council with a view to satisfy itself that the money *voted* by the Assembly was spent within the scope of the demand *granted* by the Assembly.

This Committee on Public Accounts should be carefully distinguished from the Standing Finance Committee. The difference between them was thus explained by the Hon. Sir Malcolm Hailey in the Assembly: the operations of the Committee on Public Accounts are of a *post-mortem* nature, that is to say, it only deals with expenditure *after* it has been incurred. The Standing Finance Committee, on the other hand, deals with proposals of expenditure *before* the expenditure is incurred. The latter consists of 14 Members elected by the Assembly and the Finance Member who is the Chairman. It (a) examines all proposals for new *votable* expenditure in all departments of the Government of India ; (b) sanctions allotments out of lump sum grants ; (c) suggests retrenchment and economy in expenditure and (d) generally helps the Finance Department of the Government of India by advice in such cases as may be referred to it by that Department. Though purely advisory, it serves a very useful purpose.

The Standing Finance Committee is only one among other Standing Committees. Their general utility has been mentioned in connection with Provincial Councils. Lord Chelmsford's Government, when the Reforms were being discussed, opposed the establishment of Standing Committees on the ground that they would impede business, induce delay, weaken the sense of responsibility of the Executive, open the door to intrigue, and though avowedly advisory in character would gradually come to engross the powers of the Executive.

But in January 1922 the Assembly passed a Resolution recommending the appointment of such Committees. The Resolution was accepted and by a

Notification of August 1922 such Standing Committees were attached to the Home Department, the Commerce and Industries Department, and the Department of Education, Health and Lands. Member in charge of the Department generally is the Chairman and, Secretary or Deputy Secretary of the Department the Secretary of the Standing Committee. It consists of five members of the Indian Legislature of whom two must be members of the Council of State and three of the Assembly. The members of each Committee are nominated, subject to the approval of the Governor-General, by the Member in charge of the Department, from a panel 'consisting of such number of members, not less than 10 and not more than 15, as the Governor-General may direct.' The members of the panel are elected by the two Chambers of the Legislature according to the principle of proportional representation by means of a single transferable vote. The term of office of the members of each Committee is one year. They are purely advisory and the matters that come before it are of the same kind as have been mentioned in connection with similar Committees of the Provincial Councils.

Another method by which members of the Legislative Assembly could be brought into closer association with Administration is the appointment of Council Secretaries. The Act allows the Governor-General to appoint from among the Members of the Assembly, Council Secretaries to hold office during his pleasure and to discharge such duties in assisting the Members of his Executive Council as he may assign to them. A few such appointments have been made in the Provinces, but no appointment has been made in the Central Government. In fact, a Reso-

lution recommending such appointments was defeated in the Legislative Assembly. It would seem that the difficulties in the way of making such appointments, both from the point of view of Government and the non-official members in the Indian Legislature, are great. That there are advantages in such appointments is clear: the Secretary gets administrative training; he relieves to some extent the permanent officials in the Secretariat; he serves to bring into closer contact the Government with the Assembly. But such Secretaries will be occupying an anomalous position in the Central Executive, particularly as there are no popular Ministers in that Executive. Such a Secretary will have to serve two masters: his own constituency and the political party, if any, to which he belongs on the one hand, and the Government into whose working he has been allowed to pry, on the other. There would be also difficulties about his pay. For all these reasons the Assembly did not accept the Resolution.

(85) SPECIAL POWERS OF THE GOVERNOR-GENERAL WITH REGARD TO LEGISLATION AND SUPPLIES

Legislation.—Having considered the normal course of legislation and the budget in Indian Legislature we must now turn to the special powers of the Governor-General with regard to either of them, when he finds himself in conflict with the Indian Legislature. And first with regard to Essential Legislation. Either Chamber may refuse leave to introduce a Bill or fail to pass a Bill in the recommended form. The Governor-General cannot always depend upon the 'Upper Chamber.' Nor would it be always possible to

secure the desired legislation by an attempt at compromise between the two Chambers in the manner mentioned above. As the Joint Committee said "In all such cases the Governor-General in Council should be fully empowered to secure Legislation which is required for the discharge of his responsibilities; but they think it is unworthy that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers. They believe that in such a case it would add strength to the Government of India to act before the world on its own responsibility." § 67 B of the Act lays down the procedure of affirmative legislation by certification and should be carefully read.

During the discussion on the "Protection to Indian Princes' Bill" the President of the Assembly thus expounded the meaning of § 67 B. Ordinarily a Bill may be introduced in either Chamber, though it must pass in both Chambers and receive the assent of the Governor-General before it becomes an Act.

Now a Bill may (a) be given leave to be introduced and passed either in the (originally) proposed or (subsequently) recommended form; or (b) be given leave to be introduced but not passed in either form; or (c) not be given leave to be introduced at all.

Such a Bill, in every case, has to be sent to the other Chamber. If the latter refuses leave to introduce, or fails to pass in the recommended form, a Bill passed by the other Chamber (case a), 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 the Bill becomes an Act of the Indian Legislature on the

Governor-General's signing it, notwithstanding that it has not been consented to by both Chambers.

If the Bill be one that has not been given leave to be introduced or has failed to pass in the recommended form (cases *b & c*), 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 the Bill shall be laid before the other Chamber and if it is consented to by that Chamber in the form recommended by the Governor-General, it shall become an Act on the signification of the Governor-General's assent or if not so consented to, it shall be an Act on the Governor-General's signing it.

The procedure actually followed in one or two cases will illustrate the point. The Protection to Indian Princes Bill furnished the first opportunity to adopt it. The Legislative Assembly refused even the leave for its introduction. Thereupon the Governor-General certified that passage of the Bill was essential for the interests of British India. It was then introduced into the Council of State with a recommendation from the Governor-General to pass it in the form in which it was presented. On the Council of State passing it, it became an Act without the assent of the Assembly. Similarly, when in 1923 the Assembly halved the Salt Duty as proposed in the Finance Bill, the Duty was raised to its original pitch when the Bill was introduced in the Council of State which passed it in the form recommended. The Bill was then reintroduced in the Assembly with a recommendation that it be passed in the form in which it had been passed by the Council of State. But the Assembly would not yield, and the

Bill, on being certified by the Governor-General, became an Act.

It will be seen that the Government of India Act desires the Governor-General to secure the assent of one Chamber if not of both, though it gives him the power to pass a Bill, in the absence of the assent of either Chamber, by signing it.

Every such Act made by the Governor-General must be laid before each House of Parliament for eight days and receive the assent of His Majesty in Council. The Parliamentary confirmation will be a check upon an extensive or improper use of this power of autocratic legislation. In a state of emergency (*e. g.* in the case of a Finance Bill), however, an Act may come into operation forthwith, subject to disallowance by His Majesty in Council.

Proceeding to consider the case of *non-essential legislation*. Here the first safe-guard lies in the requirement of 'previous sanction' which is necessary under Section 67 (2). For a Bill which has been introduced or which is proposed to be introduced or an amendment to the same moved or proposed in the Legislature but which the Governor-General thinks "affects the safety or tranquillity of British India or any part thereof" a certification to that effect will secure its immediate withdrawal. The Governor-General can also 'return' a Bill to the Legislature for reconsideration if it has been passed by either or both Chambers of the Legislature. He may withhold his assent and reserve the Bill for His Majesty's pleasure. In the last resort he may himself veto it. Even if he assents and the Bill becomes an Act, it may be disallowed by His Majesty in Council and it becomes void if such disallowance is notified by the Governor-

General. The power of veto vested in the Crown would be rarely used as in the case of a Bill passed by Parliament. It is, however, a useful constitutional safeguard.

Finance.—To turn to the case of essential Funds: Here the Governor-General in Council has been given the power of restoring grants that have been reduced or rejected by the Assembly. The power is quite similar to that of the Provincial Governor with regard to the same subject of essential funds and has been already considered in that connection.

Criticism.—Unfortunately the occasions on which these powers of overriding the Assembly were invoked by the Governor-General were not few both in the case of legislation and supplies. The Assembly's power over the purse is even more limited than over legislation. Two restrictions have been imposed on that power. (a) On the analogy suggested by the Consolidated Fund Charges in the Imperial Parliament certain charges of a special or recurring nature set out in Section 67 A of the Act, *e. g.*, the cost of defence, debt charges etc. have been exempted from the vote. But this analogy is misleading. What charges are to be included in the Consolidated Fund is determined by Parliament itself. Its control over the *whole* budget is therefore effective. In the case of the Assembly, however, charges enumerated in Section 67 A of the Act have been withdrawn from the vote of the Assembly, not by the will of the Assembly but that of Parliament. With regard to the non-votable part of the Budget, the acquiescence of the Assembly is taken as a matter of course. The Assembly, as already noted, can at most—and this at the discretion of the Governor-General—discuss this

non-votable part of the budget. (b) And even with regard to the votable part, the Governor-General has been given the power of restoring any grant which was refused by the Assembly if he certifies that the grant is necessary for the fulfilment of his responsibilities for the good government of the country.

The Government of Lord Chelmsford were opposed to the principle of submitting the budget to the vote of the Assembly, as they could easily anticipate the difficulties that would arise if the demands refused by the Assembly were restored by the Governor-General. "We are profoundly unwilling to accept the untried restorative power. We believe that such a power could not possibly be used with the frequency that the situation will demand. If we admit that the Legislature may vote the budget, we recognise that the Legislature has normally financial control, and therefore, may shape the policy of the Executive Government except on those extreme occasions when the latter calls up its last resources and overrules the Legislature. To grant such powers to an Assembly whose capacity in matters of Imperial importance is still quite unknown, would, in our opinion, be quite unsafe.....A state of sustained hostility must ensue between the Executive and the Legislature unless—and this is in practice the more probable consequence—the normal control of finance, and therefore, of policy passes entirely to the Legislature. What we accept both as regards Reserved and Central Subjects is the *influence* of the Legislature, and what we definitely reject is this *control*. We undertake to weigh carefully the suggestions of the Legislature in regard to finance, and we hold that, in that Government which is the

keystone, this is all that can be safely allowed in the initial decennial period."

But not to have adopted the procedure of submitting a part at any rate of the budget to the vote of the Assembly would have seriously detracted from the value of the Reforms, especially when similar procedure was adopted in the Provincial Councils. The procedure was, therefore, finally adopted with a safeguard in the form of the 'power of restoration' which power, the Joint Committee expressly laid down, 'was real and meant to be exercised if and when necessary.' The Provincial Governors as well as the Governor-General have frequently used the power. The extreme financial stringency—in Provincial and Central finance—that synchronised with the first Reformed Legislatures, and the frequency with which rejected demands were restored went a long way to bring the Reforms into discredit. Public opinion was well pronounced on matters like the doubling of the Salt-tax, or the appointment of the 'Lee Commission on the Public Services.' But in the one case the tax was 'certified' and then imposed, and in other case the demand was restored. This last was definitely a case where the Assembly tried to shape the policy of the Executive by means of its financial powers but it was not allowed to do so.

The manner in which the Government of India allowed themselves to be influenced by the Legislature was (1) firstly by accepting all-round cuts in the budget *e. g.*, the 5 per cent. reduction in all departments in the Central Government; (2) By appointing the 'Retrenchment Committee' under Lord Inchcape dealing with Central Finance. Most of the recommend-

ations of the Committee leading to important economies in Military and Railway expenditure are being carried out. (3) By not restoring a demand, where no special principle was involved *e. g.*, the Assembly's refusal to grant money to Lord Lytton's Committee on Indian students to visit India. The Secretary of State did not press for the visit of that Committee. (4) By accepting Resolutions suggesting important economies or improvements in Finance *e. g.*, Separation of Railway Finance from the rest of the Indian budget.

In fact the root cause of the failure of the Reforms to satisfy the people will be found in their financial provisions. The frequent deadlocks in the Central Government—due to there being an irremovable Executive responsible to Parliament and a Legislative Assembly with an elective majority,—have also proved that some element of responsibility ought to be introduced in that sphere of Government also.

But though the Authors of the Reforms were not prepared to introduce responsibility in the Central Government, and effected, in respect of that Government, a constitutional arrangement that was bound to lead to difficulties and deadlocks, an unexpected result has been brought about on which Lord Meston makes this profound observation:* "The purpose of the arrangement was clearly to habituate the Executive, even in discharging their own responsibilities, to rely more and more upon the support of their Legislature, and less and less upon the support of the British Parliament accorded through the Secretary of State. Under the old dispensation, if a

* Ilbert and Merton : page 151-52.

Viceroy proposed to introduce a new policy he had to persuade the Secretary of State of the necessity for it and of its wisdom; he had also to get the Secretary of State's consent to the measures for financing it. Under the new dispensation the Secretary of State will be difficult to persuade, unless the scheme has first obtained the blessing of the Indian Legislature. The Viceroy of the future will consequently tend, in increasing measure, to consult Indian opinion first, and to count on its support rather than the academic approval of Whitehall or Westminster. In precisely similar fashion, the Provincial Governors will come to lean on their Local Legislatures rather than on the Secretariats at Delhi. Thus, under a puzzling constitutional form, there is being effected a remarkable transference of power, or at least of influence so significant as to be barely distinguishable from power. Whether Parliament appreciated the extent to which it is divesting itself of authority over India, may safely be doubted. But it is in this undemonstrative fashion that the future policy of the British Commonwealth is being established."

(86) HOME ADMINISTRATION

Principle of relaxation of Parliamentary Control.—We have now seen how the essential responsibility of the Government of India to Parliament has been secured. But this will place the Secretary of State for India with respect to Indian Administration in a position quite different from that of the pre-Reforms days. Reference has been made to the rigid control he exercised over that administration and the autocratic position he had come to occupy in his own Council and with respect to Parliament, and

finally to the indifference of Parliament to Indian affairs.

Now the Fourth Formula of the M. C. Report laid down "in proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and Provincial Government must be relaxed."

Sir James Brunyate distinguished between three methods by which power could be transferred from a higher to a lower authority namely, Devolution, Delegation, and Convention.

Devolution.—Means a practically complete transference of power and responsibility together such as is effected in the Provincial Transferred subjects. In this case what Parliament surrenders is taken by the Provincial Council. Here the Secretary of State cannot be held continuously answerable to Parliament in any effective sense. But, as already explained, as between the Secretary of State and the Government of India there can be no Devolution under the existing scope of Reforms.

Delegation.—Consists in the transfer of power in minor matters to a lower authority; as to an agent by the principal. It does not imply, in its nature, any corresponding shifting of responsibility lying on the transferer who continues to exercise ultimate control.

Convention.—In any case, however, the principle of delegation is of limited application. It must be supplemented by the third method namely Convention *i. e.*, a recognised and well understood practice.

Present Position.—It is evident that the occasion and extent of the intervention of the Secretary of State must depend upon whether a subject is Central,

or Reserved, or Transferred. The Crewe Committee recommended that "the principle of previous consultation should be substituted in all cases where the previous sanction of the Secretary of State in Council was hitherto required." This proposal related only to legislative and financial projects. There are now no formal restrictions upon the powers of the Government of India in administrative questions. A reference to the Secretary of State continues to be made on questions which are understood to be of special importance. In financial matters the Secretary of State has made definite delegation of power by the Central and Provincial Audit Resolution. Reference has been made in § 73 of the book to the relaxation of control by the Secretary of State. Thus with regard to expenditure on Provincial Reserved Subjects, where the cost of revision of permanent establishment exceeds Rs. 5 lacs a year, but does not exceed Rs. 15 lacs a year, the sanction of the Secretary of State in Council is not required if a Resolution recommending the changes is passed by the Legislative Council. This is a definite delegation of the powers of the Secretary of State in Council in conformity with the principles of the Crewe Committee.

As regards Legislation the position is this : The Secretary of State requires reference for his approval prior to the introduction by the Government of India in the Indian Legislature of Bills other than routine Bills and Bills of minor importance which fall within certain specified classes. With regard to *provincial* legislation, no reference to the Secretary of State is required prior to the introduction of Bills in Provincial Legislative Councils, but the Secretary of State has directed his concurrence to be obtained before

sanction is *refused* by the Governor-General to the whole or main provisions of a Bill which it is proposed to introduce in such Councils, or before executive orders have been issued by the Government of India forbidding the introduction by a Local Government of such a Bill.

It is with regard to Transferred subjects that definite Devolution of authority has been made by the Secretary of State. Here only in *specified* cases can the Governor-General in Council and the Secretary of State intervene in the administration of Transferred Subjects. *e.g.*, (1) to safeguard the administration of central subjects; (2) to decide questions between two provinces, failing an agreement between them; (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; (5) to safeguard due exercise and performance of any powers and duties possessed by or imposed upon the Secretary of State in Council under or in connection with the action relating to the office of High Commissioner, the control of Provincial borrowing, the regulating of the Services, the duties of the Audit Department and certain other rules.

In regard to the Central and Reserved Subjects for which the Government of India and the Secretary of State are still responsible to Parliament, the Joint Committee, after the most careful consideration, came to the conclusion that "no statutory specification of purpose could be made; but in practice the conventions which now govern these relations may wisely be modified to meet fresh circumstances caused by the creation of a Legislative Assembly with a large

elected majority. In the exercise of his responsibility to Parliament which he cannot delegate to any one else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and Legislature of India are in agreement."—and so also in the case of unanimity between a Provincial Government and Legislature. An important instance of such a convention is with regard to the Fiscal Policy of India, to which reference will be made in the next Part of this Book.

Separation of the Agency and Political Functions of the Secretary of State.—Let us next consider the effect of these new relations upon the Secretary of State in Council. As the successor of the Court of Directors and the Board of Control, he had come to discharge two distinct kinds of functions. Some were purely of an agency-nature *e. g.* raising of loans, incurring capital expenditure, purchase of stores for the Government of India, payment of pensions etc.; his other functions were political and comprised correspondence with India and the exercise of superintendence, direction and control of the Indian administration.

High Commissioner for India.—Now a clear separation of the agency functions from those of a political complexion is one of the first results of the Reforms. The purely agency functions have been transferred to a High Commissioner for India. The appointment of the High Commissioner for India in London is the outward visible sign in London of the new status of India approximating her to a self-governing Dominion. The other Dominions have similar accredited High Commissioners in London and they are a symbol

of their independent status. The High Commissioner is a servant of the Government of India. The division of functions between him and the Secretary of State has not yet been made with any degree of finality. Thus though the officers of the All-India Services are recruited by the Secretary of State, their pays and allowances are paid by the High Commissioner. The latter recruits men for a number of miscellaneous services at the request of the Government of India and the Provincial Governments. He manages the Stores Department, and purchases goods required by the Government of India and is bound by the instructions received from India. He is in charge of Indian students residing in England. Also business in connection with the training of probationers to the Civil Service, passages etc., has been made over to him and his pay is paid out of Indian revenues.

The India Council.—The Secretary of State in Council is now confined to his proper political function of supervising the Government of India. It cannot be said that in the discharge of such functions the India Council (*i. e.* of the Secretary of State) had played, even before the Reforms, any glorious part. It merely entailed reduplication of work, delay, and a close restriction of the powers of the Government of India. There was some excuse for re-examining and control of the measures of the Government of India so long as the latter was not amenable to popular criticism in India. But the excuse disappeared and the control became anomalous after the growth of constitutional public opinion in India.

Again seven years was too long a period to keep the Members of the Council in living touch with the rapidly changing conditions in India.

Another defect of the system was the very anomalous position of the Secretaries of the various Departments which transacted business in the India Office. These Secretaries were appointed by the Secretary of State and were often the holders of very high official positions in India prior to their appointment. Their knowledge of Indian conditions was both more recent and authentic than that of the Councillors to whom, however, they were subordinate. The Departmental Secretaries could not attend the meetings of the Councils and they were not the constitutional advisers of the Secretary of State. The object of Lord Crewe's proposed reform of the India Council was to convert the Secretaries into the Secretary of State's constitutional advisers, but the Bill was rejected by the House of Lords.

Proposals for the reform of the Council—like the one of Lord Crewe—were always put forward. But it would seem that with the growth of Legislative Councils and popular opinion in India, the utility of the Council of the Secretary of State disappears. Any strengthening of the Council cuts at the principle of Parliamentary control at both ends: it weakens the responsibility of the Secretary of State to Parliament and of the Government of India to the Secretary of State. The case for the abolition of the India Council cannot be better put than in the words of Mr. Ramsay MacDonald*. "The Council destroys real Parliamentary interest without giving Indian control or expert political advice. It prevents such a reorganization of the India Office duties as would put that Office into proper relationship with the Indian Government on the one hand, and British representative institutions

* Ramsay MacDonald ; *Government of India*, p. 50.

on the other. It is not government or advice by the expert, but by the official. It is an adjunct to bureaucracy, not to Indian opinion. It is a Civil Service imposed on a Legislature and it becomes more and more anomalous as representative institutions in India are established and developed." The India Council therefore goes counter to the salutary axiom that henceforward India must be governed as far as possible by the Government of India. Any attempt to seek, therefore, in a reformed and strengthened Council of India an effective check over the Secretary of State is opposed to the whole trend of progress in India. Lord Crewe's Committee that was specially appointed to inquire into the Home Administration of India came to the conclusion that there was no constitutional function of the Secretary of State in Council which could not equally well be discharged by the Secretary of State, and that Committee, therefore, recommended the abolition of the Council. This radical proposal was quite in keeping with the Indian point of view—for even the late Mr. Gokhale had said in his 'political testament' that the Council should be abolished and the position of the Secretary of State approximated to that of the Secretary of State for the Colonies.*

Thus though the case for the abolition of the Council was sufficiently strong, the idea of doing away with a body of more than 60 years' standing was too radical to be accepted by British politicians. It was opposed by authorities on the Indian Constitution like the late Sir Courtney Ilbert and actual administrators like Mr. Austen Chamberlain. The Joint Committee also was not in favour of abolition. "They think that

* Keith: Vol. II, 116.

at any rate for some time to come, it will be absolutely necessary that the Secretary of State should be advised by persons of Indian experience, and they are convinced that if no such Council existed the Secretary of State would have to form an informal one if not a formal one. Therefore, they think it much better to continue a body which has all the advantages behind it of tradition and authority."

But though the Council was thus suffered to continue as a *pis aller*, both its constitution and procedure were radically altered. In reframing the constitution the chief object was to bring it into a more living contact with the rapidly changing conditions in India. This was done (1) by introducing three Indians in it, and (2) by shortening the period of service upon it. Similarly power was given to the Secretary of State to frame rules for the transaction of business in the Council. Thus the necessary amount of elasticity has been introduced into the relation of the Secretary of State with the Parliament on the one hand, and with the Government of India on the other.

The India Office,—Incidental changes have taken place in the internal organization of the India Office. Before the Reforms there used to be three main Branches of the India Office. Correspondence, Accounts and Stores. The first was the most important and contained several Departments. The Stores Branch has been transferred to the High Commissioner. In the Correspondence Branch there are now only three Departments: 'Public and Judicial' attending to constitutional and legislative questions and the general internal administration of India; the 'Economic and Overseas' dealing with Imperial and International aspects of Indian problems; and 'the Services and

General' Department dealing with the recruitment, organization etc. of the All-India Services.*

Increased Parliamentary Interest in Indian Affairs.—The reorganization of the India Council and Office shows the new relation of the Secretary of State to Parliament. For it should not be forgotten that if the Reforms have from one point of view relaxed Parliamentary control over the Government of India, they have from another point of view strengthened that control. "Imperialism" and the Great War increased the interest of Parliament in the affairs of India, and the Government of India Act has thrown upon it responsibilities for the proper discharge of which it must maintain that interest without abatement.

With regard to the Secretary of State his immediate and personal dependence upon Parliament was emphasized in four or five ways. (1) His position as the political head of the Government of India was brought into relief by the appointment of a separate High Commissioner for agency functions. (2) The old myth of the India Council as a statutory check over the Secretary of State with its power of 'financial veto' was openly given up, and the Council was reduced to the status of what it had actually become, namely, an advisory body. (3) His salary was transferred to the Home Accounts. Such a transfer was always demanded by public opinion in India, on the analogy of the salary of the Secretary of State for Colonies, on the ground of fairness to the Indian taxpayer, that England, in justice, ought to bear, on Imperial considerations, what after all was a small sum compared with the enormous advantages she derived in diverse ways from India remaining a part

* For more details see Sir Malcolm Seton's *India Office*: Ch. XVI.

of the British Empire, and finally on the ground that it would make the Secretary of State more amenable to Parliamentary criticism. Accordingly Parliament contributes the sum of Rs. 1,36,500 towards the India Office establishment—the sum including the Salary of the Secretary and the Parliament Under-Secretary of State for India, and the administrative and political expenses of the India Office. As Ilbert observes, this important change brings the administration of India Office under the direct and recurrent criticism of Parliament, like that of other Departments of the British Government.*

(4) The power of disallowing Acts of the Indian Legislatures—Central, as well as Provincial—has been vested in His Majesty in Council by the Act of 1919. And he is to be advised in these matters by the Secretary of State.

Further the Secretary of State has been given extensive powers of making Rules under the Act, and in the exercise of this function he is required either to get Parliamentary sanction before the Rules are made, or Parliamentary ratification after they have been made.

(5) Before the Reforms the interest of Parliament in Indian affairs was fitful though an influential section of the Liberal and progressive elements in the House of Commons had always formed an informal Association to represent the claims of India. The question of political reforms in India served to keep alive Parliamentary interest and the inestimable work which the Joint Committee had done in helping the passage of the Government of India Bill through

* Ilbert "Historical Survey" 137.

Parliament obviously suggested the continuance of that Committee. A Standing Joint Committee of both the Houses of Parliament is annually constituted; it does not possess any Statutory functions. It has a purely advisory and consultative status. One of its important functions is the examination of Rules to be made under the Act of 1919.

(6) Finally the Government of India Act 1919 has cast a definite duty upon Parliament namely, the periodic revision of the Indian Constitution. It has to watch carefully the progress of the great experiment of making India a self-governing dominion within the Empire.

(7) Nothing perhaps brings out more vividly the closeness with which the Secretary of State has to follow affairs in India to discharge his responsibility to Parliament than the personal visits of high officials in India to him for purposes of consultation. These visits have become more frequent now, *e. g.*, the visit of H. E. Lord Reading, of the Finance Member Sir Basil Blackett, and quite recently, the visit of H. E. Lord Irwin.

CHAPTER XVII

REFORMS IN OPERATION AND A FEW SUGGESTIONS

(87) REVISION OF THE CONSTITUTION

As the Montagu-Chelmsford Reforms introduced Dyarchy as a transitional measure in the Provinces and as they did not relax the responsibility of the Government of India to Parliament which took upon itself to define the 'time and manner' of India's advance towards Responsible Government, they almost invited popular agitation in India for further Reforms.

The way in which Parliament proposed to judge of India's fitness for further advance towards Responsible Government was by the appointment of a Parliamentary Commission in 1929. A periodic Commission to inquire into Indian conditions was an integral part of the Montagu-Chelmsford Scheme. The Government of India Act with its novel device of Dyarchy in the provinces made the appointment of some such Commission inevitable. "Dyarchy" by its very nature was a transitional form of Government. It was a half-way house to Responsible Government. It was not a *pacca* building but a tent and Sir Courtney Ilbert compared it "to one of those caravansaries which would be run up rapidly for an Indian Prince to meet a temporary need, and which could be easily removed or transformed when the need had passed."^{*}

* Ilbert and Meston 13.

But this temporary structure would not satisfy Indians. Another metaphor would bring out the opposing points of view of looking at the new Constitution. Lord Olivier, Secretary of State for India in the first Labour Government compared the Government of India Act to a sea-worthy vessel and said that it should carry Indians across if only they would get into it and row. To this Pandit Motilal replied: It may be sea-worthy but what we want is not only a sea-worthy vessel but a vessel big enough for our cargo, big enough to accommodate the millions of passengers that have to cross over from servility to freedom. (Debate in the Assembly on 10th March, 1924).

The case for the appointment of a Commission for the revision of the Constitution was thus put by Sir William Duke when the Reforms were being discussed: "It seems certain that the working of a measure which is experimental in character, and even if completely successful will only have provided an instalment of the objects stated in its preamble, must in any case be brought under review, at no very distant date. There are obvious dangers in fixing that date in advance, particularly in case it should prove too remote. These objections should, however, be out-weighed by the inducement to make the best of a system which must continue for a definite period, and by the patience which should result from the knowledge that there will be a certain and not too distant opportunity for consideration of the case for further advance."

The warning here given of the danger of fixing a distant date for revision did not prove unfounded. Within two years of the passing of the Act, the

Legislative Assembly passed a Resolution (in September 1921) recommending that the Secretary of State, in view of the progress made by India on the path to Responsible Government, should get a re-examination or revision of the Act at an earlier date than 1929. But this Resolution came after the resignation of Mr. Montagu and the advent of the Conservative Ministry to power under Mr. Bonar Law. The Secretary of State for India in that Ministry—Lord Peel—did not see the necessity of amending the Act so soon. He maintained that the Constitution of 1919 was sufficiently elastic, and that there was considerable room for progress within the structure of that Constitution without amending it. Again though the Indian Legislatures had given proof of their merits, the merits and capabilities of the electorates who are the last foundations of Responsible Government were not tested by time and experience. And finally, he argued, that the experience of six months was too limited to form a just estimate of the success or otherwise of the new provincial Executives.

Three things happened in the meanwhile which brought the question of the revision of the Constitution to the forefront. (1) The dissatisfaction with, and hostility to, the Reforms on the part of a small section of the European element in the Public Services were openly avowed both in India and in England. Many were even prepared to retire from the Indian Service; and fewer English youths were forthcoming as candidates for recruitment. The question of the improvement of the prospects of the Public Services was pressed upon the Conservative Government which finally appointed the "Lee Commission" to go into that question. The appointment

of this Commission was used as an argument in favour of an early review of the whole Constitution of India. (2) Then the Labour Party under Mr. Ramsay MacDonald came to power in England and the expectations of political reformers in India were quickened. It was thought that the Labour Party would take up as its own the Commonwealth of India Bill as drafted by Mrs. Annie Besant and her friends in India. (3) But a large volume of Indian public opinion depended more upon agitation in India than upon currying favour with any Party in Parliament in England. Political parties in India, so far as entry into the Councils was concerned, assumed three forms. (a) There were the "No-changers" *i. e.*, those who did not see any reason to change the Congress Creed of boycotting the Councils; (b) then there was the growing party of the Swarajists who wished to enter the Councils with a view to 'wreck' the Reforms. (c) And finally, there was the small party of those who had accepted the Reforms from the very first. Soon after their entry into the Councils—Central and Provincial—and finding themselves in sufficient strength in some of them, the Swarajists followed the tactics of 'obstruction' and 'paralysation' of Government, by refusing to accept the responsibility of forming ministries, by making it impossible for the Governor to appoint other Ministers, by throwing out the budgets, and by other means. In the Legislative Assembly, largely owing to the personal ability and astute leadership of Pandit Motilal Nehru, after the programme of "wrecking" the reforms and "bringing the Government to their knees" had been gone through, the following Resolution as an amendment to the original Resolution of R. B. T. Rangachariar—

recommending an early revision of the Government of India Act with a view to secure for India full Self-governing Dominion status within the British Empire and provincial autonomy in the provinces—was adopted: “This Assembly recommends to the Governor-General in Council to take steps to have the Government of India Act revised with a view to establish full Responsible Government in India, and for the said purpose: (a) to summon at an early date a representative Round Table Conference to recommend, with due regard to the protection of the rights and interests of important minorities, the scheme of a Constitution for India; and (b) after dissolving the Central Legislature, to place the said scheme for its approval before a newly elected Indian Legislature and submit the same to the British Parliament to be embodied in a Statute.”

The Muddiman Committee.—But the Government of India were not favourably disposed towards the proposal of a Round Table Conference. Nor were they prepared to press the Secretary of State for an amendment of the Act. They did not even accept the suggestion made by Indian Liberals like Sir Tej Bahadur Saprú of getting appointed a Royal Commission to go into the whole question. They adopted a most cautious attitude. As Sir Malcolm Hailey argued: “Before his Majesty’s Government are able to consider the question of amending the Constitution, as distinct from such amendments of the Act as are necessary to rectify any administrative imperfections, there must be a full investigation of any defects or difficulties which may have arisen in the transitional Constitution. Neither they nor we

would be justified in considering changes to that Constitution until they were in possession of the information which our investigations would place in their hands. If the proposed enquiry into the defects of the working of the Act shows the feasibility and possibility of any advance within the Act,—that is to say, by the use of the Rule-making power provided by Parliament under Statute, we are willing to make recommendations to that effect. But if our enquiry shows that no advance is possible without amending the Constitution, then the question of advance must be left as an entirely open and separate issue on which Government is in no way committed.”

It is important to understand the provision of making Rules under the Act of 1919. A merit of that Act is its elasticity. This it owes to an extensive use of what has sometimes been called delegated legislation, not directly by Parliament, but by Rules and Orders made under an authority given by Parliament. Sir Courtney Ilbert makes the following observations upon the method of such delegated legislation: * “ Ever since Parliament has taken to legislating for India, this method has been extensively adopted in dealing with Indian subjects.....the reasons for adopting it being the impossibility of enabling or persuading Parliament to afford the time necessary for the consideration of Indian details, and the importance of enabling alterations to be made without the passage of an amending Act. Nowhere has the policy of giving and using delegated power been carried farther than in the Act of 1919.....The subjects with which the Rules deal are of great variety and importance. They include the constitution and pro-

* Ilbert and Meston 28-30.

cedure of the Indian Legislatures, and the important subject of Devolution, and many others."

Government of India argued that it was possible to transfer greater power to the people by a revision of the Rules made under the Act. They were therefore prepared to explore all the possibilities by a revision of the Rules but were not prepared to recommend an amendment of the *Act* itself. They therefore appointed a Committee of 12 members with a non-official majority to make an enquiry into the working of the Reforms and find out the possibilities of advance by a revision of the Rules. Among the members of the Committee may be mentioned Sir Alexander Muddiman (Chairman), Sir Mahamad Shafi, Sir Arthur Froom, Sir Tej Bahadur Sapru, Sir Sivaswami Aiyer, Mr. Jinna, and Dr. Paranjpye. It is to be regretted that the Committee could not draw up a unanimous Report or make unanimous recommendations. They made a Majority (official) Report, and a Minority (non-official) Report.

This was to be expected as the two halves of the Committee fundamentally differed as to the interpretation of their terms of reference. The Majority felt that they could make only such recommendations as would remove the administrative deficiencies of the Act, and would be consistent with the scope and purpose of the Act. They, therefore, took the position that the Scheme of Dyarchy was a workable Scheme, that it had not 'failed' anywhere, that such improvements as were called for could be made by changes in the Rules under the Act, that they did not require any substantial amendment of the Act itself, and that, therefore, such proposals as the grant of Provincial Autonomy, or the introduction of responsi-

bility in the Central Government, could not be entertained. The Minority, on the other hand, postulated that Dyarchy, in spite of adverse conditions, had had a fair trial, that it was found to have inherent defects of its own which no changes in the Rules could possibly remove, and that the failure of Dyarchy pointed the way to such a substantial amendment of the Act itself as would make possible the grant of Provincial Autonomy or the introduction of responsibility in the Central Government.

Pronouncement of Lord Birkenhead.—The sharp division of opinion and recommendation revealed by the Reforms Enquiry Committee (also called the Muddiman Committee) made it easier for Government to ignore the views of both the Majority and Minority. In England also nothing more substantial was achieved than a pronouncement on the Indian political situation by Lord Birkenhead, the Secretary of State, in July 1925. He said that no further steps could be taken before the views of the Government of India and the Legislative Assembly on the Report of the Muddiman Committee were obtained. After paying a generous tribute of compliments to the late Mr. Montagu for his bold idea of planting Responsible Government in India he dwelt upon the implications of the Preamble to the Act of 1919.

He said: "we decided with the full and deliberate acquiescence of both the Houses of Parliament to make that great experiment which is known as the Montagu-Chelmsford Constitution. It is extremely important that we and others should realise with precision what was done by the Government of India Act of 1919. Its permanent and static effect is unquestionably contained in the preamble. The Act

itself was admittedly fluid and experimental. The language of the preamble ought to be borne in mind by every instructed critic of our Indian policy and of the actual Indian situation with which I have to deal.

“The preamble expressed the deliberate and deeply-considered decision of Parliament. Conformably with the principles laid down in the preamble, one constitution or another might at one time or another be attempted. Experience educating us or informing our critics in India might induce us to make an amendment here or an advance or a variation there. But the whole message as we understand it or our situation in India with all that it involves in storied past, in the critical present, and in the incalculable future is to be read in that preamble. We shall not be diverted from its high obligations by tactics of restless impatience. The door to acceleration is not open to menace, still less will it be stormed by violence.”

Lord Birkenhead then proceed to review the working of Dyarchy in the different provinces and said that “no short or dogmatic answer can be given to the question “Has the Constitution succeeded?” It has neither altogether succeeded nor has it altogether failed and it must further be noted by way of additional qualification that where it has succeeded the price of success has been at some stages and in some districts a considerable inroad upon the dyarchical principle.” He then held out the possibility of an earlier revision of the Constitution if certain conditions were fulfilled. The decennial period fixed for revision was thought to be a reasonable period though of course Parliament could not have presciently anticipated the Non-Co-operation campaign which

wrecked the Constitution. But even assuming co-operation, it was thought that a period of ten years would be required to afford the data for reliable conclusion and generalisation. "But I do not hesitate to make clear my own view that it was not the intention of the Legislature to attempt to shackle succeeding Governments. If the spirit of cheerful and loyal co-operation was generally exhibited on the one hand or if, upon the other, grave and glaring defects disclosed themselves, it would indeed have been the assumption of omniscience, alien to the Anglo-Saxon tradition, for Parliament to assume so high a degree of prescience as to declare that in no circumstances should the date of Commission be accelerated. In fact the door was never closed. It is on the contrary open to-day but the condition is clear and precise. There can be no reconsideration until we see everywhere among responsible leaders of Indian thought evidence of sincere and genuine desire to co-operate with us in making the best of the existing Constitution."

Not only would the existing Constitution be revised when favourable signs are in evidence but Parliament would be prepared, said Lord Birkenhead, to examine any Constitution framed in India. "We do not claim in Great Britain that we alone in the world are able to frame constitutions though we are not altogether discontented with the humble constructive efforts which we have made in this field of human ingenuity. But if our critics in India are of opinion that their greater knowledge of Indian conditions qualifies them to succeed where they tell us that we have failed, let them produce a Constitution which carries behind it a fair measure of general agreement among the great

people of India. Such a contribution to our problems would nowhere be resented. It would on the contrary be most carefully examined by the Government of India, by myself, and I am sure, by a Commission whenever that body may be assembled."

The Nehru Report.—The challenge thrown out by the Secretary of State was taken up by leaders of public opinion in India and by important political organizations *e.g.*, the National Congress and the Liberal Federation. Divergence of views began to appear not only with regard to the basis of the new Constitution but also with regard to details. It was realized that no Constitution had any chance of being considered by Parliament which had not behind it "a fair measure of general agreement among the great people of India." A successful effort was therefore made to bring together the Hindus, Mahomedans and the Sikhs and also the representatives of the Congress and the Federation and a Report was drawn up by a Committee of the Conference of all the Parties. It is known as the Nehru Report after the Chairman of the Conference, though leaders like Sir Tej Bahadur Sapru and Sir Ali Imam took part in its preparation.

✓ *The Simon Commission.*—Parliament did not sit still while Indian leaders were evolving a Constitution. As the enquiry into the working of the Reforms would in any case take a long time it was decided to appoint the Statutory Commission before 1929. The Act of 1919 was amended to enable Government to anticipate the date of appointment. But a grave blunder was committed in the choice of the *personnel* of the Commission. No Indian was appointed on it.

The arguments advanced to explain and justify the exclusion of Indians from a Commission that was appointed to settle the future political institutions of the country convinced nobody. It was said that there was difficulty in choosing Indians that enjoyed the confidence of different communities and parties in India; that the Commission would be unduly large if all shades and views were to have representation upon it; that the Report of such a heterogeneous body would not be unanimous and would be a source of confusion to Parliament. On the other hand, it was argued, Parliament would easily appreciate a Report prepared by its own Members drawn from the three Parties in the House of Commons. The Chairmanship was given to a distinguished Member of the English Bar and an influential Liberal Member of Parliament, Sir John Simon. Free scope was given to the Commission to settle its own procedure. The Indian and Provincial Legislatures were called upon to elect Committees to co-operate with the Commission. The Parliamentary Committee together with the Committee of the Central Legislature were to sit as a Joint Free Conference to hear evidence. Whenever the Joint Conference visited a province the Local Provincial Committee was to sit along with it for taking evidence. The Committees of the Indian Legislatures—Central as well as Provincial—were given the right of drawing up their own Reports and of making recommendations and all the Reports were to be submitted to Parliament. The Committee of the Central Legislature was to visit England and take evidence in that country. At all stages the status of the Parliamentary Commission and of the Indian Committees co-operating with it was to be the same.

Their Reports, when submitted to Parliament, would have the same value.

But these concessions could not be a compensation for the initial blunder of excluding Indians from the Statutory Commission itself. The result was deplorable. The Commission was boycotted. It carried on its labour of enquiry from province to province in an atmosphere of hostility. The views of those Indian leaders who had worked the Reforms wholeheartedly were not placed before the Commission. It is true that the Conservative Government that appointed this Commission has now gone out of office and Mr. Ramsay MacDonald has come into power with a Labour Majority. Though no reference was made to India in the King's Speech when Parliament opened on 2nd July, the Premier appealed to Indians to reopen the doors of their minds and cooperate. It is too much to expect that the Labour Secretary of State, Mr. Wedgewood Benn, would scrap the onesided evidence collected by the Simon Commission and its Report based upon such material. But a rare opportunity is before the Labour Government to make the most of a bad situation.

✓ (88) IMPLICATIONS OF PROVINCIAL AUTONOMY

We shall now turn to examine the operation of the Reforms in the Provincial and Central Governments, offering as we proceed a few suggestions. For convenience of reference we shall follow the same order of treatment as was adopted in describing the nature of the Reforms in the preceding chapters. We take up first *Provincial Devolution*.

All are agreed that the control exercised by the Government of India over the Provinces is at present

excessive and that responsible government in them will not be a reality unless and until there is further relaxation of control. This raises the whole question of the relations of the Provinces to the Central Government. Shall that relation be of the federal type or of the kind that prevails in a unitary government? Shall India be a federation or shall it continue to be a strong unitary State that it is at present?

Again it is obvious that at present the chief restrictions upon the powers of the Provincial Government arise because of the responsibility of the Secretary of State for India to Parliament, for the administration of India. Provincial autonomy can not be a reality until there is a complete relaxation of control over the provinces by the Secretary of State. This raises another vital issue: What should be the extent of control which the Secretary of State should continue to exercise over the Government of India?

We shall leave aside for the moment the goal of Independence and the severance of the British connection. Our postulate is that India is to attain Responsible Government *within* the Empire. Her status, therefore, must be that of equality with the self-governing Dominions in the British Empire. Dr. Keith has thus defined* status of the self-governing Dominions: "They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations." This is full Dominion status, the status, for example, of Canada, Australia or South Africa. Can India have

* Responsible Government Vol. II. p. 1224.

Responsible Government (in pursuance of the declared policy of Parliament) and yet fall short of that status? The possibility was first suggested by Sir Malcolm Hailey in the debate in the Assembly when it demanded full self-governing Dominion status (Feb. 1924). He expressed the opinion that the term "full Dominion Self-Government" was of wider extent than the expression "Responsible Government" by itself. He thought that it implied that not only would the executive be responsible to the legislature, but that the legislature would in itself have the full powers which are typical of the self-governing Dominions. He thought that responsible government was not necessarily incompatible with a legislature with limited or restricted powers. The difference which Sir Malcolm sought to establish between the two has been repudiated by Indian leaders and it is now accepted that Parliament had no mental reservation of the kind suggested by Sir Malcolm when it declared 'responsible government' as the goal of India. It is the same as Dominion status. It follows from this that during the period of transition to this goal the control of the Secretary of State should be narrowly confined to Imperial and international aspects of Indian questions and to defence. All matters pertaining to the internal administration of India must be left to the Government of India.

Shall the Government of India thus emancipated from the control of Parliament be a Federation or a Unitary State? No doubt the Durbar Despatch of Lord Hardinge envisaged India as consisting of a number of autonomous provinces with the Government of India ordinarily restricting their functions to matters of Imperial concern. Similarly

Sir Frederick Whyte saw * in the last paragraph of the Preamble of the Government of India Act "raw material for the creation of a federal constitution." A federal constitution has also been advocated on the ground of the diversity of the Indian population as regards language and culture, its strong provincialism, and the existence of the Indian States. At the same time a strong unitary Government has been opposed on the ground that it thereby perpetuates the subordination of India to the British Parliament and the enslavement of the Provinces to the Government of India. Thus Mr. Shrinivas Iyengar—ex-President of the National Congress—says: "The safest and easiest way of breaking through the vicious circle is to accept the principle of provincial autonomy in its twofold sense of the freedom of the Provincial Government from any external control by the Government of India and the status of full Provincial responsible Government."†

In spite of these arguments for Federation and against a Unitary Government I am disposed to favour the latter form. I agree with Sir Siwaswamy Iyer when he says that it must be regarded a piece of good fortune that we possess a strong Central Government. "Disruptive forces have been very strong in the past history of India. It is the administration of India by a strong Central Government that has succeeded in bringing about uniformity of laws and standards of administration and a feeling of common nationality. The separatist tendencies likely to be produced by differences of race, religion, language and custom have been largely overcome, or kept in check, by the

* India : a Federation ? p. 34.

† Introduction to the Draft Constitution : page XIII.

influence of a strong centralised Government. A federal government of the type of what prevails in in the United States or in Australia is likely to encourage separatist forces and particularist tendencies and check the consolidation of the Indian Empire."* Even the Minority of the Muddiman Committee hold: "We recognise that it is impossible to dispense with the Central Government. The Central Government will perhaps be the most potent unifying factor between province and province and we think that it will be charged with the vital responsibility of securing national safety."†

We must have, therefore, a strong unitary Government of India. The next question is: what should be the extent of its control over the provinces in matters of finance, legislation and administration? This is a difficult question. Its proper solution includes a precise definition of the spheres of the Central Government and the Provincial Governments, a complete separation of the financial resources of the two, a careful definition of the powers of taxation and borrowing to be conferred upon the provinces, the legislative powers of the Provincial Councils, separation of the Services required by the Central and Provincial Governments to enforce their respective laws. The present Devolution Rules are only the first step in the direction of solving the problem.

In the past the relations between the Secretary of State and the Government of India and between the latter and the Provincial Governments were not settled upon any definite principles. They were the

* Indian Constitutional Problems : p. 13.

† Report of the Minority : page 169.

result of administrative exigency or concession to political agitation. But, as Sir Frederick Whyte truly observes:* "Since the Crown took over sovereign responsibility for India in 1858 a constitutional problem of the first magnitude has been slowly incubating and has now reached a stage when a firm grasp of constitutional principles is the only security against costly error."

The subjects in which the Government of India feel specially interested and which, therefore, were kept 'reserved' under the experiment of Dyarchy are land revenue, administration of justice, police and prisons. These subjects are bound up with the framework of administration. Responsible Government in the provinces would not be a reality if these subjects were continued under the control of the Government of India. The Provincial Councils have shown the greatest interest in the subject of land-revenue. It has been transformed from an administrative into a political question of the first magnitude. Fundamental issues have been raised, As the land revenue systems differ in different provinces and as the vast majority of the population is dependent upon agriculture in one capacity or another, the Provincial Councils will have to be given utmost freedom to determine their future policy. If that freedom was not given there would be a repetition of Bardoli campaigns. It will be impossible to prevent the Councils from going into all the basic principles upon which the land revenue policy of the Indian Government has been elaborated. Similarly the Provincial Councils and Executives will have to be fully trusted for the impartial administration of justice and the efficient

* India : a Federation ? p. 32.

maintenance of order. Indeed the more one thinks upon the problem the more one is convinced that the Government of India must show greater boldness and confidence in relaxing control over the provinces. Financial devolution is, in my judgment, the crux of the difficulty. Mere remission of the provincial contributions is not enough. The contributions are no longer made. The various sources of taxation have to be assigned to the different Governments on a scientific basis. The Indian Taxation Enquiry Committee has done much spade-work in this field but its recommendations have not yet reached the stage of practical application.

Similarly in legislative matters the Governor-General must have a veto over provincial laws and in certain matters his previous sanction will be necessary. As the Minority of the Muddiman Committee observe:*

“ We do not think the doctrine of previous sanction, subject to the limitation mentioned above, is necessarily inconsistent with the ideal of provincial autonomy.”

✓ (89) DEFECTS OF DYARCHY

How far have the intentions of Parliament in setting up Dyarchy in the Provinces been realized? To what extent has responsible government in the Transferred half been a reality? Finally, in the light of the actual experience of Dyarchy does it deserve to be mended or ended? Now the Majority and the Minority were agreed that Dyarchy had certain inherent defects. The specific allegations against Dyarchy, according to the analysis of the Majority Report, were the following:—

* Minority Report : page 170.

- (i) The impinging of the administration of reserved upon the administration of transferred subjects, and *vice versa*.
- (ii) The failure to encourage joint deliberation between the reserved and transferred sides of the provincial Governments.
- (iii) The absence of joint responsibility of the Ministers.
- (iv) The failure of the Constitution to vest real authority in the Ministers, owing to the control of—
 - (a) the Governor ; and
 - (b) the Government of India and the Secretary of State.
- (v) The vesting of the control of the Finance Department in a Member of the reserved side of the Government, the control thus given to the reserved side over the Ministers and, generally speaking, the handicapping of the other departments by excessive financial control.
- (vi) The failure on the part of permanent officials to co-operate with the Ministers.

'Mixed' Dyarchy.—To begin with it should be noted that Dyarchy as actually constituted in the provinces is not of a 'pure' type. 'Pure' Dyarchy would involve

- (a) a division of functions that is absolute and final, and in which one side of Government can not interfere with or influences the other.
- (b) The Governor-in-Council absolutely responsible to the Secretary of State for the Reserved half; and the Ministers absolutely responsible to the electorates for the Transferred half.

- (c) The two halves of the Executive to have separate and distinct (a) Legislatures, (b) finances, (c) set of permanent officials for the purposes of administration. The officials can not be members of the popular Legislature; each half would have a 'separate purse' with distinct powers of taxation and borrowing; and finally, neither half can use the same set of officials as their subordinates. In fact pure Dyarchy requires a 'vertical' division of provincial functions, with a separate legislative organ, financial powers, and administrative machinery from top to bottom.

It is clear that Dyarchy as actually set up departs from the 'pure' type in every item and hence arise its practical difficulties which we will now consider in the order given above.

(i) *The Impact of the two halves of Government under the Devolution Rules.*—The power of deciding to which half a particular case belonged was vested in the Governor and he had to exercise this power frequently, and as one witness put it, doubtful cases were kicked from one department to another like a football. Each half should have been given every opportunity to have its own say in the matter, but this was not always possible or actually done. Again, in transferring certain subjects to ministerial control *e.g.* Education, Industries, the Devolution Rules imposed restrictions which proved a great handicap on the Ministers. There were frequent collisions between the two halves and generally the Governor would side with the Reserved half. The Minority regarded this as an inherent defect of Dyarchy; the Majority, on the other hand thought that the two halves would work more

smoothly if the division between the Reserved and Transferred Subjects was made upon more scientific principles.

(ii) *Joint Deliberation.*—The dictum of the Joint Parliamentary Committee on this point was quite clear. It desired the Governor to resort to joint deliberation as frequently as possible, though the practice was left to be fixed by conventions rather than by Rules.

As a matter of fact, however, each Governor acted according to his own discretion, and joint deliberation was consistently adopted only in one or two provinces.

The Minority held that joint deliberation, even if consistently adopted as a principle, would not remove the inherent defect of Dyarchy. At times it is likely to weaken the position of the Ministers *vis-a-vis* the Legislative Councils and the electorates in relation to Reserved subjects, more particularly when there is occasion for difference of opinion in regard to questions of policy between the Legislature and the Executive. It was not rare in some provinces to see Executive Councillors openly canvassing against Ministerial measures and the Ministers supporting the policy of the Reserved half in which they had no faith. Thus joint deliberation, though it may secure the acquiescence of the two halves of Government, is really opposed to the principle of responsibility to the Council. As the Minority put it: "We are anxious to safeguard ourselves against conveying the impression that given Dyarchy to work, we do not appreciate the value of joint deliberation between the two halves of Government, but we maintain that it is an inherent defect of the present Constitution

that the Government should be divided into two halves."

(iii) *Joint Responsibility*.—As in the case of Joint deliberation, this also was left to be secured by convention. But the Governors, in the appointment of Ministers could not always pay due regard to their position in the Legislature; and after appointment, they were consulted individually and not collectively. Responsibility of a Minister to the Council appears to be hollow when we analyse the composition of the Council. In each there was a solid *bloc* of votes consisting of officials, nominated non-officials and members representing special interests at the disposal of Government. When a Minister comes to depend upon this *bloc* and not upon his own followers in the Council, his responsibility is gone. Again the Minister has no effective control over his Department for we have already seen how the Governor had things in his own way. Nor finally had the Council any effective weapon in its hand to show its disapproval of the action of a Minister.

When such was the position of individual Ministers, there is no wonder that they could not attain the principle of joint responsibility. From this point of view Dyarchy must be said to have altogether failed. As the Majority point out, "The difficulties in the way of establishing joint responsibility in India are doubtless great. It is, for example, difficult to select Ministers from a single well-organized party, and this is particularly so where the main Hindu and Mahomedan Communities are keenly divided in a Local Council or where there are other communal differences of an acute character. Joint responsibility practically also involves the recognition of a Chief Minister, and

the difficulties to which we have just adverted are thereby enhanced; but we do not wish to suggest that these difficulties are insurmountable. We are convinced that joint responsibility of the Ministers is of the very essence of the present Constitution. The object of the Reforms was not merely to train Indians in administration; that could have been secured by other means. The object was to introduce an approach to cabinet government for the transferred side of the administration, and until this is accomplished, there will be, in our opinion, little training in responsible government."

The Minority attached so much importance to joint responsibility that they suggested an amendment of the Act itself to place it beyond doubt.

(iv) *Control of the Governor.*—That there was undue interference with the actions of Ministers in most provinces is admitted and was to be expected. Reference has been already made to the special powers conferred upon him by the Act or by the Rules made thereunder and the responsibilities with which he was charged by the Instrument of Instructions. The distribution of the transferred portfolios depended upon his discretion; he appointed Ministers; he consulted them individually and came to look upon the Ministers as mere advisers. This struck at the root of Ministerial responsibility. The Governors in becoming more than constitutional heads of the transferred half made serious encroachments upon the underlying principle of Dyarchy.

Strong objection was taken to one practice which seriously undermined the position of a Minister in his relation with the Governor and the subordinate Department, the practice, namely, of the Departmental

Secretary having access to the Governor independently of the Minister. No doubt Secretaries of the Reserved Departments have also a similar access to the Governor. But the practice becomes anomalous when extended to the Transferred Departments, even when it be admitted that the Governor is more than a constitutional head of the Transferred subjects and that the Secretaries are Secretaries of the Departments and not Secretaries of Ministers or Members of the Executive Council. As the Majority recommend: "to remove the suspicion that this right is capable of being used to influence the Governor behind the back and without the knowledge of the Minister, a Rule should be included in the Rules of Business requiring the Secretary of the Department or other officer with a right of direct access, to inform his Minister of every case where there is a difference between them and of all other important cases which he proposes to refer to the Governor".

As regards the control of Ministers arising out of the powers of "superintendence and direction" vested in the Governor-General in Council and the Secretary of State, we have already seen that there should be as much relaxation as possible.

(v) *The Finance Department.*—The constitution and functions of the Finance Department have been already described. The existing arrangements have been criticised on two grounds: (1) that the control exercised by the Department was excessive and (2) that the Department was in charge of a Member of the Executive Council and not of a Minister.

The object of reconstituting the Finance Department when the Reforms were introduced was that it should exercise the control that was hitherto

exercised by the Government of India. In all forms of Government there is some Department analogous to the Finance Department for expert advice and control. But it was complained that the Finance Department, in addition to furnishing financial advice, tried to *control* the policy of the Ministers. The control was felt to be particularly irksome on account of the financial stringency from which all provinces suffered. The mischief was aggravated by the contributions the Provinces had to make under the Meston Settlement. (2) The Finance Department was placed in charge of a Member of the Executive Council. Under this arrangement the Reserved half had greater facilities for obtaining funds and the Ministers had greater difficulties in obtaining them for such Departments as Education, Sanitation etc. The Finance Member and through him the official half of Government, thus came to have an effective control over the Transferred half—a result that was not expected in the beginning, and that accounts to a great extent for the failure of Dyarchy.

The Minority had a fundamental objection to the whole scheme of financial arrangements under Dyarchy. The provincial revenues are allotted between the two halves by mutual agreement, the Governor acting as an arbitrator. In regard to differences between the halves of Government arising over financial matters, his position must be extremely delicate and embarrassing. He is ultimately responsible to Parliament through the Government of India and the Secretary of State for the administration of the Reserved subjects, of which finance forms a part under the Rules. Therefore the tribunal to which alone the Minister can appeal is far from being

satisfactory. This is a prominent feature of the present Constitution, and its defective nature has been stressed by more than one Minister and ex-Minister”*

(vi) *Relation with Public Services.*—We come, finally, to the very important subject of the position of the Services, particularly the All-India Services, under the Reforms.

We shall not deal here with the All-India Services with reference to two problems (a) The problem of Indianization and (b) the removal of the economic grievances of the Services. We are concerned here with the constitutional position of the Services, so far as it has been affected by the introduction of Dyarchy in the Provinces. This question was being continually considered by the Government of India and the Secretary of State, and finally became the subject of investigation by a Royal Commission of which Viscount Lee of Fareham was the President. Their Report was submitted to His Majesty in March 1924 and as most of their recommendations have been given effect to by the Secretary of State, we shall consider here those that are relevant.

In a Minute to the Report, Prof. Coupland considered the constitutional aspect of the question. The question arises because of the introduction of Dyarchy. Though some All-India Services, notably the Indian Civil Service, are employed both in the reserved and the transferred field, for practical purposes the Services as a whole could roughly be differentiated as Services operating in the one or the other field. The position of those whose work was to lie in the reserved field was only slightly and indirectly

* Minority Report : page 168.

affected. But the case of those who were to work in the transferred field was obviously different. As the fullest opportunities for Responsible Government were to be granted in that field, it was not logically consistent with this principle to maintain for the execution of the Ministers' policy a group of Civil Services the recruitment and ultimate control of which was vested not in Ministers and Provincial Legislatures but in the Secretary of State and Parliament. At the same time it was also recognized that to change the structure of the Civil Service simultaneously with change in the structure of Government might fatally handicap the operation of the new system. The proposal of the Government of India, therefore, to retain the recruitment and control of the Services in the hands of the Secretary of State as a temporary expedient was accepted by Parliament.

But like all temporary measures it satisfied neither the Ministers nor the Services themselves. The Ministers were dissatisfied because they could not create or abolish any permanent post in the Services in that field or reorganize them without the previous sanction of the Secretary of State. Though the Secretary of State had divested himself as completely as possible of his powers of superintendence, direction, and control over the Transferred field, these powers were retained in their fulness so far as the Public Services were concerned. It must be admitted that on the whole the Public Services co-operated with the Ministers in a fine spirit, but embarrassment, friction, heart-burning were not unknown, and nowhere had the Provincial Governors to intervene more frequently than in restoring har-

monious relations between his Ministers and the Public Servants working under them.

In view of this constitutional difficulty the Lee Commission came to the conclusion that for the purposes of Local Governments, no further recruitment should be made for the Indian Educational, Agricultural, Veterinary and other Services in the Transferred field by the Secretary of State. The personnel required for these branches of administration should in future be recruited and appointed by Local Governments. As a consequence of this recommendation the control also over these 'Provincial' Services would go into the hands of the Local Governments. The Local Councils were to pass Acts for the general regulation of the Provincial Services, in the matter of selection and appointment, punishment and discipline, and pensions, promotion, and leave.

It is otherwise with respect to Services operating in the Reserved field of Provincial Governments, and under the Government of India. So long as the Secretary of State was responsible to Parliament for them, it was agreed, that he must have an effective control over the recruitment and control of the Services in those fields. "The Secretary of State can not, in any valid or effective sense, discharge his trust to Parliament for the good Government of the Reserved field unless he controls the making and maintenance of the executive machine on the efficiency of which good Government primarily depends."

The Commission, therefore, recommended that the Secretary of State should continue to have control over the Reserved Services as before.

But the Minority of the Reforms Enquiry Committee were not satisfied with these recommendations. In the first place they emphasize the changed role of the Service under the reforms. "The All-India Services in the past have been mainly responsible for the shaping of policy in India and the combination of political and administrative functions in the Services is, to our mind, mainly responsible for the frequency and strength of the criticism to which they have been exposed in the past. The immunity which Public Services in England or the Dominions enjoy from hostile or unfriendly criticism cannot, we are afraid, be secured for the Services in this country in any large measure unless, among other things, the relations of the Services to the Legislatures are brought into closer approximation with those prevailing in England or the Dominions. When it is recognised by the public that the Services are mere instruments for the execution of the policy of the Government and that they have no political functions to discharge, we think they will cease to be the targets of that criticism which is pointed out as an undesirable feature of the present political conditions in India; for when that stage is reached, it will be the responsible Ministers and not the Services who will have to bear the brunt of public criticism."*

As the Minority say in another place: We venture to think that under the present system, the entire constitution, the method of recruitment, and control of the Services are incompatible with the situation created by the Reforms and the possibility of their further developments. The present organization of the Services came into existence when admittedly the

* Minority Report : page 162.

centre of political gravity was outside India and when the Services took a leading part in the shaping of policy. Those conditions have appreciably changed and will change still further, and it is but natural that there should be dissatisfaction among the Services with their position and also among the Legislatures with the restraints and limitations imposed on their powers in relation to the Services. We think that the question of the Services is inseparably connected with the question of constitutional development in India and we are of the opinion that the relation of the Services to the Legislatures cannot be put on a satisfactory and enduring basis by a mere amendment of the Rules, or even by the delegation of certain powers under Section 96 B."

Conclusion.—It must be admitted, therefore, that Dyarchy, though it received a reasonable trial at the hands of those who had a faith in the Reforms, was a failure so far as it was meant to inaugurate Responsible Government in the Transferred field. There was no Ministerial responsibility to the Councils nor had the latter any real control over the Ministers. The Governor and the Bureaucracy possibly gained rather than lost as a result of the operation of Dyarchy. Dyarchy was a transitional stage. Just as Bureaucracy was the bridge between mediæval autocracy and modern political institutions, so was Dyarchy a bridge between Bureaucracy and Responsible Government. Now that the Provinces have nearly reached the bank of Responsible Government let the bridge of Dyarchy disappear.

(90) PROVINCIAL COUNCILS

We now proceed to examine whether the Reformed Provincial Councils and the electorates which they represent have shown themselves capable of exercising real control over the administration of the Transferred half.

An initial stumbling-block in the way of some provinces as units of Responsible Government is their unsatisfactory formation. Only provinces in North India *viz.*, the Punjab, the U. P., Bengal and Assam are tolerably homogeneous, at any rate from the point of view of language spoken in each. Provinces in Central and South India are heterogeneous, linguistically and racially. In the Central Provinces the cleavage between the Marathi-speaking and Hindi-speaking districts is getting wider; Bihar and Orissa are, as the name suggests, really two provinces than one; Madras has three recognized vernaculars and Bombay four.

It is obvious that the plant of Responsible Government, an exotic in any case, will not thrive in a province divided within itself. A redistribution of the provinces, preferably upon the linguistic basis, is therefore an indispensable preliminary to the development of Responsible Government in India. Demand for the unification of the Karnatak, the Andhra Desh, and Orissa is being persistently made. The Nehru Report is in favour of such redistribution. The Joint Parliamentary Committee rightly pointed out that the existing boundaries of a province should not be changed without due consideration of the views of the Legislative Council of the province. It is also clear that the process of redistribution is bound to be slow

on account of administrative and financial difficulties and though a further instalment of Reforms need not be put off on that account, the provinces should be rearranged without unnecessary delay. If such a re-arrangement adds to the number of existing provinces and makes them more compact and smaller in size or population, that would be an advantage.

We next turn to the *electorate* in the province. From the electoral qualification given in § 75 it must have been seen that the present property qualification is unduly high. It should be considerably lowered. Adult suffrage as recommended in the Nehru Report does not seem to be practicable at present. The election machinery would certainly break under sheer numbers, especially when it is remembered that the overwhelming majority of voters will be illiterate for some years to come. It is also not wise to confer the franchise upon those who are absolutely incapable of understanding its meaning. It has been said with truth that an illiterate voter understands the pecuniary value but not political significance of his vote. For some years, therefore, the franchise should not be co-extensive with adult suffrage. Even in highly democratic countries like England the extension of the franchise was a slow process and though in many recent European Constitutions adult-suffrage has been adopted from the first, Indian conditions differ from those in the West.

We now come to the *method of appointment* of members to the Councils. The composition of a Provincial Council in India differs from a typical democratic body in having (a) separate representation for certain communities *e. g.*, the Mahomedans, the Sikhs, the Europeans; (b) reserved seats for some

communities *e. g.*, the Non-Brahmins; (c) representation of certain special interests *e. g.* Landholders and Industry and Commerce; (d) nominated non-officials representing small or backward communities or interests *e. g.* depressed classes, Anglo-Indians, Wage-earners; (e) nominated officials.

Taking them in the reverse order we can say that the presence of officials is inconsistent with the responsible character of Legislative Councils. The Services must have nothing to do with the formulation of policies. They have to carry out the policies as shaped by the Ministry. The rôle of officials as advocates of Ministerial policy is opposed to the principle of responsible Government; their rôle as opponents of Ministerial policy is subversive of discipline. As friends they are superfluous; as opponents they are undesirable. This does not mean that the Councils will have no opportunities to benefit by the administrative experience of officials; for the latter can be summoned before the Select or Standing Committees of the Legislature and usefully consulted.

As to *nomination* of non-officials, it seems likely that it can not be altogether dispensed with for some years to come. It should be restricted within narrow limits.

No case can be made in favour of the retention of special constituencies. They must disappear.

The crux of the difficulty lies in the claim of certain communities for special consideration in the form of separate election or reservation of seats. We have seen how Lord Minto yielded, in a moment of weakness, to the Mahomedan demand for separate representation. It did not matter much if a community

enjoyed representation in excess of its numerical strength in Councils that were as void of power as the Morley-Minto Councils were. It is otherwise with the new Councils. They are expected to exercise *real* power and sectional representation goes against the whole principle of Parliamentary Government.

In spite of the defects of separate communal representation mentioned in Section 75 the demand for it gained in strength with the approach of the appointment of the Parliamentary Commission.

Those communities which have got the privilege are naturally not willing to give it up. The Majority Report of the Muddiman Committee admitted that communal representation is an obstacle to political advance "but we consider that the abolition of any special communal electorates, and in this we include reserved seats, is quite impracticable at the present time."* The Minority Report, on the other hand, argued that the difficulties arising out of communal tension are a passing phase in politics and should not be emphasized, and that sincere efforts are being made by the leaders of the Hindu and the Mahomedan Communities to come to some agreement on the points at issue. It cannot be said that the two Communities have reached any agreement on this crucial issue. The Mahomedans insist upon separate representation. The Hindus are prepared to make other concessions but would not yield on this point.

Perhaps the most uncompromising advocate of Mahomedan claims is Dr. S. A. Khan† of the University

* Para 69 of the Majority Report.

† Cf his pamphlet : *What are the Rights of Muslim minorities in India ?* Allahabad 1928.

of Allahabad. He says * that "the Muslim community is united by the common ties of religion, the social tie of equality, the cultural tie of language and the historical tie of a glorious past, and is homogeneous and compact". They *i.e.* Mahomedans are in a majority in the Punjab and Bengal and in minority in the remaining provinces. But it is contended that even in the first two provinces numbers are of no avail to them for they are hopelessly backward, economically and educationally, and entirely under the domination of Hindu landlords or money-lenders. Dr. Khan therefore, says †: "The Muslims are convinced that without the safeguard of separate electorates they will not be able to hold their own either in the legislature or administration of their country." He does not want separate representation for all time to come. The Mahomedans are prepared to forego the concession as soon as they reach the level of the Hindus. "All reasonable Muslims are convinced that it (separate representation) must be replaced by a system of joint electorates, with seats reserved for members of all communities.

But it can be abolished only if, and when, the two communities have reached the same educational and economic level, and there have grown a feeling of toleration, a spirit of give and take, in short a feeling of trust, of cordiality and confidence, between the two communities". ‡

But this is just like not throwing oneself into the water until one is able to swim. An important section of the Mahomedans is prepared to forego separate representation for a heavy price. They would

* Page : 66.

† Page : 94.

‡ Page : 93.

require the separation of Sind from Bombay, the introduction of Reforms in the N. W. Frontier Province and Baluchistan, representation in accordance with population in the Punjab and Bengal, reservation of seats in excess of the population in the other provinces and the reservation of one third of the seats in the Central Legislature. As the Mahomedans are in an overwhelming majority in Sind, N. W. F. Province, and Baluchistan; and in a majority in the Punjab and Bengal, it means that they want undisputed domination in those provinces where they outnumber the non-Mohomedans and also a more than proportionate share of seats to enable them to hold their own in the Central and the remaining Provincial Legislatures where they are likely to be in the minority.

It is impossible to support these demands. The spirit in which they are made is not consistent with a true national outlook. As the Nehru Report says, no one community should dominate over another but all should live and let others live. Fullest liberty of conscience and religion should be guaranteed to all citizens alike by its being incorporated, along with other similar rights, in a Declaration of Rights. This safeguard should suffice for all.

Separate representation has intensified communal cleavages. It has nearly undone the work of hundred years of British Rule in India; it has dragged religion into politics, turned orthodoxy into a fashion and put a premium upon fanaticism; it threatens to block permanently the way to a strong united regenerated India.

Turning next to Reservation of Seats it has been demanded by communities that are in a majority as

well as those that are in a minority. As a matter of fact this concession has been given under the existing Rules to the Non-Brahmins in the Madras and Bombay Presidencies where they are in an overwhelming majority. Experience has shown that the community in both the Provinces is sufficiently strong and organized to stand on its own legs without the crutches of Reservation. It is claimed by the Mahomedans if they give up separate representation and accept joint electorates, Reservation for a majority-community is indefensible in theory. It is opposed to Responsible Government. The Nehru Report puts this neatly in the following words. * "Responsible Government is understood to mean a Government in which the executive is responsible to the legislature and the legislature to the electorate. If the members of the executive with the majority behind them have all got in by reservation, and not by the free choice of the electorate then there is neither representation of the electorate, nor any foundation for responsible Government. Reservation of seats for the majority community gives to that community the statutory right to govern the country independently of the wishes of the electorate and is foreign to all conception of popular government. It will confine minorities within a ring-fence and leave them no scope for expansion."

Nor is Reservation helpful to the minorities which are thereby cut off and isolated from the main current of political life. If at all reservation is to be resorted to, it should be in strict proportion to the population of the minority community. It should not be given any special 'weightage' because of wealth or 'political

* Nehru Committee Report : page 43.

importance'. Such concession can be given only at the expense of the majority community or of other minority communities that do not enjoy reservation, and is unfair in either case. Coming to practical politics, it is both undesirable and unnecessary to reserve seats for the Mahomedans in the Punjab and Bengal where they are in a majority. As regards other provinces, the Nehru Report lays down the following formula which represents a compromise* : In provinces other than the Punjab and Bengal we must make an exception in favour of Muslim minorities by permitting reservation of seats, if so desired by them, in proportion to the population both in the Central and Provincial Legislatures. The retention of communal representation to this extent for some time to come is a necessary evil." The Mahomedans might enjoy this privilege of reservation for the next ten years at the end of which period the question is open for reconsideration.

Reservation is not necessary in the case of the other communities in India. They are numerically so small or so scattered that not one of them is likely to derive any real advantage from the microscopic representation which this method will ensure to them.

I am also not inclined to favour any special treatment of the Depressed Classes, either by reservation or by nomination. At one time members of the Civil Service or the missionaries were supposed to be the custodians of the interests of this community. Latterly members of that community were available for nomination. But it can not be said that these nominations were made without any ulterior motive as to their usefulness in other ways. It is wrong to suppose that

* Nehru Report : page 51-52.

a small political concession in the form of reservation will solve the problem of the Depressed classes. It is essentially a social and economic problem. They must be raised socially and economically by special facilities for education and co-operation, so that they may cease to be 'depressed' any longer and may take their proper place in the body politic.

Nor does the European commercial community at the other extreme require special concession. It has begun to realize, or at any rate ought to, that its abiding prosperity does not lie in the enjoyment of exclusive privileges but in a genuine co-operation with Indians in their political advancement. As Sir Sivaswamy Iyer puts it* : "If Europeans threw themselves into the political life of the country it would be attended with great advantage both to their community and the country. With their superior knowledge, political experience, wealth and other qualifications, we should be surprised if they failed to secure due representation. It is because they have kept aloof from the political life of the country and have not chosen to identify themselves with the interests of Indians, that feelings of mutual aloofness have often arisen between them and Indians."

I do not, of course, regard the Nehru Report as the last word upon the subject of Communal representation or indeed upon the larger question of constitutional reform. But I am in agreement with the principles upon which its recommendations regarding representation are based.

Representation in the provinces should approximate as quickly as possible territorial representation, as in Western countries. The strength of the

* Indian Constitutional Problems : page 55.

Provincial Councils must vary within wide limits. There is scope for useful enlargement of the present size. It may be from 150 to 250 according to population.

Their Work.—Though the existing Councils are defective as representative bodies because of the artificial configuration of some provinces and the warping influence of communal representation in all, their record of work must be said to be satisfactory. Advent of the Non-co-operation movement and of the Swarajya Party no doubt interfered with their normal functioning and in two provinces they made Dyarchy impossible. But in other provinces they showed a fine sense of responsibility in co-operating with the Executive for the maintenance of law and order, in cheerfully bearing additional taxation and above all, in putting through a mass of progressive legislation. This is true of all provinces. They showed keen interest in Local Self-Government. By lowering the franchise they widened the basis of the Municipalities and the District Boards. At one end they democratized the Corporations in the Presidency Towns and revived the Village Panchayats at the other. In Education, they considered or passed legislation to make primary education free and compulsory, to diversify secondary education, to co-ordinate school and college education and to broaden the constitution and functions of the Universities. In most provinces the older Universities were democratized and they were made teaching as well as examining bodies. In some new Universities of the residential type were founded. Nor was legislation of a social kind left neglected. The most striking achievement in this field was the passing of the Hindu Religious Endowment Act by the Madras

Council. It became possible by this Act to control the immense wealth of Hindu Temples and *Maths* and divert it to educational and social purposes. Such a measure of religious and social reform was unthinkable in the pre-Reform regime. It bears testimony to the representative, progressive and liberal character of the new Councils.

The activities of the Councils were not confined to mere legislation. They made their influence felt in finance and administration as well. In financial matters they offered useful resistance to additional taxation, and exercised pressure on the Executive to bring about retrenchment. In the sphere of administration they made diligent use of the right of interpellation, of moving Resolutions, and motions for adjournment. The Resolutions dealt with such questions as the separation of the Executive and Judicial functions, abolition of Divisional Commissionerships, annual exodus of Government to Hill-stations during summer, communal representation in the Public Services, removal of the disabilities of the Backward and Depressed classes, providing special facilities for their education, encouragement to indigenous systems of medicine, criticism of the Land Revenue policy of Government, plea for the adoption of a Permanent Settlement, safeguarding the rights of tenants, regulation of usury, village sanitation and rural reconstruction.

But though the Reformed Councils have been far more useful and influential than the Morley-Minto Councils as legislative and controlling bodies they have not succeeded as instruments of Responsible Government. Backwardness of the electorate is a fundamental weakness. Prevalence of communalism

is another. The electors as well as the representatives must learn to combine on political issues. Formation of political parties is indispensable to the working of Parliamentary Government. Party-system has its defects. These defects are accentuated when there are more than two parties in the country. The success of the cabinet form of Government depends upon the existence of two parties. Cabinets depending upon the coalition of two or more groups are generally shortlived. But in spite of all things that can be said against party-system, Parliamentary Government is impossible without it. In India we have yet to learn to build political parties. The voters must be drilled and disciplined as battalions. The members also must learn to abide by party discipline. The Ministers must learn to hold together and work in concert for the promotion of the policy for which their party stands. The evolution of the entire mechanism of Responsible Government must be a slow process, in any case.

Conclusions.—Having reviewed the working of Dyarchy and the Reformed Councils it will be sufficient if a few observations are made upon the changes that are necessary in the provincial executive. If Dyarchy is to disappear, the Executive Council goes along with it. The Provincial Governor should be the constitutional head of the Province. He should carry on the entire administration of the Province with the help of a homogeneous Ministry. He should leave the formation of the Ministry to the Chief Minister whom he should appoint with due regard to his position in the Council. Five to seven Ministers will be required to carry on Provincial Government. The Ministers should not be over-burdened with routine work but

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should be left sufficient leisure to educate the Councils and electorates in the principles of Responsible Government.

(91) REFORMS IN CENTRAL GOVERNMENT

The introduction of a substantial measure of responsibility in the Central Government is now absolutely necessary. Nothing contributed more to bring the Reforms into discredit than the helplessness of the Legislative Assembly before the Government of India. Indeed the combination of an irremovable Executive and a popular Legislature generally ends in deadlock. Such deadlocks were overcome by the exercise of the extraordinary powers of certification (in the case of legislation) and of restoration (in the case of the budget) with which the Governor-General was armed under the Constitution. Frequent use of these powers tended to antagonise the Legislature and make it more irresponsible. It has been shrewdly observed that the main defect of the Reformed Constitution was that in many directions it stimulated a sense of irresponsibility than a sense of responsibility. The position of the Government of India was safe so long as it could always command an official majority in the old Legislative Council; it became anomalous when the Central Government was confronted with a Legislative Assembly with a substantial elected majority. As Sir Tej Bahadur Sapru points out* "The whole theory of the subordination of the Government of India to the Secretary of State and Parliament was consistent with the state of things which prevailed when the Legislative Councils were merely advisory bodies and contained clear

* The Indian Constitution : pages 65-66.

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official majorities. That position, so far as the Legislatures are concerned, has been changed, and the obvious incongruity between the present position of the Assembly and an irresponsible and irremovable Executive is in the nature of a constitutional anomaly not free from dangers to the smooth working of the administration and the growth and development of healthy relations between the Legislature and the Executive."

The difficulties and deadlocks that arose out of the relations between the Government of India and the Assembly are well illustrated by the struggle over the Princes Protection Bill, the Reserve Bank Bill, and the Public Safety Bill. The first Bill was certified by the Governor-General when the Assembly refused leave for its introduction. The Reserve Bank Bill well illustrates the awkward position in which the Government of India often found themselves placed because of their duty to carry out the mandate of the Secretary of State and their desire to placate the Assembly. The then Finance Member, Sir Basil Blackett, had, after protracted negotiations, arrived at a provisional constitution of the Directorate of the proposed Reserve Bank of India that was agreeable to the leading politicians in the Assembly. But the Secretary of State would not accept the compromise and the Finance Member is reported to have even tendered his resignation. He then went to England to have conversations with the Secretary of State and a new Bill embodying the views of the Secretary of State as to the Reserve Bank of India was sought to be introduced in the Assembly. The President of the Assembly ruled that the new Bill could not be introduced as the old Bill had not been formally with-

drawn, and in this way a very important item in the reorganization of Indian currency and banking system had to be indefinitely postponed. As for the Public Safety Bill, the Assembly could not see eye to eye with Government regarding the urgency of special legislation to check the progress of Communist propaganda in India. After long debates the Bill reached the Select Committee Stage. In the meantime the Government of India arrested certain leaders of the Communist Party throughout India and instituted proceedings against them at Meerut. When the Public Safety Bill, as reported upon by the Select Committee, came up for consideration the President again intervened. The occasion was marred by the throwing of a bomb at Government Benches in the Assembly which, fortunately, did not result in anything more serious than minor injuries to the new Finance Member and Sir Bomanji Dalal and some damage to the furniture. The next day the President ruled that the Public Safety Bill cannot be proceeded with as the Members of the Assembly would be deprived of the right of reasonable debate, the presumption upon which the Bill was based being the same as that which was being judicially examined in the trial of the Communist prisoners proceeding at Meerut. The President held that either the Meerut prosecutions must be dropped or the Public Safety Bill must be dropped. The Governor-General chose the latter alternative and passed an Ordinance which for the time being has all the force of an Act of the Legislature. The Ordinance gave to the executive the additional powers which the Public Safety Bill proposed to give. Only a passing reference need be made to the tactics of the Assembly in throwing

out demands for grant pertaining to the Executive Council, to the Railways, the Customs Department by way of protest, and the restoration of those demands by the Governor-General. The conviction that a demand was certain to be restored by the Governor-General made the Assembly on the one hand reckless and irresponsible in the vetoing of grants; its irresponsibility, on the other hand, made the Government of India indifferent, if not callous, to the wishes of the Assembly. The latest instance of the intriguing situations that now and then arose between the Government and the Legislature is furnished by the announcement that the Governor-General would prolong the life of the existing Assembly for an indefinite period. Similar announcements have been made with regard to most Provincial Councils by the Governors. This procedure has deprived the electorates of the opportunity they would otherwise have obtained of pronouncing their views upon controversial political issues of the hour *e. g.* the Public Safety Bill, and the Simon Commission.

I do not wish to say anything about these and other points, for they have been mentioned here just to demonstrate how impossible it would be if the present responsibility of the Government of India to Parliament was not substantially modified. The increasing responsibility of the Indian Government to the Legislature is also rendered inevitable not only by the obstructionist attitude of the Assembly but also by the solid and constructive work it has achieved in the field of legislation and finance. As 'Kerala-putra' points out* the Assembly took keen interest in abolishing racial distinction in criminal trials, (thanks to the recommendations of the Committee of which Sir Tej

* The Working of Dyarchy in India : page 101.

Bahadur Sapru was the Chairman) and the abrogation of the Press Act. It showed great interest in the question of defence. In addition to passing a series of Resolutions on the Esher Committee (or the Army-in-India Committee) it compelled the Government of India to undertake the Indianization of the Army, and give better opportunities to Indian youths for military training in India. Its interest in the Railway policy led to the separation of Railway finance from general finance, and this has gone a long way in bringing the whole question of railways before the Assembly every year. It also favoured the State-management of railways. Under its pressure the Government of India were obliged to adopt a policy of "discriminating protection" and it gave favourable consideration to the Reports of the Tariff Boards pertaining to the Iron and Steel and the Textile industries. It was not less keen in championing the cause of Labour. One of its members was always appointed to attend the International Labour Conference at Geneva and it passed the Indian Factories Amendment Act, the Workmens' Compensation Act, the Trades Union Act, and the Trade Disputes Act. It also undertook and finished the great work of amending and codifying the law relating to Criminal Procedure. It raised important debates on constitutional questions such as the abolition of the non-votable items in the Indian budget, the remission of provincial contributions, the holding of a Round Table Conference for the revision of the Constitution, demand for Dominion Status etc. On the whole we agree with the view of Keral-putra that the Assembly has been one of the successful features of the Reforms Act.* "Its

* The Working of Dyarchy in India : page 108.

legislative work has been far-reaching and comprehensive; its influence, in matters of administration, has not been directed either towards a weakening of the Central Government or exercised without consideration for the supreme necessity of maintaining law and order. Its enthusiasm for social reform has been praiseworthy and it has been assiduous in its demand for Indianization of the services and for a share in national defence. It has effected considerable retrenchment in administration and has continuously impressed on the Government the necessity of economy."

Nor is an irresponsible Central Government compatible with the grant of autonomy to the Provinces. It is unthinkable that while in the Provinces the Councils are provided with an ampler scope for Responsible Government similar powers to control and direct the Government of India are withheld from the Assembly.

The difficulty in the case of the Central Government arises from the circumstance that in addition to being responsible for the administration of *British* India it is also responsible for relations with Indian States. In the latter capacity it cannot be made responsible to the Indian Legislature. Kerala-putra, thus comments upon the implications of this distinction: "So far as the administration of British India is concerned and it is only there that Parliament can directly interfere—the administration will be one and unitary under a Prime Minister and Cabinet who would represent all the constitutional powers of the Governor-General in relation to British India. The Central Government, in its capacity as a Paramount Power, will be a distinct authority interested in the

affairs of British India only to the same extent as it is now in the affairs of Mysore or Baroda. Without such a differentiation, Responsible Government will be impossible in India, because the British Government has not the right, even if it so wishes, to hand over the suzerain powers which it enjoys over the people of Indian States to the people of British India.”*

The rights of Indian Princes, their duties to their subjects and their relations with Paramount Power represent one difficulty in the way of the Central Government being made completely responsible to the Indian Legislature. Another is represented by the problem of defence and foreign relations. Here Imperial interests are at stake and it is clear that in these and kindred matters the devolution of responsibility to the Legislature will be a very very slow process. Whether the final goal is to be reached through the stage of Dyarchy in the Central Government, or by the adoption of certain safeguards and conventions is to be seen. The relations to be maintained and the interests to be safeguarded are of a very complex and delicate nature. It is clear, in any case, that the period of trial and probation will be long. It will bridge the gulf between Responsible Government in the Provinces and complete Dominion Status just as Dyarchy bridged the gulf between Responsible Government in the Provinces and Bureaucracy.

The Indian Legislature.—We now come to the Indian Legislature. Its bicameral constitution must continue. The Council of State, however, requires to be reorganized. It is, at present, a very small body. It must contain at least twice its present number.

* Working of Dyarchy in India : page 120.

The Nehru Report would have 200 members in it and is disposed to treat it like a Senate in a Federal constitution with the Provincial Councils returning a fixed proportion of members to it. This means a reversion to the system of indirect election that prevailed before the Reforms. But it will not be difficult to modify the existing rules so as to get a Council of State by direct election. It should also consist of a few nominated members. Its life should be of from seven to nine years, for the present limit of three years for the Assembly and five years for the Council of State is too short. The Assembly should last for five years and the Council of State for at least seven years.

On all important issues the Council of State must yield to the Assembly. At the same time it should not be a feeble body merely registering the Bills passed by the Assembly. Its real position and function are thus described in the Nehru Report:* "There is no justification whatever for a Second Chamber consisting of obscurantists and people belonging to special classes whose chief aim is to protect their own interests and to obstruct all liberal measures. The only justification for it is that it ensures the reconsideration of all measures emanating from the Lower House in a somewhat calmer atmosphere and more dispassionately than is likely to be the case in the Lower House when controversial matters are discussed." It is premature to say whether the Council of State should also contain representatives of the Indian States. Their inclusion depends upon (a) the readiness of the majority of Princes for some organic union with British India and

* Nehru Report : page 94.

(b) the Upper House being constituted upon federal principles. As for (a), the Princes as well as the Government of India are now considering the Report of the Butler Committee. The Princes seem to be more anxious about their rights and privileges as Princes and their relations with the Paramount Power, and about their claim for a voice in the formulation of policies affecting India as a whole; they have not yet realized the need for a close or organic union with British India. And as for (b), it is not clear whether the Indian constitution will evolve along federal lines. I have expressed my own view that the unitary type of constitution is better adapted to conditions prevailing in India.

As for the Assembly, it requires to be much enlarged. The Nehru Report would have 500 members in the House of Representatives (the Legislative Assembly).

The Nehru Report would vest all legislative power in a Parliament consisting of the King, the Senate and the House of Representatives. It includes the British Provinces as well as the Indian States into a Commonwealth of India. The executive power of the Commonwealth is vested in the Governor-General who is to represent the Crown in India. He is to act on the advice of his Executive Council consisting of the Prime Minister and six other Ministers. According to the Nehru Report there will be no Dyarchy in the Central Government, for the entire administration of India—including defence, foreign relations and relations with Princes—is to be entrusted to the Ministry which is to be completely responsible to the House of Representatives.

As noted before, this goal may not be reached at

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once. But perhaps sufficient has been said with regard to the reform of the Central Government and Legislature.

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Any orientation in the Government of India compelling them to depend more upon Delhi than upon Whitehall for their policy must raise the fundamental question : to what extent and in what manner can the Government of India be freed from the control of the Secretary of State and be made responsible to the Indian Legislature at Delhi? Parliamentary control was justified so long as there was no trained electorate in India. That control must dwindle and ultimately cease with the growth of Responsible Government in India. We have already examined the nature of Parliamentary control in theory and practice. In theory it was absolute; in practice it meant the control exercised by the Secretary of State in the name of Parliament. This can not continue any longer. As Mr. Ramsay MacDonald puts it,* "Though Parliamentary control is an enormous advance upon Company rule, there is a stage beyond it when the real control of Indian affairs should rest with those who benefit or suffer from that Government."

This does not mean abolition of the Secretary of State for India. He should continue but his supervision and control should extend only to questions of Imperial or International complexion. His position should approximate to that of the Secretary of State for the Colonies.

The authority shed by Parliament will be taken up by the Assembly. The Governor-General in Council

* Government of India : page 52.

can become responsible to the Assembly so far as the administration of British India is concerned. In so far as he is responsible for relations with Indian States, his responsibility to Parliament will continue. As Kerala-putra says* "It is obvious that the people of British India have no more claim to authority over the people of the Indian States than the latter have to authority over them. Clearly, therefore, until such time as it is possible to establish a Parliament representing the people not only of British India but of the Indian States as well, that aspect of the Government which deals with the whole of India must remain outside the control of the Indian Legislature."

When most questions pertaining to administration of British India are disposed of in India without reference to the Secretary of State there will be little work left for the India Council. We have already considered the arguments for its abolition. Its continuance as an efficient body is incompatible with the responsibility of the Secretary of State to Parliament for Indian affairs and with the responsibility of the Government of India to the Legislature.

No doubt the Secretary of State will require a body of men experienced in Indian affairs for consultation and guidance. But the questions coming up before him will be broad questions of policy and not of detailed administration. Men of wide outlook and varied experience will be more useful than retired bureaucrats. It will be always easy for the Secretary of State to have a Committee of such men drawn from both the Houses of Parliament. The House of Lords will always contain an influential group of Indian administrators of the status of Provincial Governors,

* The Working of Dyarchy in India : page 119.

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or Governor-Generals or Commanders-in-Chief. In the Lower House there will be many more interested in India because of her commerce, industry, history, philosophy, art or humanity. He can, in any case, appoint Committees or Commissions to examine complex or technical matters. He has no need of a Council of India.

Reduction in the establishment of the India Office will be counterbalanced by addition to the establishment of the Indian High Commissioner whose position will rise with every step towards the goal of Dominion Status.

PART V

SOME RESULTS AND PROBLEMS OF INDIAN ADMINISTRATION

CHAPTER XIX

(93) FOREIGN RELATIONS AND FRONTIER POLICY

We may compare the Constitution of a State to a sort of mechanism through which the citizens of that State expend their energy for their moral and material development. The less friction there is in the machine, the more efficient will be the form of Government. In the bureaucratic form of Government the friction is very great because of the opposition between the Government and the governed. The friction is least in the Responsible form of Government because the people are the Government. The mere provision of a machine, however, is not enough for the progress of a people. There ought to be a corresponding increase in the fund of national energy. The results and problems of administration, therefore, which flow from the working of the Constitution, are as important as that Constitution itself. The student will find most of them treated in a lucid manner in the annual report in the material and moral progress of India compiled by the Director of the Information Bureau with the Government of India. Prof. Rushbrooke Williams and his successor, Mr. J. Coatman, have both proved able editors and compilers.

Let us first review the history and analyse the present condition of the Frontier Policy of the Indian Government.

Foreign Relations.—Ever since India came direct under the Crown, there has been a great extension of her relations with the Asiatic neighbours, and corresponding increase in her Military liabilities and preparations and, as a consequence, large addition to the burden of taxation upon the ryot. As Lord Curzon explained in one of his speeches, this extension was due to two causes. (1) The extension and consolidation of the Indian Frontier brought India into more direct and intimate relations with the countries lying immediately beyond. (2) Secondly, the growing interest which the European Powers *e. g.* Russia, France, and Germany began to take in the Central Asia produced the same result. To these we may add the increasing influence of Japan, the revival of China under a Republican form of Government, the advent of Russia as a Soviet power, and the great Pan-Islamic Movement that is going on in South-Western Asia.

The position of India with respect to the Asiatic and European powers was thus put in a picturesque manner by Lord Curzon: (Budget speech 1904). "She is like a fortress with the vast moat of the sea on two of her faces, and with mountains for her walls on the remainder. But beyond those walls, which are sometimes by no means of insuperable height and admit of being easily penetrated, extends a glacis of varying breadth and dimensions. We do not want to occupy it, but we also cannot afford to see it occupied by our foes. We are quite content to see it remaining in the hands of our allies and friends; but if rival and

unfriendly influences creep up to it and lodge themselves right under our walls, we are compelled to intervene, because a danger would thereby grow up that might one day menace our security."

It is the special domain of the Viceroy to watch the Foreign Relations of India with her neighbours.

Frontier Policy.—The problem of the "Defence of India" has been lucidly examined by "Arthur Vincent" in the Oxford Series of "India of To-day." He considers that problem under three sections (1) Maritime Defence, (2) The Northern, North-Eastern, and Burman Frontiers, and (3) The North-West Frontier.

(1) *Maritime Defence.*—Though India does not lie directly upon the great sea-routes she lies to a little north of the main track from West to East. The danger of her vast exposed coast-line was well brought out by the adventurous career of "*The Emden*" during the Great War. But though India cannot be free from such hostile demonstrations on account of progress in naval construction and strategy, it is not likely that so long as England holds the command of the sea, any real danger will come upon her from the Western Coast. A danger from the East on account of the naval programmes of Japan and the United States is not so improbable and experts believe that the crux of the problem of naval superiority in the Indian Ocean has shifted to Singapore. The idea of developing that base was given up by the first Labour Government, but was again taken up by the Conservative Government that followed. The new Labour Government is anxious to arrive at a programme of naval disarmament in concert with America. Whatever the upshot of these negotiations it is clear that though no

serious danger is threatened to the safety of India from the sea, the importance of protecting her sea communications, her ports and coasts, and the provision of naval bases, and dockyards cannot be minimised. The naval expenditure of India was represented hitherto by her contribution of £100,000 towards the upkeep of the East Indies Squadron of the British Navy. But India ought to have her own Navy as the other Dominions have got their contingents. Her approach to the "Dominion" status requires an independent Navy. It is required not only for purposes of defence, but also for the purpose of encouraging maritime enterprise among the Indians.

(2) *The Northern, North-Eastern, and Burman Frontiers.*—Not much need be said about the defence of India in these quarters. The Mountain Wall of the Himalayas and the mediæval condition of Tibet protect India on the North. On the North-East the country is equally difficult, and inhabited by wild tribes which are kept under control by the Military Police of Assam though occasionally some military demonstration is required *e.g.*, the Abhor Expedition of 1911. A considerable portion of the Burmese Frontier marches with the boundary of the Chinese province of Yunnan. The country is not quite so inaccessible and is well adapted for large military operations, but no danger is threatened from this sector of the Frontier, so long as the Chinese of this region are in their present state of division and political torpor.

The real problem of defence centres round *the North-Western Frontier.*—In the two Chapters dealing with the territorial expansion of the East India Company, India's relations with Afghanistan were traced

up to the year 1857. The twelve years that followed the Mutiny were years of quiet on the Frontier. The danger of Russian invasion was in abeyance and what is called the policy of "Masterly Inactivity" of Lord Lawrence held the field. It consisted in the abstinence from any active interference in the affairs of Afghanistan by the deputation of a high British Officer with or without a contingent, or by the forcible or amicable occupation of any part of tract in that country beyond the natural frontier of India and in placing full reliance upon a compact and highly equipped and disciplined army within or on the border of the country.

In accordance with this policy Lawrence refused to do any thing more than acknowledge Sher Ali, the son of Dost Mahomed, after the latter's death in 1863. Lord Mayo, who succeeded Lawrence, generally followed the latter's policy but his career was cut short by assassination in 1872. His successor was Lord Northbrook. But about that time the Imperial party was getting stronger in England and the danger of Russian invasion revived. Lord Salisbury who became the Secretary of State in 1874 fell in with the views of this "forward school" and desired Lord Northbrook to send a "mission" to Kabul. As the latter was unable to comply with this order, he (Northbrook) resigned. Thus ended the period of peace which began in 1858.

Disraeli chose Lord Lytton as the successor of Lord Northbrook because "the critical state of affairs in Central Asia required a statesman" and Lytton was in entire accord with the policy of Disraeli. In spite of repeated efforts, however, Sher Ali refused to allow a mission to visit Kabul. With a view, therefore, to

isolate Afghanistan, and facilitate attack upon it in the event of war, Lytton secured from the Khan of Khelat a footing in Baluchistan. Quetta was permanently occupied by the British by the Treaty of Jacobabad, December 1876. Similarly, on the Eastern frontier of Afghanistan, the valleys of Kurm and Khost were occupied, and though in the meanwhile the Russian menace had disappeared, war was declared upon Afghanistan on the 20th November 1878. This war is the Second Afghan War and it was brought to a close by the treaty of Gandmak on May 26th 1879 which assigned to the English the territories of Pishin, Sibi, and Kurm and allowed them to have paramount control "over the external relations of the Amir." But Sir Louis Cavagnari, the British Ambassador in Kabul, was put to death and the War was renewed. In April 1880 the Conservative Government fell and Lord Lytton also resigned. Gladstone was successful in stemming the tide of Imperialism in England and Lord Ripon made peace with the Afghans recognising Abdur Rahman as the Amir and withdrawing the army from Kabul and Kandahar.*

Amir Abdur Rahman was a capable Ruler. He established a firm rule in Afghanistan. Though peace on the Frontier was threatened by the continued aggression of Russia which culminated in what is known as the "Pendjeh Incident" in 1885, war was averted by diplomatic pressure upon Russia. Another important event in the regime of Abdur Rahman was the delimitation of the border between India and Afghanistan in 1894. The border is known as the "Durand Line." "Spheres of influence" was the name given to the new policy which the Government of

* R. C. Dutt ; India under Victorian Age.

Lord Lansdowne set itself to pursue. "This policy aimed at surrounding India's natural frontier with a belt of country in which British influence alone should prevail. With the dwellers along this political frontier no foreign power, Russian, French, or Chinese should be allowed to interfere. The independence of the tribes within this belt was to be carefully respected while the Indian Government claimed to itself the right of making roads through any part of it and maintaining posts at need for their protection."

But the inclusion of places like Chitral, Swat and Waziristan within the British sphere of influence, and the occupation of the outpost of Chitral threw the whole borderland into commotion which was only kept down by expensive military operations. By the beginning of 1898 some kind of peace was established on the Frontier.

Lord Curzon.—Frontier policy was one of the twelve reforms to which Lord Curzon addressed himself soon after his arrival in India. His policy consisted in the withdrawal of regular troops from advanced posts in tribal territory, and their concentration in posts upon or near the Indian border. At the same time the regular troops were to be replaced by tribal levies trained by British officers *e.g.*, the Swat and Chitral Levies, the Khyber and Samana Rifles etc. Thus the tribes themselves were to be enlisted for the garrisoning and protection of their own country. The second point in Lord Curzon's policy was the constitution of the North-West Frontier Province under a Chief Commissioner, who was directly under the Governor-General. By this means the relations with the tribes in the five districts of the Punjab were brought under the direct supervision of the Governor-General. But

Lord Curzon was aware that "Waziristan" was the weakest link in the whole chain. "Waziristan will for some years to come be a section of the Frontier that will require careful watching."*

Third Afghan War.—Relations continued to be of the closest with Amir Habib-Ullah—the successor of Abdul Rahman. During the first years of the Great War the Anglo-Afghan friendship was sufficiently strong to bear the strain of Turkish hostility. But all of a sudden Habib-Ullah was assassinated in 1919 and his successor Amir Amanulla was driven into a war with the Indian Government. But within four months of the declaration of hostilities peace was established. Having measured his strength with the Indian Government and made friends with them the Amir set about 'modernising' Afghanistan. He was the first Afghan ruler to visit Europe where he had a warm reception. After his return to the kingdom, however, he found the whole country in arms against him on account of his reforming zeal and he had to leave his Kingdom. At the present moment there is anarchy in Afghanistan. The tribes are fighting against each other. The policy of maintaining a strong and friendly Afghanistan on the Indian Frontier is for the moment impossible. The danger of 'Soviet' Russia beyond Afghanistan is as imminent as ever. The agents and emissaries of that Government have been continuously busy and it is difficult to say what the ultimate consequences will be of their revolutionary and mischievous propaganda.

The state of anarchy prevailing in Afghanistan has increased the danger of tribal raids upon the Indian Frontier. The wild tribesmen who inhabit

* Curzon's Speeches : Vol. II, 157.

the region between India and Afghanistan have no other occupation but that of raiding, and whenever there is a shortage of food in their barren country, they descend upon the peaceful plains. The danger of the raids has been immensely increased since the Great War and the War with Afghanistan, because it has enabled the tribesmen to secure vast quantities of arms. Not only was the country saturated as it were, with arms, but two tribes of Waziristan got entirely out of hand. Of these the Afridies who are more civilized and better organized in tribes were brought under control by Sir John Maffey. But the Mahsuds and Wazirs—who are at once barbarous and ill-organized—proved obdurate, and the whole territory had to be “occupied.” Though that territory has been since evacuated the menace of tribal disturbance is ever present on the Frontier.

We have thus passed under review the opposing policies of “Masterly Inactivity” of Lawrence and “Forward Policy” of Lytton and the policy of Lord Curzon which was a compromise between the two. The policy has been one of continuous growth and adaptation and the difference between its various phases lies in the degree of importance to be attached to the Russian danger and in the methods of meeting it. The ‘Forward School’ maintains that the danger is real and is best met on the farther side of Afghanistan and would not allow the enemy to approach the mountain passes. For this purpose it would annex the whole country right up to Afghanistan and it would spare no effort to keep the Amir and ally of the British Power. For the moment diplomatic relations with Afghanistan have been cut off and Government is following the policy of “wait and see.”

(94) DEFENCE

Army in India.—After the abolition of the three separate armies of Bombay, Bengal and Madras in 1893, a reorganization took place according to the plans of Lord Kitchner. The Indian Army was divided into two parts—the Northern and Southern—each under a General Officer. But the scheme proved very costly and was not fully carried out. The Great War brought out the defects of this scheme and an extensive reorganization took place after the conclusion of hostilities. Under the new scheme the whole of India was divided into 14 districts grouped into four Commands, each district containing a certain number of Brigade Commands.

In July 1919 the Esher Committee was appointed by the Secretary of State to inquire into the post-war reform of the Army, its relations with the War Office and India Office, the position of the Commander-in-Chief in his dual capacity as Head of the Army and Member of the Executive Council, and other matters related with the Army. The Committee pleaded for diminution of the detailed control of the Indian army by the India Office; and as for the Commander-in-Chief, though not unanimous, it was of opinion that he should be the sole military adviser of the Government of India and be the administrative as well as the executive head of the army. Reference has been made in section 45 to the Army Department and the present position of the Commander-in-Chief.

The Defence of India raises three questions that are closely connected: (a) the composition of the Army in India; (b) the purpose or purposes for which it is to be maintained and employed and (c) the authority which should control the army.

(a) The Army in India consists of two parts: the British Army and the Indian or Native Army. The proportion between the two has varied between 1 to 2 and 1 to 3. During recent years it is about 1 to 2·5. An impassable gulf stands fixed between the two parts, the Indian officer and soldier being in every way inferior to the British officer and soldier as to status, pay, equipment, promotion etc. The Indian Government has hitherto shown a profound distrust of the Indian population in the matter of military service. Recruitment is confined to certain areas and classes, their training and equipment are purposely kept at a very low level and they are never allowed to develop a sense of solidarity. The British force is unnecessarily large and is maintained partly to overawe the Indian Army should it or the country at large show signs of restlessness and open rebellion and partly to stiffen the army. But it entails an enormous cost on the Indian exchequer.

As for (b), the purpose of the Army in India, Sir Siwaswamy points out: * "The military policy of the British Government in India is really composed of two strands. One is concerned with the legitimate requirements of the defence of India which may be called the domestic requirements of India. The other strand is concerned with the requirements of British Imperial policy." This twofold function explains its composition as well as total strength. Lord Curzon also observed: † "The Indian Army in fact has always possessed and has been proud of possessing a triple function; the preservation of internal peace in India itself; the defence of the Indian Frontiers; and

* Indian Constitutional Problems : page 109.

† The Indian Corps in France : Introduction page VIII.

preparedness to embark at a moment's notice for Imperial service in other parts of the globe. In this third aspect, India has for long been one of the most important units in the scheme of British Imperial defence, providing the British Government with a striking force, always ready, of admirable efficiency and assured value." The value of the Indian Army for Imperial purposes was demonstrated in the Great War.

As for (c), the controlling authority, the employment of the Indian Army for Imperial purposes in any part of the world in case of necessity naturally transfers the control over the Indian Army from the Government of India to the Imperial General Staff. The British War Office regards the Indian Army as merely a part of the total military forces of the Empire. The Esher Committee emphasized this aspect of the Indian Army. It could not consider the administration of the Army in India otherwise than as part of the total armed forces of the Empire.

It is clear that the present composition, functions and control of the Army in India require radical revision in view of the goal of Responsible Government that has been held out before the country. Responsible Government postulates ability of the country to defend itself against foreign aggression and maintain internal peace and order. India's present helplessness is the result of the deliberate policy of British rule in India. The Indian Legislature would cheerfully bear the cost of defence if the Army was entirely Indian in composition. It is persistently demanding two things: rapid Indianization of the Army and extension of existing facilities for the training of Indians for a military career.

The steps taken by the Government of India have proved wholly inadequate. The Commander-in-Chief announced in February 1923 his scheme of the Indianization of eight units of the Indian Army. The process of Indianization relates only to the Indian Army. It is in no way connected with the British units which serve in India or with the question of reducing their number. It simply means the replacement of British officers of the Indian Army by Indian officers holding King's Commission. Not only is the scheme very limited in scope but it would take full twenty five years before the eight units are fully Indianized.

There are two avenues for entering the army as officers, namely, by securing the King's Commission or the Viceroy's Commission. Before the War King's Commissions were held exclusively by British officers. An important departure was made when the King's Commissions were thrown open to Indians. As a cadet has to qualify himself for the Commission by passing a course of training at the Military College, Sandhurst, about 10 seats were reserved annually for Indians. Also a Military College—known as the Prince of Wales Royal Military College—was established at Dehra-Dun for the preliminary training of cadets for Sandhurst. Military career requires a thorough training. Certain mental qualities like initiative, resolution, coolness of judgment and capacity to command have to be developed and again the scientific and technical aspects of military organization and strategy have to be understood. The existing facilities for training are quite inadequate. Government appointed the Indian Sandhurst Committee (also known as the Skeen Committee). Its report was published on April 1st 1927. It

recommended the abandonment of the Eight Unit Scheme and its replacement by a scheme providing that half the total cadre of King's Commissioned officers in the Indian Army should be composed of Indians by the year 1952, the establishment of an Indian Sandhurst in 1933, and the throwing open of all branches of the Army to Indians. Its complaint against the Eight Unit Scheme was that it barred the co-operation between Indian and British officers. To ensure an adequate supply of Indian officers it recommended the reservation of a progressively larger number of vacancies for Indian cadets at Sandhurst pending the establishing of Indian Sandhurst in 1933. Recruitment from the British Sandhurst was to continue even after the establishment of the Indian Sandhurst. The Committee urged the employment of Indian officers in the Artillery, Engineer, Signal, Tank and Air Arms, and recommended that Indian cadets be admitted at Woolwich and Cranwell for that purpose. The Committee attached the greatest importance to the maintenance of a due portion of British Army in India and adequate recruitment of British officers.

The Assembly though not quite satisfied with the Skeen Committee's Report was prepared to accept it if immediate effect was given to its recommendations. But here again the Indian Government had to yield to the superior power of His Majesty's Home Government and they could not accept the most important of the recommendations of the Skeen Committee. The Commander-in-Chief insisted upon efficiency of the army—for domestic as well as Imperial purposes—as the only test to which all proposals about Indianization must conform. He said that the Indian Army

formed one link in the chain of Imperial defence and no changes in its organization, which might affect its efficiency, could be undertaken without the fullest consideration of His Majesty's Government who were ultimately responsible for the security of the whole Empire. The Government of India, therefore, though agreeable to a further measure of Indianization would not tie themselves to the rigid time-table of Indianization proposed by the Skeen Committee. For the same reason they would not commit themselves to the establishment of the Indian Sandhurst in 1933, though they would give stipends to a larger number of Indians going to England for military training. Government were prepared to throw open a few vacancies at Woolwich and Cranwell to Indians. Referring to the constitutional aspect of defence the Commander-in-Chief said, "As constitutional advance progresses, the question will continually be asked how far the military side of Indian Swaraj has kept pace? Government contemplates that, as India progresses towards full Responsible Government within the Empire, there may be in process of development an Army of the same character as the Dominion Armies, organized on a national basis and officered by Indians holding their own distinctive national form of Commission."

Government's unwillingness to accept the basic principles of the Skeen Report caused great disappointment to the Assembly which successfully moved a motion for adjournment as soon as the Commander-in-Chief announced the views of the Imperial and Indian Governments upon the Report of the Skeen Committee. Nor have any appreciable results accrued from the recommendations of another Committee, presided over

by Sir John Shea, the Adjutant General. The objects of the recommendations were * “(1) to create a national desire for patriotic military service and afford opportunities for military training to a wide range of the manhood of India and so lay surely and solidly the foundation of a National Army and (2) to provide a second line of defence to support the regular army in time of war.” Their main recommendations were the expansion of the University Training Corps, and the formation of urban battalions of the Indian Territorial Force.

Whatever the composition of the army, for what purpose shall it be employed? The Indian demand was thus expressed in a Resolution passed by the Assembly in 1921 on the Esher Committee Report: “That the purpose of the Army in India must be held to be the defence of India against external aggression and the maintenance of internal peace and tranquillity. To the extent to which it is necessary for India to maintain an army for these purposes, its organization, equipment and administration should be thoroughly up-to-date, and, with due regard to Indian conditions, in accordance with the present-day standards of efficiency in the British Army so that when the Army in India has to co-operate with the British Army on any occasion, there may be no dissimilarities of organization etc. which would render such co-operation difficult. For any purpose other than those mentioned in the first sentence, the obligations resting on India should be no more onerous than those resting on the self-governing dominions, and should be undertaken subject to the same conditions as are applicable to those dominions.”

* Indian Constitutional Problems : page 117.

So long as the dual purpose—domestic and Imperial—of the Indian Army continues its control will present a great constitutional problem. The Secretary of State for India and through him the British War Office will claim a decisive voice. On the other hand the Indian Legislature will claim control over the military budget for it should not be forgotten that the whole cost of the army—for domestic as well as Imperial purposes—falls upon the revenues of British India. Whether the conflicting claims will be satisfied by some form of Dyarchy in the Central Government as Moderate Indian opinion would suggest or by the complete subordination of the Army Department to a responsible Indian Ministry as Extreme Indian opinion would demand, is to be seen.

(95) RAILWAYS

Government Policy regarding Construction.—It is unnecessary to emphasize the importance of a good system of a communications for the material and moral development of a country. The East India Company sorely felt the absence of good roads in India and the necessity of constructing trunk roads was increasingly felt with every expansion in its territories. Little was, however, spent on the construction of such public works, as we saw in an earlier section (§ 24). Lord Dalhousie laid the foundation of Railways, Posts and Telegraphs in India and established the Public Works Department. In his famous Minute (Section 30) he referred to the great advantages of connecting the interior of the country with the principal ports for the development of commerce. The Mutiny demonstrated the military importance of railways and since

then the State has taken keen interest in this subject.

The Railway policy of Government regarding the construction of railways falls into well-defined periods. In the first period (1850-1869) Government relied upon the agency of Joint Stock Companies formed in England. It was felt that British enterprise and capital would be forthcoming if railway construction in India was made sufficiently attractive to the British investor. Accordingly Government offered valuable concessions to the Companies such as (a) the free gift of land, and (b) a guaranteed rate of interest ranging between $4\frac{1}{2}$ to 5 p.c. on the invested capital, payable at 22 shillings per rupee. In return Government retained certain nominal powers of supervision and control, claimed a share in the profits (if any were left after making up the guaranteed interest) and had the option of purchasing the lines after 25 to 50 years. This policy is known as the Guarantee System. The defect of this system was that the guaranteed interest encouraged extravagance in the construction of railways and waste in management. As the railways thus constructed could not earn the stipulated interest, the State had to make good the deficit by drawing upon the general revenues of the country.

Government then abandoned the policy of constructing railways through private agency and for the next ten years (1869-1880) directly undertook this business. They decided to borrow annually two million pounds in London for capital expenditure upon railways. The new lines were of metre gauge instead of the broad gauge of the Company-built lines. But soon after difficulties arose in connection with borrowing funds in London on account of the

falling exchange; nor was the pace of railway-construction sufficiently rapid. The defence of the N.-W. Frontier required an elaborate chain of strategic railways and in other parts of the country they were required for protection of the country against famine. The Famine Commission of 1880 urged a more rapid programme of railway-construction and Government, therefore, reverted to the Guarantee System with slight modifications in its favour. Thus the lines constructed under the new system were declared to be the property of the State which had the right of purchasing them after a stipulated period. The guaranteed rate of interest was only $3\frac{1}{2}$ p. c. instead of the higher rate of the old system. The new conditions were extended to the railway-lines built under the older guarantee system when contracts with them came up for revision. The Indian States also were encouraged or pressed to co-operate with Government in building the railway system. They supplied funds or undertook branch or feeder lines on their own account within their territories. Attractive terms were also offered to private companies for constructing feeder lines.

During the first fifty years the railways were a source of loss. This was due to the undeveloped state of the country, to the initial extravagance in construction and high working expenses. Also a number of lines were built for 'strategic' purposes and others for 'protecting' the country against famines and both these kinds of lines were never expected to pay their way or earn any profits.

It was only after 1910 that the railways may be said to have begun to pay their way, though it should be always remembered that no source of revenue is

more fluctuating than that from railways, thanks to the dependence of traffic upon general agricultural conditions. When the railways acquired their first profits, a fresh incentive was provided for their rapid extension. Then the total capital outlay increased from Rs. 330 crores to Rs. 495 crores, and the mileage from 24,750 to 34,650 during the period 1900-1914. The expansion as well as the operation of the railways were seriously handicapped by the outbreak of the great war. The requisite material could not be imported from abroad, and repairs and renewals had to be suspended. Great hardships were inflicted upon the travelling public and serious losses upon the commercial community on account of the shortage of locomotives, coaches and wagons. It was only after 1920 that the railways resumed their career of expansion and race for efficiency. At the end of March 1928 the total mileage of railways was 39,712. It may be said that the country now has the framework of the main trunk lines. Most of the subsidiary trunk lines, joining the main trunk lines are also there, or under construction. Three such subsidiary lines are at present under construction, all in the Central Provinces, one joining the Bengal-Nagpur and the East-Indian Railways, another connecting the Central Provinces to the East Coast, and the third bridging the gap between the Northern and Southern systems of railways. A North-South line connecting Karachi to Bombay and a West-East line connecting that Port to Delhi would complete the network of subsidiary trunk lines. The key-note of the present programme of railway construction is, in the words of Mr. J. Coatman, * "the filling in of the interstices of the

* India in 1927-28 : page 172.

network of trunk lines with useful branches and feeders so that the benefits of railway service may be brought right to the doors of the agriculturists and the rural population." Considerable sums are also being expended upon the improvement of existing lines, remodelling of terminal facilities, electrification of railways etc.

Railway management.—When we turn from construction to the management of railways, we find that here also the policy of Government has undergone many phases due to the diversity of conditions under which the railways were built. The present position is that over seventy per cent of the total route mileage is owned and over forty per cent is directly managed by the State. The control, financing and management of this vast property requires elaborate organization. The present policy is the outcome of two important Committees appointed during the last ten years to deal with this subject. The Indian Railways Committee with the late Sir William Acworth as Chairman and the Rt. Hon. Mr. Shastri, Mr. (now Sir) Purshottamdas Thakurdas and Sir R. N. Mookerji among other members was appointed in 1920, and three years later the Inchcape Committee on Retrenchment critically examined the railway policy of Government.

As we saw, though 70 p.c. of the railways are owned by the State only 40 p.c. are managed by it, the rest being managed by Companies most of which have their Boards of Directors in London. Even if we accept Company management, the next question is whether the Companies should have their domicile in England or in India. This is a controversial point, raising the general question as to the proper sphere of

Government action and the advantages of private over public enterprise. The Acworth Committee went exhaustively into this question but did not come to a unanimous decision.

Though the members agreed that the time had come for abolishing the management of Railway lines through Companies domiciled in England, four members (including the Chairman) were for State Management, and 5 members were for Company Management—but the Companies were to have their head-quarters in India.

But the Government have now definitely accepted the principle of State-management. When the contracts with two big Companies—the East India and the Great Indian Peninsula Railways recently terminated, the State took them under its own management. As the existing contracts with the old railway Companies come up for renewal the State will resume direct management.

Railway Administration.—With regard to the machinery by which Government should administer Railways, the Acworth Report was more unanimous. Ever since 1905 there was a Railway Board consisting of a chairman, two members, and a secretary, with the Government of India. It was under the control of the Member in charge of the Department of Commerce and Industries. In 1908 the Chairman of the Board was made a Secretary to Government with the right of independent access to the Viceroy, and he was also appointed a member of the Indian Legislative Council to represent Railway interests. It was felt, however, that adequate justice was not done to the importance of Railways. Important changes were, therefore, made in the light of the recommendations

of the Acworth Committee. The official description of the present Railway administration is as follows :^{*} "The Railway Board consists of a Chief-Commissioner, a Financial Commissioner and two members, one of whom deals with technical subjects, and the other with general administration, personnel and traffic. The Financial Commissioner deals with all financial questions. Five Directors assist the Board in the five branches of Civil Engineering, Mechanical Engineering, Traffic, Finance and Establishment, and, by disposing of all matters except those of policy or of major importance, relieve the Railway Board of routine work and enable them to concentrate their attention on the larger questions of Railway policy." Under the Railway Board each Railway has an Agent in supreme charge. Each railway system is cut up into suitable 'Divisions' in which there is a 'Divisional Superintendent' responsible to the Agent for the entire administration of the railway line in his 'Division'.

The administration of railways is brought into contact with public needs by the institution of Central and Provincial Advisory Committees.

Indianization.—The replacing of Europeans by Indians in the higher grades of service is going on, or ought to, in the Railways also, as in other branches of administration. The process is slow and this is partly the result of the absence of facilities for training in India. New Rules were framed in 1926 for the recruitment of Indians in the four branches of railway service, *viz.*, Civil Engineering, Transportation, Commercial and Mechanical Engineering. A Railway Staff College for the training of superior officers is being erected at Dehra Dun while there is a school

* India in 1927-28 : page 171.

at Chandausi where the subordinate servants only are trained. While the pace of Indianization can be quickened on railways under State management (for the budgets of such railways come up before the Legislative Assembly) the question of the employment of Indians in the superior service on company-managed railways is beyond the control of the Assembly and this is one of the reasons why State management is preferred to Company management.

(96) FISCAL POLICY

One of the most deplorable results of the advent of British Rule in India has been the destruction of her indigenous industries. Indian opinion, rightly or wrongly, attributed this to the adoption by the Government of a Free Trade policy which has been the traditional policy of England for so many years. But many causes combined during the last few years to bring into special prominence the question of the fiscal policy most suitable to India.

(1) The Great War showed how the very existence of nations in modern times is bound up with an all-round and up-to-date progress in industrial matters. It was mainly on account of this experience that the Government of India had to appoint the Industrial Commission to inquire into the deficiencies of the existing industrial organization of the country and the possibilities of development. But this Commission was precluded from examining the fiscal policy of India.

(2) The declared policy of Parliament to give Responsible Government to India was bound to have important influence upon a number of problems of a social and economic character and the authors of the

Reforms as well as Members of the Joint Parliamentary Committee had no doubt that fiscal autonomy would follow in the wake of the grant of Responsible Government to India. Important witnesses like Sir James Brunyate declared before the Joint Committee that the value of the Reforms will be seriously compromised if they were not accompanied by a definite assurance regarding India's fiscal policy. The Joint Committee accordingly laid down the following dictum: "A satisfactory solution of the question of fiscal autonomy can only be guaranteed by the grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral part of the British Empire. It cannot be guaranteed by statute without limiting the ultimate power of Parliament to control the administration of India, and without limiting the power of veto which rests in the Crown; and neither of these limitations finds a place in any of the statutes in the British Empire. It can only therefore be assured by the acknowledgement of a convention. Whatever be the right fiscal policy of India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa have. In the opinion of the Committee, therefore, the Secretary of State should as far as possible avoid interference in this subject when the Government of India and its Legislature are in agreement, and they think that his intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire, or any fiscal arrangements within the Empire to which His Majesty's Government is a party."

(3) The next step was the appointment of the Indian Fiscal Commission under the Chairmanship of the Hon. Sir Ibrahim Rahimtoola and it came unanimously to the conclusion that the policy of Protection was best suited to the condition of India and that it should be applied with discrimination.

(4) Fourthly, ever since the War there has been in England—the Home of Free Trade—a strong reaction in favour of Protection, or, at any rate, Imperial Preference.

(5) And finally, largely on account of financial stringency, the Indian Tariff had undergone successive revisions and each time it was raised. Though the high duties were imposed ostensibly for revenue purposes, questions were asked whether they could not be used to promote and protect indigenous industries as well. A permanent and scientific principle had to be laid down on which to base the Indian Tariff.

And a Resolution definitely recommending the adoption of a Protectionist policy for India was moved in the Legislative Assembly on 16th Feb. 1923. In its place was adopted the following, which represented the considered policy of the Government of India.

That the Assembly recommends to the Governor-General-in-Council :—

- (a) “That we accept in principle the proposition that the fiscal policy of the Government of India may legitimately be directed towards fostering the development of industries in India ;
- (b) That in the application of the above principle of protection, regard must be had to the financial needs of the country and to the present dependence of the Government of India

- on import, export, and excise duties for a large part of its revenue ;
- (c) That the principle should be applied with discrimination, with due regard to the well-being of the community and subject to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission ;
 - (d) That in order that effect may be given to these recommendations, a Tariff Board should be constituted for a period not exceeding one year in the first instance, that such Tariff Board should be purely an investigating and advising body and should consist of not more than three members, one of whom should be a Government official, but with power, subject to the approval of the Government of India to co-opt other members for particular inquiries."

As the Hon. Sir C. A. Innes said, this announcement, constituting a departure from the traditional policy, marks an epoch in the fiscal history of India. The first three clauses embody the principle of Protection with the proper safeguards; the fourth shows how the principle is to be applied in practice. We must decide what industries need and deserve protection and what kind and measure of protection they should get. It is the province of the Tariff Board to investigate these two questions.

Since then Tariff Board or Boards have examined applications for protection from representatives of most of the organized industries in the country and published a series of valuable Reports. On the recommendation of the Tariff Boards the Assembly has given legislative sanction to a measure of protection to the iron and steel industry, and the textile industry.

(97) CENTRAL FINANCE

Reference has been made in section 65 to the separation of finance between the Central and Provincial Governments. It is proposed to give here the chief features of the present financial position of the Government of India. The Reforms were introduced at a time when the country was passing through extreme financial stringency. To add to its difficulties the Central Government was faced with a deficit of nearly ten crores of rupees a result of the abolition of the 'Divided' Heads of Revenue. A real improvement in its situation set in with the advent of Sir Basil Blackett as Finance Member in 1923. Reviewing past difficulties and deficits he said in his first Budget speech on 1st March 1923 that for five years in succession India was having deficits the accumulated total of which amounted to no less than one hundred crores of rupees in spite of the fact that additional taxation to the extent of 60 crores had been imposed up to 1922-23. He also referred to the growth of the National Debt of the country from 411 crores on 31st March 1914 to 781 crores on 31st March 1923, out of which 557 crores was Productive Debt and 224 crores was Unproductive Debt.

The Legislative Assembly exercised continuous pressure upon Government to effect retrenchment and, as a result, the Inchcape Committee was appointed in 1922-23 and it suggested economies of nearly twenty crores of rupees. It severely criticised the two most important items of expenditure in the Central Budget, namely, the Army and the Railways. After analysing the causes of the great increase in military expenditure and tracing them to rise in prices, improvement in pay, better equipment, higher standard of comfort for

the troops, and the Frontier policy of the Government, especially the occupation of Waziristan, the Committee laid down: "The expenditure which has been incurred in the past may have been inevitable, but the question is whether India can afford to maintain the military expenditure on the present scale as an insurance against future eventualities. In our opinion repeated huge deficits of the last few years have made it abundantly clear that India can not afford this expenditure. So long as peace conditions obtain the first essential is for India to balance her budget and this can only be secured by a very substantial reduction in the military estimates." After suggesting various economies the Committee came to the conclusion that with a fall in prices it should be possible to reduce the military budget to 50 crores of rupees.

The Inchcape Committee also very severely criticised the extravagance of Railway finance. It totally disapproved of the plan of spending 30 crores of rupees every year on the construction of railway lines (as recommended by the Acworth Committee) when the existing lines were a source of loss. It laid down as a cardinal principle of railway finance that the working expenses should be so reduced as to ensure an average return of $5\frac{1}{2}$ p. c. on the capital expended upon the railways. Each railway should provide for its own repairs and maintenance.

Separation of Ry. Budget.—Arising out of the recommendations of the Acworth Committee and the Inchcape Committee a great reform was effected in 1924 by the separation of the Railway Budget from the General Budget. The Acworth Committee pointed out that with a common budget

the annual allotments for railway expenditure were determined from year to year with less regard to actual railway requirements than to the general financial position of the country. Also it was difficult to ascertain at a glance the net financial result of the working of Indian railways when their income and expenditure formed part of a common Budget. With a separate Budget the Railways can be treated as strictly business undertakings, and a programme of construction and repairs can be planned and carried out irrespective of the general finances of the country. On the other hand the General Budget also would gain, negatively, by the removal of a disturbing factor of income and expenditure, the railway income being notoriously fluctuating; and it would gain, positively, if a fixed annual contribution accrued to it from the Railways irrespective of the financial results of their operation. Any surplus that was left after the payment of the contribution was to be placed to Railway Reserve on the condition that "if the amount available for transfer to the Reserve should exceed in any year rupees three crores, one third of the excess should be paid to General Revenues. This Railway Reserve is to be utilized to secure the payment of the annual contribution, to provide, if necessary, for arrears of depreciation and for writing down and writing off capital, and to strengthen generally the financial position of the railways. The effect of this arrangement upon the finances of the country is that the Indian tax-payer is now assured of a regular and growing contribution in relief of taxation from his investments in railways; while the task of maintaining a continuous financial policy and of distinguishing between a temporary and permanent

surplus or deficit in accounts is immensely facilitated."

In accordance with this arrangement the Commerce Member of the Government of India presented his first separate Railway Budget in March 1928. By the end of that year a railway reserve of nearly 16 crores had been built during four years and also appreciable reductions were made in passenger fares and goods rates. The concessions represented an annual relief of three crores to the public.

Sir Basil Blackett's Regime.—In addition to the reform of the separation of the railway budget Sir Basil's regime was responsible for other improvements. The Hilton Young Commission was appointed to go into the whole question of Indian currency and exchange. Sir Basil's predecessor had made a mess of the whole thing and the country lost crores of rupees after the war as a result of exchange fluctuations. The Commission recommended that the rupee should be stabilized at the ratio of 1s. 6d., that India should adopt the Gold Bullion Standard and that there should be immediately established a Reserve Bank both for stabilizing the exchange and for controlling the volume of currency. Sir Basil took an active part in carrying out these recommendations. He stabilized the rupee at 1s. 6d. in the teeth of popular opposition. He also introduced a Reserve Bank Bill. But, as has already been seen, frequent deadlocks arose between the Assembly and Government on the question of the constitution of the new Bank. The Finance Member was prepared to come to a compromise with the Assembly but the Secretary of State intervened and the Bills were dropped. Sir Basil instituted a Central Board of Revenue consisting of two members for the collection

of revenues from central heads. He also established the National Debt Service upon a solid foundation. By diligent economy he succeeded in diminishing the Unproductive Debt by 76 crores from 224 crores on 31st March 1923 to 148 crores on 31st March 1928. During the same period the Productive Debt increased from 557 crores to 746 crores *i. e.*, by 189 crores. These internal reforms converted annual deficits into annual surpluses. They enabled the Finance Member to reduce the Salt Tax and to abolish the Cotton Excise Duty—a running sore in Indian politics for thirty years. Sir Basil's whole policy was directed to the balancing of the budget. This enabled him to borrow on easier terms in London and also to raise large Rupee Loans in India itself. Indeed a cardinal feature of the policy of Sir Basil was the development of the money market in India and for that purpose appointed the External Capital Committee and prepared the ground for the appointment of another Committee to study the condition of Indian banking. His successor, Sir George Schuster, has quite recently announced the plan on which a comprehensive enquiry is to be conducted by a Central Banking Committee in collaboration with separate Provincial Committees. In this connection reference must also be made to the introduction and popularization of the Post Office Cash Certificates for which Sir Basil was responsible. He also accomplished the complete remission of the Provincial contributions. In this way he relieved the Provinces of an obligation that had proved galling to some and inconvenient to all. As he said in his last Budget speech, the Provincial Governments were now the friends of the Central Government.

They have no fears of counter-attack. "They can proceed to carry out the great task allotted to them in the governance of India, with the knowledge that no part of the revenues at their disposal will be diverted to the Central Government's purpose. The Central Government too has reached a new vantage ground, from which it can begin to survey the field ahead, and there will be no outside claimants to the surplus which the Government may expect to enjoy. They will be free to turn their minds on the one hand to new directions in which money can be usefully laid out for India's advancement, and on the other to a readjustment of reduction in the burden of taxation."

Sir Basil, in addition to being a financier, had a fine sense of dealing with a Parliamentary Body. He treated the Legislative Assembly with respect. He helped its Committee on Public Accounts to exercise real control over the Budget and he also appreciated the financial powers which the Legislative Assembly possessed. He admitted in one of his budget speeches in the Assembly (1925-1926) that the association of the chosen representatives of India with the Executive Government and their constant interaction the one upon the other in the Assembly and the Council of State have enabled India to win through the inevitable discomforts of the period following the War with success.

Home charges.—Before proceeding to consider the main items of revenue and expenditure in the Central Budget, reference must be made to one conspicuous feature of Indian finance, namely the large payments which the country has to make in England. They are known as 'Home Charges' and come annually to about

thirty million pounds. They include payment for interest on the capital which India has borrowed in England, for the purchase of Government Stores, for the allowances to Government servants who are on leave in England and for their pensions after retirement, and finally, for a part of the establishment of the India Office, and for the whole of the establishment of the High Commissioner for India.

This section will close with two tables, one showing the Budget Estimates for 1928-29 of the Central Government, and the other showing how a rupee of revenue and expenditure was made up (taking into account the figures for the Central and Provincial Governments for the year 1926-27).

Budget Estimates for 1928-29 Central Government.

Figures are in lacks of Rs.

Revenue		Expenditure	
Customs	50,18	Direct Demands on Revenue	4,24
Taxes on Income ...	16,99	Salt and other Capital Outlay charged to Revenue	6
Salt	7,00	Railways: Interest etc., as per Ry. Budget	33,02
Opium	3,47	Irrigation	23
Other Heads	2,21	Posts & Telegraphs	81
Total Principal Heads	79,85	Debt Service	14,90
Railways: net Receipts as per Ry. Budget	38,50	Civil Administration	11,69
Irrigation: net	12	Currency, Mint and Exchange	69
Posts & Telegraphs: net... ..	57	Civil Works	1,73
Interest Receipts ...	2,91	Miscellaneous	4,10
Civil Administration	1,01	Military	58,04
Currency and Mint	2,48	Provincial Adjustments ... ..	...
Civil Works	14	Extraordinary	8
Miscellaneous	86		129,59
Military Receipts ...	2,94	Surplus	5
Provincial Contributions ... ..	...		129,64
Extraordinary Items	26		
	129,64		

How each rupee of revenue and expenditure was made up in 1926-27 (taking together the Central and Provincial Government).*

Revenue		Expenditure	
Customs	... 0·22	Military Service	... 0·27
Railways	... 0·16	Railways	... 0·13
Land Revenue	... 0·16	Other Heads	... 0·14
Other Heads	... 0·10	Debt Services	... 0·09
Excise	... 0·09	Police, Jails and Justice	... 0·09
Taxes on Income	0·07	General Adm.	... 0·06
Stamps	... 0·06	Civil Works	... 0·06
Salt	... 0·03	Education	... 0·05
Irrigation	... 0·03	Super Annuation	
Forests	... 0·03	Allowances and Pensions	... 0·03
Interest	... 0·03	Land Revenue	... 0·02
Military receipts...	0·02	Forests	... 0·02
		Irrigation	... 0·03
		Public Health	... 0·01
	<hr/> 1·00		<hr/> 1·00

(98) THE PUBLIC SERVICES

Pre-Reforms Organization.—We shall now resume the consideration of the subject of Public Services to which reference was made in section (26). Before proceeding to the problem of Indianization it is desirable that a brief description is given of their organization prior to the Reforms. Since the transfer of the administration of India to the Crown the Secretary of State used to recruit in England to fill a number of posts in India. As the appointments thus made increased in volume and variety much confusion ensued in the classification of Public Services and the matter was simplified by the Public Services Commission under the presidency of Sir Charles Aitchison (1886-1889). This Commission divided all civil officials into three classes: '*Imperial*', comprising the Indian Civil Service and the higher grades of such specialized services as Police, Education, Public Works and Forests. For these Services recruitment was made in England by the Secretary of State in Council; '*Provincial*,' generally speaking, a lower grade in each Service possessing an Imperial branch, but in some instances, complete in itself. It was recruited in India largely from Indians and partly from men of European descent domiciled in India. Finally the *Subordinate* Services including grades like police constables, messengers, etc.

Let us next consider the development of the principal Public Services in India. Regarding *the Civil Service* we have seen (§ 26) how the Court of Directors opposed Wellesley's scheme of a College for the training of the servants of the Company. After 1806 probationers for service in India were put through

a course of two years' training at the East India College at Hailebury. When the Indian Civil Service was thrown open to competition in 1853, the Hailebury College was closed. The competitive examination, annually held in London, was conducted by the Civil Service Commissioners. The age-limit of candidates appearing for the I. C. S. was varied from time to time, and for many years was low. This, as well as the place of examination, in practice barred most Indians from competing for the examination. The *Police Service* was recruited by a competitive examination similar to that held at Sandhurst from 1893. Ten years later the new grade of Deputy Superintendents, ranking as Provincial Service posts, were created, Indians or Anglo-Indians being appointed to them direct or promoted from Inspectorships. The rank of the Deputy Superintendents was below that of Assistant Superintendents who were appointed from England. The *Indian Forest Service* was recruited by a Competitive examination held in London since 1867. The Probationers were sent for further training to the Engineering College at Cooper's Hill during the period 1885-1905. When that College was closed appointments were made by Selection Committees and the selected probationers had to make an extensive Continental tour before joining service in India. The *Public Works Department* (Indian Service of Engineers) was recruited from candidates that had to undergo training at the Royal Engineering College at Cooper's Hill where in addition to Civil Engineering training was provided in Forestry and Railway Engineering. In 1892 a Provincial Branch of this Service was created to which appointments were made from successful Indian candidates from Engineering Colleges at

Roorkee, Poona etc. In addition to these there were other all-India Services, *e.g.*, Education, Meteorology, Survey of India, Zoology. In the I. E. S. the distinction between Indian and Provincial was made since 1839. The Secretary of State used to make appointments to the I. E. S. by selection after an interview with the candidates. Some were promoted to the I. E. S. from the Provincial Service.

Indianization—It will be seen from this brief description how the Services were organized and recruited by the Secretary of State. When we consider the Services from the point of view of the number of Indians employed in the higher ranks we find that in spite of the Proclamation of 1858 the results were disappointing for the fifty years that followed. The competitive examination being held in London by its very nature excluded most Indian candidates. Curiously enough a Committee appointed by the Secretary of State in 1860 to inquire into this question recommended the holding of simultaneous examinations in England and India for recruitment to the Civil Service. No effect was given to this recommendation. As a result of the spread of higher education in India and thanks to the agitation carried on in England by Dadabhoj Nowroji, the question was reopened in Parliament in 1870 and an Act of that year contained the clause empowering the Government of India to frame rules, subject to the sanction of the Secretary of State in Council, "for the employment of the Natives of India, of proved merit and ability, in the Civil Service of his Majesty" without requiring them to appear at the competitive examination in London. The method adopted for making appointments under these rules was that of *nomination* and

did not give the best results. Again, the appointments thus made were kept separate from those made by open competition; they formed the "Statutory Civil Service" as distinguished from the "Covenanted Civil Service" which was regarded as of altogether a superior status. As educated Indians were entirely dissatisfied with these arrangements, the Public Service Commission under the presidency of Sir Charles Aitchison was appointed with the declared object of devising means for the larger admission of Indians in the Civil Service. The final orders of the Secretary of State on the Report of this Commission were passed in 1891, and they made the position of Indians worse than what it was prior to the appointment of the Commission. (1) The Statutory Service Rules of 1879 had reserved a sixth of the total recruitment to the Civil Service for Indians. This meant about 160 posts out of a total strength of 1000 posts. But as a result of the Aitchison Commission's recommendations only between 90 and 100 posts were abstracted from the Indian Civil Service and reserved for Indians. (2) Secondly, the Commission recommended, as we have already seen, the division of the Public Services into Imperial and Provincial. The constitution of the Provincial Service—inferior in every respect to the Imperial Service—created a permanent inequality as between Indians and Englishmen that led to grave dissatisfaction. In 1893 the House of Commons adopted a Resolution in favour of holding simultaneous examinations in England and India. This was again largely due to the efforts of Dadabhoj, who was then a Member of Parliament. But the Resolution proved a dead letter. The Bureaucracy did not budge an

inch to give effect to it. Nothing was done for the next twenty years when, as a result of a Resolution moved in the Imperial Legislative Council, a Royal Commission on the Public Services was appointed in 1912. Its chairman was Lord Islington and Mr. Ramsay MacDonald, the present Labour Premier, was one of its members. The Indian element was represented by Gokhale (who unfortunately died before the preparation of the Report), Sir M. B. Chaubal and Justice Abdur Rahim. Though the Report was submitted to Government in August 1915, its publication was postponed till January 1917 on account of the War. By that time the expectations of Indians were raised to such a pitch that the recommendations of the Islington Report were denounced as wholly unsatisfactory and inadequate.

The Announcement of 1917 and the Montford Report mark a complete orientation in the policy of Indianization. Lord Chelmsford declared in the Vice-regal Council in September 1917 that the employment of Indians in more responsible positions under the Government was one of the methods of advancing towards Self-Government. Thus increasing Indianization of the Services became at once an end in itself and a means to the attainment of Self-Government. As the M. C. Report puts it : "The success of the new policy which has been adopted towards India very largely depends on the extent to which it is found possible to introduce Indians into every branch of administration. It is a great weakness of public life in India to-day that it contains so few men who have found opportunity for practical experience of the problems of administration. Although there are distinguished exceptions principally among the Dewans

of Native States, most Indian public men have not had an opportunity of grappling with the difficulties of administration, nor of testing their theories by putting them into practice. Administrative experience not only sobers the judgment, and teaches appreciation of the practical difficulties in the way of the wholesale introduction of reforms, however attractive, and the attainment of theoretical ideals, but by training an increasing number of men in the details of day-to-day business it will eventually provide India with public men versed in the whole art of Government. If Responsible Government is to be established in India there will be a far greater need than is even dreamt of at present for persons to take part in public affairs in the Legislative Assemblies and elsewhere; and for this reason the more Indians we can employ in the public services the better. Moreover, it would lessen the burden of Imperial responsibilities if a body of capable Indian administrators could be produced."

The M. C. Report recommended that a proportion of 48 p. c. of the posts in the Public Services should be held by Indians in the course of ten years following the inauguration of the Reforms. A Resolution was issued by the Government of India in December 1920 laying down the principles of the recruitment and organization of the Civil Service in the light of the recommendations of the M. C. Report. The insistent demand for *simultaneous competitive examination* in India was partially conceded. In addition to this method, there was also adopted the method of nomination with a view to secure the representatives in the Services of various provinces and communities, of promotion from the Provincial Service, and finally, recruitment from the Bar.

The limit of Indianization indicated by the M. C. Report, though not over-liberal, raised a hue and cry both in India and in England. Even the Government of India became apprehensive and they addressed a letter at the end of May 1922 to the Provincial Governments which became famous as the "O'Donnell Circular." This document reviewed, and invited the opinion of the Provincial Governments upon, the various considerations involved in the question of Indianization in order that the Government of India might consider the whole position. "The letter which had not been written for publication was given to the world through journalistic enterprize.*" There was great agitation over the publication of this circular. The agitation was intensified by the famous "Steel Frame speech" of Mr. Lloyd George in August 1922. He said that the Reforms were an "experiment" and that the "Steel Frame of British Civil Service" must be maintained for all time to come with its existing rights, privileges, and functions. It was argued that this speech was inconsistent with the declared policy of Parliament, and with the Indianization of the Services. The Viceroy, however, removed the fears caused by the speech by making public an assurance from Mr. Lloyd George that he never intended to say anything that was in conflict with the declared policy of His Majesty's Government.

This agitation in England and India directly led to the appointment of a Royal Commission under Viscount Lee of Fareham which, as Sir Malcolm Hailey announced in the Assembly on 25th Jan. 1923, "in view of the necessity of maintaining a standard of administra-

* India in 1922-23 : page 280

tion in conformity with the responsibilities of the Crown for the Government of India and the declared policy of Parliament in respect of the increasing association of Indians in every branch of the administration, and having particular regard to the experience gained by the operation of the system of Government under the Government of India Act, was to inquire into the organization and the general conditions of service, financial and otherwise, of the superior Civil Services in India, and the best methods of ensuring and maintaining the satisfactory recruitment of such numbers of Indians and Europeans respectively as may now be decided to be necessary in the light of the considerations above referred to."

The Commission commenced its inquiry on November 4 and signed its Report on March 29, 1924. It accepted the limit of Indianization as laid down in the M. C. Report and worked out the following details. For the I. C. S. it considered desirable that to promote increased feeling of comraderie and equal sense of responsibility, the proportion of half Europeans and half Indians should be attained without undue delay. Some members attached particular importance to maintaining the principle of equality in rates of direct recruitment which should be 40 Indians and 40 Europeans out of every 100, the remaining 20 being promoted from the Provincial Service. This ratio of recruitment of 40 Europeans to 60 Indians would produce half and half composition of the Service in about 15 years.

In the Indian Police Service, recruitment is to be fifty per cent. European and fifty per cent. Indian, the latter being composed of thirty per cent. taken by direct recruitment and twenty per cent. by promotion

from the Provincial Service of men of whose fitness for such posts the Commission had convincing evidence. In this Service the composition of half European and half Indian would be attained in about 25 years.

The recruitment to Indian Forest Service in the Provinces where Forest is a reserved subjects should be 75 per cent. Indians and 25 per cent. Europeans.

Recruitment for Irrigational Engineers is to be 40 per cent. Europeans and 60 per cent. Indians, 40 per cent. being directly recruited and 25 per cent. promoted from Provincial Service.

It is pointed out by the Commission that, while the question before the Islington Commission was how many Indians should be admitted into Public Services, the question before the Lee Commission was what is the minimum number of Englishmen which must still be recruited. The Commission hoped that in respect of provincialized Services the Ministers would still wish to obtain the services of Europeans in technical departments and that Europeans would show as much willingness to take service under Local Governments as under the Secretary of State.

The proposals for the Indianization of the Central Services were: Political Department: 25 per cent. Indian recruitment from L. C. S., Provincial Civil Service, or Indian army. For the Cumstoms Service, recruitment to be on the present basis. For Railways, Posts and Telegraphs 75 p. c. recruitment in India as soon as sufficient training facilities were available and 25 p. c. recruitment in England.

The main recommendations of the Commission in respect of Indianization have been accepted.

Communal Representation in the Services—The progress of Indianization brought into prominence another problem namely, the extent to which the different communities in India should be represented in the Services. The communal aspect of Indianization did not attract notice so long as the number of superior posts available to Indians was insignificant. But wider opportunities roused communal jealousies and whetted communal aspirations. Communities that are educationally or economically backward *e. g.* the Non-Brahmins or the Mahomedans claim preference in the making of appointments and would insist upon a certain proportion of posts—from the highest to the lowest—reserved for them. We may take the views of Dr. S. A. Khan as typical of extreme communalism. He says that in India administrative posts mean power and affirms* “The Muslims are unanimously of the opinion that effective representation should be guaranteed to them in the Cabinet of the Government, in the Government Departments, and in the Services maintained by Municipal and District Boards and other bodies.” He would indeed “fix the proportion of each community in every province in every Government Department, the Universities and in Services maintained by local bodies. For admission to the appointments so reserved there should be competitive examinations.”†

The attempt to make the Services a microcosm of the diversified Indian population is absurd, if not mischievous. The real solution of the problem lies, in the first place, in a broadening of the field for employ-

* S. A. Khan, *op. cit.* : page 102.

† S. A. Khan, *op. cit.* : page 105.

ment that is at present open to educated Indians. A number of careers in business, banking and commerce are closed to them; agriculture and industries are backward; the army is a closed preserve. The professions are overcrowded. Hence the pressure upon Government Service. Secondly, special facilities should be given to backward communities to get education. Thirdly, given two candidates of *equal* efficiency (as tested in examinations) preference may be given to one because of his belonging to a particular community or of other considerations. But if, to quote the words Kerala-Putra,* "the principle of representation in offices is claimed on the basis of a numerical percentage, and is pressed with vigour as part of a political programme, there is serious danger that the ideal of an efficient Public Service may be subordinated to a method of balancing communal claims."

The position of the Government of India with regard to this question was thus explained by Sir Malcolm Hailey in the Legislative Assembly: "It must be recognized that intellectual qualifications combined with physical capacity should not be the sole test for admission to important posts in the Public Services. Due regard must also be given to such considerations as character and hereditary connection of the candidates both with Government and the people with whom their work will mostly lie; while in the present condition of India it is essential that there should not be an undue predominance of any one class or caste."

Any concession to communal claims at the cost of the efficiency and integrity of the Public Services

* Working of Dyarchy in India : page 133.

will weaken the basis of sound administration on which Responsible Government must ultimately rest.

Control of the Services—A problem as important as the composition of the Public Services is the extent of power which the Secretary of State should exercise over their recruitment and discipline. Until the Reforms he recruited the all-India Services and the latter looked up to him for protection. We have seen how the Services were protected in various ways under the Government of India Act, 1919. Their pay was made a non-votable item in the Central and Provincial budgets. Rules as to the conditions of service, pay, allowances etc. were incapable of being modified by the Central or Provincial Legislatures; no officer appointed by the Secretary of State could be dismissed except by him; further no order adversely affecting such an officer could be passed by a Minister without the concurrence of the Governor.

So far as such officers were employed in the Transferred Departments, the Ministers found themselves compelled to use an agency over which they had no control whatsoever. This seriously impaired their power and prestige. Accordingly the Lee Commission recommended that the Secretary of State should no longer recruit for all-India Services in the Transferred Departments. All such appointments will be made by the Governor with the Ministers and rules for the same will be made by the Provincial Legislature. We have already seen in § 89 that in the revised constitution Dyarchy must disappear. The question arises as to the position of the Services when the whole Provincial Government is managed by a Ministry. At present the senior officials in the Civil Service enjoy two privileges which would seem to be

inconsistent with Ministerial Government. They can not become Members of the Executive Council, for there will be no Executive Council. Nor can the Official Heads of Departments be nominated as Members of the Legislature, for we have seen that their position of subordination to the Ministers will be inconsistent with their opposition to Ministerial policy in the Council.

Henceforward the Services must simply administer and not govern. The Ministers must have full authority over the discipline, promotion and transfer of officials and they and they alone must be held responsible for the initiation and execution of policies.

The Public Services Commission.—With the transfer of the Services to Ministerial control the question of their appointment becomes one of supreme importance. They should not be made upon political or communal considerations. “It would be a disaster of the first magnitude, if the Superior Services which have been built up through the efforts of over a century and on which depends the peaceful evolution of self-government, should be made a prey to shifting political considerations and communal and personal interests.”*

The most effective way to secure, on the one hand, rapid Indianization and to avoid, on the other, the dangers of communalism, political corruption or Ministerial patronage is to institute Public Services Commission, as laid down in the Govt. of India Act. 1919, The Lee Commission makes valuable

* Kerala-Putra : *Working of Dyarchy*: page 131

observations on the constitution and functions of such a Commission. Experience has shown, says the Report, that wherever democratic institutions exist, some impartial body is necessary to protect the Civil Services from political influences and give them stability and security. This is best done by the appointment of a Public Service Commission. It should be an all-India body consisting of five Commissioners of the highest public standing, detached so far as practicable from political associations and possessing, in the case of at least two, high judicial or legal qualifications. Their emoluments should not be less than those of the High Court Judges. The function of the Commission would be (A) recruitment in India for all-India Services, Central Services and, if Provincial Governments so desires, also for Provincial Services. The Commission would be the final authority in determining, with the Secretary of State, the Government of India or the Local Governments as the case may be, the standards of qualifications and methods of examinations for recruitment in India. (B) The exercise of functions of quasi-judicial character in connection with disciplinary control and protection of Services. Appeals to the Governor-General-in-Council by the aggrieved officer against such orders of the Local Governments as are declared by the Governor-General-in-Council to be appealable should be referred to the Commission which should report to the Government of India with its recommendations. A Commission on these lines has already been constituted for British India. Similar Public Service Commissions for the Provinces will be necessary and they are in the process of being established.

(99) LOCAL SELF-GOVERNMENT

Resolution of Lord Chelmsford.—The history of this subject was traced up to the Announcement of 1917 in §56. After that Announcement Lord Chelmsford explained that Local Self-Government was one of the means by which advance was to be made towards the progressive realization of Responsible Government in India. Accordingly in May 1918 his Government issued a comprehensive Resolution the underlying principles of which may be summarised thus : in the forefront comes the main object of Local Self-Government: the training of the people in the management of their own affairs. For this purpose the local bodies should be as representative as possible, and they should be freed a great deal from outside control. The control of Government was hitherto exercised from within as well as from without and it was mainly in the substitution of outside for inside control and the reduction of outside control to the limit compatible with safety that progress was to be achieved. Internal control is capable of relaxation by a greater use of election both of Members and Chairmen of Boards. External control was relaxed by removing unnecessary restrictions in connection with taxation, budgets, the sanction of works etc.

The Resolution recommended that as a general principle there should be a substantial elective majority both in Municipalities and Rural Boards, and suggested that the proportion of nominated members in a Board should not ordinarily exceed one-fourth. The franchise for election also should be low. The necessity for this provision was revealed by the fact that the average electorate in Municipalities in India

seemed to represent only 6 p.c. of the population, and the electorate in the District Boards only 0·6 p.c. The end to be kept in view before a full elective system, analogous to the one obtaining in the West can be achieved is that some 16 p.c. of the population should be represented in the electorate. Similarly the nominated chairman should make room for elected chairman, both in Municipalities and District Boards.

So far about the reduction of the internal control over Local Bodies. External control was to be reduced by giving them greater latitude in taxation and borrowing, and greater freedom with regard to the Budget.

Recent Developments.—In 1925-26 there were 767 Municipalities in British India with something like 19 million people resident within their limits and an aggregate income of Rs. 16·20 crores. The rest of the population *i. e.*, about 90 p. c. of the total is still rural. This disproportion of urban and rural population ought to show how vitally important it is that Local Self-Government should get a deep rooting in the rural areas. The Provincial Councils have passed a great volume of legislation during the past ten years affecting local Self-Government. It is in the direction of lowering the franchise, making the Boards more representative and more efficient in the discharge of business. As an example we may consider recent changes in the Bombay Presidency.

Bombay.—The Municipal Corporation of Bombay has undergone a radical change. Its strength has been increased to 106, of whom 72 are elected and 10 are co-opted; the strength of the Standing Committee has been increased to 16; and the franchise for election has been fixed on the uniform basis of monthly payment of Rs. 10 or more as house-rent.

An Act was passed to remove an important drawback in the administration of Municipalities. The idea is to approximate the larger Municipalities to the methods of business that obtain in the Municipality of Bombay.

Under the old Act, save where a Chief Officer or a Municipal Commissioner was appointed, the executive administration centred in the Managing and other Committees. This may still be possible in the smaller Municipalities; in these the president may still be able to supervise and control the municipal staff, and the Municipal Committee to perform the functions of an executive body. But in the larger cities the Municipality can do little more than determine questions of policy : committees can exercise only a general control over the municipal staff. The executive powers must be exercised largely by the permanent staff. The new Act gives to the larger Municipalities an executive officer called 'Chief Officer.' He is to be appointed by the Municipality but he can only be removed from office by an adverse vote of three-fourths of the whole body of councillors. A similar change has been introduced in the relation of the various committees of the Municipal Body. The main committee, to be called the 'Standing Committee,' will have powers analogous to those of the Standing Committee of the Bombay Corporation. While larger questions of policy are decided by the Municipality questions of lesser interest are disposed of by this Committee which also exercises a general control over the executive.

Again in March 1923 was passed the Bombay Local Boards Act for the reconstitution of rural bodies. There will be a Board for Local Self-Govern-

ment in each Taluka of the District, and one for the District as a whole. There will be elective members and "nominated members" in the Board—but the number of elective members is to be three-fourths of the whole Board, and not more than one-half of the nominated members can be salaried servants of the Government. The franchise for voting to the Taluka Board is the payment of land revenue of not less than Rs. 8: and that for the District Board, of Rs. 32, except in the three districts of Upper Sind Frontier, Panch Mahals and Ratnagiri, where it is only Rs. 16. Both in Taluka and District Boards the Mahomedans have been given separate representation. For purposes of election to the District Local Board each Taluka forms a separate general constituency; and for Taluka Boards, the villages have been grouped into constituencies. The President of the Board will be elected. The District Board must hold a meeting at least once in every three months. Every Local Board is to have a Standing Committee of between 5 and 7 members and the President is to be the *ex-officio* Chairman of the Committee. The Board may appoint other executive Committees for other purposes *e.g.*, Public Health; certain Government officers *e.g.*, the Executive Engineer, the Educational Inspector, the Deputy Director of Public Health, and Civil Surgeon have the right of attending meetings of the District Board. Their immediate subordinates can attend meetings of Taluka Local Boards; conversely, the District or Taluka Board may require the presence of any of the above officers at their meetings. The duties of the Boards have been classified as obligatory and discretionary. Only the District Board can incur expenditure on Education; the budget of the Taluka

Board is subject to the approval of the District Board.

Attention has repeatedly been drawn to the decadence of Village Communities in India under the British Rule. Efforts are being made to revive the Village Panchayats. Local Self-Government would be unreal if the most important unit in Indian Society *viz.* the Village, is without an efficient organization for that purpose. The existing Panchayats are not thriving because they are in an experimental stage, have inadequate powers and meagre funds. Not much progress has been made beyond the appointment of a Committee to consider generally the present position of Village Panchayats, and (ii) to devise means to improve their working and should these necessitate an extension of the financial resources of Village Panchayats to make concrete proposals for increasing the sources of income.

Criticism.—While the encouragement of Local Boards and Panchayats is on the right lines, we cannot approve of certain tendencies in Local Self-Government that became evident in many places ever since the subject was transferred to Ministers. It must be admitted that, on the whole, interest in local matters has increased enormously during recent years. The elections are keenly fought, there are more meetings of the Municipal Committees, and more party-organization than was ever the case before.

But what is undesirable is the intrusion of the communal spirit in Local Self-Government upon which Prof. Rushbrook Williams makes the following remarks :—“A tendency has been noticed in Municipal and District Committees towards the formation of Hindu Muslim cliques which display distrust of each other and waste time in mutual recrimination. The

constitution into Municipalities and District Boards of regular parties with a definite policy is of course all to the good; but when these parties are merely communal in their out-look they tend rather to the obstruction than to the transaction of business. Moreover lines of cleavage which are not based on matters directly affecting the prosperity of the area administered, but depend solely upon communal or sectarian differences, neither stimulate an interest in the task in hand nor foster that pride in the efficiency of Municipal institutions which is essential to the growth of Local Self-Government.”*

That the interest in local affairs, whether the result of a healthy realization of the importance of the subject or a passing phase of political or communal conflict, is not able to achieve striking results is due to the financial stringency of the Local Bodies. The resources of the Local bodies are insignificant compared to their functions and any theoretical increase in their powers of taxation is useless unless there is a corresponding increase in the capacity to bear the taxes. Programmes of Compulsory Education, of construction of roads, &c., and the provision of adequate sanitary arrangements are being held up because of the shortage of funds.

(100) EDUCATION

Introduction.—Various considerations make education one of the most important subjects of Indian Administration. As in other countries, it is, in India, a condition of the material and moral progress of the people. It is the most powerful solvent of ignorance

* India in 1922-1923.

and superstition, of narrow prejudices and practices, and of castes and communal rigidities, which make India a backward country. It is the basis of all social reform and the *sine qua non* of an active participation in Responsible Government. The policy of Government with regard to education has not always been wise or liberal. The result is that education has not spread equally or satisfactorily in all directions. It has created quite a crop of social, political and educational problems that are constantly exercising the mind of Government and the public.

History of the Educational Policy.—The History naturally falls into the following six periods:—

- (1) Educational experiments up to 1835.
- (2) From the Educational Minute of Lord Mecauly (1833), to the Educational Despatch of Sir Charles Wood (1854).
- (3) From this Despatch to the Indian Educational Commission of 1882.
- (4) From this Commission to the Indian Universities Commission of 1904.
- (5) From 1905 to the Calcutta University Commission of 1917-1918.
- (6) Education under the Reforms.

An account has already been given in section (25) of the beginnings of Education up to 1854. The Despatch of 1854 laid the foundation of the Educational System of India, and as such it deserves careful study.

It defined the object of education that was being extended in India to be "the diffusion of the improved arts, sciences, philosophy and literature of Europe, in

short of European knowledge." The vernaculars were to be used as the *media* of instruction along with English. "It is neither our aim nor desire to substitute the English language for the vernacular dialects of the country." It recommended the creation of a Department of Public Instruction under a Director as the proper machinery for spreading education; also the establishment of "Universities" which may encourage education by the conferring of degrees, on the model of the London University. But the "Universities were not so much to be in themselves places of instruction as to test the value of the education obtained elsewhere." Schools to be opened in every district in India, they were to provide opportunities for the acquisition of such an improved education as would make those who would possess it more useful members of society in every condition of life. Government was to encourage private effort by grants-in-aid. The remaining part of the Despatch deals with questions like scholarships, training of teachers, professional and industrial education, female education, Mahomedan education, etc.

As a result of the establishment of Universities and the Departments of Public Instruction there was an increase of education after 1854. Private Schools began to multiply to cater for the needs of the growing numbers, and as such schools could be made self-supporting on the proceeds of the fees, they could do without the grant-in-aid and thus be independent of the control of the D. P. I. The Department in fact had little control over these schools, as the latter prepared candidates for the Matriculation examination of the University, and looked to the University for regulation of study, standard of attainment etc.

Not much attention was paid to the subject of primary education, either by Government or by the people. The Universities continued to be merely examining bodies.

Education Commission of 1882.—In 1882 the Government of Lord Ripon appointed the Education Commission under Sir William Hunter to review the progress of education during the preceding thirty years. The voice of the first generation of educated Indians was being felt in the country and Lord Ripon had also taken the first steps in Local Self-Government. This Commission did not initiate any new departure of policy. It deplored the neglect of primary education, recommended its being delegated to the newly-created Municipalities and District Boards, and desired the State to undertake large expenditure for its encouragement. As regards secondary education, the Commission was satisfied with the progress made by private effort in this field. It suggested that Government should not do more than maintain one model High School in each district, and control and help private schools by means of grant-in-aid and inspection. The problems of University education did not come within the purview of this Commission.

Lord Curzon's Educational Policy.—Twenty years were allowed to elapse before the whole educational field was surveyed in the regime of Lord Curzon. During those twenty years primary education remained almost stationary, for the local Authorities to which it was entrusted had very limited resources and though a substantial portion of them was applied to primary education and though it was supplemented by grants from Government the results were meagre. On the

other hand every thing conspired to increase the number of those who went in for secondary education, and there was a large increase in the number of Middle Schools and High Schools. Though the Schools prepared boys for the Matriculation, the University had no machinery by which to inspect and control them. Nor had it any real control over the Colleges that were affiliated to it. The constitution of the University also had revealed defects of its own. Apart from these and other defects incidental to the educational system, questions began to be asked as to whether the imparting of Western Education to Indians had been an unmixed blessing to them. Point was given to such questions by the supposed connection between education and political agitation and possibly between education and seditious crime. Lord Curzon put this last suspicion in the characteristic words of Erasmus. When this great Divine was reproached with having laid the egg from which came forth the Reformation, "YES" he replied; "But I laid a hen's egg and Luther has hatched a fighting-cock." The Hon. Mr. Thomas Raleigh thus expressed the result of higher education upon Indians: "In point of fact it has been both, but much more I believe a blessing than a curse. We note every day the disturbing effects of a new culture imposed upon learners who are not always prepared to receive it; but still it is a great achievement to have opened the mind of the East to the discoveries of Western Science and the spirit of English Law. To the Schools and Colleges under our administration we owe some of the best of our fellow-workers—Assistant Judges, useful officials, and teachers who pass on to others the benefit which they have received. To them also we owe the discontented

B. A. who has carried away from his college a scant modicum of learning and an entirely exaggerated estimate of his own capacities, and the great army of failed candidates who beset all the avenues to subordinate employment."

Lord Curzon threw himself with a burning zeal into the subject of educational reform. He began by calling a conference of European educational experts at Simla in September 1901. He appointed the Universities Commission of 1902 under Sir Thomas Raleigh. As a result of the labours of this Commission the Indian Universities Act of 1904 was passed, and a comprehensive Resolution on the educational policy of Government was issued in the same year.

The defects in higher education that were pointed out by the Commission were real though many of the measures adopted by Lord Curzon roused the bitterest opposition of educated Indians. The constitution of the Universities had not been changed ever since their establishment fifty years before. They had each a Senate which had become in every case a very large body consisting of Fellows appointed for life by the Chancellor, many of whom had no direct connection with education; the Senates had therefore become quite unfit to discharge their functions. The Universities were again merely examining bodies as the London University was at the time when they were established. But the London University had undergone a radical change as a result of the Royal Commission that was appointed in 1898 to inquire into its state, and it was converted into a Teaching University. There were four features of the London changes whose influence is directly perceptible in the discussions of

the Commission of 1902; that every University ought to be a Teaching University; no college should be allowed full privileges unless it was thoroughly well-staffed and equipped; that teachers must always be intimately associated with the work of the University and the supreme governing body of the University—namely the Senate—should not be too large.

The recommendations of the Commission of 1902-3 fall into five main categories.

(1) The reorganization of University Government; the University Senates were reduced in each case to the uniform strength of 100 members, of whom 80 were to be nominated by Government, 10 were to be elected by the registered graduates of the University, and 10 by the Faculties. The latter were special Committees of the Senate for Arts, Science, Medicines, Law and Engineering and they were given power of "co-opting" outsiders. The "executive" of the Senate was the Syndicate which was to consist of the Vice-Chancellor and the Director of Public Instruction as *ex-officio* members, and 15 members elected as follows: by the Faculty of Arts 4; of Science 3; of Medicines 2; law 2; by the Senate as a whole 4. The Vice-Chancellor was to be a nominee of Government.

The Regulations made by the Senate were required to get the sanction of Government; similarly the affiliation and disaffiliation of colleges, and the appointment of University professors, teachers and readers had also to be sanctioned by Government.

(2) A second feature of the new system was the introduction of stricter control over schools and colleges. Every private college was required to have a Governing Body consisting partly of teachers and partly of outsiders; its income and expenditure were

to be published as of a public institution; the rules of affiliation were made stricter; and the college was submitted to periodical inspection by the University.

(3) The conditions under which students lived and worked in large towns like Calcutta and Bombay were wretched. There was no supervision over them, and, in the absence of hostel accommodation, they were exposed to all the evil influences of town-life, and in addition, some of them at any rate could not resist the temptation of actively participating in politics which were running high ever since the advent of Lord Curzon. The Colleges were now required to provide residence for a large proportion of their students as a condition of affiliation.

(4) The main function of the Universities continued to be that of prescribing books, and regulating studies, and of holding examinations. Almost the whole of the teaching was done in the "affiliated" colleges. The teaching function of some of the Universities was confined to post-graduate work, the appointment of University professors, the award of scholarships for research etc.

(5) Substantial changes were made in curricula of studies and the methods of examination by means of Regulations.

That the Universities Act of 1904 enormously increased the control of Government over University matters—both direct and indirect—cannot be gainsaid. The University was virtually turned into a Department of the State. The power of nominating 80 out of one hundred Fellows of the Senate and of renewing the nominations every five years was very great. Both in regard to their composition and powers the Senates had to depend largely upon Government. The late

Mr. Gokhale did his utmost to oppose the retrograde provisions in the Act of 1904. He complained that to revolutionize the constitution of the Universities was reforming the system of education at the wrong end. The remedies he suggested were the application of larger funds for the development of the colleges and the employment of the best men from England as professors. "The greatest work of Western Education in the present state of India is not so much the encouragement of learning as the liberation of the Indian mind from the thralldom of old-world ideas, and the assimilation of all that is highest and best in the life, thought, and character of the West. For this purpose not only highest but all Western education is useful. I think Englishmen should have more faith in the influence of their History and their Literature. And whenever they are inclined to feel annoyed at the utterances of a discontented B. A. let them realize that he is but an accident of the present period of transition in India, and that they should no more lose faith in the results of Western education on this account than should my countrymen question the ultimate aim of British Rule in this land because not every Englishman who comes out to India realizes the true character of England's mission here."*

Calcutta University Commission.—During all this time the forces that were making for an increased demand for secondary and higher education were gathering strength. This kind of education had become the only avenue to a respectable position in life to the middle classes; again the immense mass of the backward communities was gradually perceiving the necessity of this education; and finally, political and

* Gokhale Speeches : 235.

social problems required a spread of higher education for their proper solution. Thus the question of education always remained a pressing problem. The evil effects of "overdoing" higher education of a purely literary character, of examinations, of cram, of rapid increase of incompetent schools and colleges, and of the growth of the University beyond manageable proportions became particularly apparent in Bengal. The University had little control over the education imparted in Schools and no effective control over its own affiliated Colleges. Lord Chelmsford, therefore, appointed a Commission under Dr. Michael Sadler to inquire into the state of education in Bengal, and the late Sir Ashutosh Mukerji—a man of rare intellectual powers and wonderful attainments in the fields of Oriental scholarship, Mathematics, Law and Philosophy—was a member of this Commission.

The Report of the Commission is a landmark in the history of Education in India. Though its criticisms and recommendations were directed to the special problems of Bengal they were found to be of a much wider application, and throughout India University education is undergoing changes that were suggested by that Commission.

The Commission distinguished between two types of Universities—the affiliating and the teaching. The first was the only type that had been adopted in India. But the affiliated Colleges were scattered over a wide area and separated from each other and the University, in many cases, by hundreds of miles. The tie between them naturally was very slender. Each college was a unit by itself, and even between colleges in the same city there was no inter-relation. Naturally there was monotony and multiplication of teaching,

and the entire absence of inter-collegiate co-operation kept the colleges at a lower level than if they had pooled their teaching resources together. Many of the "second grade" and even "first grade" Colleges in the mofussil indeed were little better than high schools.

In the other type of the University the Colleges themselves form the University. Lord Curzon described the Universities of Oxford and Cambridge in the following eulogistic terms. "They are incorporated institutions composed of Colleges which constitute and are embodied in the corporate whole. The two together make the University; they twain are one flesh. Each College has its own students and fellows and tutors and its own local habitation, often hallowed by romance and venerable with age. The groups of Colleges combine for purposes of lecturing. The University supervises and controls all by its examinations, its professorial lectures, its central government, and by its administration of corporate funds. Above all, it sways the life of the College undergraduates, by the memory of its past, by the influence of its public buildings, by its common institutions, and by the cosmopolitan field of interest and emulation which it offers."*

That the system of affiliation had reached the breaking-point is clear from the following figures which show the number of students and of colleges "affiliated" to one or the other University in the year 1917.

* Curzon's Speeches : Vol. II, 35.

University	Colleges	Students
Calcutta	58	28,618
Bombay	17	8,001
Madras	53	10,216
Punjab	24	6,558
Allahabad	33	7,807

The movement for establishing new Universities had set in even before the appointment of the Sadler Commission. The demand for a University began to be keenly felt in those provinces which had no University of their own *e. g.* Bihar and Orissa, Burma, etc.; and there was a widespread movement among the Hindus and the Mahomedans to found separate Universities as the embodiment of whatever was best in their culture, at Benares and Aligarh respectively, in North India. This separatist movement received an impetus by the Report of the Calcutta University Commission. The Patna University, which followed as a natural corollary on the formation of the separate province of Bihar and Orissa in 1912, was established in 1917. It does not differ greatly in form from the older Universities except in the possession of a wholtime paid Vice-Chancellor. The Dacca University was established in 1920. It is a teaching and residential University and it was the first to adopt the revised form of constitution recommended by the Commission. In place of the Senate and Syndicate of the older Universities, there are three main bodies in the new type of the University.

(a) A large Body, called the Court, on which are represented the chief interests of the community either by election or nomination. The functions of the Court are to make statutes and pass recommend-

ations on the financial accounts and the annual report submitted by the Executive Council.

(b) The Executive Council in whom the executive authority in regard to finance and University appointments and also all residual powers are vested.

(c) The Academic Council who are responsible for the control, general regulation, and maintenance of the standard of instruction, education, and examination within the University. It is to consist almost entirely of University teachers.

The new Universities of Lucknow and Delhi and the reconstituted University of Allahabad closely follow the model of the Dacca University.

The older Universities of Bombay, Madras, and Punjab are in the process of reconstruction.

The Bombay University has been recently re-constituted "to enable it to provide greater facilities for higher education and to conduct post-graduate teaching and research in all branches of learning, including technology, while continuing to exercise due control over the teaching given by Colleges affiliated to it from time to time".

The University consists of the following authorities: The Senate, the Faculties, the Syndicate, the Academic Council and the Board of Post-graduate Studies.

The Governor of Bombay is the *ex-officio* Chancellor of the University and he appoints a Vice-Chancellor who holds office for two years. The Vice-Chancellor convenes the Senate and presides at its meetings and is responsible for the proper administration of the University. He is neither a full-time or paid official of the University.

Constitution of the Senate.—Ex-officio Fellows. (A) The Chancellor, the Vice-Chancellor, the Rector (if any); the Registrar of the University. (B) the Chief Justice of Bombay; the Minister of Education; the Director of Public Instruction; the Surgeon-General with Government; the Director of Agriculture; Secretary to Government P. W. D. (C) All Heads of University Departments.

Ordinary Fellows.—

(i)	Elected by Principals of Arts Colleges	8
	" " Science and	
	" " Professional	
	" " Colleges	5
(ii)	By University Teachers and Teachers from among themselves	20
(iii)	By Head Master of schools in each of five groups. (Sind, Gujrat, Deccan, Kokan, Karnatak).	5
(iv)	By Public Associations as shown	15
	(a) Bombay Municipal Corporation	1
	(b) Indian Merchants Chamber	1
	(c) Chamber of Commerce	1
	(d) Mill-owners' Association ? Bombay	1
	(e) Mill-owners' Association, Ahmedabad	1
	(f) Municipalities in five groups.	5
	(g) District Boards in five groups	5
(v)	By Registered graduates	25
(vi)	By the Faculties	10
(vii)	By the Legislative Council	5
	<i>Nominated by the Chancellor</i>	40

Donors and nominees of donating bodies giving more than a lac of Rupees to the University, under certain restrictions.

The Senate is the supreme governing body of the University, makes Statutes, and considers the Ordinances made by the Syndicate and the Regulations of the Academic Council. It constitutes various Faculties such as those of Arts, Science, Medicine, Engineering and Law.

In The Syndicate is vested the executive government of the University. It consists of the Vice-Chancellor, the Rector (if any), the D. P. I, seven persons elected by the Academic Council, and nine persons elected by the Senate. Members hold office for three years.

The Academic Council shall consist of the Vice-Chancellor, Deans (chairmen) of Faculties, Representatives (not more than five) of the University Teachers, two Head Masters (from among the Fellows), twenty representatives of the Boards of Studies, and five representatives from the Senate. It has power to regulate teaching, to determine standards of examinations, to make Regulations prescribing studies, to recommend to the Syndicate names of persons to be appointed examiners.

It will be seen that the Bombay University continues to be essentially an affiliating University. In Madras residential Universities have been established by private benefaction *c.f.* the Annamalai University of Chidambaram, also the Andhra University. The rapid increase in the number of new Universities is not without possible danger. All the provinces are not on the same footing as regards their general educational progress or financial resources. Further, education is now a Transferred Subject and therefore fully amenable to Provincial Council (though with proper safeguards as to university education.) It is, therefore,

necessary that all the Universities—the new and the old—should maintain a high and uniform standard. It would be most unfortunate if in India, as in the United States of America, a degree ceased to possess any intrinsic value, and was dependent for recognition on the status and reputation of the particular University by which it had been conferred.* It cannot be said that we have more Universities than the needs of the country require—indeed many more are bound to spring into existence in the near future—but the great desideratum is that a high, a very high, standard is maintained by all.

Secondary Education.—It is not proposed to go here into the subject of secondary and primary education, and of other aspects of education. Only a few remarks are offered.

A feature of the Indian High School is the uniformity that prevails throughout them, preparing as they do candidates for the Matriculation examination over them. “Too often the staff, the parents, the public and not infrequently the inspecting staff also gauge the merits of a high school by the percentage of success which it obtains at the final examination. This attitude is not wholly unreasonable. So long as there is little individuality in the character of different schools there is little, except their success in the examinations, to differentiate good schools from bad. Moreover, it is precisely in order that his boy may pass the final examination that the ordinary parent sends him to a High School. Such success in itself possesses a recognized value in the Indian wage market. It also opens the door to the University; and a University

* Richey ; 11.

career is the aspiration of nearly every High School boy. Nor would this afford grounds for criticism if preparation for the University meant laying the foundation of a good education.* But in India the whole purport of education is narrowed to the passing of an examination.

Now properly speaking the use of a secondary school is to prepare the best of its scholars for the University and the rest for the business of life. This object is better served by having an elastic School Final or School Leaving Certificate Examination which should also serve the purpose of Matriculation. A reform in this direction has been effected in Bihar and Orissa, Madras, Bombay, and the United Provinces. The evil of cramming for examinations would to a large extent be minimised by the use of vernacular as the medium of instruction and this reform also is gaining ground in most provinces. The provision of an adequately trained staff of teachers is a further requirement of sound secondary—as indeed of all—education. To a large extent this depends upon offering adequate salaries to the teachers. Government have opened special schools for training Secondary Teachers and the University has established degrees like L. T. or B. T.

Primary Education.—The importance of this subject needs no emphasis at this time of the day. Unless the reproachful ban of illiteracy is removed from the whole population—male and female—India cannot be a truly progressive country. This means the application of enormous sums—public and private—to this object, which cannot be attained within the life

* Richey : 85-87.

of a generation or two. Ever since Gokhale brought forward his Bill for Compulsory Primary Education in 1910, this subject is engaging the attention of Government. Many Provincial Governments tried to expand primary education by chalking out definite schemes of opening so many schools every year, or of spending so much for Primary Education. But expansion based upon this method was not rapid or satisfactory enough, and the next step was the passage of Primary Education Acts in the provinces, authorising the introduction of compulsory education by local option. In Bombay for instance an Act permitting the Municipalities to introduce compulsory education within their areas was passed as early as 1918. But few Municipalities came forward to avail themselves of this provision. The final step rendered inevitable by the inauguration of Responsible Government—was the adoption of the principle of Free and Compulsory Primary Education throughout the province. An Act to that effect was passed by the Bombay Legislative Council, thanks to the labours of the then Minister of Education Dr. R. P. Paranjpye. It applies to the whole of the Presidency, except the city of Bombay. Every District Board and the larger Municipalities are to constitute a "SCHOOL BOARD" consisting of elected Members. This School Board is to have as its chief executive officer "The School Board Administrative Officer," recommended by the Board and approved by the Government. The District Boards and Municipalities are required to prepare "Schemes" for the introduction of compulsory primary education. As soon as the scheme is sanctioned, Government is to bear "half of the additional recurring and non-recurring annual cost of the scheme

in the case of a Municipality and two-thirds of the cost if it is a District Board." The Rules required under this Act have been framed long since but the Act has not yet been vigorously put into operation.

APPENDIX A

PART I—LIST OF CENTRAL SUBJECTS

1. (1) Defence of India, and all matters connected with His Majesty's Naval, Military and Air Forces in India, or with His Majesty's Indian Marine Service, or with any other force raised in India other than Military and Armed police wholly maintained by local Governments.
(2) Naval and Military works and Cantonments.
2. External relations, including naturalization and aliens, and pilgrimages beyond India.
3. Relations with States in India.
4. Political charges.
5. Communications to the extent described under the following heads, namely:—
 - (1) railways and extra-Municipal tramways, in so far as they are not classified as provincial subjects under entry 6 (4) of Part II of this Schedule ;
 - (2) aircraft and all matters connected therewith ; and
 - (3) inland waterways, to an extent to be declared by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature.
6. Shipping and navigation, including shipping and navigation on inland waterways, in so far as the latter are declared to be a Central Subject in accordance with entry 5 (3).
7. Light-houses (including their approaches), beacons, light-ships, and buoys.
8. Port quarantine and marine hospitals.
9. Ports declared to be major ports by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature. (Calcutta, Bombay, Karachi, Aden, Rangoon and Madras have been so declared as major ports).

10. Posts, telegraphs and telephones, including wireless installations.
11. Customs, cotton excise duties, income-tax, salt and other sources of all-India revenue.
12. Currency and Coinage.
13. Public debt of India.
14. Savings Banks.
15. The Indian Audit Department and excluded Audit Departments, as defined in rules framed under Section 96 D (1) of the Act.
16. Civil law, including laws regarding status, property, civil rights and liabilities, and civil procedure.
17. Commerce, including banking and insurance.
18. Trading Companies and other Associations.
19. Control of production, supply and distribution of any articles in respect of which control by a central authority is declared by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature to be essential in the public interest.
20. Development of industries, in cases where such development by central authority is declared by order of the Governor-General in Council, made after consultation with the local Government or local Governments concerned, expedient in the public interest.
21. Control of cultivation and manufacture of opium, and sale of opium for export.
22. Stores and stationery, both imported and indigenous, required for Imperial Departments.
23. Control of petroleum and explosives.
24. Geological survey.
25. Control of mineral development, in so far as such control is reserved to the Governor-General in Council under rules made or sanctioned by the Secretary of State, and regulation of mines.
26. Botanical survey.
27. Inventions and designs.
28. Copyright.

29. Emigration from, and immigration into, British India and inter-provincial migration.
30. Criminal Law, including criminal procedure.
31. Central police organization.
32. Control of arms and ammunition.
33. Central agencies and institutions for research (including observatories) and for professional or technical training or promotion of special studies.
34. Ecclesiastical administration, including European cemeteries.
35. Survey of India.
36. Archæology.
37. Zoological Survey.
38. Meteorology.
39. Census and statistics.
40. All-India Services.
41. Legislation in regard to any provincial subject, in so far as such subject is in Part II of the Schedule stated to be subject to legislation by the Indian Legislature, and any powers relating to such subject reserved by legislation to the Governor-General in Council.
42. Territorial changes, other than inter-provincial, and declaration of laws in connection therewith.
43. Regulation of ceremonial, titles, orders, precedence and civil uniform.
44. Immoveable property acquired by, and maintained at the cost of, the Governor-General in Council.
45. The Public Service Commission.
46. All matters expressly excepted by the provisions of Part II of this Schedule from inclusion among provincial subjects.
47. All other matters not included among provincial subjects under part II of this Schedule.

PART II—PROVINCIAL SUBJECTS

1. Local Self-Government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement

trusts, district boards, mining boards of health, and other local authorities established in a province for the purpose of local Self-Government, exclusive of matters arising under Cantonments Act 1910; subject to legislation by the Indian Legislature as regards—

(1) the powers of such authorities to borrow otherwise than from a Provincial Government and

(2) the levying by such authorities of taxation not included in Schedule II of the Scheduled Taxes Rules.

2. Medical administration, including hospitals, dispensaries, and asylums, and provision for medical education.

3. Public health and sanitation and vital statistics, subjects to legislation by Indian Legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian Legislature.

4. Pilgrimages within British India.

5. Education: provided that—

(1) the following subjects shall be excluded, namely:—

(a) the Benares Hindu University, the Aligarh Moslem University and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be Central Subjects, and

(b) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of Members of His Majesty's Forces or of other public servants or of the children of such members or servants; and

(2) the following subjects shall be subject to legislation by the Indian Legislature, namely:—

(a) the control of the establishment and the regulation of the constitutions and functions of Universities constituted after the commencement of these rules, and

(b) the definition of the jurisdiction of any University outside the province in which it is situated, and

(c) for a period of five years from the date of the commencement of these rules, the Calcutta University, and the control and organization of secondary education in the Presidency of Bengal.

6. Public works, other than those falling under entry 14 of this Part and included under the following heads, namely:—

- (1) construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the province; and care of historical monuments as defined in Section 2 (1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under Section 3 (1) of that Act; provided that the Governor-General in Council, may, by notification in the *Gazette of India*, remove any such monument from the operation of this exception;
- (2) roads, bridges, ferries, tunnels, ropeways and causeways, and other means of communication, subject to such conditions as regards control over construction and maintenance of means of communication declared by the Governor-General in Council to be of military importance, and as regards incidence of special expenditure connected therewith, as the Governor-General in Council may prescribe;
- (3) tramways within municipal areas; and
- (4) light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation, subject to legislation by the Indian Legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line.

7. Water-supplies, irrigation and canals, drainage and embankments, water storage and water power; subject to legislation by Indian Legislature with regard to matters of inter-provincial concern or affecting the relations of a province with any other territory.

8. Land revenue administration as described under the following heads, namely:—

- (1) assessment and collection of land revenue,
- (2) maintenance of land records, survey for revenue purposes, records of rights,
- (3) Laws regarding land tenures, relations of landlords and tenants, collection of rents,
- (4) Courts of Wards, encumbered and attached estates ;
- (5) land improvement and agricultural loans ;
- (6) colonization and disposal of Crown lands and alienation of land revenue ; and
- (7) management of Government estates.

9. Famine Relief.

10. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive pests and prevention of plant diseases, subject to legislation by the Indian Legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian Legislature.

11. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases ; subject to legislation by Indian Legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.

12. Fisheries.

13. Co-operative Societies.

14. Forests, including preservation of game therein and all buildings and works executed by the Forest Department ; subject to legislation by the Indian Legislature as regards disforestation of reserved forests.

15. Land acquisition ; subject to legislation by Indian Legislature.

16. Excise that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and license fees on, or in relation to, such articles, but excluding, in the

case of opium, control of cultivation, manufacture and sale for exports.

17. Administration of justice, including constitutions, powers, maintenance and organization of Courts of Civil and Criminal Jurisdiction within the province; subject to legislation by the Indian Legislature as regards High Courts, Chief Courts and Courts of Judicial Commissioners, and any Courts of Criminal Jurisdiction.

18. Provincial law reports.

19. Administrator Generals and Official Trustees; subject to legislation by Indian Legislature.

20. Non-Judicial stamps, subject to legislation by the Indian Legislature, and judicial stamps, subject to legislation by Indian Legislature as regards amount of Court-fees levied in relation to suits and proceedings in the High Courts under the Original Jurisdiction.

21. Registration of deeds and documents; subject to legislation by Indian Legislature.

22. Registration of births, deaths and marriages; subject to legislation by the Indian Legislature for such classes as the Indian Legislature may determine.

23. Religious and charitable endowments.

24. Development of mineral resources which are Government property, subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.

25. Development of industries, including industrial research and technical education.

26. Industrial matters included under the following heads, namely;—

(1) factories;

(2) settlement of labour disputes;

(3) electricity;

(4) boilers;

(5) gas;

(6) smoke nuisances; and

(7) welfare of labour, including provident funds, industrial insurance (general, health and accident) and housing;

subject as to heads (1), (2), (3), (4) and (7) to legislation by the Indian Legislature.

27. Stores and stationery, subject, in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.

28. Adulteration of foodstuffs and other articles; subject to legislation by Indian Legislature as regards import and export trade.

29. Weights and measures; subject to legislation by Indian Legislature as regards standards.

30. Ports, except such ports as may be declared by rule made by the Governor-General in Council or by or under Indian legislation to be major ports.

31. Inland waterways, including shipping and navigation thereon so far as not declared by the Governor-General in Council to be central subjects; but subject as regards inland steam vessels to legislation by Indian Legislature.

32. Police, including railway police; subject in the case of railway police, to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine.

33. The following miscellaneous matters, namely:—

- (1) Regulation of betting and gambling;
- (2) prevention of cruelty to animals;
- (3) protection of wild birds and animals;
- (4) control of poisons; subject to legislation by the Indian Legislature;
- (5) control of motor vehicles; subject to legislation by the Indian Legislature as regards licenses valid throughout British India; and
- (6) control of dramatic performances and cinematographs; subject to legislation by Indian Legislature in regard to sanction of films for exhibition.

34. Control of newspapers, books and printing presses; subject to legislation by the Indian Legislature.

35. Coroners.

36. Excluded areas.

37. Criminal tribes ; subject to legislation by the Indian Legislature.

38. European vagrancy ; subject to legislation by the Indian Legislature.

39. Prisons, prisoners (except State prisoners) and reformatories ; subject to legislation by the Indian Legislature.

40. Pounds and prevention of cattle trespass.

41. Treasure trove.

42. Libraries (except the Imperial Library) and museums (except the Indian Museum, the Imperial War Museum and the Victoria Memorial, Calcutta) and Zoological Gardens.

43. Provincial Government Presses.

44. Elections for Indian and Provincial Legislatures; subject to rules framed under Section 64 (1) and 72 A (4) of the Act.

45. Regulation of medical and other professional qualifications and standards ; subject to legislation by the Indian Legislature.

46. Local Fund Audit, that is to say, the audit by Government agency of income and expenditure controlled by local bodies.

47. Control, as defined by rule 10, of members of all-India and provincial services serving within the province, and control, subject to legislation by Indian Legislature, of public services within the province other than all-India services.

48. Sources of provincial revenue, not included under previous heads, whether:—

(1) taxes included in the Schedules to the Scheduled Taxes Rules ; or

(2) taxes not included in those Schedules, which are imposed by or under provincial legislation which has received the previous sanction of the Governor-General.

49. Borrowing of money on the sole credit of the province ; subject to the provisions of the Local Government (Borrowing) Rules.

50. Imposition by legislation of punishments by fines, penalty ; or imprisonment for enforcing only law of the province relating to any provincial subject ; subject to legislation by the Indian Legislature in the case of any subject in respect of which such a limitation is imposed under these rules.

51. Any matter, which falling within a central subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.

APPENDIX B

LIST OF PROVINCIAL SUBJECTS FOR TRANSFER

The following heads as defined in the previous list of provincial subjects :—

In all Governors' Provinces	}	1 Local Self-Government; 2 Medical administration; 3 Public Health and Sanitation; 4 Pilgrimages within British India; 5 Education, other than European and Anglo-Indian education.
In all Governors' Provinces except Arssam		6 Public works
All Governors' Provinces	}	10 Agriculture
All Governors' Provinces except Assam.		11 Civil Veterinary Department
All Governors' Provinces	}	12 Fisheries.
except Assam.		13 Co-operative Societies
All Governors' Provinces Bombay only		14 Forests.
All Governors' Provinces except Assam	}	16 Excise
		21 Registration
		22 Registration of births etc.
		23 Religious and charitable endowments
All Governors' Provinces	}	25 Development of industries
		27 Stores and stationery
		28 Adulteration of foodstuffs
		29 Weights and measures
		42 Libraries and Museums

APPENDIX C

The *Gazette of India* 1921 Part I page 776 gives a list of Madras, Bombay and Bengal Regulations passed till 1934 for amending which no previous sanction is necessary. Then there is a list of certain General Acts of the Governor-General in Council and certain Local Acts passed by him between 1835-1859 for amending which also no previous sanction is necessary. It is not necessary to burden the appendix with the long list of obsolete Acts and Regulations.

APPENDIX D

Previous sanction of the Governor-General is required for repealing or altering laws, passed since 1860, contained in the following Schedule.

Year.	No.	Short Title
1860	XLV	The Indian Penal Code, 1860.
1864	III	The Foreigners Act, 1864.
1865	III	The Carriers Act, 1865.
1865	X	The Indian Succession Act, 1865.
1865	XV	The Parsi Marriage and Divorce Act, 1865.
1865	XXI	The Parsi Intestate Succession Act, 1865.
1866	XXI	The Native Convert's Marriage Dissolution Act, 1866.
1866	XXVIII	The Trustees' and Mortgagees' Powers Act, 1866.
1867	XXV	The Press and Registration of Books Act, 1867.
1869	IV	The Indian Divorce Act, 1869.
1870	XXI	The Hindu Wills Act, 1870.
1872	I	The Indian Evidence Act, 1870.
1872	III	The Special Marriage Act, 1872.
1872	IX	The Indian Contract Act, 1872.
1872	XV	The Indian Christian Marriage Act, 1872.
1873	X	The Indian Oaths Act, 1873.
1874	III	The Married Women's Property Act, 1874.

1874	XIV	The Scheduled Districts Act, 1874.
1874	XV	The Laws Local Extent Act, 1874.
1875	IX	The Indian Majority Act, 1875.
1877	I	The Specific Relief Act, 1877.
1881	V	The Probate and Administration Act, 1881.
1881	XIII	The Fort William Act, 1881.
1881	XXVI	The Negotiable Instruments Act, 1881.
1882	II	The Indian Trusts Act, 1882.
1882	IV	The Transfer of Property Act, 1882.
1882	VII	The Powers of Attorney Act, 1882.
1889	IV	The Indian Merchandise Marks Act, 1889.
1889	VII	The Succession Certificate Act, 1889.
1889	XV	The Indian Official Secrets Act, 1889.
1890	VIII	The Guardians and Wards Act, 1890.
1890	IX	The Indian Railways Act, 1890.
1891	XVIII	The Bankers' Books Evidence Act, 1891.
1895	XV	The Crown Grants Act, 1895.
1897	III	The Epidemic Diseases Act, 1897.
1897	X	The General Clauses Act, 1897.
1897	XIV	The Indian Short Titles Act, 1897.
1898	V	The Code of Criminal Procedure, 1898.
1898	IX	The Live-stock Importation Act, 1898.
1899	IX	The Indian Arbitration Act, 1899.
1903	XIV	The Indian Foreign Marriage Act, 1903.
1903	XV	The Indian Extradition Act, 1903.
1908	V	The Code of Civil Procedure, 1908.
1908	IX	The Indian Limitation Act, 1908.
1908	XIV	The Indian Criminal Law Amendment Act, 1908.
1908	XV	The Indian Ports Act, 1908.
1908	XVI	The Indian Registration Act, 1908.
1909	III	The Presidency-Towns Insolvency Act, 1909.
1909	IV	The Whipping Act, 1909.
1909	VII	The Anand Marriage Act, 1909.
1910	I	The Indian Press Act, 1910 (Repealed)
1911	X	The Seditious Meetings' Act, 1911.

- 1912 IV The Indian Lunacy Act, 1912.
1912 V The Provident Insurance Societies Act, 1912.
1912 VI The Indian Life Assurance Companies Act,
1912.
1913 VI The Mussalman Wakf Act Validating Act,
1913.
1913 VII The Indian Companies Act, 1913.
1914 II The Destructive Insects and Pests Act, 1914.
1914 III The Indian Copyright Act, 1914.
1914 IX The Local Authorities Loans Act, 1914.
1916 XV The Hindu Disposition of Property Act,
1916.
1917 I The Inland Steam-Vessels Act, 1917.
1917 XXVI The Transfer of Property (Validating) Act,
1917.
1918 X The Usurious Loans Act, 1918.
1919 XI The Anarchical and Revolutionary Crimes
Act, 1919. (Repealed)
1920 V The Provincial Insolvency Act, 1920.
1920 X The Indian Securities Act, 1920.
1920 XIV The Charitable and Religious Trusts Act,
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