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THE INDIAN

CONSTITUTION

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A. RANGASWAMI IYENGAR,

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# THE INDIAN CONSTITUTION

THE  
INDIAN CONSTITUTION

AN INTRODUCTORY STUDY

BY

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

## PREFACE

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

standard books as Cowell's "Courts and Legislative Authorities in India" and Sir Courtenay Ilbert's "Government of India," do, of course, treat of the Indian Constitutional Laws as they have been enacted, in all their details; but they deal only incidentally with the constitutional or political principles, understandings and conventions, on which so large a part of the working of British institutions all over the world depends.

It is to stimulate the study of the Indian Constitution in this direction that this introductory sketch is primarily placed by the author before the public. It is also attempted in the book to furnish the Indian citizen with a hand book of information to be of use to him in the discharge of his duties. The average Indian who cares to interest himself in politics, gains a knowledge of political problems in a haphazard way. Such knowledge as he obtains by his business contact with other men, the reading of newspapers and the hearing and reading of political speeches, can but give him a slender acquaintance with the subject.

Matters are not very much better even in regard to many who take an active, instead of a passive, part in public affairs. The author ventures to hope the present publication will give them some preliminary help in this direction.

The book lays no claim whatever to originality or research except in its method of presenting the leading facts and features of the Indian Constitution. Written, moreover, in the intervals of busy work, it is likely to contain many errors of style and of statement. For fuller information he would refer the readers to the authoritative works of Cowell, Ilbert and others, and to the many State Papers and Proceedings published by Government. A small collection of select constitutional documents is, however, published in the Appendix, which the author trusts will prove useful both to students and to politicians.

MADRAS,  
December, 1909. }

A. R.

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# THE INDIAN CONSTITUTION

## CHAPTER I

### BRITISH SOVEREIGNTY OVER INDIA

The Constitution of British India is, in a strict <sup>Introductory</sup> sense, "made"; yet it cannot be denied that it has also "grown." Unlike the British Constitution, it owes its origin to definite statutes of the Imperial Parliament of Great Britain and Ireland; but like the British Constitution, its progress and present character have not been due to any startling innovation or revolution, but to changes consciously made by British administrators to suit the varying needs of good government in the country and, latterly, to satisfy the growing aspirations of the people of the country for a share in the government of the land. The Indian Constitution, therefore, bears all the marks of British political and institutional peculiarities, so far as they could be found applicable to this country. It exhibits, for instance, that distaste for violent or radical change and that disposition to deal with the needs of the hour, as they arise, rather than with the requirements and possibilities of the future. It exhibits, again, that tendency towards "legal" forms of political institutions—*i.e.*, institutions in respect of which legal remedies

and judicial control are provided, that regard for the maintenance of what Professor Dicey calls "The Rule of Law," which is a peculiarly British or Anglo-Saxon feature. At the same time, the requirements of the necessarily bureaucratic form of government in India, for more than a century, have also produced and perfected an administrative and constitutional system whose efficiency is its most conspicuous merit, but which possesses many drawbacks from the point of view of constitutional development.

History of  
British  
Sovereignty :  
Charters

British India, as the Statute of 1858 puts it, is governed by and in the name of His Majesty the King Emperor. How the British Crown came to acquire this vast and wonderful country is a matter of history which is common knowledge among educated people in India. But, in reference to constitutional growth, we may briefly indicate how the sovereignty of the British Crown came to be established as it is at present in India. The Charter issued to the East India Company in 1600 by Queen Elizabeth and the successive Charters renewing or amplifying the same, conferred on a trading corporation in England monopolies of trade in the East and for that purpose authorised the acquisition of territories, their fortification and defence by military levies. The Company pushed its fortunes vigorously in the midst of the political chaos in India in the 18th century. "At first the agent, it became

the master of princes. It fought and conquered with an army of its own and auxiliary forces hired from the Crown." On its behalf, Robert Clive in 1765 obtained from the Emperor at Delhi, the Dewani of the rich and fertile territories of Bengal, Bihar and Orissa. In the difficulties and troubles which arose over the administration of these provinces, arose the first Parliamentary assertion of rights of control and sovereignty over the Company's affairs in the East. The Regulating Act of 1773 contains the first Parliamentary restriction and definition of the Company's political powers and is the first important constitutional document of the Indian Government. It introduced the system of Parliamentary control over Indian affairs, and at each subsequent renewal of the Company's Charter, whenever necessary, the Parliament enacted laws for expanding and revising the constitution of the Indian Government and providing for just and impartial administration over its territories.

By the Regulating Act, the Governor of Bengal was raised to the rank of Governor-General and, in conjunction with his Council of four other members, was entrusted with the authority of supervising and controlling the Governments of Madras and Bombay in important matters. A Supreme Court of His Majesty's Judges was established at Calcutta—similar Courts were later established in Madras and Bombay—and the power of legislation was

The  
Regulating  
Act

conferred on the Governor-General in Council. The India Act of 1784, known before it became law as Pitt's Bill, established the Board of Commissioners for the Affairs of India—commonly known as the Board of Control—which virtually absorbed all real power from the Company's Court of Directors. The Act of 1813 did away with the Company's trade monopoly, except in China and that of 1833 took the latter also away and introduced various reforms in the constitution of the Indian Government—among others, the addition of a Law-Member to the Council of the Governor-General, the first appointment made to this office being that of Thomas Babington Macaulay. It also accorded the authority of Acts of Parliament to the laws and regulations passed by the Governor-General in Council. The Act of 1853 practically announced the forthcoming death of the Company and its rule as such, and laid down the principle that "the administration of India was too national a concern to be left to the chances of benevolent despotism." Finally, the Act of 1858 for the Better Government of India vested the executive administration of India in the Crown. The Indian Councils Act of 1861 defined and extended the constitutions and powers of the Executive and Legislative Councils in India; and the High Courts Act established the High Courts of Judicature in the Presidency towns under Charter from the Crown and by

The Act of  
1858

combining the old Supreme and Adalat Courts. The Acts of 1892 and 1909 have extended the principles embodied in the Act of 1861.

It will be seen from this necessarily brief outline that the powers and duties of the various legislative, executive and judicial bodies in India have to be gathered from the enactments of over a century and a half. The proposal to consolidate these has been allowed to drop and the Digest contained in the admirable book of Ilbert's 'Government of India' is the only authoritative exposition of the statutes : Parliamentary legislation, as is usual, has not attempted their consolidation and the latest enactment introducing very important changes in the constitutional system of India, *viz*, the Indian Councils Act, 1909—can only be understood and construed with reference to previous statutes.

We may begin with what is indeed a truism of the British constitutional system, that the legal sovereignty of the British Empire in India, as elsewhere, vests in the British Parliament—Parliament, in legal phraseology including King, Lords and Commons. It is the British Parliament that possesses the unrestricted power of legislating on Indian affairs, affecting the interests and welfare of all the Indian subjects of His Majesty. To those laws every body or authority in India, is bound to pay unquestioned obedience. In a legal, as well as in a moral sense, therefore, the destinies of this

Legal  
Sovereignty  
vested in  
Parliament

country are committed to the care of Parliament. But the political sovereignty over the Indian Empire is a different thing. "That body is *politically* sovereign or supreme in a state" writes Professor Dicey in his 'Law of the Constitution' "whose will is ultimately obeyed by the citizens of that state. In this sense of the word, the electors of Great Britain, may be said to be, together with the Crown and the Lords, or perhaps in strict accuracy, independently of the King and the Peers, the body in which the sovereign power is vested. The matter, may, indeed be carried a little further and we may assert that the arrangements of the Constitution are now such as to ensure that the will of the electors shall, by regular and constitutional means, always in the end assert itself as the predominant influence in the country. But this is political and not a legal fact." So far as England is concerned, the electors constitute the bulk of the people of the land and the will of the people, therefore, can rightly be stated to be supreme in the government of their country. In respect of the government of India, however, it cannot be said that the will of the people of India is supreme, and though it is in a sense true that the electors of Great Britain are the political sovereigns of India, it cannot be said that the will of the British electors has regularly and constitutionally, or ever, asserted itself on questions of Indian administration. As a

matter of fact, at the present time, the conduct of the Indian Government depends on the policy and measures taken from time to time by the ministers of the Crown commanding the confidence of the House of Commons in the first instance and thus of the electors indirectly. The time at which the electors of Great Britain assert their political sovereignty with regard to questions concerning themselves is at General Elections. But the time seems yet to be far distant when a purely Indian question will be fought out at a General Election, the prevailing policy of both the great political parties in England being to treat Indian affairs as non-party matter\*

Subject, therefore, to the legal sovereignty of the British Parliament and the political sovereignty of the ministers of the King, for the

A three-fold  
origin of  
powers

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\* [The intention, however, of the framers of the Act of 1858, which transferred the rule of India from the Company to the Crown, appears to have been that the House of Commons should exercise a direct and regular supervision over the Government of India. The history of that measure is from a constitutional point of view interesting, and an admirable summary of it by the late Mr. George Yule in his Presidential Address as the President of the 4th Indian National Congress, appears in a note at the end of this chapter. From the stand-point of a political institution, India has been usually deemed a dependency of Great Britain and it is only on the material authority and moral responsibility of the people of England that the good government of this Country ultimately rests—whatever might be the changes which the new reforms might hereafter effect in the way of constitutional government for this country.]

time being chosen by the electors of Great Britain, the superintendence, direction and control of the civil and military Government of India itself is vested in the Secretary of State for India assisted by a Council in England and the Governor-General of India in Council in India. The Governor-General in Council exercises in India the delegated authority of the Crown and the Parliament over Indian affairs but the actual powers exercised by all these authorities have been inherited from different sources. Though there could be no limit to the authority of Parliament from a constitutional point of view, it is still useful in obtaining a proper idea of the usual course of Britain's administration of India, to bear in mind the three-fold origin of the powers of the Government in India, *viz.*, those arising from the authority of Parliament, those inherited from the East India Company and those derived from the Mughal Emperor and other territorial rulers whose powers the Company succeeded to by cession or conquest. The Government of India Act, 1858, refers to these when it recites in section 3:—

“ One of his Majesty's principal Secretaries of State shall have and perform all such or the like powers and duties in anywise relating to the government or revenues of India, and all such or the like powers over all officers appointed or continued under the Government of India, Act, 1858, as if that Act had not been passed might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company, either alone or by the direc-

tion or with the sanction or approbation of the Commissioners for the affairs of India, in relation to that Government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone."

His Majesty's Secretary of State with his Council thus exercises on behalf of the Crown, all the powers of control over the authorities in India previously exercised by the East India Company through its Court of Proprietors and Court of Directors. He also represents, as a member of the Cabinet responsible to Parliament, the supreme and ultimate authority of Parliament, formerly exercised through the Board of Control. The powers, rights, and duties inherited from the previous rulers of the land are in practice exercised by the Viceroy and Governor-General of India. This may seem a valueless distinction in the face of the omnipotence of Parliament to deal with Indian affairs as it chooses. But it assumes importance with reference to the actual means and methods of administration in India. We may say, for instance, that the Secretary of State by himself, in a sense, succeeded to the powers of the Board of Control, but with a more direct authority over the affairs of India and a more direct responsibility to Parliament. The Council of India established by the Act of 1858 to advise and assist the Secretary of State in the transaction of Indian business is also, in a similar sense, the successor to the old Courts of Directors and Proprietors of the Company. To the

extent to which this Council assists and interposes in the Secretary of State's action or policy in regard to the affairs of India, the position of the Indian Secretary of State in fact differs in some respects from that of other Secretaries of State of His Majesty. Similarly, though his office is the creature of a British statute, the Governor-General has and exercises rights, powers and privileges which do not come within those enumerated in the statutes of Parliament, but which have accrued to the Government of India as the successors of the previous native rulers in the land and as the representative of the Crown and the accredited agent for its prerogatives in India. The important rights of the State to the land revenue in India arise, for example, from what is claimed to be the customary and ancient Indian right to the *Rajabhagam* or the King's share of the produce of the land in India.

Indifference  
of Parliament  
in practice

It may, therefore, be inferred from the above that Parliamentary control over Indian affairs, even from the constitutional point of view, must needs be imperfect owing to the complicated origin of British authority in India and the difficulty of exercising direct supervision. In actual fact, moreover, the indifference of Parliament and the British electors to the government of India—the brightest Jewel in the British Crown—is astounding and their ignorance of Indian affairs is 'abyssmal.' The extent and the limits of the authority ordinarily

exercised by Parliament over Indian administration, as fixed by statute, are comprised in the following provisions :—(1) that, “ although the whole of the Indian revenues are at the disposal of the Secretary of State and the Council, to be by them drawn upon for all expenditure required for the service of India, they must make known to Parliament all expenditure incurred and may not increase the debt of India without the sanction of the House of Commons ; (2) that, on the other hand, although the Indian Budget is annually laid before that House to enable its members to offer suggestions, ask for information, and generally criticise the policy of the Government in relation to India, the financial statement is followed by no application for any vote to control or influence the taxation of India. but merely by certain formal resolutions setting forth the actual revenue and expenditure in India for the current year” ; (3) that, except for preventing or repelling actual invasion of His Majesty’s Indian possessions, or under other sudden and urgent necessity, the revenues of India are not, without the consent of both Houses of Parliament, applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty’s forces charged upon those revenues and (4) that all proclamations, regulations and rules made under the India Councils Act, 1909, other than rules made by a Lieutenant-Governor for the more convenient.

transaction of business in his Council, shall be laid before both Houses of Parliament as soon as may be after they are made.

While it is true that Parliamentary control over Indian affairs has thus tended to become unreal, because of its difficulty, it has been maintained by no less an authority than Mr. Leonard (now Lord) Courtney in his book on the Working Constitution of the United Kingdom, "that it has been part of the overruling mind which has shaped the organisation of Indian Government to make it not too responsive to the varying temper of the House of Commons, though in the end, the national will must have its way." How both these could be secured by placing the Indian Secretary of State's salary on the British Estimates, is explained by Mr. (Lord) Courtney as follows :—

"The Secretary of State is a member of the Cabinet which must possess the confidence of the House of Commons. It has nevertheless been part of the overruling mind which has shaped the organisation of Indian Government to make it not too responsive to the varying temper to the House of Commons. In the end the national will must have its way here as elsewhere ; but checks and obstacles are interposed which, perhaps insensibly, moderate its force. No part of the expense involved in the Government of India comes before the House of Commons in Committee of Supply. The salary of the Colonial Secretary is voted by Parliament and there is thus a possibility of annually reviewing his policy in the full activity of the Parliamentary session. The salary of the Indian Secretary of State is paid by India and never comes before the House of Commons. At the end of the Session, generally after the Appropriation Bill has been

read a second time, the Indian Budget is submitted ; and this consists of the review of the financial situation in India followed, after a desultory discussion, by a resolution simply affirming that the Indian Accounts show certain totals of income and expenditure. It may be doubted whether this does not betray too great a jealousy of the House of Commons. If the salary of the Indian Secretary of State were submitted like the Colonial Secretary's to a vote, the opportunity for a real debate would be given which, experience suggests, would be used rather than abused."

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NOTE

*(Extract from the Presidential Address of Mr. George Yule, as President of the Fourth Indian National Congress held in Allahabad in December 1888.)*

"When the sole Government of this country was taken over by the Crown in 1858, it fell to the lot of Lord Palmerston who was then Prime Minister, to introduce into the House of Commons, a bill which was afterwards known as India Bill No. 1. The main provisions of this bill were, that the Government of India was to vest in a Viceroy and Council in India and a Council of eight retired Indian officials presided over by a Secretary of State in London. The proceedings of these two separate bodies, each of whom had certain independent responsibilities, were to be subject to the review and final decision of the House of Commons. The chief objection to this Bill was that no provision was made for the representation of the people of the country. Mr. Disraeli, who was leader of the Opposition, objected to it on the ground of the insufficient check which it provided ; and he said that with such Councils as those proposed, ' you could not be sure that the inhabitants of India would be able to obtain redress from the grievances under which they suffered, that English protection ought to insure.' Almost immediately after the introduction of the Bill, Lord Palmerston was defeated upon a side question and Lord Derby became Prime Minister with Mr. Disraeli as Leader of the House of Commons. No time was lost by

the new Ministry in introducing India Bill No. 2. Mr. Disraeli dwelt upon the desirability of having the representative principle applied to the Government of the country and his scheme was to increase the Council in London, which was proposed by Lord Palmerston, from eight to eighteen members, half of whom were to be elected and were in all other respects to be entirely independent of Government. He regretted that the unsettled state of the country did not admit of a representation of the people in India itself, and all that could be done in the meantime was to approach as near to that form of government as the circumstances would permit. The provisions of his Bill to effect that purpose were briefly these. Four of the elected half of the Council were to be members of the Indian Civil and Military services of ten years' standing and the remaining five must have been engaged in trading with India for at least five years. The constituency electing the four members connected with the services was to consist of all officers of both branches of the India Service and also of all residents in India owning £2,000 of an Indian Railway or £1,000 of Government Stock. The five mercantile members were to be elected by the Parliamentary constituencies of London, Belfast, Liverpool, Manchester and Glasgow. So deeply ingrained is this notion of government by representation in the minds of Englishmen that, rather than leave it out of sight altogether in dealing with the affairs of India, the Government of that day made the proposal I have stated. Although the intention underlying these proposals was applauded, the scheme itself was felt to be, from the imperfect character of the constituencies, wholly inadequate to secure the check that was desired. It was clear, or rather it soon became clear, that the interest of one set of voters were adverse to the interests of the mass of the people and that the other set knew absolutely nothing of the country or its wants. Received with favour at first, the Bill soon became the object of jest and derision on the part of the Opposition and even its more impartial critics said of it that it was useless offering to the people of India under the name of bread, what would certainly turn

out to be a stone. At the suggestion of Lord John Russell, the Bill was withdrawn and the House proceeded by way of resolutions to construct the frame work of another Bill. The plan finally adopted was this—the legislative and administrative powers were to be entrusted to a Viceroy and a Council in India and the check upon them was to be a Council of fifteen members sitting in London. This Council was to be responsible to the Cabinet through a Secretary of State, who was to be responsible in turn to the House of Commons. This arrangement was regarded merely as a provisional one and the policy to be pursued was to work up to the constitutional standard. Education was to be largely extended and improved and the natives of the country were to be drafted into the service of Government as they became qualified with the view, among other reasons, to fit them for the anticipated enlargement of their political powers. The provisions made and the prospects held out in the debates in Parliaments derived a lustre from the famous Proclamation of the Queen—that half-fulfilled Charter of Indian rights—which was first read and published to the people of India in this very city of Allahabad thirty years ago.

Now, what I wish to impress upon your mind by this brief narrative, is the great importance that was attached at that time to some sort of constitutional check. Failing to have it in the form that the English people themselves approved and followed in the management of their own affairs, they devised the substitute with its three-fold check that I have mentioned. Parliament itself was full of gushing enthusiasm as to the part it would take in the business. In the absence of a representative body in India, the House of Commons was to play the role of one on our behalf. It was to regard the work as a great and solemn trust committed to it by an all-wise and inscrutable Providence, the duties of which it would faithfully and fully discharge. Such was the style of language employed both in and out of Parliament at the time I allude to. And now what is the actual state of the case? It is summed up in a single sentence: there is no check. The Bill under which our affairs are administered

appears like many other Bills to be open to more than one interpretation. The interpretation put upon it at the time, and what was probably the intention of Parliament, was ; the Government of India was to have the right of initiative ; the Council in London the right of revision and the Secretary of State, subject to the ultimate judgment of the House of Commons, the right of veto. And this was practically the relation of the parties until 1870. In that year, the Duke of Argyll was Secretary of State ; and in a controversy on this subject with Lord Mayo who was then Viceroy, he laid down quite another doctrine. He held that the Government in India had no independent power at all and that the prerogative of the Secretary of State was not limited to a veto of the measures passed in India ' The Government in India,' he maintained, ' were merely executive officers of the Home Government, who hold the ultimate power of requiring the Governor-General to introduce a measure and of requiring also all the official members of the Council to vote for it.' This power-absorbing despatch is dated 24th November 1870. The supposed powers and privileges of the Council in London have been similarly dealt with and the Council is now regarded merely as an adjunct of the office of the Secretary of State, to furnish him with information or advice when he chooses to ask for it. The present position is this : the Government of India has no power ; the Council in London has no power ; the House of Commons has the power, but it refuses or neglects to exercise it. The 650 odd members who were to be the palladium of India's rights and liberties have thrown ' the great and solemn trust of an inscrutable Providence ' back upon the hand of Providence to be looked after as Providence itself thinks best."

## CHAPTER II

### THE CROWN AND THE INDIA OFFICE

The executive authority of the Crown over India is not a thing which arose with the Act of 1858. As has been pointed out in the introductory chapter, it has existed all along and been exercised through various bodies from time to time. What the Act of 1858 did was to vest that authority in a Secretary of State, assisted by a Council, newly created. It is in this respect that the framers of the Act made a departure from the methods followed as regards the Colonies. The reasons therefor were then indicated to consist in a desire to have expert advice and guidance on, and to some extent control over, the affairs of India entrusted to the Secretary of State. In respect of the Colonies, the constitutional theory has been that the authority of the Crown, both in regard to legislation and administration, is exercised by the King in Council (*i.e.*, the Privy Council). Parliament, of course, is supreme and might intervene and make provision for the Government of any Colony—for, in the words of Lord Mansfield, “there cannot exist any power in the Crown exclusive of Parliament.” But, ordinarily, it has been deemed to be specially

The Colonies  
and India : a  
distinction

within the province of the 'King in Council' to deal with the good government of the overseas Empire. This theory, to a large extent, held good in respect of India, too, and vestiges of it still remain in the matter of issuing military commissions. With the passing, however, of the Regulating Act, in 1773, the Parliament came upon the scene and the authority of the King in Council receded and was practically thereafter confined to the "settled prerogative of the Crown to receive appeals in all colonial causes"—a power which is now statutorily vested in the Judicial Committee.

Thus, while the authority of the Crown over Colonial affairs continued to be exercised by the King in Council, that over India came to be exercised through special bodies, such as the Board of Control and the Secret Committee of the Court of Directors, the main reason being, it may be presumed, to keep a zealous watch over the Company and to provide well-informed and expert guidance in the administration of such a vast and varied territory as the Indian Empire. The evolution of the Colonial Secretary, therefore, became associated with the King in Council, while that of the Indian Secretary became associated with a special and new body known as the Council of India. In his book on "The Law and Custom of the Constitution," Sir William Anson has laid down this distinction in the following terms :—"Apart from the legislative supremacy

of Parliament, which is the same for all parts of the King's dominions, the Colonies are governed by the King in Council, or by the King acting on the advice of the Secretary of State for the Colonies. But India is governed by the Emperor of India acting on the advice of the Secretary of State for India in Council. The Secretary of State, no doubt, represents the King-Emperor of India in the exercise of the royal prerogative, but his *Council* is not the Privy Council, but the *Council of India.*"

The Act of 1858 which inaugurated the direct Government of India by the Crown, recites that all rights which, if the Act had not been passed, might have been exercised by the East India Company in relation to any territories, may be exercised by and in the name of His Majesty as rights incidental to the Government of British India. In virtue of his position, the Indian Secretary is always a member of the Cabinet—the body in whom the ultimate executive authority of the Crown over the whole of the British Empire is by constitutional convention vested. The Secretary of State for India advises the Sovereign, according to legal theory, in his capacity of Privy Councillor, having been 'sworn of the Privy Council' as a matter of course. The Cabinet, therefore, in its solidarity, joins in his counsels and shares in his responsibilities. The Act of 1858, however, as we have seen, has associa-

The Indian  
Secretary of  
State

ted with the Indian Secretary, a Council whose function it is "to conduct, under his direction, the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India." Its concurrence, moreover, in respect of some important matters relating to Indian affairs, has been made essential to the Secretary of State taking any action in respect thereto.

**His position :** The constitutional position of the Indian Secretary of State has thus been made to differ somewhat markedly from that of other Ministers. According to constitutional usage, he is the person responsible to Parliament for the administration of India. But in regard to certain specified questions—one of them being the appropriation of the revenues of India—the determination thereof is reserved by statute to the Secretary *and* a majority of the India Council—a body which is unrepresented in Parliament and is statutorily disqualified from direct representation in Parliament. The only exception to this rule is that no appropriation of Indian revenues for any military operations beyond the Indian frontiers can be made without the sanction of Parliament. ✓ This, of course, is of very rare occurrence. It would therefore seem as if the principle of ministerial responsibility to Parliament could not be enforced against the Indian Secretary in such cases—which would virtually mean that Parliament could not exercise effective control over

the finances and expenditure of India. A discussion arose on this question in the House of Commons some time after the Act of 1858 was passed, in 1869, and the matter has been virtually settled by the statement of a late Secretary of State for India. The proper mode of regarding the India Council would appear to be as a body deputed by Parliament to exercise a species of *quasi*-Parliamentary control in certain matters over the Secretary of State, and the authority so delegated is, in this view, liable to be revoked. "The House of Commons is so overwhelmed with business nearer home," he said, "that it has no opportunity of making itself acquainted with all those vast fields of knowledge that will enable it to exercise an efficient influence over the Secretary of State for India. Therefore, it has instituted this Council to be its deputy, as it were, to watch him and see that the powers placed in his hands are not abused. It ought, however, to be clearly understood that the moment the House steps in and expresses an opinion on a subject connected with India, that moment the jurisdiction of the Council ought to cease. It is not to be endured in this constitutional country for a moment that the Council should set itself against the express opinion of the House."

The student of Indian constitutional history In practice has yet to look for the development and subsequent use of a constitutional convention such

as is indicated in the above words. The consciousness that the will of the House of Commons is ultimately bound to prevail has not acted so much to prevent the Council of India from assuming a factious or obstructive attitude in the exercise of its powers, as in strengthening the hands of the British Cabinet, which could rely on the support of the House to subordinate and even to sacrifice the interests of India—which is unrepresented in the House—to British or Imperial exigencies or interests. “While the object, and to some extent, the effect of the Act was,” writes Mr. Ilbert, “to impose a constitutional restraint on the powers of the Secretary of State with respect to the expenditure of money, yet this restraint could not be effectively asserted in all cases, especially where Imperial interests are involved. For instance, the power to make war necessarily involves the expenditure of revenues, but it is a power for the exercise of which the concurrence of a majority of votes at a meeting of the Council cannot be made a necessary condition. The Secretary of State is a member of the Cabinet and in Cabinet questions, the decision of the Cabinet must prevail.” The belief that the Act of 1858 had vested in the India Council the power to veto absolutely any expenditure which they considered India should not be charged with, was soon discovered to be unfounded. In practice, the Council has often been overborne and sometimes not

even consulted. The Secretary of State has had to bow to the decision of the Cabinet in these matters irrespective of the interests of India.

This fact was clearly brought out in the examination of the Marquis of Salisbury, when Secretary of State for India, by the Parliamentary Committee on Indian Finance of 1871—74. “If, with the support of the Council, the Secretary of State should oppose a demand from the Treasury,” said Lord Salisbury, “the result would be ‘to stop the machine’.” He was thereupon asked: “You must either stop the machine or resign or go on tacitly submitting to injustice.” “I should accept that statement”, he replied, “barring the word, ‘tacitly.’ I should go on submitting with loud remonstrances.” “Remonstrances, however loud,” remarks an authority,\* “might be unavailing unless backed by the force of external opinion. And here was the constant difficulty indicated by another of Lord Salisbury’s replies. Under the pressure applied by the House of Commons, every department desires to reduce its estimates. It is, therefore, tempted, without any desire to be unjust, to get money in the direction of least resistance. So long as the House of Commons is indifferent to Indian finance, there will therefore be a steady temptation to shift burdens upon India. The zealous watchfulness of the House of Commons, said Lord Salisbury, would be the best protection of the people of

The India  
Council  
ineffective

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\*Leslie Stephen—Life of Henry Fawcett.

India against such injustice, and he spoke of the desirability of exciting public opinion in England 'up to the point of integrity'."

The  
Constitution  
of the  
Council

It has thus happened that the body constituted by Parliament to watch over and act as a check on the Indian Secretary in the exercise of his powers has been, by the Parliament's own subsequent action, deprived of its power and that the object of the framers of the Act has been defeated. The India Council, in fact, possesses little real power and its only function is to constitute itself a body of advisers to the Indian Secretary, who are deemed specially conversant with Indian affairs. The constitutional distinction, however, between the Secretary of State in Council and the Secretary of State is still, in many cases, of practical importance. The powers of the Secretary of State, of the India Council and of the Secretary of State in Council will be found fully set out in the Act of 1858, which is published in the appendix, but a brief reference may be made here to a few noteworthy points. In general, under the terms of the Charter Act of 1833, the Secretary of State may, as inheriting the powers of the Board of Control, "superintend, direct and control all acts, operations and concerns which in any wise relate to or concern the Government or revenues of India." The Council of India, under the terms of Section 19 of the Act of 1858, conducts under his direction "the business transacted in the United Kingdom in

relation to the Government of India and the correspondence with India." The Council of India, as at present constituted, is to consist of not more than fourteen members and not less than ten members. These are appointed by the Secretary of State to hold office for a term of ten years which may for special reasons be extended for a further term of five years. The Secretary of State may also appoint to the Council a member having professional or other special qualifications. The members of the India Council can only be removed, like His Majesty's Judges in England, by an address of both Houses of Parliament. All powers required to be exercised by the Secretary of State in Council and all powers of the Council may be exercised at meetings of the Council at which not less than five members are present. The Secretary of State is authorised to divide the Council into committees for the more convenient transaction of business and to appoint a Vice-President.

The Indian Secretary and his Council, between them, have succeeded, as we have seen, to all the powers previously exercised by the Board of Control with and without the Courts of Directors and Proprietors of the East India Company. The nature of the control which, prior to 1858, this Board exercised over the administration in India was thus described by John Stuart Mill :—

The control  
of the India  
Office

"It is not," he said, "so much an executive as a deli-

berative body. The Executive Government of India is and must be seated in India itself. The principal function of the Home Government is not to direct the details of administration, but to scrutinise and revise the past acts of the Indian Government, to lay down principles and issue general instructions for their future guidance and to give or refuse sanction to great political measures which are referred Home for approval."

Sir John Strachey \* is of opinion that this description holds good even at the present day. "The work of the Secretary of State," is, according to Sir John, "mainly confined to answering references made to him by the Government in India and apart from great political and financial questions, the number and nature of those references mainly depend on the character of the Governor-General for the time being. Some men in that position like to minimise personal responsibilities and to ask for the orders of the Home Government before taking action. Others prefer to act on their own judgment and on that of their Councillors. The Secretary of State initiates almost nothing." The last statement, however, appears too broad. Though it is supported in principle by the pronouncement of the present Viceroy that in the matter of the new reforms, the initiative came from the Government of India and not from Lord Morley, still instances can be quoted in which the Secretary of State initiated measures of reform owing to pressure of public opinion in India and England, in

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\* India : Its Administration and Progress. Third Edition, p. 78.

opposition to the views of the Government in India. Other instances can also be quoted in which the "Home" Government initiated and forced on this country measures of financial or fiscal policy under the pressure of powerful interests in England and against the declared intentions and policy of the Government in India as well as of public opinion in this country.

The work of the Council of India is usually to deal with such business as is placed before it by the Secretary of State. He may overrule his Council in all matters where there is difference of opinion between him and his Council, except as to those in which their concurrence is obligatory under the statute. He may despatch letters and issue orders directly to the authorities in India in the "Secret Department", wherever the matter is, in his opinion, or in that of the Indian authorities, one requiring secrecy or urgency, or concerns the making of war or peace, or the policy respecting the Native States and Princes, or for which a majority of votes of the Council is not declared to be necessary. A majority of such votes is necessary for decisions on the following matters :—

The business  
of the  
Council

- (i) Appropriation of the revenues of India or properties.
- (ii) Exercise of borrowing powers and entering into contracts.
- (iii) Alteration of salaries, furlough rules, etc.
- (iv) Appointments of Natives of India to offices reserved for the Indian Civil Service and the making of provisional appointments to the Governor-General's Council.

For the purposes of the exercise in England of the financial powers and duties in respect of the revenues of India or other properties which are by law vested in the Crown, and the incurring of rights and liabilities under contracts, the Secretary of State has been declared by the Act of 1858 a juristic person. The Act has also provided that the Secretary of State in Council may sue and be sued as well in India as in England as a body corporate and that every person has the same remedies against the Secretary of State in Council as he might have had against the East India Company.

An interesting distinction in law

In this respect, an important constitutional distinction exists between him and the other Secretaries of State. In England, an action does not lie against the Crown. The only legal remedy against the Crown is by Petition of Right. On the other hand, Ministers in England are not protected, except where expressly so provided by statute, in respect of legal wrongs by pleading the authority of the Crown, whereas in respect of India, the Secretary of State and every member of the India Council are expressly exempted from personal liability in respect of all contracts, covenants or other engagements entered into by them in their official capacity and "all costs and damages in respect thereof are borne by the revenues of India." Moreover, as Mr.

Ilbert points out, \* it has been held that a Petition of Right does not lie for a wrong committed, in pursuance of the maxim that the King can do no wrong ; and for a wrong done by a person in obedience or professed obedience to the Crown, the remedy is against the wrong-doer himself and not against the Crown. But, in India, it would seem as if a statutory remedy will lie against the Secretary of State in Council as a body corporate, not merely in cases in which a Petition of Right will lie in England, but in all cases in which the right of suit is given by statutes and in respect of acts done in the conduct of undertakings which might be carried on by private individuals without sovereign powers.

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\* The Government of India—Second Edition, p. 171.

## CHAPTER III

### THE IMPERIAL GOVERNMENT

The Execu-  
tive authority  
in India

We have dealt, in the last two chapters, with the powers, functions and ordinary business of the Supreme Legislative and Executive authority over the Indian Empire, vested in the Parliament of Great Britain and Ireland and the Crown of the United Kingdom. The direct administration of an Empire like British India could not, however, be conducted by a body or bodies constituted in London and it is to the organs and institutions, evolved and established in India during more than a century and a half, that we must next look to obtain an idea of how the administration is carried on. In doing so, we may first of all deal with the executive authority, as being the older in point of origin and as the one from which the legislative authority subsequently expanded and became distinct. The 'superintendence, direction and control' in India of the civil and military Government of British India is vested in the Viceroy and Governor-General of India in Council. Statutorily, of course, the old provision in the Regulating Act of 1773 requiring and directing the Governor-General in Council "to obey all

such orders as they shall receive from the Court of Directors" of the East India Company is still operative and vests in the Secretary of State, who has succeeded to the powers of the Court of Directors under the Act of 1858, the power of requiring similar obedience to his orders.

The position  
of the man  
on the spot

The constitutional question, however, in this connection is not so much as to the subordinate or delegated executive authority of the Governor-General in Council, which is undisputed, as to the extent and limits of such authority. The relations between the Secretary of State and the Government of India are now regulated, as Mr. Ilbert says, by constitutional usage. Sir John Strachey, however, as we have seen, seems to think that the usage is not quite settled, at least so far as the every-day administration is concerned, and that it depends on the character of the Governor-General for the time being. It is not possible for those not directly acquainted with the administrative business and methods of the Imperial Government to venture any opinion on this subject. Nor could any definite and petrified usage in this respect be expected to outlive the requirements of the daily progressive administration in India. There are those who believe implicitly in "the man on the spot" theory, while there are others who believe in the corrective influences of control from the democracy in England and its agents, the Ministers of His Majesty, under the guidance of public opinion and progressive ideas.

His initiative  
in Legislation

Whatever be the right principle in this respect, we may refer to one or two understandings which have become settled in regard to the relations between the Governor-General in Council and the Secretary of State, as a result of controversies which arose after the Acts of 1858 and 1861 were passed. The interpretation put upon the Act of 1858 at the time it was passed by Parliament was, as Mr. George Yule pointed out, that the Government of India was to have the right of initiative, the Council in London the right of revision and the Secretary of State the right of veto, subject to the ultimate judgment of the House of Commons. Similarly, the India Councils Act of 1861 vested the power of previous sanction necessary for the introduction of certain important measures in the Legislative Councils in the Governor-General, and not in the Secretary of State—the power of subsequent disallowance by the Crown, exercised through the latter, being the only check retained in his hands under the Statute. Disputes, however, arose over this division of powers. The first of its kind was in 1870, when the Duke of Argyll was Secretary of State for India and Lord Mayo the Viceroy. There were differences of opinion between the Secretary of State and the Government of India in connection with some of the legislative proposals of the latter, then before the Legislative Council. Among these, the Punjab Drainage and Canal Act which set the whole

subject of irrigation works on a legal footing as regarded the Punjab, was the subject of a great controversy between Lord Mayo and the Duke of Argyll. In a despatch, dated the 24th November 1870, the Duke of Argyll laid it down that the prerogative of the Secretary of State was not limited to a veto of the measures passed in India. "The Government of India," he observed, "were merely Executive Officers of the 'Home' Government who hold the ultimate power of requiring the Governor-General to introduce a measure and of requiring also all the official members to vote for it." The Punjab Canal Act was afterwards repealed and re-enacted with modifications.

The next important dispute was in 1874 and was but the natural development of what took place in 1870. If the Secretary of State could and ought to do what the Duke of Argyll said he had the power of doing in respect of the legislative proposals of the Government of India, it follows that in order effectually to exercise such a power, action subsequent to the passing of measures by the Councils in India either by exercise of veto or by requiring the Governor-General to repeal and re-enact them with the necessary modifications, is not sufficient. This was exactly how it struck the Marquis of Salisbury who was Secretary of State for India in 1874. In a despatch to Lord Northbrook, the Governor-General, the Secretary of State directed that the Govern-

ment of India should in future communicate to him—in order that he may have an opportunity of previously expressing his opinion and directions thereon—information regarding any measures, except those of slight importance or those requiring urgent action, which they might intend to introduce into the Legislative Council. A similar course was to be followed in case any important alterations were made during the progress of a measure through the Legislative Council and the orders of the Secretary of State were to be awaited thereon. The Provincial Governments were also asked similarly to follow the same procedure. The Government of India pointed out difficulties in following this course, after once a measure had been launched, and suggested that the understanding should be that the measure might be proceeded with, if no reply were received to their communications within two months; and in regard to the Provincial Legislative Councils, Lord Northbrook's Government pointed out that the course proposed by the Secretary of State was likely to interfere with the power and the obligation, imposed by statute upon the Governor-General, of sanctioning or rejecting prior or subsequent to enactment the legislative proposals of the Provincial Governments. As a result of the correspondence that took place, the Government of India promised to bear carefully in mind the wishes of the Secretary

of State, more especially as he had assured them that his instructions were not intended to fetter the discretion which the law had vested in the various legislative authorities in India or in the Governor-General. The Secretary of State accepted the arrangement. But in 1875, in consequence of the financial state of the country, the Tariff Act was passed urgently without reference to the Secretary of State, imposing a duty of 5 per cent. on imported cotton and other goods, which had the effect of check-mating the Secretary of State in reference to a matter on which he had expressed contrary views before and in which the interests of the Lancashire cotton manufacturers were involved. He, therefore, censured the Government of India for having passed the Tariff Act without reference to him. He refused to accept the contention of the Government of India that the urgency of the case was their justification and that an additional reason for immediate action lay in the difficulty of carrying on prolonged discussions, pending a reference to the Secretary of State, with regard to measures 'involving alterations of customs duties without a disclosure of the intentions of Government which would be productive of considerable inconvenience to trade.' Lord Salisbury considered that the Government of India had over-rated the difficulty of keeping an official secret and re-affirmed his former position that the import duty on cotton manufacturers

should be removed as soon as the condition of the revenues enabled the Government of India to part with it. In regard to legislative measures, he directed for the future that whenever the Government of India found it necessary to pass an Act urgently, telegraphic intimation should be given to him beforehand without delay.

This decision led to the immediate resignation of Lord Northbrook and the appointment of Lord Lytton to the Viceroyalty, with a mandate on this and other questions—a mandate, however, which he found difficult to carry out and carried out eventually only by the exercise of his extraordinary power of overruling the majority of his Councillors. The effect of the Marquis of Salisbury's orders in connection with this question was considered to be, according to a great authority, "to transfer to a great extent the initiative of the measures required for the good government of India from the Viceroy's Council to the Secretary of State," and the despatch on the subject, though approved by a majority of the then members of the Council of India, was dissented from by such high authorities as Sir Erskine Perry and Sir Henry Montgomery.\*

His executive powers.

It may, therefore, be inferred that while the statutory powers vested in the Governor-General in regard to legislation have come to be

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\* The main despatches in connection with this controversy which set forth the constitutional understandings between the Secretary of State and the Government of India will be found in the Appendix.

controlled by the Secretary of State in the manner indicated in the foregoing paragraphs, his powers are even more liable to be interfered with in regard to executive administration, where the occasions for interference in the interests of good government or otherwise are likely to be more frequent. On all questions relating to foreign affairs, the Government of India equally with the self-governing Colonies, have no foreign policy of their own, because India's foreign relations must necessarily be co-ordinated with those of the Empire. The power of declaring war, commencing hostilities or concluding treaties is vested in the Crown, and in cases where these happen to be in connection with India, they have been subject, as we saw in the last chapter, to some amount of Parliamentary control where expenditure is involved. In regard to India's neighbouring Asiatic powers, the initiative in the conduct of foreign affairs must, to a large extent, be in the hands of the Government of India; but the summary manner in which Mr. Brodrick (now Lord Middleton), Secretary of State in 1904, revised the treaty concluded by Colonel Sir Frank Younghusband with the Tibetan Government at the instance of the Government of India, is one example to show how limited the power of the Government of India might become should the Secretary of State choose to interfere. The recent Curzon-Kitchener controversy is also a measure of the extent to

which even a powerful Viceroy may have to yield in respect of large questions of administrative policy to the Secretary of State's views.

Extent of  
the Viceroy's  
responsi-  
bility.

The Governor-General and his Council are appointed from "Home," and the former is usually a politician or administrator of experience from England. The utmost effect, therefore, of his subordination to the Secretary of State could only be that, if he felt disposed to differ from the policy of the Secretary of State, he must yield up his private opinion or resign. If he yields, he becomes in effect a mere creature of the "Home" Government. If he resigns, there is no constitutional means in India by which he can vindicate his position, or have carried out the policy which he deems necessary for the welfare of India. It is to be noted that in this respect the Government of British India differs from that of the self-governing Colonies. If the Secretary of State for the Colonies, through the Governor or Governor-General of that Colony, vetoes any legislation or other proposal the members of the Colonial Government can resign and appeal to Colonial Constituencies and, if the latter support them, the "Home" Government is virtually powerless to proceed further. The responsibility of the government of a self-governing Colony rests upon the will of and could be enforced towards the people of the Colony and not the "Home" Government. The Governor-General in India may resign, but the Government of India, consisting of the Coun-

cillors and his successors, are bound to carry out the orders of the "Home" Government. The legal and political responsibility of the Government of India is only towards the "Home" Government, and there is no constitutional arrangement by which they could be made responsible to the people of the country. The Government in India is primarily based upon principles of benevolent despotism and such responsibility as the Government of India might feel to the people of India is only moral and based upon their sense of justice and righteousness and on the effect of such expressed public opinion in the country as could, if possible, make itself felt.

Yet, when all has been said as to the measure of subordination of the Governor-General to the Secretary of State, the fact remains that British India has to be under the immediate administration of the Viceroy and his Council. In the ordinary course of business, where the Secretary of State is not disposed unduly to interfere with the Governor-General and his Council, the powers of the latter are practically unlimited for efficient administration and the furtherance of the welfare and progress of the country. In a country where personal government has played so large a part, the personality of the Viceroy and Governor-General as the representative of His Majesty the King-Emperor in India has always been looked upon to a great extent as the sign

Wide powers  
of Viceroy.

of just and benevolent Government, though the tendency of departmentalism, as we shall see presently, has steadily gone to reduce this personal factor in administration. The Governor-General, moreover, as we have observed in a former chapter, is the repository of all those legal prerogatives and powers, privileges and immunities, which have become vested in him as the representative of the British Crown and as the successor on behalf of the Crown, to the old territorial rulers and princes of the land. The rights which the Governor-General in person and the Executive Government collectively have inherited, vary from the important rights of the state to the land revenue in India, to receiving formal *nuzzers*, which are touched and returned, from chiefs and princes. The prerogative of pardon and mercy reside in the Governors and Governor-General, and the Imperial and Provincial Governments have been expressly strengthened in the exercise of this power by the Criminal Procedure Code. The Governor-General, and the provincial heads of Government too, can claim the priority of Crown debts over other debts. They are also entitled to the benefit of the rule that the Crown is not bound by statute unless expressly named therein. The Governor-General in Council has also, by virtue of delegated authority and subject to the control of the Secretary of State, the powers of making treaties and arrangements with Asiatic States, of exercising jurisdiction and other powers

in foreign territory, and of acquiring and ceding territory.

In the exercise of such vast and varied powers and the discharge of responsibilities so great and growing towards the peoples in India and the Government in England, as those which the Acts of 1858 and 1861 and the subsequent course of administrative regulations have imposed on the Governor-General in Council, it is hardly to be expected that the plan of conducting the business of the Government of India should not from time to time undergo marked changes. These changes are in themselves illustrative of the adaptation of means to ends characteristic of British political methods. The Regulating Act of 1773 which first established the authority of the Governor-General in Council over British India directed the administration to be carried on by the vote or opinions of the Council over which the Governor-General presided. The administrative difficulties and dead-locks which arose in working this and other provisions of the Act during the time of Warren Hastings led to an alteration in the law—at the time when his successor, Lord Cornwallis, was appointed—which empowered the Governor-General to over-ride the majority of his Council in special cases and act on his own responsibility. In fact, Lord Cornwallis, mindful of the bickerings which had impeded Warren Hastings in his administration, went so far as to give it as his opinion, to Mr. Dundas, President of the

'Council Government': its merits.

Board of Control, at the close of his administration, that "nobody but a person who had never been in the service and who was essentially unconnected with its members, who was of a rank far surpassing his associates in the Government, and who had the full support of the Ministry at Home, was competent for the office of Governor-General." These principles have, with a single exception, been kept in view since, and an Act passed in 1793 further strengthened the position of primary responsibility and power which the Governor-General thenceforth assumed. This system of "Council Government," as we may call it, to distinguish it from Government by a sole administrator, was deemed by John Stuart Mill to possess peculiar merits.

In his essay on "Representative Government," he observes :—

"The Councils should be consultative merely, in this sense, that the ultimate decision should rest undividedly with the minister himself ; but neither ought they to be looked upon, or to look upon themselves as ciphers, or as capable of being reduced to such at his pleasure. The advisers attached to a powerful and perhaps self-willed man ought to be placed under conditions which make it impossible for them, without discredit, not to express an opinion, and impossible for him not to listen to and consider their recommendations, whether he adopts them or not. The relation which ought to exist between a chief and this description of advisers is very accurately hit by the constitution of the Governor-General and those of the different presidencies in India. These Councils are composed of persons who have professional knowledge of Indian affairs, which the Governor-General and Governors usually lack, and .

which it would not be desirable to require of them. As a rule, every member of Council is expected to give an opinion, which is, of course, very often a simple acquiescence; but if there is a difference of sentiment, it is at the option of every member, and is the invariable practice, to record the reasons of his opinion; the Governor-General or Governor doing the same. In ordinary cases the decision is according to the sense of the majority; the Council, therefore, has a substantial part in the Government, but if the Governor-General or Governor thinks fit, he may set aside even their unanimous opinion, recording his reasons. The result is that the chief is, individually and effectually, responsible for every act of the Government. The members of Council have only the responsibility of advisers; but it is always known, from documents capable of being produced, and which, if called for by Parliament or public opinion, always are produced, what each has advised, and what reasons he gave for his advice; while from their dignified position and ostensible participation in all acts of Government, they have nearly as strong motives to apply themselves to the public business, and to form and express a well-considered opinion on every part of it, as if the whole responsibility rested with themselves."

The progress of Indian Government since Mill's day has made his language to some extent inapplicable to the actual methods of business and manner of administration pursued by the Government of India. The distribution of business amongst the members that has taken place since Mill wrote has devolved greater responsibility on them in regard to ordinary business. The Governor-General, of course, is nominally associated with every act of the executive Government and all orders issue in the name of the Governor-General in Council, thereby indicating the

Its present  
altered  
character.

constitutional theory of a corporate executive. As a matter of fact, however, neither the Governor-General individually nor the Council collectively is actually responsible for much of the ordinary business of administration, which is transacted by the Member in charge of the particular department. So much as regards what Mill termed the chief's *individual* responsibility for every act of the Government. Turning now to *effectual* responsibility, Mill derived this characteristic of Council Government from the power possessed by the chief to override even a unanimous verdict of the Council. This power still exists on the statute-book, but has long since fallen into disuse. The power was originally vested in the Governor-General with a view to counteract factious opposition in the Council. The most notable exercise of it during the last 30 years was by Lord Lytton when he repealed the Indian Cotton duties in pursuance of a mandate from the 'Home' Government. Since then the power has lain dormant mostly and a tendency has developed in most Governors-General to embark on a policy only if a majority of the Council concur in it and not to take on themselves the sole responsibility of initiating and carrying it out. This is only natural. The task of Indian Government is becoming every day more complicated and an English statesman fresh from 'Home,' with no knowledge of India, has, of necessity, to defer to the opinions of his colleagues. This may mean in some cases the

surrender of his better judgment and wider outlook to the views of colleagues, most of whom are nurtured in a narrower groove and have not at any time in their career felt the restraining hand of popular control. On the other hand, it also acts as a curb upon a Governor-General who may wish to introduce and carry out in India measures unsuited to local conditions.

It is therefore apparent that, while the *individual* and *effectual* responsibility of the chief for every act of Government cannot be said to be a correct representation of the actual methods of Council Government at the present day, the status of the Councillors themselves has changed from that of mere advisers to that of heads of important departments of the State, responsible individually for all *ordinary* business relating to their particular departments. In this latter respect, the Governor-General and his Council have approximated to the position of Ministers in England in charge of great departments of administration held together by a system which has been frequently compared to the methods of the Cabinet in England, but which is in fact very different from the system of Cabinet Government.

It is worth while to go somewhat more fully into this question. The changes that have been brought about in the system of Council Government, as described by Mill, are the natural outcome of the rapid progress of the Indian Government and the

Its dis-  
advantages.

changes it underwent in the middle of the nineteenth century. To us in the twentieth century, it is obvious that if every case or paper was supposed to be laid before the Governor-General and the whole Council and to be decided by them collectively, a "more cumbrous and impossible system," as Sir John Strachey says, could hardly have been invented. But those who had grown up under the system could not perceive its inconveniences as acutely. Moreover, the reason that enabled such a system to last so long was that in matters requiring prompt and vigorous action, it was not really acted upon. Events, however, precipitated the change after the Mutiny. The growth of administrative business became very great and Lord Canning availed himself of a power to make rules under the Indian Councils Act, 1861, to improve the usefulness of the Members of Council and the efficiency of administration. Section 8 of the Act empowered the Governor-General to make rules and orders for the more convenient transaction of business in his Council, and every order made or act done in accordance therewith was directed to be treated as being the order or the act of the Governor-General in Council. Rules were made by Lord Canning assigning to each Member of the Council a separate department, the Governor-General himself keeping the foreign department in his hands. The change, however,

does not seem to have gone far enough, for we find Sir Henry Maine complaining of the cumbersome manner in which business was done during the time of Lord Elgin, Lord Canning's successor in the following terms:—

"A division of business was made between the Governor-General in the Upper Provinces (whither he had gone on account of military and political business) and the President in Council at Calcutta. Everything which was of importance was referred directly to the Governor-General, and there was either a rule or an understanding that if any matter which came before the President in Council assumed, contrary to expectation, the least importance, it should be sent on to the Governor-General . . . Except in regard to matters belonging to the foreign department, of which it was usual for the Governor-General himself to undertake the primary management, the severance of the Governor-General from the Council dislocated the whole machinery of Government. I believe it to be impossible for any human arrangement to have worked more perversely. Lord Elgin was distinguished by remarkable caution—though I doubt whether his caution was practically greater than that which any man comparatively fresh from England would display under similarly vast responsibilities—and all or most important matters were transferred by him over a distance of 1,500 miles for the opinions of his Council. The result was that a great deal of work was done twice over, and a great deal not done at all."

The reform of procedure, however, was completed by Lord Lawrence and the mechanism of the Supreme Government of India as it worked during the time of the successor of Lord Lawrence has been graphically described by Sir William Hunter in his valuable book, the "Life of the Earl of Mayo," from which we

Its develop-  
ment.

take the following passages, as they serve to illustrate the next stage in the development of Council Government—

“ Lord Mayo, besides his duties as President of the Council, and final source of authority in each of the seven departments, was therefore in his own person Foreign Minister and Minister of Public Works. All routine and ordinary matters were disposed of by the Member of 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 worked up the Member's note into a letter or resolution, to be issued as the orders of the Governor-General in Council. But in matters of weight, the Viceroy, even when concurring with the initiating Member, 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 other 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 sending the case for initiation to the Member of Council at the head of the department to which it belonged.

“ This was the paper side of Lord Mayo's work. All orders issued in his name. Every case of any real importance passed through his hands, and either bore his order, or his initials under the initiating Member's note. Urgent matters in all the seven departments went direct to him in the first instance. He had also to decide what cases could be best disposed of by the departmental Member and himself, and what ought to be circulated to the whole Council or to certain of the Members. In short,

he had to see, as his orders ran in the name of the Governor-General in Council, that they fairly represented the collective views of his Government. ...

“ The Viceroy also gives one day a week to his Executive Council. In this Oligarchy, all matters of Imperial policy are debated with closed doors before the orders issue ; the Secretaries waiting in an ante-room and each being summoned into the Council Chamber to assist his Member when the affairs belonging to his department come on for discussion. As the Members have all seen the papers and recorded their opinions, they arrive in Council with their views accurately matured, and but little speechifying takes place. Lord Mayo, accustomed to the free flow of Parliamentary talk, has left behind him an expression of surprise at the rapidity with which, even on the weightiest matters, the Council came to its decision, and at the amount of work which it got through in a day. His personal influence here stood him in good stead. In most matters, he managed to avoid an absolute taking of votes, and by little compromises won the dissentient Members to acquiescence. In great questions he almost invariably obtained a substantial majority, or put himself at the head of it ; and under his rule the Council was never for a moment allowed to forget that the Viceroy retained the constitutional power, however seldom exercised, of deciding by his single will the action of his Government.”

It will be seen from this that though the Council was re-modelled after the Act of 1861, it continued for long to retain the essential characteristic which Mill claimed for the system of ‘Council Government,’ *viz.*, that the chief is individually and effectually responsible, if not for every act of the Government, at least for all really important acts of the Government, the Members having only the responsibility of advisers therein. Now, if we next take a later description of the manner in which the exe-

Its present tendencies

cutive business of the Governor-General has been carried on, we find a few more changes. Sir John Strachey describes the system as follows :—

“ Although the separation of departments in India is less complete than in England, and the authority of the Member of Council much less extensive and exclusive than that of an English Secretary of State, the Members of Council are now virtually Cabinet Ministers, each of whom has charge of one of the great departments of Government. Their ordinary duties are rather those of administrators than of councillors. The Governor-General regulates the manner in which the public business shall be distributed among them. He usually keeps the Foreign Department in his own hands; the other departments are—Home, Revenue and Agriculture, Finance and Commerce, Military, Public Works, and Legislative. While the Member of Council takes the place of the English Secretary of State, there is in each department a Secretary holding a position analogous to that of a permanent Under-Secretary in England. It is the duty of this Secretary to place every case before the Governor-General or Members in charge of his department, in a form in which it is ready for decision. He submits with it a statement of his own opinion. In minor cases, the Member of Council passes orders which are final. If the matter be one of greater importance, he sends on the papers, with his own orders, to the Governor-General for his approval. If the Governor-General concurs and thinks further discussion unnecessary, the orders are issued. If he does not concur, he directs that the case shall be brought before the Council, as in England an important case might come before the Cabinet. The duty rests upon the Secretary, apart from his responsibility towards the Member of Council in charge of the department, of bringing personally to the knowledge of the Governor-General every matter of special importance.”

On the other hand, Lord Curzon, with all his bias towards pro-consular authority, was inclined

to the view that the Government of India was a Committee Government, and not one by the responsible head of it. In one of his farewell speeches in India, he said :—

“ Never let it be forgotten that the Government of India is governed not by an individual but by a Committee. No important act can be taken without the assent of a majority of that Committee. In practice this cuts both ways. It is the tendency in India as elsewhere, but much more in India than anywhere else that I have known, to identify the acts of Government with the head of the administration. The Viceroy is constantly spoken of as though he and he alone were the Government. This is, of course, unjust to his colleagues, who are equally responsible with himself, and very often deserve the credit which he unfairly obtains. On the other hand, it is sometimes unfair to him ; for he may have to bear the entire responsibility for administrative acts or policies which were participated in and perhaps originated by them . . . In the previous records of Indian Government, I have often come across sparring matches between the illustrious combatants, and contentious minutes used to be fired off like grape-shot at the head of the Secretary of State . . . The Viceroy has no more weight in his Council than any individual Member of it.”

If the Council or the system under which the Council works has come to wield the power which even such a strong Viceroy as Lord Curzon is prepared to attribute to it, we may form some idea of the extent to which departmentalism and devolution have tended to remove the Viceroy and Governor-General from that position of primary responsibility which the statutes intended to vest in him.

It is no doubt true, as a former Member of the Viceroy's Executive Council wrote, that the

old system involved an amount of Minute writing which seems now hardly conceivable and that fifty years ago, the Governor-General and the Council used to perform work which would now be disposed of by an Under-Secretary. But the evolution of departmentalism, even if inevitable or necessary in administrative progress, is by no means a merit in the political progress of Governments unless it is the result of popular or legislative control over the executive, and, if carried too far in the administration, it will tend to diminish, if not the sense of personal responsibility to the public in India and to the Government in England in the head of the Indian Government, at least the opportunities for his personal initiative in the several departments of administration; and it is also likely to reduce his personal factor in an impersonal system which is subject to no systematic constitutional checks.

It may be noted in this connection that Lord Morley, our present Secretary of State, with whose name the present political reforms are associated, like the profound student of Mill that he is, has apparently adopted the older view of Mill as regards the character of the Executive Councils. In his famous Reform Despatch of the 27th November 1908, dealing with the proposals for the creation of Executive Councils in the Provinces under Lieutenant-Governors, he seems to take the view that the functions of the Councils should be, more especially in view of

the enlargement of the powers and duties of the Legislative Councils, to ensure that "the judgment of the Lieutenant-Governor should be fortified or enlarged by two or more competent advisers, with an official and responsible share in his deliberations."

Whether this is so or not, it will be obvious that 'Council' Government, whether of the old or the new type, is not Cabinet Government nor the members of Council Cabinet Ministers, as Sir John Strachey seems to put it, and students of the Indian Constitutional system should clearly note the distinction. The necessary implication of the words, "Cabinet Government," is government by a body of people constitutionally responsible to the Legislature—a thing which is entirely absent in the Indian Executive. "The essence of responsible government," said an eminent English statesman, the late Lord Derby, "is that mutual bond of responsibility to Parliament one for another, wherein a Government acting by party go together, frame their measures in concert, and where, if one member falls to the ground, the others almost, as a matter of course, fall with him." This is as far from being the case in regard to India as is possible. The Members of Council are of the permanent Civil Service and do not and need not resign if their policy is disapproved. For instance, when in consequence of the censure of the Marquis of Salisbury, above referred to, Lord Northbrook

Council  
Government,  
not Cabinet  
Government

resigned, Lord Lytton had to take the headship of a Council in which he found himself in a permanent minority as to the policies on which he came with a mandate \*. With the power to overrule the majority which he possessed with the support of the Home Government and the exercise of great deal of tact and good feeling, he managed to get on, though in one important matter he had to exercise his extraordinary powers. The political conception of a Cabinet, on the other hand, is the reverse of this state of things. A Cabinet has been defined "as a body necessarily consisting (a) of members of the legislature, (b) of the same political views and chosen from the party possessing a majority in the lower House of Legislature, (c) prosecuting a concerted policy, (d) under a common responsibility to be signified by collective resignation in the event of Parliamentary censure; and (e) acknowledging a common subordination to one chief minister. This description cannot by the boldest flight of imagination be attributed to either the Imperial or Provincial Governments in India, and the present reforms of Lord Morley, so far at least as their main principles are concerned, have hardly aimed at making them approach to

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\* "From day to day and hour to hour," wrote Lord Lytton to the Marquis of Salisbury as soon as he arrived in India, "I found as I approached Calcutta, that the spirit of anticipative antagonism to the new Viceroy was so strong on the part of the Council here that any appearance of scolding or lecturing them would have been fatal to our future relations".

Cabinet Government or attempted their approximation to any form of Parliamentary Executive. The semblance to it, such as there is, exists only in the form. In essence and in spirit, the Government of India is as unlike Cabinet Government as could be imagined.

The departmentalisation of Council Government, which is really what has been effected since 1861, is governed by the rules and orders above referred to, made by the Governor-General, which are treated as confidential by the Government. Their general effect will be gathered from the quotations we have cited. There are now nine departments, namely, Home, Foreign, Finance, Legislative, Revenue and Agriculture, Public Works, Commerce and Industry, and Army and Military Supply. All minor questions are settled departmentally by the Secretary who is at the head of each department, or by the Member of Council in whose charge the department is placed. All important questions, questions involving any difference of opinion between two departments, or raising any general question of policy or gravity, are brought before the Council which meets generally once a week, and the Secretaries in charge then take note of the orders passed and issue them as resolutions or proceedings.

It is not possible within the limits set for this book to deal exhaustively with the administrative mechanism—tracing it from the Crown downwards to the District Officer and the Village Headman and Panchayat.

Departmentalism  
and Centralisation

The mechanism itself is subject to frequent changes and divergent tendencies, now veering towards centralisation and again towards decentralisation. At the present time, changes of a somewhat far-reaching character are in contemplation, tending towards a large decentralisation of administrative authority and the development of local self-government. One or two essential and general principles and features of the whole of the British Indian administrative system may, however, be dealt with. In the case of what are called unitary constitutions, the governmental functions are usually and clearly divisible into central and local, the former comprising those of the immediate executive agents of the sovereign authority and the latter the agencies, official and non-official, on the spot. In the case of federal constitutions like the United States or the German Empire, on the other hand, the governmental functions are divisible into those performed by the Federal executive, the State executive and the local authorities.

Decentralisation and division of powers

An Imperial Government like that of British India partakes more of the nature of the latter, so far as the methods of administrative work are concerned. In the nature of things, it is impossible for any central Government directly to carry on the administration of an Empire consisting of a fifth of the human race, under such diverse physical and social conditions. The Imperial Government can only carry it on through Provincial Govern-

ments retaining a control and direction which might vary according to the circumstances of each case. In the case, again, of a country where a constitutional Government,—*i. e.*, a Government in which the people themselves participate largely in the work of governing,—does not exist, it is inevitable in the interests of efficient administration that the control of the central authorities, provincial or imperial, should be larger over its paid officers or agency of administration, than in a country where local or provincial affairs are largely in the hands of the representatives of the people themselves. Between these two wide limits, set by the area and conditions of the Indian Empire and the character of its Government, the nature and extent of centralisation or its reverse has varied from time to time. But in so far as the tendency to employ unpaid, unofficial and popular agency in the administration grows, the tendency towards decentralisation becomes increasingly manifest.

The executive government of British India, therefore, may be conveniently grouped and studied under the three heads, Imperial, Provincial and Local, instead of under the time-honoured classification of Central and Local Governments. The process of consolidation which the Indian Government underwent, immediately after the transfer of the rule from the Company to the Crown, has tended to unify the Indian Empire in respect of administrative

Imperial,  
Provincial  
and Local  
administra-  
tion

policy and methods, while the measures of decentralisation from time to time adopted have tended to increase the authority and the initiative of subordinate authorities subject to such control. The administrative work of the Imperial Government thus divides itself into two groups, namely, that in which its action is only by way of supervision and control and that which it directly deals with. The Secretariats, of course, are only concerned with control, but the public services controlled by them are divided into Provincial and Imperial. The former are the larger and more important group, but they are performed by Local, or as we should more accurately describe, Provincial Governments, while the latter are conducted by the officers under the Government of India. The latter comprise such departmental services as for Imperial, fiscal or administrative reasons the Imperial Government has deemed necessary to keep in its own hands. Under the former group, the ordinary functions of administration, the maintenance of law and order, the collection of revenues, education and sanitation, provincial and local finance, agriculture, roads, forests, &c., are included. Under the latter, are included : (i) the Railways, Posts and Telegraphs and the Opium Department, all of which may be described as coming under the quasi-commercial functions of the Government ; (ii) the Political, Foreign and Military Departments, which, for obvious reasons, have not been provincialised.

The Finance Department also derives its authority from the Government of India and exercises a control over finance, Imperial, Provincial and Local, and an independent audit over public accounts, which is all the more necessary in India in the absence of a systematic legislative check.

The duties of the group of officers immediately under the Government of India, outside the Secretariat, who form the connecting link between the Provincial officers and the Imperial Government, differ according to the group of services with which they are connected. In regard to the matters under the control of the Provincial Administrations, comprising such work as that of the new offices created during Lord Curzon's regime, namely, the Inspectors-General of Agriculture, Forests, Irrigation, &c., the Directors-General of Education, Medical Service, &c., their function is mainly that of advisers of the Provincial and Imperial Governments, with some amount of control derived from the latter as their administrative advisers and guides. In regard to the other matters directly under the Government of India, the officers such as the Directors-General of Posts and Telegraphs, the Railway Board, the Surveyor-General and others, exercise authority all over India and conduct the business of their departments in direct subordination to the authority of the Governor-General in Council.

## CHAPTER IV

### THE PROVINCIAL GOVERNMENTS

The old  
Presidencies

We may next proceed to deal briefly with the Provincial Executive and the local administrative authorities. The Indian Provincial Administrations, though they owe their later development and organisation to political and administrative causes, are historically of an earlier origin and of more importance in the early history of British rule in India than the Government of India. Until the acquisition of Bengal and the passing of the Regulating Act, the system of government was that known as the Presidency system, viz., that in which a group of factories and their adjoining acquisitions within a certain area were placed under the administrative control of a President and Councillors, otherwise known as the Governor and Council. The three Presidencies under which the territories of the East India Company were originally comprised were, till 1773, distinct from one another and under the direct control of the Court of Directors. In 1773, under the Regulating Act, the Bombay and the Madras Presidencies were placed in subordination to the Governor of Bengal, which had no separate Governor, and he was thereafter styled Governor-General of Bengal. This

Presidency system endured till 1833. As fresh territories came into the possession of the Company, they became attached to one or other of the Presidencies according to their proximity, but the additions to the Presidency of Bengal, which was in the hands of the Governor-General himself, became so heavy, especially after the beginning of the nineteenth century, that the Charter Act of 1833 authorized the creation of another separate Presidency, to be styled the Presidency of Agra. The provisions in this behalf were, however, suspended by a statute of 1835 which directed that during such suspension the Governor-General in Council might appoint any servant of the Company of not less than ten years' service to "the Office of Lieutenant-Governor of the North-West Provinces now under the Presidency of Fort William in Bengal." Thus was the first Lieutenant-Governorship created. Very soon after this, the further growth of the work of the Governor-General made it imperative that he should cease to directly administer the Presidency of Fort William or of other territories. The Act of 1853, therefore, provided that the Governor-General of India (not of Bengal, as he was till then called) should not be Governor of the Presidency of Fort William thereafter, that a separate Governor should be appointed thereto, but that until this was done the Governor-General was not to appoint a Deputy Governor from his Council—as was done till then—but to appoint a Lieutenant-

Governor for such portion of the territories of the original Presidency as was not under the Lieutenant-Governor of the North-West Provinces. The Act also authorised the creation of one more new Presidency and the appointment of one more Lieutenant-Governor similar to those of the two Bengals.

The later  
Lieutenant-  
Governor-  
ships

The origin of the Lieutenant-Governorship of the North-West Provinces and Lower Provinces was thus a tentative one, the constitution of Presidencies with Governors and Councils being then deemed the normal method of administering a Province. This idea, however, was subsequently given up, and the two Bengal Lieutenant-Governorships remained. A third was added to them in 1859, by constituting the Punjab a Lieutenant-Governorship, the first appointment in which capacity was held by Sir John Lawrence. Further powers of constituting new Lieutenant-Governorships have been given by Section 46 of the Indian Councils Act, 1861, but, according to Sir C. Ilbert, they are exercisable only when a new Legislative Council is established. Burma in 1897, and Eastern Bengal and Assam in 1905, became Lieutenant-Governorships under this provision.

The tendency to the creation of Lieutenant-Governorships without Councils in preference to the Presidencies with Governors and Councils, seems likely to receive a marked check with the passing of the Councils Act of this year, which has authorised

the creation of Executive Councils for the Lieutenant-Governors. Apparently, the advantages of "Council Government" as opposed to pro-consular government, as Lord Curzon would put it, seem to have again acquired importance with the political and administrative changes which are now being made. We do not deem it proper to enter into the controversies which took place over this question during the debate in Parliament last session, nor to discuss the merits or demerits of either system. But it may perhaps be right to infer that Lord Morley is inclined to agree with Mill in his view of the merits of "Council Government", quoted in the last chapter.

Besides the Presidencies and the Provinces under the Lieutenant-Governors, there are other Provinces and territories which are administered by Chief Commissioners and Commissioners, under the more direct control of the Governor-General in Council. The position of these heads of Provinces with reference to the Governor-General varies both according to their status and according to the powers and responsibilities specifically entrusted to them. There are thus thirteen separate Provincial administrations in India, consisting of the two old Presidencies of Madras and Bombay, the five Lieutenant-Governorships, Bengal, Eastern Bengal and Assam, the United Provinces of Agra and Oudh, the Punjab and Burma ; and the six Chief Commissionerships of the Central

The Chief  
Commissioner  
ships

Provinces, Ajmere-Merwara, Coorg, British Baluchistan, the North-West Frontier Province and the Andaman Islands, some of which are combined with other offices.

Their  
gradation  
and powers

Madras and Bombay, with their Governors and Executive Councils, are, historically and from a constitutional standpoint, the most important of the provinces. The Lieutenant-Governors in the other provinces have no Executive Councils at present, but power has been taken under the India Councils Act of this year to constitute such Councils for them and it is likely that one or more of them will soon have Councils established in their provinces. In many respects, the position of the Governors in Council is somewhat different from that of other administrative heads. The reasons therefor lie in the past history of the Provinces and their political importance and extent. Though, under the provisions of the Regulating Act, the Governments of Madras and Bombay are directed "to pay due obedience to such orders as they shall receive from the Governor-General and Council for the time being", and are expressly prohibited from making hostilities, or peace, &c., except in pursuance of express orders, the control of the Supreme Government over the Governors in Council of Madras and Bombay is less complete than over the Lieutenant-Governors. The position of the Chief Commissioners is the lowest in the scale of subordination.

A Chief Commissioner, according to the view taken of his functions by the Government of India, merely administers territory on behalf of the Governor-General in Council, and the Governor-General does not divest himself of any of his powers in making over the provincial administration to a Chief Commissioner\*. The creation of a Chief Commissionership and the delimitation of the territories placed under him is, therefore, made by a Resolution of the Executive Government of India, and a proclamation is issued whenever a territory under the Viceroy's direct control is made over to a Chief Commissioner. When, however, a territory once placed under a Governor or Lieutenant-Governor is proposed to be transferred to a Chief Commissioner, the statutory power under the Government of India Act of 1854, has to be invoked and the sanction of the Secretary of State has to be obtained, for the same. It would thus seem that the Government of a Chief Commissioner is deemed to be a less developed form of administration than that of a Lieutenant-Governor or a Governor-in-Council.

The somewhat undefined limits and extent of subordination of the Governors-in-Council to the Governor-General in Council have, as in the case of the position of the latter to the Secretary of State, led to many historic disputes and is regulated by usage and rules which are more or less confidential. The position of partial

The control of the Imperial over the Provincial Govern-

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\* Ilbert, p. 194.

freedom and prestige which the Presidency Governments have enjoyed, has not been without administrative difficulties even in recent years. A masterful personality like Lord Curzon—who disbelieved in devolution and decentralisation, who had a firm faith in a strong Government of India, “gathering into its hand and controlling all the reins,” and who “would ride local governments on the snaffle,” though not on the curb—was able to boast that there never had been a time when the relations between the Supreme and the Provincial Governments had been so free from friction or so harmonious, as in his days. But other masterful rulers like Lord Mayo or Lord Lytton were not able to avoid the frequency of “peppery letters or indignant remonstrances” or “the spectacle of infuriated pro-consuls strutting up and down the stage.” During the famine of 1877 in Madras, for example, Lord Lytton was hard put to it to manouvre a satisfactory arrangement with the Duke of Buckingham in Madras, in regard to an efficient and uniform famine policy, for, as he said, he was unable “to force upon the Madras Government advice which it will neither invite nor accept.” Provincial Governments, it would then seem, were often “more strongly represented than the Supreme Government, not only in the India Council, but throughout the whole region of Anglo-India.” The danger of provoking the resignation of provincial pro-consuls even by the use of slight

pressure from above, which Lord Lytton feared, is perhaps less likely now than before, but the opportunities therefor have also become less owing to the growth of system, routine and uniformity in administrative methods. In truth, however, the legal powers of compelling obedience in the case of obstructive Provincial Governments in the ordinary course of business are, as Lord Lytton found out, much feebler and fewer than might be supposed. Now-a-days much more depends on diplomacy and influence and the personal qualities and characteristics of the Supreme and the Provincial rulers than on statutory powers and rules, in enforcing the due limits of the authority of the Supreme Government on the one hand and the amount of independence and autonomy allowed to the Provincial Governments on the other.

The checks against the wrongful exercise by the Lieutenant-Governor of arbitrary powers are, however, much more complete than in respect of Governors and Councils. There is no branch of the administration, according to Sir John Strachey, in which he is not bound either by the positive law or by the standing orders of the Supreme Government or by the system which has gradually grown up under his predecessors. Any great changes which he may desire to introduce must first receive the approval of the Governor-General in Council. It is not perhaps so well known that this tendency to secure the previous approval of the Government of India

is silently, but steadily, finding expression in the methods of the Provincial Governments of the two older Presidencies also, a tendency which, if allowed to persist, will destroy independence of action even in the limited sphere in which they are at present able to exercise it. The freedom of action of the Chief Commissioner is still more restricted, for it merely exists at the discretion of the Supreme Government to whom the Chief Commissioner has not only to look for the support which is necessary to carry on his administration, but for the approval and credit on which his future and further prospects depend.

**Provincial  
Department-  
alisation**

The Executive Councils of Madras and Bombay are modelled on similar lines to those of the Governor-General. The Governors, who like Governor-General, they are usually appointed from England from among distinguished politicians or administrators, have the power of overruling their Councils under circumstances similar to those defined in the case of the Governor-General. The work of a Governor-in-Council has also been "departmentalised", more or less in the same way as that of the Governor-General in Council, under the powers given by the Act of 1861 to the Governors to frame rules for the efficient conduct of business. While Governors of Madras and Bombay are thus assisted by the Executive Councils in the work of every-day administration, the Lieutenant-Governors of the two Bengals and the United

Provinces are assisted by Boards of Revenue, and the Lieutenant-Governors of the Punjab and Burma by Financial Commissioners. Each Provincial Government has a Secretariat of varying strength according to its needs, and the departments of administration are presided over by heads variously termed in different provinces, while there are also special departments presided over by special officers.

The actual executive functions of the Provincial Governments need not be referred to here in detail. In respect of all functions of administration which are not kept under direct imperial control, authority in every branch of the public service, except the judicial, is concentrated in the hands of the Provincial Governments, subject only to the paramountcy of the Governor-General in Council. The powers of the Governors and Councils to introduce large reforms and the powers of raising fresh revenue or incurring additional expenditure, although large, are subject to restrictions. As to the methods by which the Supreme Government exercises control, it has been said that, in India, the Provincial Administrations and the Heads of Departments under the Government of India represent the initiative, and the Secretariats, the critical element in the Government. The Head of a Department or a Provincial Government, "is almost *ex-officio*, one that has something to propose. And his plans of improvement, however admirable in them-

Provincial  
Executive  
functions

selves, and however economical they may purport to be at the outset, mean an eventual increase of expenditure. The function of the Secretariat is to pull such schemes to pieces, to expose their weak points, and to put down the drag upon every proposal that sooner or later will cost money. A strong Viceroy acts as arbiter between the two sets of forces thus constantly set in motion".\* *Mutatis mutandis*, the same description might be given of the relationship between the Provincial Secretariats and the Heads of Administration and the District Heads of the several Provinces. With a Viceroy or Governor inclined to place more faith on his own Secretariat than on the "Heads," the latter prone to suffer, while the reverse happens with one who gives more regard to the views of "Heads" and local officers. The question whether and how far "Secretariat tyranny" has grown in recent years, is one on which controversy has been rife, but it may be noted that the Royal Commission on Decentralisation has voted in favour of enlarging the powers of the District Officers and enhancing their position and prestige.

The mechanism of administrative machinery under the Provincial Governments varies greatly in different provinces, is often subject to changes and is hardly of a kind which would throw light on the constitutional aspects of Indian Administration. It is, however, necessary to

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\* Hunter's Life of Lord Mayo, Vol. II, pp. 2-3.

examine a few of the general principles which bear on the local functions of Government, and no account of the Indian Executive Government will be complete without a description, however brief, of the District Collector and a reference to the Local and Municipal bodies to which are being delegated increasing duties of local administration. These two may, therefore, be conveniently dealt with in the next chapter.

## CHAPTER V

### DISTRICT AND LOCAL ADMINISTRATION

Local orga-  
nisation and  
control

The Provincial and Imperial executive authorities in India owe their constitution and powers more or less directly to statutes of Parliament. The departments of administration which carry on the work of the central government, Provincial or Imperial, depend for their authority, on the other hand, on laws passed by the Indian Legislatures, or administrative regulations and organisation, hardly susceptible of general treatment in an introductory study like the present. But, while a description and study of the duties performed by the various ministerial officers under the Government is not of much constitutional importance, the division of administrative duties in general between central and local bodies in its general outlines ought to be noted. From the standpoint of political development, the form of local organisation will undoubtedly react with momentous effect on the national character. As a recent writer \* on Constitutions has put it, "the citizen who from boyhood expects to take, sometime or other, of his own free will, an active part in the administration of local affairs, is likely to be

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\*Leonard Alton, M. A., in 'his Modern Constitutions'.

found a very different citizen from the man who may be authoritatively commanded, at the most inconvenient juncture of affairs, to serve his locality without remuneration, and both from the citizen who perpetually finds himself 'cabin-ed, cribb'd, confined', by the cramping influences of an all-pervading bureaucracy." The French local administrative system has, for instance, reduced local administrative councils to the position of more or less consultative bodies under the all-powerful authority of the central government, through its *Prefet*. The Prussian system has, on the other hand, introduced a network of committees and councils composed of officials and non-officials, in which the former, as being the expert class, have obtained a preponderating voice. It is the English Local Government organization, however, which, though full of complications, has left the largest province for local, unpaid, un-official administrative efforts. The extent to which the citizen is actively and in a very real manner associated with the discharge of the functions of local administration in England is the widest till now attained in modern states. In the United States, the theory of popular Government is carried to the extremest logical limits, all local officials being practically elected and discharging their functions, not so much under superior administrative control as in England, as under the provisions of laws enforceable and enforced by courts of justice.

The Collector-Magistrate

The Indian local administrative system partakes mainly of the French and the Prussian. In each Province, the one uniform and important administrative unit is the district, at the head of which is the District Collector and Magistrate, or Deputy Commissioner, as he is termed in some of the Provinces. In spite of the encroachments which the progress of centralisation and of communications have made in his authority, he is, in the eyes of the ordinary people of the country, the most important functionary of the British Administration in India. The oft-quoted description of the ideal Collector-Magistrate, by the late Sir William Hunter, will bear repetition here :

“ The District Officer, whether known as Collector-Magistrate or as Deputy Commissioner, is the responsible head of his jurisdiction. Upon his energy and personal character depends ultimately the efficiency of our Indian Government. His own special duties are so numerous and so various as to bewilder the outsider ; and the work of his subordinates, European and Native, largely depends upon the stimulus of his personal example. His position has been compared to that of the French *Prefet*, but such a comparison is unjust in many ways to the Indian District Officer. He is not a mere subordinate of a central bureau, who takes his colour from his chief and represents the political parties or the permanent officialism of the capital. The Indian Collector is a strongly individualised worker in every department of rural well-being, with a large measure of local independence and of individual initiative. As the name of Collector-Magistrate implies his main functions are two-fold. He is a fiscal officer, charged with the collection of the revenue from the land and other sources; he is also a revenue and criminal judge both of first instance and in appeal. But his title by no

means exhausts his multifarious duties. He does in his smaller local sphere all that the Home Secretary superintends in England, and a great deal more, for he is the representative of a paternal and not of a constitutional Government. Police, Jails, Education, Municipalities, roads, sanitation, dispensaries, the local taxation, and the imperial revenues of his district are to him matters of daily concern. He is expected to make himself acquainted with every phase of the social life of the natives, and with each natural aspect of the country. He should be a lawyer, an accountant, financier, and a ready writer of State papers. He ought also to possess no mean knowledge of agriculture, political economy, and engineering." \*

The purely bureaucratic character of local government in India, as thus originally organised, has led to an inordinate amount of centralisation in finance and administration. Some decentralisation of administration and finance became absolutely necessary more than 30 years ago, and the first step in both directions was taken by Lord Mayo, who first clearly recognised that administrative decentralisation cannot go very far without detriment to the well-being of the State, unless local agency and popular co-operation in the performance of administrative duties are resorted to. The really important step, however, in the direction of local self-government was taken by Lord Ripon. The principles of Lord Ripon's scheme, though often questioned, have now been definitely accepted by Lord Morley who has, in his Despatch on the Reform Scheme, laid down that "it is necessary to attempt without delay an effectual advance in the

\* The Indian Empire, p. 513.

direction of local self-government," going down to "the smallest unit *viz.*, the village community—the fundamental and indestructible unit of the social system, surviving the downfall of dynasty after dynasty—and to make the village the starting point of public life."

It is, therefore, not of much practical value at present to discuss the existing arrangements and state of things in regard to local government in India, until the changes foreshadowed by Lord Morley and recommended by the Royal Commission on Decentralisation are carried into effect. Both Lord Ripon's famous Resolution on Local self-Government and Lord Morley's Despatch are printed in the Appendix, as they embody the principles on which future progress is expected to be made. It may, however, be stated with reference to the existing system in general, that so far as the discharge of local administrative functions are concerned, the Indian administrative system bears resemblance to that of the French *departments* with their *prefets*. In so far as the discharge of such of the functions as have been and are being entrusted to local and Municipal bodies are concerned, the system of Councils and Boards bears more resemblance to the Prussian system than to the French. As in the Prussian system, two distinct classes of members sit in these local bodies—"unpaid residents of the locality and highly trained professional servants of the bureaucracy. As far as possible, (and in India, it is hardly far enough) matters

## DISTRICT AND LOCAL ADMINISTRATION 77

of purely local interest are controlled by councils on which the lay members have the preponderating weight. Matters of national interest (including education and the state taxes in Prussia, but many more matters in India) are more under professional control." The German and the French local government arrangements may, therefore, be usefully studied along with the English system and with the indigenous and undying communal system in India, to learn what may be avoided and what may be adapted to the political needs of this country.

## CHAPTER VI

### THE INDIAN LEGISLATURES—GENERAL FEATURES

Legislative  
and Execu-  
tive func-  
tions

In dealing with the powers and functions of the executive authority in India, we began by pointing out that it was of earlier origin than the legislative authority. This is true in a general sense of all political communities, but it is true in a special sense with reference to the origin and growth of British Government in India. Logically, no doubt, the making of the law is antecedent to its execution and to decisions as to its meaning, and the legislative power, as Judge Story put it long ago, "is the great and overruling power in every free government". Historically, however, it is the decisions of disputes and the specific regulation of the conduct of the individuals composing the community by its ruler or rulers, that have preceded the formulation of general rules to guide the rulers and the ruled. The modern distinction of governmental functions into legislative, executive and judicial—in which the organ representing the legislative function is regarded as supreme and as determining the rules applied by the judicature and carried into effect by the executive—did not find its counterpart in the

earlier history of communities, as Sir Henry Maine's great works have demonstrated.

Even in the case of highly developed modern states, it would be a serious mistake to imagine that the Executive *organ* of Government is confined to the carrying out merely of what may be strictly termed, *Executive functions*. No matter how explicitly and comprehensively laws are made, they must of necessity leave a wide discretionary power in the hands of the Executive. To the extent to which the Executive exercise this discretion, they are really supplementing express legislation. A more modern development of what we may call the legislative side of Executive activity, is the power expressly delegated to them by the legislative *organ* to make rules and regulations, to determine the details of laws to be enforced. We may even go further and state that in the constitutions of the most advanced nations, the legislative function which the strictly legislative *organ* of Government exercises, is not that of *law-making*, but only that of *law-sanctioning*. In those countries, like England, in which the Parliament has developed into what the late Professor Seeley called a Government-making organ, it entrusts most of the work of law-making to the Executive in office. For instance, in England, it is the Cabinet that really makes the laws; Parliament, however much it may amend, or turn them out of shape, only *sanctions* them. As one writer on Political Science

Legislatures  
and law-mak-  
ing -

has put it : "It is true that all the work of law-making is done *in* Parliament, but it is misleading at the present day to speak of Parliament as the legislative body in contradistinction to the Cabinet, which is called the Executive, because it leads us to forget that the course of legislation (except in Norway) is habitually regulated by the Cabinet through its influence over its supporters in Parliament." \*

Origin of  
Indian Legis-  
latures

If such is the case with the most highly developed constitutions in the world, it need not be wondered at that the Executive in India are possessed of large legislative powers. In fact, it was originally the Executive that was empowered "to make regulations and ordinances," for the good government of the factories or territories at first acquired in India, "so as they be not repugnant to the laws and customs of the United Kingdom." The earlier charters and the later statutes up to 1853, vested both the executive and legislative functions in the same body of individuals. The power of making regulations thus vested was in character the same as that which the Executive is invested with by modern statutes. The only laws, properly so called, which the Governors and the Governor-General and their Councils in their Executive, as well as in their legislative, capacity, were subject to, were the laws of the Parliament in England. The legislative and legal sovereignty of Parliament was,

\* Hammond's 'Comparative Politics' pp. 407, 408.

as it still is, the only theoretical and legal safeguard against the executive becoming a law unto themselves.

But the power of regulation-making in India gradually grew as the territories of the British rulers increased, and the need for Indian legislation in India itself became imminent. Thus, the executive function became early differentiated from the legislative function even when both were vested originally in the same body or bodies. It was in 1833 that, along with the appointment of a Law Member to the Governor-General's Council, Parliament declared that the laws of the Governor-General's Council were "to have the effect of Acts of Parliament." With the addition, in 1853, of additional members to the Council when sitting for the purpose of making laws and regulations, law-making became a distinct branch of the work of Government in India, and laws, strictly regarded as rules enforceable by the Courts and to be carried out by the executive, came into existence, admirably codified and enacted.

The character and constitution of the Indian legislatures are distinct from analogous institutions elsewhere. They have therefore to be carefully noted. We have already seen that the Indian Constitution is really a creature of the British Parliament. That is itself one mark of the subordinate character of the Indian legislatures. The body or organ in the Indian Constitution which enacts laws is legally the same as

Legislative  
organ  
subordinated  
to the  
executive

the body which administers the State. In other words, there is only one body, *viz.*, the Governor-General in Council—or the Governor in Council—which is both the Executive and the Legislature in India. The Executive organ of the State expands itself by means of *additional* members into the *legislative* organ. Modern law-making, as has been pointed out already, is now-a-days done only by the Executive. The *legislative* organ confines its legislative functions only to the giving or refusing of assent to the laws made by the Executive. This practice obtains in India also, though it would be erroneous to trace its origin in India to the same process of development as in Western countries with representative institutions. It does not need proof, therefore, to see that so long as the Legislative Councils in India maintained an official majority, the Executive did not only *make* laws, but sanctioned them also. Hence the anomaly to the student of modern constitutions that, in a constitution which is every day being more closely approximated to Western representative institutions, the legislative organ is really subordinated to the Executive. This fact may or may not be a defect. One organ in every State has to be *superior* to all others in order that stability and strength may be secured. The legislative organ in a State will not be fit for this superior position till it is sufficiently developed to make and unmake Governments. The Indian Constitution is based on the assumption

that India has of necessity to wait a considerable time before she can claim that her Legislative Councils should possess the power of deciding who shall be the Executive.

These are such marked features of the Indian Constitution that Mr. Cowell in his "Courts and Legislative Authorities in India" regards even the Councils—enlarged under the Act of 1892, by the addition of some practically elected representatives of the people,—as "mere committees for the purpose of making laws, committees by means of which the Executive Government obtains advice and assistance, and the public derive the advantage of full publicity being ensured at every stage of the law-making process." "Although the Government enacts the laws through its Council," he observes, "yet the public has a right to make itself heard and the Executive is bound to defend its legislation. And when the laws are made, the Executive is as much bound by them as the public, and the duty of enforcing them belongs to the Courts of Justice. Such laws are in reality the orders of Government, but they are made in a manner which ensures publicity and discussion, and are enforced by the Courts and not by the Executive." It does not follow from this that the executive authority in India is constitutionally irresponsible to any legislative authority, but only that its responsibility is not to the Indian Legislatures. This matter has been made clear in Lord Morley's Reform Despatch. "It is an essential condition

Indian  
Legislatures—  
Committees  
of advice

of the reform policy," wrote Lord Morley, "that the Imperial Supremacy shall, in no degree, be compromised. I must, therefore, regard it as essential that your Excellency's Council, in its legislative, as well as in its 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." The executive authority in India is thus constitutionally regarded only as a subordinate agency of His Majesty's Government and by that very fact responsible to the legislative authority of the Imperial Parliament, and not to that of the Indian Legislatures which are themselves subject to the same authority, deriving their very constitution and functions from its enactments.

This theory of the responsibility of the Indian Executive and of the Indian Secretary of State, to Parliament means however, in practice, as we have seen in Chapters I and II, but little useful or effective control over them, and the manner in which the legislatures have been constituted and are likely to be constituted even under the Indian Councils Act of this year, has but strengthened the practically absolute power of the Government of India. The chief characteristic, therefore, which ought to be noted with reference to the Indian Legislatures is the independence of the Executive towards them, coupled with the power which the latter possesses

of virtually controlling them and reducing them, in the words of Mr. Cowell, to mere committees of advice. This state of things has not been altered under the new Reform scheme of Lord Morley, as will be seen presently. In fact, the relationship of the Executive to the Legislatures in India is not what has been described as that of "a parliamentary executive," as in the Self-Governing Colonies, but that of a "non-parliamentary executive," virtually capable of controlling the legislatures. Hence we arrive at the same result which we referred to in a former chapter as deducible from the constitutional position of the executive authority in India *viz.*, that there is no Constitutional arrangement by which the Executive is or could be made responsible to the people of the country or to the Legislatures in which the people are to some extent represented.

It follows from what has been stated above that the Indian Legislatures are, according to constitutional theory, strictly non-sovereign law-making bodies ; and it becomes necessary to note the characteristics flowing therefrom, before proceeding to discuss their constitution and functions. The general characteristics of such bodies are, according to Professor Dicey:— first, the existence of laws affecting their constitution which such bodies must obey and cannot change; hence, secondly, the formation of a marked distinction between ordinary laws and fundamental laws ; and lastly, the existence of a

Non-sovereign characteristics of Indian Legislatures

person or persons, judicial or otherwise, having authority to pronounce upon the validity or constitutionality of laws passed by such law-making bodies. Each of these three characteristics is noticeable with reference to the Indian Legislatures, Provincial and Imperial. Although the Council of the Governor-General can pass laws as important as any Acts passed by the British Parliament, the authority of the Council in the way of law-making is completely subordinate to, and dependent upon, the Acts of Parliament which constituted the Legislatures. The legislative powers of the Indian Councils arise from definite Parliamentary enactments, the chief of which will be found printed in the Appendix. They form what might be termed the 'constituent' laws of the Indian Government. In the next place, the Indian Councils are also non-sovereign in that they are bound by a large number of regulations and rules which the Executive is empowered to frame under the 'constituent' statutes above-mentioned, which cannot be changed by the Indian legislative bodies themselves, but which can be changed only by the Executive Government or by the superior power of the Imperial Parliament. If we for a moment turn to these regulations and rules and observe what they provide for, it will be seen, as has been pointed out in the previous paragraphs, that the Executive has been invested with very large powers in framing not only the constitu-

tion—fixing the franchise and the qualifications of representatives and so forth—but also in prescribing the functions and the authority exercisable by the Councils themselves. This aspect of the matter will, however, be presently discussed in connection with the more detailed consideration of the constitution and the functions of the Councils. It is sufficient to note here that not only the Acts which created the Councils, but also the rules and regulations framed by the Executive under the sanction of these Acts for the constitution and working of the Councils, could not be changed by the Councils themselves. Again, the powers of the Councils as to law-making proper are also specifically restricted by the rules as well as by the statutes. Thus, the Governor-General in Council has no power of making laws which may affect the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or the Sovereignty or dominion of the Crown over any part of India or any of certain specified statutes of the British Parliament applicable to this country. Lastly, the Courts in British India are constitutionally vested with the power of pronouncing upon the validity or constitutionality of laws passed by the Indian Councils.

## CAPTER VII

### THE INDIAN LEGISLATURES— THEIR CONSTITUTION

Official and  
non-official  
elements in  
the Indian  
Legislatures

We now proceed to describe briefly the constitution of the various legislatures, Imperial and Provincial. The Imperial Legislative Council and the Legislative Councils of Madras and Bombay are, in legal theory, but expansions of their Executive Councils by the presence of additional members nominated or elected, for the purpose of making laws and regulations. The Legislative Councils of the Lieutenant-Governors of East Bengal, the United Provinces, the Punjab and Burmah have been separately constituted under statutory powers vested in the Governor-General. It is a curious fact to note in this connection that subsequent to the passing of the Indian Councils Act of 1861, no new Lieutenant-Governorships could be created without Legislative Councils accompanying them. In fact, the power to constitute the latter under the Act seems to be derivable from the former.

In reference to all these Councils, it is necessary to note that their constitution consists of two elements, the official and the non-official, and that they are recruited both by nomination

and by election. While the Government, Imperial or Provincial as the case may be, is on its part empowered to nominate additional members to the Councils from officials and non-officials alike, the constituencies or electorates are on their part empowered to elect members to these Councils who may be officials or non-officials. In practice, however, officials are not usually elected, as this would virtually be equivalent to losing the right of election and representation on the part of the electors electing them. The particulars in regard to the formation of these Councils will appear from the Regulations and the Despatches of the Government of India published in the Appendix, and it is not proposed to repeat them here. A few facts bearing on their constitution may, however, be drawn attention to, to show their main characteristics.

The first among these is the proportion between the official and the non-official members in the Councils. Under the new scheme of Lord Morley, it has been settled as essential that the official majority in the Viceroy's Council should be retained, in order "to enable the Government of India to discharge the constitutional obligations which it owes to His Majesty's Government and the Imperial Parliament." The principle of a standing official majority is, however, dispensed within the case of all Provincial Legislatures, but the proportion which this majority bears to the official minority

Their  
proportion  
in the several  
Councils

varies in different provinces, according to the view the executive head of each has taken of its necessities. The Bengal Government, it will be seen, has consented to work with the largest, while that of Madras has provided its Council with the smallest, non-official majority.

Constitutional understanding as to official members' votes

This scheme of official and non-official majorities has been based upon what has been deemed to be a legitimate constitutional understanding, that official members are bound to vote with the Government on all Government measures. There does not, however, seem to be any statutory warrant for this rule or any warrant under the Rules and Regulations framed under the Councils Acts. The understanding, however, has been a somewhat anomalous growth in Indian constitutional development. The position taken by the Government in this matter appears to be this. In respect of all measures of legislation introduced by the Executive Government, the Governor-General and the Members of the Executive Council—either in accordance with the decision at which they may have previously arrived, as embodied in the Bill or in pursuance of the instructions and directions of the Secretary of State, which they are bound to carry out—introduce a Bill into the Council as a 'Government measure'. In either case, the Ordinary or Executive Members of the Council find themselves bound to vote in favour of the measure they have introduced, and against any alterations or amendments

Position of Members of Executive Councils

thereto, if they are not in conformity with the plans of the Government. In the former case, their vote is based upon their convictions, and in the latter case, their vote is based upon the mandate of the Secretary of State which they are bound to have carried out through the Council. The position in this respect was well explained by the Marquis of Lansdowne in a speech which he made in the Legislative Council on the 27th December 1894, when he defended the position taken by himself and the other Members of his Executive Council in supporting the Cotton Duties Bill in pursuance of a mandate from the Secretary of State, and against their own previously expressed views. He said :—

“ So far as the individual action of my colleagues and myself is concerned, Sir Henry Brackenbury, in the discussions on the last Tariff Bill, and again to-day, has said that we are bound to obey the orders given by the proper and constitutional authority. But, for my part, I do not think that exhausts the question. It is claimed that members must be free to speak and vote in this Council for the measure they honestly think best. I can accept that proposition only with the qualification that they duly recognise the responsibility under which they exercise their rights in this Council. 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 that to make Parliamentary government effective it has been 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. But that is not all. Parliament has provided for the government of the Indian Empire. The British Raj can be provided for in no other way. Parliament has allotted his proper place to the Viceroy, as the head of the Executive in India, and it has given him a Council for the purpose of making laws and regulations which cannot have powers in which he does not share. But the Viceroy admittedly is not invested with supreme authority, but, as I understand, it is by distinct enactment entrusted to the Secretary of State and his Council ; and to speak of this Council as supreme, if that means that it has independent and unfettered authority—is to say what is not the fact.

“I speak with some deference, after what fell from the Hon'ble Sir Griffith Evans ; but, with all respect for his legal authority, I think that he is not correct in the view he took that a member of this Council is unfettered in the vote he gives here, or that he could ‘ hand over his responsibility ’ to the Secretary of State. I am inclined to think that the Hon'ble Mr. Mehta took a more correct view of the matter when he said that he would leave the responsibility with the Secretary of State, because the responsibility which the Secretary of State would exercise would be the responsibility which belongs to him.”

Position of  
other official  
members

If the Viceroy and the Members of his Executive Council could be brought down to the position which the Marquis of Lansdowne admitted was the net result of the constitutional arrangements of the Government of India, it follows, as a further extension of the very same theory, that additional members nominated by the Government from among its subordinate

officials are bound to vote, on all 'Government measures,' in accordance with the declared intentions or policy of the Government, in respect of every matter on which they are called upon to vote. In the words of Sir James Westland, spoken in the debate above cited, "if the question before the Council is a 'Government question', the Government will, on the reasons and principles explained, exercise the whole of its voting power."

The effect of this state of things is to alter the actual position originally assigned to the Legislative Councils in the Constitution, in all cases where the Government has an official majority or a majority which it can create, control, or influence. Protests have now and again been made both in and out of the Councils as to this somewhat demoralising state of things. Sir Griffith Evans and Sir P. M. Mehta adverted to this during the debates in the Legislative Council in 1894 and, in the Madras Presidency, the late Sir V. Bhashyam Iyengar, the distinguished jurist, submitted a strongly worded minute against this procedure, last year, when giving his opinion in regard to the new Reform scheme. "We should be careful," said Sir Griffith Evans in the Viceregal Legislative Council, "to maintain the position assigned to us in the Constitution and not to abdicate our functions or allow the Executive to make laws when we only register them. The Secretary of State and the Executive Council have no legis-

The position  
of the  
Legislatures  
altered in  
consequence.

lative powers and cannot be allowed to usurp them." Sir P.M. Mehta considered the position of the ordinary Members of Council to be different from that of the additional official members of Council and claimed that these had, for their part, more freedom of action. This, however, Sir James Westland did not concede in respect of what he termed 'Government questions.' Sir V. Bhashyam Iyengar's opinion is entitled to the greatest weight on this subject, as he has occupied the position of both an official and a non-official member of the Legislative Council and as he could by no means be considered to be biased against the Executive Government. The text of it appears in a note at the end of this chapter and is well worth perusal by students of Indian constitutional history.

Official  
votes not  
analogous to  
Party votes  
in England

The enforcement of an understanding to the effect above referred to, with respect to the official Members of the Legislative Councils, is very different from that which prevails under the party system in England, and is much worse in its consequences. In England, the Party Whips insist on Members of Parliament voting with or against the Government according to the party to which they belong, in respect of all measures irrespective of their individual opinions. The ultimate sanction for this is the power of the constituencies to compel the Member morally to support the Government whom they desire to keep in power, or the Opposition with whom they side. The Govern-

ment and the Opposition in turn, rest and count on the support of the constituencies. But, while in the case of Members of Parliament, the submission to the Whip is purely voluntary and based on considerations of expediency and party politics, the voting to order of the official Members in the Indian Legislative Councils, is based upon the official authority exercised by a superior over a subordinate in the public service, which virtually gives power to the former to materially alter the legal character and position of the Legislative Councils and their Members.

Such being the position of the Legislative Councils, we may next consider the qualifications necessary for the Legislative Councillors, Provincial and Imperial. In regard to the Members nominated by the Government, no specific qualification is prescribed under the Acts or the Regulations. It does not seem to be even necessary that the nominees should be literate in English; for, we find that among the rules of business provision is made for having bills or their purport to be translated in Hindustani or other local vernaculars for the use of Members unacquainted with English, and also provision for one Member to speak at the request and on behalf of another Member who is unable to express himself in English. Such contingencies are, of course, of rare occurrence. It is also to be noticed that the Rules and Regulations now framed under the Indian Councils Act, 1909, prescribing the qua-

No qualifications for nominated Councillors

fications of Members, are applicable only to those elected by the constituents and not to those nominated by the Government. It, therefore, seems to be open to the Government, theoretically at least, to nominate to the Council persons who may be ineligible to be elected under the Regulations for any of the constituencies, such as bankrupts or convicted persons or others.

Qualifications  
and dis-  
qualifications  
of elected  
Councillors

The qualifications and disqualifications of Members elected by the constituencies are, however, prescribed in great detail under the new Regulations. In the first place, there are certain general categories of disqualification. Aliens, females, lunatics, minors, bankrupts, dismissed public servants, convicted persons, persons debarred from practice as lawyers and, lastly, persons who "have been declared by the Government to be of such reputation and antecedents that their election would, in the opinion of the Government, be contrary to public interests,"—are disqualified from being elected. In the next place, any person who is to be elected by any constituency should, except in one important instance, himself belong to the constituency as a voter entitled to elect the candidate of that constituency. He must, in order to be elected, be also duly nominated under the rules in force for each constituency and he must be duly elected according to such rules. Some of the disqualifications can be relieved against by the Executive Government, but others, from the nature of things, could not be so relieved against.

The term of office of Legislative Councillors is, as a rule, three years in the case of all elected candidates and three years or less in the case of members nominated by Government. Every member elected or nominated is to take the oath of allegiance before taking his seat. These, in brief, are the general qualifications necessary for the members of the Councils. Special qualifications are prescribed for special electorates, but these arise more from the nature of the constituencies which they represent than from the qualifications pertaining to the candidates themselves.

The constituencies which are to elect members to the Legislative Councils in pursuance of the new Rules and Regulations are not so much electoral areas as electoral groups, so framed as to secure a certain proportion of representation of classes, interests and areas, and for this purpose the power of nomination is also intended to be used to supplement the elections. It is hardly possible to bring under any systematic treatment, from a constitutional standpoint, these various 'schedules' of electoral arrangements, but readers of this book may be referred to the whole scheme as summarised from the Despatches, Resolutions and Regulations which we publish in the Appendix. It may be mentioned, however; that, while the object and evident desire of the whole scheme is to secure some amount of real representation of the wishes and intentions of the

Complicated  
constituen-  
cies

varied classes of the population in the country, it is doubtful whether the complicated machinery coupled with the intricate manner in which the electoral groups intersect each other and also divide themselves off one from another, is likely to work as smoothly as its authors expect it to do. One is reminded of the complicated and chaotic state to which the electoral arrangements in England became reduced at the end of the eighteenth century by the variety and antiquity of the franchise, which led subsequently to the famous Reform Bill of 1832. It may also be pointed out that the power of enquiring into and deciding the validity of disputed elections, disqualifications of voters and candidates—involving questions of title to property under the personal law of each Hindu, Mahomedan, Malabar or other, and the assessment of their rental values and so forth—is vested in the Executive Government, and not in the Courts, at the instance of the legislature itself, as in England. It is hardly possible to exaggerate the burden which this might increasingly throw on its shoulders as time advances. To quote a remarkable petition which was presented to the House of Commons in the last decade of the eighteenth century on an analogous state of things:—

“Your honourable House is but too well acquainted with the tedious, intricate, and expensive scenes of litigation which have been brought before you in attempting to settle the legal import of the numerous distinctions which perplex

and confound the present rights of voting. How many months of your valuable time have been wasted in listening to the wrangling of lawyers upon the various species of burgage-hold, leasehold and freehold. How many committees have been occupied in investigating the nature of scot and lot, potwallopers, commonalty, populacy, resident inhabitants, and inhabitants at large. What labours and research have been employed in endeavouring to ascertain the legal claim of boroughmen, eldermen, portmen, select men, burgesses, and councilmen; and what confusion has arisen from the complicated operation of clashing charters from freemen, resident and non-resident, and from the different modes of obtaining the freedom of corporations by birth, by servitudes, by marriage, by redemption, by election, and by purchase."

It has also to be remembered that the franchise in respect of the constituencies or electoral groups above referred to, is distributed in as unsymmetrical and uneven a manner as the conditions of the country and its people are deemed to demand; so as to secure the proper representative elements in the Councils, and in proper proportions. Generally speaking, the franchise now conferred may be divided into three main classes: that of the normal territorial electorates, that of the electorate composed of the landed interest, and that of the electorate composed of the Mahomedan population whose political importance, it has been decided, requires special representation in excess of their numerical strength. The franchise is also bestowed to a more limited extent on certain other special interests, such as those of European and Indian commerce, the planting, jute and other special industries. The proportion in which representation is given to all these interests and

classes is not in accordance with either their numerical strength or their proprietary interests. Reasons of political importance, special minority representation and similar considerations have been set out in the whole scheme as having guided the Government in arriving at its decisions as to the numbers of seats to be allotted to each. The consequence has been that, from a theoretical point of view at any rate some electorates have double and sometimes treble representation in the different constituencies to which they belong.

Elective  
element by  
no means  
over-powerful

It is, however, not profitable to discuss the whole scheme at its inception as it were, at the present moment. It has moreover to be remembered that, after all, the elective element is only one and by no means an over-powerful element in the Legislative Councils, Provincial or Imperial. Even in regard to the territorial electorates, the franchise is bestowed on a fairly high class of citizens, namely, members of Taluq and District Boards and of Municipalities, a large proportion of whom the Executive Government nominates. Again, though the mode of election is based more or less upon the Ballot Act in England, still the power of deciding contested elections is vested in the Executive Government and not either in the Legislative Councils or the Courts as was and now is, the practice in England. Besides, the powers of the Councillors themselves in legislation and in administration, even

under the new scheme, are strictly limited. Experience might perhaps show that the power of consolidation of the Indian peoples is stronger than the tendency to isolation and differentiation, on the existence of which the Government has had to base its scheme. But to the student of politics, the present experiment will be from many points of view an extremely interesting one to watch.

#### NOTE

[*Extract from a Note by Sir V. Bhakym Aiyangar on the proposed enlargement of the Legislative Councils and establishment of Imperial and Provincial Advisory Councils, submitted to the Government in 1908.*]

“Both under the Indian Councils Act of 1861 and under the Indian Councils Act of 1892, the Governor-General in Council and the Governors in Council of Fort St. George and Bombay, in exercising the power of making laws and regulations vested in such Councils, respectively, are to consist not only of the Governor-General, the Governor of Fort St. George or the Governor of Bombay as the case may be and the ordinary members of his Council but also of certain additional members whether in the service of the Crown in India or not, the minimum and the maximum numbers of such additional members having been originally prescribed by the Act of 1861 and since raised by the Act of 1892. The functions of a Government are both executive and legislative and the power of making laws and regulations is no less an important function of Government than its executive functions, and the fundamental principle of the British Indian constitution is, that the Indian Government in expressing its important function of legislation should consist not only of the individuals in whom the executive functions of Government are vested but of a certain number of additional individuals who, in so far as the passing to laws and regulations is concerned, form as much a com-

ponent part of Government as the former body of individuals. The only difference between ordinary members and the additional members is that the former form a component part of Government not only when the Government is discharging its legislative functions, but also when the Government is engaged in discharging its executive functions, whereas the additional members form a component part of Government only when the Government is engaged in exercising its legislative jurisdiction. It is therefore opposed to the very constitution of Indian Government that at meetings of the Council for the purpose of making laws and regulations, the individuals composing the executive Government should be regarded, or that they should assert themselves, as *the* Government, or as a component part of the Council, separate and distinct from the additional members of the Council.

Up to 1834, the executive and legislative functions of each province were vested in one and the same body of individuals constituting the respective Governments and by 3 and 4 William IV, Chapter 85, the Governments of Madras and Bombay were substantially divested of their legislative functions and the Governor-General and his Councillors were empowered as the central legislative authority to legislate for the whole of British India, the duty of one of such Councillors, namely, the fourth ordinary member, being confined entirely to the subject of legislation with no power to sit or vote except at meetings for the purpose of making laws and regulations.

Thus for the first time the principle was introduced enlarging the Council of the Governor-General by the addition of a member, a paid official, who formed a part of Government for purposes of making laws and regulations only. This principle was further developed by 16 and 17 Vic., Ch. 95, by which, the Chief Justice and a Puisne Judge of the Supreme Court of Calcutta, as well as four official representative members chosen by the Governments of Bengal, Madras, Bombay and the North-Western Provinces formed additional members of the Governor-General's Council for the purpose of making laws and regulations only, and the fourth

ordinary member of the Governor-General's Council was, like the other ordinary members, given a right to sit and vote at executive meetings. Under the Indian Councils Act of 1861, legislative powers were restored to the provincial Governments and it was provided that for the purpose of making laws and regulations the Councils of the Governor-General, as well as of the Governors of Madras and Bombay were to be re-inforced by the appointment of certain additional members, officials and non-officials. It will thus be seen that from 1833 to 1853 there was one additional official member in the Governor-General's Council and from 1853 to 1861 there were six additional members in that Council, who were all official; such additional members were undoubtedly, for purposes of legislation, as much a part of Government as the ordinary members of the Council, and it was only under the Indian Councils Act of 1861 that provision was made for the appointment as additional members of non-official persons also, and under the Indian Councils Act of 1892 not only was the number of additional members increased, but provision was also made for the introduction of an elective or quasi-elective principle in the nomination of such additional members. But the introduction into the Council of non-official members either by direct nomination, or by election under statutory rules subject to the approval of the Governor-General or Governor as the case may be, can in no way affect the constitutional aspect of the question namely, that all additional members, whether official or non-official, whether nominated or elected, are the colleagues of the Governor-General or the Governor and of the ordinary members of his Council and as such form a component part of the Government in the exercise of its legislative functions, and there is nothing in either of the said statutes affecting the status of the Legislative Council as the Government for the purpose of making laws and regulations.

Another cardinal principle of the constitution is that not less than one-half of the persons nominated as additional members of the Council including the Advocate-General for the time being shall be non-official persons and that the

seat in Council of a non-official member accepting office under Government should be vacated on such acceptance, there being however no corresponding provision that an official additional member vacates his seat on ceasing to be an official. Notwithstanding the provision of the law that not less than one-half of the additional members shall be non-official persons, it is no doubt possible for the Governor-General or the Governor as the case may be, to secure, as has almost invariably been the practice, an official numerical majority in the composition of the Council by appointing only the minimum proportion prescribed by law of additional non-official members, with the result that an official majority can be ensured by reckoning upon the additional official members voting with the ordinary members of the Council. The principle however, of the constitution is not that there *need* be a "numerical official majority" in the Council as now proposed, but that the numerical majority *may* be on the side of non-official members. So far as the relative proportion of non-officials to officials is prescribed by law, it is as already stated that the number of non-official additional members should be at least one-half of the additional members. I may also beg leave to assert emphatically that the notion of an official majority in the Legislative Council, or the notion that the additional official members should vote with the ordinary members of the Council or that the ordinary members of the Council and the President should vote alike, is entirely opposed to the fundamental principles of the constitution as stated above, namely, that so far as legislation is concerned, the Government consists of the Governor-General or Governor, his ordinary members *and* the additional members whether nominated by him or elected, subject to his approval, and all form but one component and indivisible part of Government for the purpose of making laws and regulations : and the division of this body into the Executive Government supported by an official majority and a non-official minority corresponding to an opposition to Government is the introduction of a principle which, in British India, is as unconstitutional as

it would be mischievous in the result. Until the enlargement of, and the introduction of a quasi-elective principle into, the Indian Legislative Councils by the Indian Councils Act of 1892, the fundamental principle of the constitution as settled by the Indian Councils Act of 1861 was not departed from, the official and the non-official members of the Councils co-operating as members of one body and there was no feeling that the non-official members were in the opposition or that the official members should vote together any more than they should in executive or other matters outside the Legislative Council. Neither when the Legislative Council and the Executive Council were identical, nor, later on when the Governor-General's Council was for the purpose of making laws and regulations reinforced by the addition of certain official members only, was there or could have been any theory or notion that all the individuals composing the Council should vote unanimously on every measure before it. A reference to the reports in the official gazette of the proceedings of the Legislative Councils as constituted under the Councils Act of 1861, and especially to the proceedings of the Viceregal Legislature would show that, when divisions in the Councils were recorded, it was by no means unusual that official members were as much divided among themselves as the non-officials were. If, in the deliberations of the Executive Council or of the Board of Revenue, the members are expected to, and do in fact, express and assert their individual views if they are unable to agree after consultation and discussion, it seems strange that in deliberations on legislative measures at meetings of the Legislative Council a different theory or practice should prevail by reason of the enlargement of the Council and the presence therein of elected members and that officials should all vote together irrespective of their individual, deliberate and mature opinions. According to the principle of the constitution of the Legislative Councils in India, there is no difference between official and non-official members, and it is because of the importance attached to the Legislative.

function of Government that in addition to the ordinary members a certain number of additional members are associated with the Governor-General or Governor and the policy of the Act is that legislative measures should be publicly discussed and passed at meetings of such bodies in accordance with the views of the majority and it is a distinct violation of this principle that under the sanction of an unwritten law a theory should prevail and assert itself that officials should all vote solidly irrespective of their convictions and opinions and that non-official members, and the elected members, in particular, should be regarded and treated as being in the opposition to Government. Though in regard to unessential matters where there is a difference of opinion, it is a matter of comparative indifference if all the officials should vote together by their deferring to the judgment of the ordinary member in charge of the Bill, yet in controversial matters affecting the principles of the Bill, it will be a distinct violation of the constitutional principle that they should do so. I do not at all consider this matter from the standpoint of the moral philosopher but purely from the standpoint of an Indian constitutional lawyer and politician who is convinced of the wisdom of the constitutional principle in question and apprehends the evil political consequences of ignoring this principle and substituting therefor the principle of a standing official majority accompanied by the creation in the Council of an irresponsible opposition. Such has been the unfortunate and unexpected result of the operation of the Indian Councils Act of 1892 and it is a matter for extreme regret that the Government of India should now explicitly declare in writing that "they consider it essential that the Government should always be able to reckon on a numerical majority and that this majority should be strong enough to be independent of the minor fluctuations that may be caused by the occasional absence of an official member. The principle of a standing majority is accepted by the Government as an entirely legitimate and necessary consequence of the nature of the paramount power in India, and so far as they know it has never been disputed by any section of Indian opinion, that does not dispute the

legitimacy of the paramount power itself." That is not an open question and if two men are not able to wield one sceptre it is idle to dissemble that fact in constructing political machinery. I am however not surprised at this and nothing can be a greater condemnation, by the highest authority in India, of the practical working of the Indian Councils Act of 1892 than that it should publicly declare that the *legislative* function of Government cannot be safely and satisfactorily discharged unless a standing and decisive majority of official votes in the Council can always be reckoned upon. This necessarily implies not only that there should be a numerical official majority in the Council, but that they should all vote together. I was a member of the local Legislative Council for several years prior to 1892 and for several years subsequent thereto, and my humble opinion is that the working of the enlarged Legislative Council has by no means been satisfactory in a political point of view. An opposition has unconsciously been created and the relations between the official members and the non-official members and in particular the elected members are far from being cordial. There is no doubt that legislative measures are debated upon and criticised more ably and freely by the non-official members than was the case prior to 1892, but so far as official members are concerned, though their number has been increased, fewer of them take part in debates and the theory, unwritten though it be, that they should all vote solidly with the ordinary member of Council in charge of the Bill has a most demoralising effect. As a general rule, with the exception of one or occasionally two official members who actively assist the member in charge, the other official members pay little or no attention to the debates in Council and when meetings of the Council are sometimes protracted, they attend the Council much to the detriment of their other duties. Of course, if the theory is that an official member is to vote with the member in charge of the Bill and not according to the opinion which he may form by attending to and following the debate, it is no matter for surprise, that instead of paying close attention to the debates in

Council he should, while the debate is going on, prefer to attend to his own office work. Since the enlargement of the Legislative Councils in 1892 there has been a preponderance of leading vakils amongst the non-officials who, by their training at the bar, have a decided advantage over their official colleagues, most of whom belong to the Indian Civil Service the members of which have proved themselves remarkably successful as administrators by reason of the fact that their policy hitherto has been one of decisive action and discreet silence while their official training is not such as to qualify them to make extempore speeches or to meet debates in Council."

## CHAPTER VIII

### THE INDIAN LEGISLATURES—(*continued*)

#### THEIR LEGISLATIVE FUNCTIONS

From what has been said in the previous chapter, it will have been perceived that the Indian legislatures were originally created for a strictly limited purpose, namely, that of making laws and regulations, as a non-sovereign legislative body subordinate to the Imperial Parliament. The progress of constitutional development even in India has, however, led to the enlargement of both the constitution and the scope of work of these Councils. Both in the department of legislation and of administration, their functions are becoming enlarged from time to time. The powers of the Councils in regard to the latter, however, are of very recent growth and inappreciable. The distinction between legislation and the other functions of Government, namely, those comprised under administration is, no doubt, important from the point of view of political theory, but as is usual in all such cases, the line dividing them is hard to draw and the question whether a particular act done or required to be done is an act of legislation, or of

Legislative-  
and Execu-  
tive Acts

administration is not easy of solution. Moreover, it is very necessary to note that the power of a statute enacted by the legislature need by no means be confined to the province of what a jurist or political philosopher would consider the domain of legislation. This is as true of Acts of the Indian Legislative Councils as of the Acts of the Imperial Parliament. Taxation, for instance, in England is the undoubted province of the legislature, to vote by means of an Act, and in India legislation is invariably resorted to whenever fresh sources of raising taxation are proposed. Similarly, there are many fiscal and administrative enactments both in England and in India which could hardly be classified as legislation. On the other hand, there are many matters in which, as we have indicated in the last chapter, the Executive is empowered to practically legislate by rules and to administer the rules so legislated.

Their distinction one of method

The only legal distinction, therefore, between the acts of the legislature and the acts of the Executive is the method adopted in deciding on and pursuing a course of action with reference to the government of the country. This absence of a clear differentiation of functions between the legislatures and the Executive is accentuated in this country by the fact, to which reference has been made, that the Legislative Council practically grew out of the Executive Council. The Act of 1833 formally enhanced the legislative power of the Governor-General in Council

by the addition of a Law Member to it, by abolishing the legislative authority of the Madras and Bombay Councils (an authority which was subsequently restored) and by enacting that the body so constituted "is authorized to legislate for all persons, places and Courts within the Companies' territories", and that the laws made by it "are, subject to disallowance by the Court of Directors, to have the effect of Acts of Parliament." The Council was strengthened in 1853 by the nomination of additional members to it when acting for the purpose of making laws and regulations. The Indian Council's Act of 1861 formally consolidated, revised and regulated the legislative powers of the Councils. It also restored subordinate legislative authority to the Madras and Bombay Councils and provided for the creation of further Provincial Legislative Councils in fresh provinces to be created with Lieutenant-Governors.

The limitations put upon the power of legislation which was in general terms bestowed on the Governor-Generals' Council in 1833 will be gathered in their detail from the enactments printed in the Appendix. Generally speaking, the Imperial legislature has power (1) to make laws for all persons, for all Courts and for all places and things within British India, (2) for all Native Indian subjects of His Majesty whether within or without His Majesty's dominions in any part of the world, (3) for all British subjects of

**Powers of  
Legislation  
of Indian  
Councils**

His Majesty and servants of the Government of India who reside in parts of India outside British India, (4) for all persons employed in the Military or Marine Service of His Majesty in India and (5) for repealing or altering such laws or other laws and regulations for the time being in force in British India. No law so made is to be deemed invalid by reason only that it affects any of the prerogatives of the Crown or any of the statutes or laws of England not applicable to India. But the Imperial Legislative Council (i) has not power to make any law repealing or affecting the laws by which the Indian Government has been constituted, namely, (a) some of the provisions of the Government of India Act of 1833 and all the provisions of the Government of India Acts of 1853, 1854, 1858 and 1859, the provisions of the Indian Councils Act of 1861 and (b) any Act of Parliament passed since 1861 extending to British India, and a few minor Acts such as Acts enabling the Secretary of State to raise loans on behalf of India, the Army Act and Acts amending the same ; (ii) has not power to make any law affecting the authority of Parliament or any part of the unwritten laws of the constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or the sovereignty or dominion of the Crown over any part of British India ; (iii) nor has power, without the

previous sanction of the Secretary of State, to pass any law empowering any Court other than the High Court to sentence European subjects of His Majesty to the punishment of death or abolishing any High Court. One restriction referred to above is perhaps of more importance than others, so far as constitutional rights go, *viz.*, that which refers to the allegiance to the Crown in clause (ii) above. This has virtually been interpreted as amounting to a compact on the part of the subject to bear allegiance to the Crown and on the part of the King to preserve the constitutional rights of the subject, contained in the unwritten laws of the United Kingdom of Great Britain and Ireland. Mr. Justice Norman, in the case of *In re Ameer Khan*, has explained this aspect of the question in the following words :—

“ In order to see what is meant by the words ‘ unwritten laws or constitution whereon may depend in any degree the allegiance of any person,’ it is necessary to consider first what allegiance is. Every one born within the dominions of the King of England or in the Colonies or dependencies, being under the protection of the King, therefore, according to our common law, owes allegiance to the King. Every British subject is born a debtor by the fealty and allegiance which he owes his Sovereign and the State, a creditor by the benefit and protection of the king, the laws and the constitution. ‘ Allegiance,’ says Sir William Blackstone, ‘ is the tie which binds the subject to the King in return for that protection which the King affords to the subject.’ Foremost amongst the privileges assured to the subject by the protection of the Sovereign is liberty and security of the person. The Crown cannot derogate from those rights. Bracton tells us that

'the King is under the law, for the law makes the King.' The King cannot interfere with the liberty of the subject, nor deprive him of any of his rights. How absolute soever the sovereigns of other nations may be, the King of England cannot take up or detain the meanest subject at his will and pleasure.

"I will proceed to consider what are the 'unwritten laws and constitution' of the United Kingdom which are alluded to in the section (b). It is well known that the provisions of the Great Charter and the Petition of Right are for the most part declarations of what the existing law was, not enactments of any new law. They set forth and assert the right of the subject, according to what was assumed to be the ancient unwritten laws and constitution of the realm.

"Now if it be true that allegiance and protection are reciprocally due from the subject and the Sovereign, it is evident that the strict observance of the laws which provide for such liberty and security ensures the faithful and loving allegiance of subjects.

"On the faithful observance by the Sovereign of the unwritten laws and constitution of the United Kingdom, as contained in the Great Charter and other Acts which I have mentioned, depend in no small degree the allegiance of the subjects. It would be a startling thing to find that they could be taken away by an Act of the subordinate Legislature. It would be a strange thing indeed if a great popular assembly, like the Parliament of England, had put into the power of a Legislature which has not, and in the nature of things cannot have, any representative character, the power of abrogating or tampering with such fundamental laws."

Powers of  
Indian  
Legislatures  
plenary

The net effect of the powers and restrictions relating to the Indian legislatures cannot be better put than in the words of Lord Selborne in the case of *Queen v. Burah*. He says :—

"The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it

can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established courts of justice, when a question arises as to whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so is by looking to the terms of the instrument, by which affirmatively the legislative powers were created, and by which negatively they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would of course be included any Act of the Imperial Parliament at variance with it), it is not for any court of justice to inquire further, or to enlarge constructively those conditions and restrictions."

These plenary powers of legislation, which the Indian Legislatures at present possess, are the result of the series of enactments which we have referred to above, between the years 1833 and 1861 which had changed their original character of being delegates or agents of the Imperial Parliament. The delegated authority, originally in the hands of the Councils, then Executive as well as Legislative, ceased to exist with the constitution of plenary Legislative Councils with additional members, but the exercise of the delegated power of 'regulation-making' by Executive authority, continued without legal warrant for many years in respect of the administration of territories not brought within the regular administration of British Courts and British laws. The difficulty,

Limited  
power of  
Regulation-  
making of  
the Executive

however, was found out during the time of Sir Fitz-James Stephen as Law Member in India, who placed the power of so-called regulation-making in the hands of the Executive on a legal and statutory basis. Under the Government of India Act of 1870, the power of making regulations at the instance of the local Governments concerned was vested in the Governor-General in Council in his executive capacity in respect of what are, by a curious contradiction in terms, called non-regulation provinces, or provinces in which, owing to their backward character, the regular Indian law and Law Courts could not be established. The Governor-General in his own person also has been vested with an extraordinary power of making Ordinances having the force of laws in cases of emergency for a period not exceeding six months.

The Rule of  
Law in India

These vestiges of the tendency to what may be termed non-legal methods of Government in India, are still noticeable here and there in the Indian Statute Book. Peculiar powers of deportation are, for instance, found in Regulations nearly a century old and these have recently been revived and exercised under circumstances, also deemed peculiar, but their exercise has been vigorously challenged both in England and in India. Subject to these exceptions, the Indian Constitution may be deemed to be as much subject to the rule of law as the British Constitution. What this singular advantage of

British institutions mean to India has not always been grasped by many people who have a fondness for arbitrary methods and personal Government; but students of Constitutional History will easily discern that this is, perhaps, one of the most valuable advantages which the British connection has secured for this country. The value of this constitutional principle to India can hardly be over-estimated and cannot be put better than in the words of Sir Fitz-James Stephen, who was a Law Member of the Viceroy's Council during the time of Lord Mayo's Viceroyalty. "Peace and law," he said, "go together; whatever else we do in India, we must keep peace; and this is strictly equivalent to saying that we must rule by law." The remarks of this great jurist on the constitutional question whether India shall be ruled by law according to British traditions, or by arbitrary, personal government, according to what are fancied to be Oriental notions, are so apposite that we extract them in a note at the end of this chapter, from the chapter on 'Legislation' which he contributed to Sir W. Hunter's "Life of the Earl of Mayo."

While it will thus be seen that the province of legislation has been enlarged with very beneficial results to the people of this country, it has also to be remembered that it has been limited by other circumstances. The share of the representatives of the people

Province of  
Indian  
Legislation  
circum-  
scribed

themselves in shaping them is, in the first place, extremely limited. In the next place, it has been the declared policy of the Government not to interfere with the personal law of the various communities inhabiting this country, but to respect and enforce them, as laid down in their legal text books and as deducible from their settled customs, and to maintain scrupulous regard for the religious and social usages of the people themselves. The province of legislation in these directions is extremely circumscribed, and does not lend itself to assisting social progress to the extent to which it has done in Western countries. Interesting questions, legal and social, arise in connection with this peculiar state of things in India, which it is not the province of a student of constitutional history to discuss or to express opinions upon; but their existence has to be noted as a constitutional fact tending to show that the domain of legislation in India is not as large as in Western countries where a more homogeneous population exists. Legally, of course, Parliament can legislate with the utmost freedom in respect of social and religious matters in India and in the Indian Legislatures also, measures of legislation affecting social and religious usages may be introduced; with the previous sanction of the Governor-General; but the declared policy of neutrality on the part of the State in such matters, a policy which has been solemnly re-affirmed in the

late Queen's Proclamation of 1858, makes any interference by Government in any way counter to the feelings of the people themselves as unlikely as possible.

The powers of the Provincial Legislatures are in general respects co-extensive with those of the Imperial Legislature, but only in respect of the territories made subject to their laws. There are, however, a few important matters excepted from their competence and reserved absolutely for the Imperial Council. Apart from the general restrictions on the powers of the Indian Legislatures which apply equally to the Provincial Legislatures, the latter have not power to deal with matters comprised under Imperial Finance, Currency, Posts and Telegraphs; and they cannot alter the Indian Penal Code, without the previous sanction of the Governor-General.

Powers of  
Provincial  
Legislatures

All legislative measures passed by the legislatures in India are subject to the power of veto on the part of the Crown and of the authorities representing the Crown in India, as in the case of all Colonial Legislatures. Every act passed by a Provincial Legislature has to receive the assent of the Governor first and the Governor-General next, whereupon it becomes law. It is, however, subject to subsequent disallowance by the Crown, on communication of which to India it ceases to be law. Every law passed by the Legislative Council of the Governor-General has to receive the assent of the Governor-General and

Veto on  
Indian  
Legislation  
by the  
Crown and  
its represen-  
tatives

is also subject to similar disallowance by the Crown. According to Sir. C. P. Ilbert, assent has usually been withheld on one or more of the following grounds:—(1) that the principle or policy of the Act or of some particular provision of the Act is unsound, (2) that the Act or some provision of the Act is *ultra vires* of the Provincial Legislature and (3) that the Act is defective in form.

Legislative  
work in  
India and the  
Legislative  
Department

Such, in brief, are the powers of the Indian Legislatures. Though restrictions on their power, constitutionally speaking, are great, the amount and the character of legislation which they have produced have been extremely valuable and might form examples to other states where more advanced legislatures have hardly succeeded so well in the sphere of law-making proper. Not that the Indian Legislatures have not blundered nor that their enactments are perfect; but they have a record of achievement respectable and creditable. This is due to their possession of a special Legislative Department as well as a compact constitution which has enabled the Indian Government to make its laws, whatever they have been, more systematically arranged and more thoroughly worked out than, for instance, in the United Kingdom. In its Legislative Department, the Government of India possesses an office, the function of which is the superintendence of all matters connected with the enactment and revision of the laws and which is under the charge of a member of the

Legislature. "The small size of the Indian Legislature," Sir Fitz-James Stephen points out, "the fact that it consists of only one body and the fact that its duties are purely legislative and that it has nothing to do with the Executive Government, expedite its proceedings to an extent which it is difficult for any one accustomed only to England even to imagine. The comparative fixity of tenure of the higher Indian officials and the practice which prevails of carrying on the legislative business continuously and not in separate sessions at the end of which every bill not passed is lost, all give a degree of vigour and system to Indian Legislation unlike anything known in England and which I hope and believe compensate to a considerable extent for its unavoidable defects and shortcomings."

The reforms introduced under the Councils Act 1909, might to some extent modify the observations of Sir Fitz-James Stephen. Symmetry and system in Legislative enactments are not a *sumum bonum* in themselves, nor is simplicity of procedure at all conducive to soundness and suitability of legislative measures. The primary need for making legislation popular and representative of the feelings of the people whom the laws affect, outweighs every such consideration, and there can be no doubt that measures taken towards this result will secure far better the real object of all legislation, *viz.*, to make them suited to the people, render them

acceptable to them and obtain willing obedience to the Acts of the legislature.

Mode of  
transacting  
Legislative  
business

The procedure of the Legislative Councils in the making of laws will be found fully set out in the rules for the conduct of legislative business, published in the Appendix. The power of the Government on its part to introduce legislation in the Councils is limited ; in the first instance, statutorily, by the provisions which we have referred to in the previous pages and, in the next place, by the Legislative standing orders, which have been framed in conformity with the Acts and in pursuance of the policy laid down from time to time by the Secretary of State and the Government of India. There have been many disputes over questions connected with this matter, affecting the powers of the various Executive authorities responsible for the administration of India, in introducing legislation. Some of these are embodied in the standing orders from which we have extracted important portions in the Appendix. Special attention might be directed to one of these which is of more than administrative significance and has raised and decided a constitutional issue of importance to which we have already referred in Chapter II, *viz.*, the extent to which the Government of India is responsible to the Secretary of State in the matter of initiating legislation.

**Note**

[*Extract from the Chapter on "Legislation under Lord Mayo" by Sir James Fitz-James Stephen in Hunter's "Life of the Earl of Mayo".*]

"Many persons object not so much to any particular laws, as to the Government of the country by law at all. They have an opinion which I have in some instances heard very distinctly expressed by persons of high authority, that the state of things throughout India is such that law ought in all cases to be overridden by what is called equity, in the loose popular sense of the word. That the Courts of Justice ought to decide not merely whether a given contract has been made and broken, but whether it ought to have been made, and whether its breach was not morally justifiable. In short, that there ought to be no law at all in the country as far as natives are concerned, but that in every instance, the District Officers ought to decide according to their own notions, subject only to correction by their superiors.

In the second place, it is a favourite doctrine with persons who hold this opinion that the Government of India possesses the absolute power of the old native states subject only to such limitations as it has chosen to impose upon itself by express law. That every new law is thus a new limitation on the general powers of Government and tends to diminish them, and that there ought to be as few laws as possible, in order that the vigour of the executive power may be maintained at a maximum.

Nothing struck me more in my intercourse with Indian civilians, than the manner in which the senior members of the service seemed to look instinctively upon lawyers of all kinds as their natural enemies, and upon law as a mysterious power, the special function of which was to prevent, or at all events to embarrass and retard, anything like vigorous executive action. I was once discussing with a military officer of high rank, and in high civil employ, the provisions of a bill for putting certain criminal tribes in the North-West Provinces under police supervision. When I showed him the powers which it conferred upon executive officers, he said, "It is

quite a new idea to me that the law can be anything but a check to the executive power."

\* \* \*

I may give a few illustrations, which will throw further light upon this way of thinking. One of the commonest of all complaints against Indian law is that it is stiff and inelastic, that it does not adjust itself to the exigencies of real business and so forth. I have heard these complaints perhaps a hundred times and whenever I heard them I asked the same question, 'which particular law do you refer to, and in what manner would you make it more elastic?' If, as was generally the case, I got no distinct answer to this question, I used to ask whether the objector thought that the Penal Code was too definite, and that it could be improved if its definitions were made less precise; and in particular, whether he would like to have the definitions of murder or theft, or of any and what other crime, altered and if so, where and how? These questions were hardly ever answered. I generally found that nearly every one, when closely pressed, gave the same illustrations as to what he understood by the stiffness and want of elasticity of the law. They all referred to those sections of the Code of Criminal Procedure which require the officer presiding at the trial to take down the evidence with his own hand, and their notion of rendering the Code more elastic was that this requirement should be relaxed.

These sections are the chief guarantee that a judge actually does this duty, and does not merely pretend to do it. They are the great security for a fair trial to the person accused. Before they were inserted in the code, it was a common practice for the judges not to hear the witnesses at all, but to allow four or five native clerks to take down the evidence of as many witnesses in as many different cases at the same time; and then to form his opinion, not from hearing the witnesses, but from reading, or from having read over to him, the depositions taken by the native clerks. In fact, the elasticity which the critics in question really wished for, appeared to me on full examination to be elasticity in the degree of attention which they were to bestow on the most important of their own duties.

A friend of mine, whilst inspecting an important frontier district, received complaints from the officer in charge of it as to the want of elasticity in the existing system; and on asking what he meant, was informed that he had found it impossible to punish certain persons whom he knew to be guilty of murder. His informants would not come forward as witnesses for fear of the vengeance of the relations of the criminals, and the law did not permit him to move without a regular trial. 'Then,' replied my friend, 'what you want is power to put people to death without any trial at all, and on secret information which is satisfactory to your own mind, of which the persons who give it are not to be responsible' This, no doubt, was what the officer in question did want. It had not occurred to him that the impunity of a certain amount of crime was a less evil than the existence of an arbitrary and irresponsible power, which would practically have to strike in the dark.

\* \* \*

What I wish to notice is the gross fallacy of condemning law and legislation in general, because the provisions of one particular law which allows land to be sold for debts may be open to question. There is nothing specially refined or technical in the law in question. What is really objected is its stringent simplicity. A law which mediated between the usurer and the landowner, which tried to secure to the one his just claims, and to the other the enjoyment of what he had been accustomed to regard as his ancestral rights, would have to be far more complicated than a law by which a judgment-creditor may sell his debtor's land by auction. In this, as in numberless other instances, the commonplaces about simple and primitive populations and refined systems of law mean merely that particular laws ought to be altered, which is a reason for, not against, legislation. To wish to put an end to legislation because some laws are not wise, is like wishing to put an end to tailors because some clothes do not fit. To argue that, because some English laws are unsuited for some Indian populations, law in general is not the instrument by which India ought to be governed, is to assume that law is not that which a legislator enacts as such, but a mysteriou

something which is to be found in England, and which must be introduced bodily into India, if India is to be governed by law at all.

The only rational meaning which can be ascribed to such language as I refer to is one which is not expressed, because it cannot be avowed. It is, that the person who uses it would like the law to stand as it is, but that the District Officers should use their own discretion about putting it in force. This is only a weak form of the doctrine that India ought to be governed, not by law, but by personal discretion. A law which people may enforce or not, as they please, is not a law at all.

The theory that Government by law is not suitable for India, and that everything ought to be left to the personal discretion of the rulers, that is to say, of the District Officers, is one of those theories which many persons hold, though no one who regards his own reputation will avow it. In England, every one will admit in words that popular reduction is an admirable thing, whilst many persons couple the admission with qualifications intelligible only upon the supposition (which is undoubtedly true) that in their hearts they believe it to be mischievous. In India, whilst hardly any one will be found to maintain distinctly that the personal discretion of local rulers, free from all law whatever, is the true method of Government, numbers of people qualify their consent to the proposition that the country must be governed by law, by commonplaces like those of which I have given specimens, and which really mean that unfettered personal discretion would be a much better thing. The unavowed influence of this theory acts so powerfully, that it will be by no means superfluous even now to show how baseless and mischievous it is.

In doing this it is necessary to refer shortly to common places, which are often forgotten because they are so familiar. Often as it has been repeated, it is not the less true, that the main distinction between the Government which we have established and the government which it superseded is, that the one is in the fullest sense of the word a government by law, and that the

other was a government by mere personal discretion. It is also true that the moral and general results of a government by law admit of no comparison at all with those of despotism. I do not believe that the people of England, as a whole, would take any sort of interest in supporting a mere despotism, differing from those of the native rulers only in the fact that it was administered by Englishmen.

Government by law is the only real security either for life or property, and is therefore the indispensable condition of the growth of wealth. This is no mere phrase. Before the introduction of law, it admitted of considerable discussion whether property in land existed in India at all. It admits of no discussion that the value of funded property depends entirely upon the limitation of Government demand, and upon the due adjustment of the relations between the cultivators and the zamindars. Laws, therefore, of some kind there must be.

## CHAPTER IX

### THE LEGISLATURES AND THE EXECUTIVE

Attempted  
control of the  
Administration  
by the  
Legislature  
between the  
years, 1853-  
1861

When the function of legislation was differentiated from that of administration in British India and entrusted to the hands of the Councils expanded for legislative purposes by additional members, between the years 1833 and 1861, as we saw in the last chapter, it was found that they had to be further strengthened by the addition of Provincial and other representatives to assist in the making of laws. Legislative activity at that period was marked, and, between the years 1853 and 1861, the Indian Legislatures modelled themselves on the procedure of the House of Commons in England, and not only proceeded to deal with matters of legislation, pure and simple, but also with questions of administration. They showed what was then considered, in the words of Sir C.P. Ilbert, an inconvenient degree of independence by asking questions as to, and discussing the propriety of, measures of the Executive Government—deeming themselves competent to enquire into abuses and grievances, calling for reports and returns from the local administrations, debating long on

questions of public interest and introducing motions and resolutions independent of the Executive Government. In a despatch of Lord Canning at the time, he pointed out that the Council had become invested with forms and modes of procedure closely imitating those of the House of Commons, that there were 136 standing orders to regulate the procedure of a dozen gentlemen assembled in Council, that, in short, in the words of Sir Lawrence Peel, they had assumed jurisdiction in the nature of that of a grand inquest of the nation. It is needless to say that the Legislative Council came into constant conflict with the Executive Government of those days. The following, among others, may be cited as examples of the power which, whether originally intended to be vested in the Council or not, was actually exercised by the Governor-General's Legislative Council between the years 1853 and 1861 :—

At the meeting of the Council held on the 16th April, 1859, Sir Charles Jackson put the following question :—  
 “ Whether the Government have taken any and what steps for the erection of a jail in a suitable climate for the reception of European or American convicts sentenced to terms of penal servitude under Act XXIV of 1855 ?” In support of the question, he made a long statement giving his reasons for his inquiry ; and the answer was also accompanied by a statement at some length.

On September 6, 1859, the Vice-President (Sir Barnes Peacock) called the attention of the Council to certain observations made by the Madras Supreme Court in the matter of an application by one Gunshamdoss, which observations were considered by Sir Barnes Peacock as at

reflection on the Legislative Council. Then, on the 4th February, 1860, the matter was by a motion referred to a select committee and the report of the committee was presented on the 25th February, 1860, when Sir Barnes Peacock moved the following resolution thereon, *viz.*, "the remarks of the learned Judges of the Supreme Court of Madras on Act XVI of 1859 in delivering judgment on the 8th August, 1859 on the case of Gunshamdoss, were unwarranted by the facts and were wholly unjustifiable." In moving the resolution, Sir Barnes Peacock made a very long and interesting speech in the course of which he said that the members of the Legislative Council were as independent as the learned Judges of the Supreme Court of Madras and generally defended the conduct of the Legislative Council against the attacks of the Supreme Court. Mr. Sconce, Sir Charles Jackson and Sir Bartle Frere and the Right Honourable Mr. Wilson all took part in the debate. The original motion was eventually withdrawn and a resolution that the report of the select committee be adopted and transmitted to the Secretary of State for India was unanimously agreed to.

On the 18th August, 1860, Sir Mordaunt Wells rose to call the attention of the Council to the evidence given before the Indigo Commission by the Hon'ble Mr. Eden, a member of the Bengal Civil Service, so far as his evidence referred to the administration of Criminal justice in Her Majesty's Supreme Court." In thus calling the attention of the Council to the subject, Sir Mordaunt Wells made an elaborate speech quoting facts and figures in defence of the Supreme Court of Calcutta against the charge made by the Hon'ble Mr. Ashly Eden, that the Supreme Court and the Calcutta Jury were partial to Europeans accused of offences. Sir Bartle Frere, Mr. Forbes, Member for Madras, Sir Barnes Peacock and Mr. Sconce, all spoke on the subject.

On the 15th December, 1860, Sir Barnes Peacock moved that Government be requested to furnish several items of information specified in the notice of motion in respect to certain grant by the Government to the descendants of

## THE LEGISLATURES AND THE EXECUTIVE 131

Tippu Sultan of Mysore. The Vice President made a most vehement and eloquent speech in support of his motion.

The motion was opposed most vigorously by Sir Bartle Frere and others on behalf of the Executive Government. The Council was divided and the votes were equal in number. Sir Barnes Peacock in the chair as Vice-President gave a casting vote in favour of his motion which was carried.

The information asked for by the resolution was substantially given by the Government on the 22nd December, 1860 when Sir Charles Jackson in the absence of Sir Barnes Peacock expressed his gratification and said that the message granting the information "would increase that confidence which the Council had in the Executive Government and would promote that harmonious action between the Executive Government and the Council which was so greatly to be desired."

The activities of the Council at this time and the lively disputes which it had with the Executive Government finally led to an address of the Legislative Council for the communication to it of certain correspondence between the Secretary of State and the Supreme Government of India. These, together with the differences which arose between the Supreme Government and the Government of Madras on the Income Tax Bill and the doubts which had been raised as to the validity of laws introduced into non-regulation provinces without enactment by the Legislative Council, finally led to the revision and consolidation of the laws in regard to the Indian Councils in general. The Indian Councils Act of 1861 provided a most effective check against any interference of the Legislative Councils with the Executive

Powers of  
Councils  
curtailed by  
Act of 1861

even by way of advice or suggestion. Under section 19 of that Act, it was enacted that no business shall be transacted at a Legislative Meeting of the Governor-General's Council other than the consideration of measures introduced or proposed to be introduced into the Council for the purpose of enactment or the alteration of rules for the conduct of business at Legislative Meetings, and that no motion shall be entertained other than a motion for leave to introduce a measure into Council for the purpose of enactment or having reference to a measure introduced or proposed to be introduced into the Council for that purpose, or having reference to some rule for the conduct of business. Similar restrictions were imposed on the Provincial Legislative Councils.

Restrictions  
slightly  
relaxed by  
Acts, of 1892  
and 1909

These restrictions were somewhat relaxed by the Indian Councils Act of 1892, which permitted (1) the asking of questions in regard to administrative matters, under strictly limited conditions, by the Members of Councils and the eliciting of answers thereto, and (2) the explanation of the annual Financial Statements of the Imperial and Provincial Governments in the respective Councils and a general discussion of the same by the Members. The Indian Councils Act of 1909 has further relaxed the limitations imposed by the Act of 1861 limiting the business of the Council to purely legislative matters, by empowering the Governor-General in Council and the Provincial Governments to

make revised rules (a) for allowing supplementary questions to be put along with interpellations in the Council, (b) for moving resolutions on the Financial Statements presented to the Councils, and (c) for moving resolutions on matters of general public interest at meetings of the Legislative Councils. It is doubtful if the extent of what we may call concessions, thus granted to the Legislative Councils, in allowing them to deal with matters of administration, amount to a restoration of the position which they occupied and exercised under the Act of 1853. It may be pointed out, however, that under the Act of 1853 the powers of the Council, if they existed at all, were unrestricted by any legislative limitation and controlled only by the standing orders above referred to. The express limitation on the powers of the Councils imposed by the Act of 1861 is not repealed by the Indian Councils Act of 1909, but only modified to the extent to which the rules framed by the Governor-General in Council or the Provincial Governments may relax it, while the province of such concessions as the Executive Government may grant in this behalf is expressly forbidden to be widened by the Legislative Councils under their power of making rules for the conduct of business.

It is too early to decide to what extent the powers of the Legislative Councils to criticise and control the administration might be developed under the rules now framed by the Exe-

Extent of  
present  
powers

cutive Government. On the one hand, the Executive Government may not make such rules as to nullify in effect the privileges that have been granted; on the other hand, the Legislative Councils or their members may not so far extend the letter of the rules as to defeat the express limitations imposed on their powers by statute. The rules themselves which have now been framed by the Governor-General in Council for this purpose will be found in the Appendix. They are divisible into two sections, (1) those dealing with the powers which the Legislative Councils are now invested with in discussing and proposing resolutions on the Budget and (2) the powers which they are invested with in obtaining information from the Executive Government and in discussing questions of general public interest. The former are dealt with in the two subsequent chapters dealing with Indian Finance. The latter, which concern the more general respects of administration, may be dealt with here.

Powers and  
Procedure of  
House of  
Commons

The utmost powers which a Legislature could exercise over an executive, whom it can directly or indirectly control, are exemplified in the practice of the British House of Commons towards the Ministers of the Crown and the Departments of State. As the rules which have now been framed have, according to the Government of India, been to some extent framed upon the practice of the House of Commons, it is useful to contrast the exact

limits of the steps now taken in India with those obtaining in Parliament. In theory, of course, the Executive is not in England subject to the control of Parliament, but in practice ministerial responsibility to Parliament has been more completely enforced in England than in any other modern democratic state. As Professor Dicey has pointed out: "There is not to be found in the law of England an explicit statement that the acts of the Monarch must always be done through a Minister, and that all orders given by the Crown must, when expressed in writing, as they generally are, be countersigned by a Minister. Practically, however, the rule exists, as the custody of the various seals of the Crown is in fact vested in several Ministers of State. What the law of England provides is that a Minister who takes part in giving expression to the Royal Will is legally responsible for the act in which he is concerned, and he cannot get rid of his liability by pleading that he acted in obedience to Royal orders".

Thus, the acts of the Executive are brought under the control of the law of the land, and this constitutional principle equally applies to the acts of the Executive in India, except in so far as the laws themselves may provide immunity from legal consequences in respect of acts done under such statutory powers. The tendency to grant such immunity is, no doubt, very much greater in this country than in England, mainly owing to the fact that a British

Parliament is unlikely to tolerate any such infraction of its rights in respect of the affairs of its own country. There are no doubt in England other weapons in the hands of Parliament by which the Executive is made subject to the complete control of the House of Commons, such as the power of impeachment, censuring etc, but the ordinary legal power which enables the House of Commons "to insist that the Ministers shall answer what are deemed proper questions and shall carry out resolutions which are the outcome of the deliberate will of the House of Commons," is, according to the late Professor Maitland, "in the last resort the power of withholding supplies or of refusing to legalise the existence of a Standing Army." In the absence of any such power in the Indian Legislative Councils, it is obvious that the effect which their resolutions may have on the Executive will be conditioned by the merit of the resolutions themselves, by the extent to which they express general or popular will and, this is the most important consideration, by the extent to which the Executive deems fit to accede to such expression of popular will in the Councils.

The usual methods adopted by the House of Commons in England in respect of administrative matters fall under three heads, namely, (1) the practice of Parliament in regard to asking for information from the Executive, by means

of questions or by motion for papers relating to matters of administration, (2) the exercise of what we may term an inquisitorial power by the House of Commons in respect of the administration of public affairs in any department of State, by the appointment of Select Committees or Commissions—either with a view to make the results of such inquiries the basis for legislation or with a view to introduce administrative reforms—and (3) by the practice of moving resolutions on all matters connected with administration, including motions of censure on the conduct of Ministers or of their departments and motions for adjournment on the refusal of any minister to give information to the House or to comply with other similar requests on the part of members. The general principles on which the above rights are based are laid down by Sir Erskine May in the following terms :—

“ The limits, within which Parliament, or either House, may constitutionally exercise a control over the Executive government have been defined by usage upon principles consistent with a true distribution of powers in a free state and limited monarchy. Parliament has no direct control over any single department of the state. It may order the production of papers for its information ; it may investigate the conduct of public officers and may pronounce its opinion upon the manner in which every function of Government has been, or ought to be discharged ; but it cannot convey its orders or directions to the meanest executive officer in relation to the performance of his duty. Its power over the executive is exercised indirectly, but not the less effectively, through the responsible Ministers of the Crown :

These Ministers regulate the duties of every department of the State, and are responsible for their proper performance to Parliament as well as the Crown. If Parliament disapprove of any act or policy of the Government, Ministers must conform to its opinion or forfeit its confidence. In this manner the House of Commons, having become the dominant power of the legislature, has been able to direct the conduct of the Government, and control its executive administration of public affairs, without exceeding its constitutional powers."

"Every measure of the ministers of the Crown" says Lord Grey, "is open to censure in either House; As that when there is just or even plausible ground for objecting to anything they have done or omitted to do, they cannot escape being called upon to defend their conduct. By this arrangement, those to whom power is entrusted are made to feel that they must use it in such a manner as to be prepared to meet the criticisms of opponents continually on the watch for any errors they may commit, and the whole foreign and domestic policy of the nation is submitted to the ordeal of free discussion."

Powers of  
Indian Councils,  
as to (i)  
interpellation,

We may now proceed to consider how far or how little the new rules framed by the Governor-General in Council, in respect of the discussion of administrative matters by the Indian legislatures, bear resemblance to the practice of Parliament. To take the question of giving information to members of the Legislature, we may point out that the English practice is based on the principle "that it is imperative that Parliament shall be duly informed of everything that may be necessary to explain the policy and proceedings of Government in any part of the Empire and the fullest information is communicated by Government to both Houses from time to time upon all

matters of public interest." Information is, of course, withheld on the ground that public interests will suffer by their disclosure and Ministers cannot be compelled to give the same ; but when Ministers do so, they take the responsibility for so doing and if the House is of a contrary opinion, the member who asks for information can move for the adjournment of the House or move a resolution asking the Minister to furnish the information. The powers of interpellation given to members of the Legislatures in India proceed on the reverse principle that the Government is not bound to give any information except such as it deems necessary to give in the public interests, and it is a question whether the power of moving resolutions now vested in the Councils under the rules extends to moving resolutions asking for information or for adjournment, which is doubtful. The practice of putting supplementary questions in England has been developed into what we may term a fine-art, both on the part of those putting the questions and on the part of those Members of Government who answer them. Whether the strictly limited power of putting supplementary questions which has been granted this year to the Indian Councils, subject to the wide discretion vested in the President in respect thereof, could, and is likely to, be developed into a weapon of of heckling the Executive, as is done in England, it is too early to prophesy.

(ii) appointment of Select Committees and motions

We may next consider the practice as to the appointment of Select Committees. The appointment of Select Committees in the Indian Legislatures in respect of legislative measures introduced in the Councils has been used with very great benefit to the public interest, and in this respect this practice has been deemed to be a wholesome and advantageous variation from the practice and procedure of Parliament in England with respect to Bills which are usually discussed in committees of the whole House and are voted upon more or less on party lines and passed after the third reading. There seems to be nothing in the new rules preventing the Government or any member to move for the appointment of Select Committees of the Councils to enquire into matters of administrative reform or of administrative abuses, and it is sufficient to note that having regard to the nature of the constitution of the Councils, mixed committees of official and non-officials appointed for those purposes may be the best suited to advise as to the course of action to be taken by the Government. Of course, there is no scope for discussion of questions of public interest on, what are usually termed in the House of Commons, motions to go into committee, or motions for adjournment before the orders of the day are begun, so as to allow discussions in Council on questions of urgent public interest and an oppor-

tunity to the Executive to furnish the Councils with a statement of its policy or its procedure in regard to urgent administrative matters.

It is, as has been pointed out already, quite possible that if the powers now entrusted to the Councils are used with care, wisdom and discrimination, precedents and procedure analogous to those of the House of Commons might gradually grow up and might serve as a useful means, if not of directly controlling the Executive,—a power which, under the present constitutional arrangement of the Government of India, it is impossible that the Council could possess—at least of directing the Executive into correct and proper channels in regard to administrative policy and administrative action.

## CHAPTER X

### THE COURTS AND THE CONSTITUTION

The division  
of govern-  
mental  
functions

A description of the judicial system of the Indian Empire and the powers and duties of Courts is easily available in many recognised text books. In the pages of Cowell's "Courts and Legislative authorities in India" will be found an exhaustive discussion of how the jurisdiction of Courts, established under the authority of the British Government, arose and became established throughout the country and by what laws and rules they are now regulated. It is, therefore, not attempted to re-produce their substance here, nor to discuss the questions arising out of the Indian judicial system in itself, which are mainly of interest to the student of law rather than to the student of the Constitution, who is principally interested in the relationship of the Courts to the various executive and legislative bodies. It is usual to talk of the English Constitution as resting on a balance of powers and as maintaining a division between the executive, legislative and judicial bodies. Such a distinction, though not quite accurate as to actual facts, as was pointed out in an earlier Chapter, rests upon the definitely

recognised principle of the supremacy of the British Parliament and the supremacy of its laws, to which both the Courts and the Executive are subject. The Executive of the English Constitution, though distinct from the legislature, have been made completely subordinate to it in actual fact. The growth of constitutional principles and understandings have brought the Crown and its servants, in whom the theory of the English Constitution vests the executive authority, into entire subjection to the authority of the legislature. On the other hand, the position of the Judges, though of unquestioned subjection to the law of the land, has been made independent by placing their office on a permanent tenure and raising it above the direct influence of the Crown or the Ministry to whom they might have owed their original appointment.

This inter-relation of the three organs of Government necessarily underwent alterations when applied to the case of territories governed by non-sovereign legislatures within the British Empire. The legislatures of the Colonies and of India are, as pointed out before, subordinate law-making bodies, and it has, therefore, become the necessary function of the Judges of the Courts of the land to interpret the law made by these legislative authorities and to decide whether they are within or beyond of the scope and competence of their respective authority. The Courts, therefore, both in India and in the Colonies, are empowered to pronounce on the

validity or constitutionality of laws made by their respective legislatures. The position of the Judges of His Majesty's Courts both in the Colonies and in India has consequently been made one of independence of both the legislatures and of the Executive of these territories.

The authority  
of His  
Majesty's  
Courts

Since the days when Parliament began to seriously take upon itself the responsibility of the administration of this country, it has pursued the definite policy of establishing His Majesty's Courts in India, owing their authority to the Government at Home' (and not to the Company in India) and exercising jurisdiction subject to the sovereignty of Parliament. This has been deemed as a necessary concomitant of the introduction of British institutions into this country, as well as elsewhere in the Empire. The Regulating Act of 1772 recited that the Charter Act which authorised the East India Company to establish courts did not "sufficiently provide for the due administration of justice in such a manner as the state and condition of the Presidencies do and must require", and empowered His Majesty to establish by Charter a Supreme Court of Judicature at Fort William, consisting of a Chief Justice and three other Judges exercising all the powers which the King's Courts might exercise in England. How far this Court was deemed to be independent of the Executive and the Legislatures in India—that is, the Governor-General and his Council—can be easily inferred

from the famous disputes which arose between this Court and the Governor-General's Council, which nearly reduced the Government of Bengal to a deadlock and necessitated the interference of Parliament to remove some of the anomalies which then arose. The Supreme Court at Calcutta and those at Madras and Bombay which were later established, were in fact originally created for the purpose of acting as a check upon the powers of the Government then administering the affairs of India, and especially over English residents in India. It was considered at the time, as Sir Fitz James Stephen points out, "not without reason, that by establishing courts independent of the local Government, armed with somewhat indefinite powers and administering a system of law of which they were the only authorized exponents, a considerable check might be placed upon the despotic tendencies on the part of the Government. The effect of this policy was, in the first place, to produce bitter dissensions between the Government and the Supreme Courts both at Calcutta and at Bombay and, in the next place, to set the Supreme Courts and the English law of which they were administrators before, the eyes of every European in India, as representatives of a power not only different from, but opposed in spirit and principle to, the powers of the Government." This antagonism between the two authorities, the Governor-General in Council possessing legislative and executive functions and

the Courts of His Majesty, both simultaneously established by the Regulating Act, was eventually tided over by a series of enactments which enlarged and differentiated the legislative power from the executive and placed the authority of the Supreme Courts and of the High Courts which succeeded them, within bounds considered compatible with smooth and efficient administration.

Independence of the Judges

The Judges of the High Courts, with reference to the Indian Legislatures and the Indian Executive, then, do stand in a position of independence. They owe their appointment to Letters Patent from His Majesty, though the Governments in India may be and often are consulted as to their choice. They hold office during His Majesty's pleasure, and in this respect essentially differ from the Judges of the British High Court of Judicature, who can only be removed upon an address to His Majesty by both Houses of Parliament. The function of the Indian High Courts is to administer justice according to the law of the land, namely, the laws of the Imperial Parliament and the laws of the Indian Legislatures passed within the scope of their respective authorities, and according to the customs and usages of the communities inhabiting this land. While the position of the Judges has thus been made one of security against any improper influence of the Executive in India itself, the corrupt or improper exercise of their own powers was guarded against in the Regulat-

ing Act of 1772 by vesting the power to punish them for the same in the Court of the King's Bench in England, and for this purpose the Governor-General and the Governors in Council were made judicial authorities to take evidence and transmit the same to the Court in England when asked to do so. This provision has been reproduced in the collection of Statutes relating to British India, and we presume it applies to the Judges of the present High Courts which have succeeded the old Supreme Courts. The Judicial Committee of the Privy Council, constituted by an Act of 1833, is the highest judicial authority in respect of all judicial matters arising in India.

The composition of the High Courts and of the Courts inferior to them has, however, to some extent, told upon their independence in relation to the Executive, which the judiciary was expected to possess under the original statutes. The position of the Judges of inferior courts is, so far as their discharge of judicial functions within their respective spheres is concerned, theoretically at any rate, one of independence of the Executive. The conduct of the Executive and its officers and the constitutionality of Indian Acts, in so far as they may come before them for judicial pronouncement, ought to be treated in the same way as any superior Court ought to treat it. The judges of the inferior courts are subject, no doubt, to the administrative control of the High Court, but the executive government, in the case

Combination  
of executive  
and judicial  
functions

of a large number of them, has a good deal of voice in deciding their prospects and promotion. In the case of judicial officers who are Magistrates exercising criminal jurisdiction, the position of the executive officers of the Government is such as to permit of interference, sometimes serious, with the independence of the subordinate Magistracy in the discharge of their functions. The combination of executive with judicial functions in the same hands, which so largely prevails, however necessary or expedient in some circumstances it may be, has undoubtedly resulted in making the actual discharge of judicial duties appear much less independent than was intended to be. Legally, of course, the two functions are clearly distinct, and the union of them in the same officer is only a matter of administration. The law does not recognise the prosecutor and the judge acting together in the same person, or in the same body of persons related to each other as superior and subordinate. On the other hand, the law does clearly distinguish between Magistrates and Judges who try cases and the prosecutor and police who prosecute and investigate. It is the union in practice of the two functions that has gone to interfere with the principle of the separation of functions on which all British institutions have been framed.

Special exemptions

There are, moreover, in India a few exemptions from the authority of the courts which are mainly of historical importance. The position

and prestige of the Governor-General and the Governors of the Presidencies has been enhanced from the time of the Regulating Act by the provision contained in it, that they shall be personally exempt from the original jurisdiction, civil or criminal, of the High Court or from arrest or imprisonment in any suit or proceeding of that Court. The Chief Justices and the Judges of the several High Courts are also similarly exempted. It has also been provided that an order in writing of the Governor-General in Council is a full justification for any act which may be questioned in any civil or criminal proceeding in any High Court, except so far as the act extends to any European British subject of His Majesty. The abuse of the authority or power vested in the Governor-General and the Members of his Council is provided against by vesting an authority to deal with them in the Court of the King's Bench in England and the High Court has been authorised, as the Governor-General and Governors in Council have been in respect of the High Courts, to take and transmit evidence to said Court in this behalf when asked to do so.

## CHAPTER XI

### INDIAN FINANCE

Wide field of  
Indian  
Finance

No account of the Indian Constitution can be considered complete without a brief description of Indian Finance. The total revenues of this country amount annually to more than 85 millions sterling and the total expenditure amounts to a like figure. The sources of these revenues are as varied as the purposes to which they are applied. We are not here concerned with the principles according to which the revenues of this country are raised. They vary from the extreme English conception of *laissez faire* to the equally extreme German conception of land and railway nationalisation. The history of Indian Finance is full of examples of financial statesmanship notable alike for resourcefulness and for success. Few modern states will furnish adequate parallels to them. The study of Indian Finance, from a scientific point of view, has yet to be made in any serious fashion by students of Indian Politics or Economics. A proper presentation of its varied features and interesting tendencies during the last half-century and more is itself matter for a separate volume. Such a task is beyond the limits set for this book. All that is essayed here is merely

a brief examination of the relation that, under the present Constitution, exists between finance and government.

By Section 2 of the Government of India Act, 1858, all the revenues of this country, from whatever source derived, are received for and in the name of His Majesty and must be applied to the purposes of the Government of India alone. By Section 41 of the same Act, the expenditure of the revenues of India, whether in India or elsewhere, is subject to the control of the Secretary of State in Council, and every grant or appropriation of such revenues cannot be made without the concurrence of the majority of votes at a meeting of the Council of India.

Control of  
Indian reve-  
nue and ex-  
penditure

Indian public expenditure is either incurred in England or in India, roughly speaking. Expenditure in England is incurred only on the authority of the Secretary of State in Council; expenditure in India is incurred by the Government of India according to rules approved by the Secretary of State in Council. The sphere of expenditure, therefore, within which the Government of India may be said to have an unfettered discretion, is thus limited. To cite one example, no new appointment carrying a salary of over Rs. 250 per mensem can be created by the Government of India without the Secretary of State's sanction. In India itself, expenditure may be divided into Imperial, Provincial and Local, though all expenditure is

brought into the accounts of the Government of India.

Sources of  
Indian  
Revenue.

All revenue is raised in India. For constitutional purposes, it is sufficient to classify this revenue under two principal heads (i) that which has a legislative sanction and (ii) that which has not. The revenue derived from salt, customs, excise, assessed-taxes, provincial rates, stamps, registration and opium, come under the first head. The two considerable items under the second head are tributes and contributions from Native States, and land revenue. Tributes &c., from Native States form a class of revenue arising from the foreign policy pursued by the Government and foreign policy is, and largely ought to be, least controlled by the Legislature.

No legisla-  
tive sanction  
for land  
Revenue

There appears, however, to be no constitutional reason for removing the item of land revenue from the sphere of those which require legislative sanction. This exclusion is generally justified on the ground that, ever since the days of Manu, the State has been entitled to have a share of the produce of the land from the cultivator. This customary right to a *Rajabhagam*, is said to be inherent in the British Government as the successors of the ancient Hindu Kings and is being enforced by such rules and according to such principles as the Executive have chosen to fix for themselves. Whether such a position could be considered sound from a modern financier's point of view is a question that need not be discussed in detail here. One argument may,

however, be stated in reply to it. In his Financial Statement presented on the 18th Feb. 1860, the Right Hon'ble James Wilson justified the imposition of frseh taxation by quoting the authority of Manu and proceeded as follows :—"Now, I must say that there is latitude enough here for the most needy Exchequer and for the most voracious Minister : a twenty per cent. income-tax upon profits ; a tax varying from two to five per cent. upon accumulated Capital ; a share of almost of every article produced . . . I should imagine that revenue laws of the ancient Hindus must have been contributed to the sacred compiles by some very needy finance minister of the day !" And yet, though authority is found in Manu for income-taxes, customs and excise, all these have been imposed and are to-day collected only under legislative sanction. If a tax on income—a share of profits, as Manu put it—requires an Income Tax Act, why should a share of agricultural produce be levied without a legislative enactment? Into the vexed question of whether the land revenue is rent or tax, it is again unnecessary here to enter. Its assessment and collection are dependent purely on executive discretion and no one who pays land revenue has the right to question in a Court of Law the justice of the burden that is imposed upon him for the purposes of the State.

The exclusion of land revenue from the province of the Legislature practically removes between 40 and 50 per cent. of the net public revenue

Financial and constitutional drawbacks thereof

nues from any sort of control. Two considerations may be urged in this connection from a financial and constitutional stand point:—

(a) The amount realised as land revenue—which over a large part of India is subject to periodical revision—has grown and is growing and the funds at the disposal of Government are thereby swelled. Expenditure, therefore, also tends to increase in order keep pace with the increased revenue (b) when a surplus occurs and the Finance Minister casts about for the best means of effecting reduction of taxation, he finds himself unable to give any substantial relief to the class which pays the largest slice of the public revenue and which also really parts with the largest proportion of its income for the needs of the State. And, no wonder, he certainly cannot make any suggestions for reducing the amount taken as land revenue, because the principles of its assessment are not fixed by legislative enactment. He has, therefore, to fall back upon the abolition of a few unimportant cesses on land or upon the reduction or abolition of other taxes which have been sanctioned by the legislature. It seems to the present writer unnecessary to further press this constitutional objection against the present method of making land revenue assessments. The recent Royal Commission on Decentralisation has recommended the placing of these assessments on a legal and statutory basis and it is to

be hoped that that recommendation will be acted on.

It may, therefore, be stated that all *taxation* in India, except the one item of land revenue, has to be voted by the Legislative Council. Such, at any rate, has been the practice—the constitutional convention, if we may so put it—though there appears to be no definite statutory prohibition apart from the principles of the English Constitution, in the way of the Executive Government imposing a tax without reference to the Legislative Councils.

Taxation  
voted by  
Legislature

With regard to public expenditure, however, the Executive both in practice and in theory has been absolutely uncontrolled. How far the reformed Councils will be able in future to exercise any control in this matter will be discussed in some detail in connection with the Budget.

Executive  
uncontrolled  
in expendi-  
ture

Originally, the administration of the whole of Indian Finance was vested in the Government of India, a task which, with the growing development of the country, became both difficult and inefficient. A policy of decentralisation was initiated by Lord Mayo's Government in 1870 and the 'Provincial Contracts' came into existence. This policy has been considerably improved and developed of late. It must be clearly borne in mind, however, that the various Provincial Governments are merely repositories of financial powers delegated to them by the Imperial Government. Within the sphere

limited by the provincial settlements, they are free to order their own revenue and expenditure subject to various rules as regards the creation of appointments, raising of fresh revenue &c. The following passage taken from the new "Imperial Gazetteer of India" Vol. IV, p. 190, describes the system as it was introduced :—

Decentralisation of Provincial Finance in 1870

"The objects aimed at were to give the Local Governments a strong inducement to develop their revenue and practise economy in their expenditure, to obviate the need for interference on the part of the Supreme Government in the details of Provincial Administration, and at the same time to maintain the unity of the finances in such a manner that all parts of the administration should receive a due share of growing revenues, required to meet growing needs, and should bear in due proportion the burden of financial difficulties which must be encountered from time to time. This problem has been solved by the Government of India delegating to the Local Governments the control of the expenditure on the ordinary provincial services, together with the whole, or a proportion, of certain heads of revenue sufficient to meet these charges. The heads of revenue selected are such as are most susceptible of improvement under careful provincial management." These 'Settlements' with Provincial Governments were subject to revision periodically, but recently this policy has given place to a more permanent system. Provincial finance, on the whole, is under

the constant check and supervision of the Supreme Government and is only a part—and not independent—of Imperial Finance.

The features of strictly Local Finance in this country are still more interesting, though they cannot be discussed in detail here. The revenues and expenditure of Local Boards and Municipalities are now separately shown in the Financial Statement of the Government of India. The revenue is mostly derived from taxes on houses, professions, vehicles &c. and from tolls. Both the imposition of these taxes and their expenditure are under the control of the Government. As has been already said in a previous chapter, a detailed description and discussion of the activities of these bodies must be held over till after the impending measures of decentralisation have been carried out in their case.

## CHAPTER XII

### BUDGETS AND BUDGETARY RULES.

Finance and  
constitu-  
tional  
Government

"Money is the vital principle of the body politic. He who controls the finances of the State controls the nation's policy. Constitutionalism is the idea, budgets are the means, by which that idea is realised."\* These are the words of a well-known writer on Public Finance. They describe most effectively the close relation that subsists between finance and constitutional government. One of the fundamental principles of every State that either recognises constitutional limitations or purports to develop a constitutional form of government, is the vesting of some measure of control of the public purse in the representatives of the people. This control—the measure of which varies with the stage which each particular community and state has arrived at in the development of free institutions—is usually exercised through the Budget.

What is a  
Budget

The Budget, broadly speaking, is an account of the finances of the State presented by the Executive to the legislature. Its presentment is necessary in order that the representatives of the

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\* H. C. Adams' Finance, pp. 115-6.

people constituting the legislature may ensure that care and economy is secured in the finances of the nation. In highly developed forms of popular government, it passes through two stages. In the first stage, it is a report prepared for the purpose of giving the legislature an idea of the condition of the finances and of what is needed and proposed for the year that is budgeted for. In its second stage, it is treated as a project of law and passed like other legislative measures. With these prefatory remarks, we may proceed to the study of the Budget in India, as a means of exercising control over financial administration.

From what has been said in the earlier chapters of this book, it will be clear that the Parliament, though it is the ultimate sovereign authority in respect of all revenue that is raised and all expenditure that is incurred by the Government of India, does not, and is unable to, regularly and systematically exercise any control over Indian finances, as it does in the case of the finances of the United Kingdom. Its control is mainly confined to two matters, *viz.*—

(a) No expenditure of the revenues of India can be incurred for defraying the cost of any expedition beyond the Indian frontiers (except for preventing or repelling actual invasion) without the consent of both Houses of Parliament

(b) It is also directed by the Government of India Act of 1858 that the Indian Budget shall be laid annually before the House of Commons

Control of  
Parliament  
over Indian  
Finance

to enable its members to offer suggestions, ask for information and generally criticise the policy of the Government in relation to India. In practice, however, the 'resolution to go into Committee to consider the East India Revenue Accounts' is purely a formal one, consisting of the identical proposition that the Accounts show what they show. Not only is Parliament unable to control Indian Finance, but careful students of the tendencies of constitutional development in India ought also to recognise that, so far as the people of India are concerned, this control should be exercised not in England, but in India. The Indian Constitution, even as it is, clearly points to the latter tendency and rightly too.

Indian  
Legislature  
cannot vote  
or veto  
a Budget.

It is true that the Indian Legislatures possess no statutory powers for voting, much less for vetoing, a Budget. Their functions have been confined to discussing the Budget and criticising the general administration. This right was conceded to them since the Viceroyalty of Lord Mayo when financial administration was decentralised. It was considered at that time that the Resolution of the Government of India on the subject vested the Provincial Legislative Councils with the power of passing the Budget by means of an Appropriation Bill. In Madras, at any rate, in 1871, the Executive Government, under the guidance of Sir Alexander Arbuthnot, took up such a position, but the Government of India subsequently dis-

abused them of that impression. For a long time after, the discussion over the Budget was neither systematic nor regular. Under the law, the Councils could only meet for legislative purposes. In the absence of any Bills imposing fresh taxation, there was no legal or constitutional obligation thrown on the Executive to present the Budget or to allow its discussion. The difficulty was obviated by the Indian Councils Act of 1892, which authorised the Governor-General in Council to make rules from time to time permitting the Legislative Councils to discuss the annual Financial Statement of the Governor-General in Council. Similar provisions were enacted for the Provincial Legislative Councils also.

Under these rules, the procedure with regard to the preparation and presentment of the Financial Statement to the Imperial Legislative Council was as follows. The Comptroller and Auditor-General prepared the Budget Estimate and forwarded it for approval to the Finance Member. The Finance Member examined the same and suggested or made alterations in the proposals necessary for meeting fresh expenditure or disposing of surpluses. It was then laid before the Governor-General in Council. On being passed by them, a Financial Statement was made by the Finance Member to the Legislative Council. After an interval of at least a week, the Members delivered speeches which generally ranged over the whole field of adminis-

Budget  
Rules under  
Act of 1892

tration. The President wound up the debate with a speech of his own. No vote was taken; no amendments were allowed. The Budget, for the year at any rate, was neither better nor worse on account of this debate. If the latter had any effect at all, it was only posthumous, so to speak; it might result in improving the statement for the following year.

No 'Budget  
right' in  
India

A radical change in this procedure has now been effected by the Rules recently published by the Government under the Councils Act of 1909. These Rules will be found published in the Appendix. The Councils are still far from having obtained anything like the control of the national purse. In the Despatch which the Government of India sent to the Secretary of State in October, last year, they took care to insist upon one proposition as a constitutional fact, namely, that the power of passing the Budget is vested not in the Legislative Council, but in the Executive, and that it is the latter and not the former that decides any question arising on the Budget. There can be no doubt that, under the law, there is no power in the Legislative Council to claim to meddle with the Financial Statement of the Governor-General in Council. If the constitutional proposition enunciated by the Government of India were accepted literally, it would mean that the Legislative Council has no control over either the raising of revenue or the incurring of expenditure. In other words, the Executive

Government would be at liberty to impose a tax and collect it with the same ease as it is able to incur expenditure. As a matter of fact, however, these legally unrestrained powers of the Executive have been considerably modified by constitutional usage. During the last half-a-century and more, no fresh taxation or alteration in existing taxation has been resorted to without the sanction of the Legislative Council. Of course, care has always been taken to present the Bill for a fresh tax as a separate measure and not as part of the Budget and with the official majority in the Councils, the powers of the Executive were practically unlimited. The established constitutional practice will, however, be of advantage in the future, especially in regard to Provincial Legislative Councils. With a non-official majority, these Councils must be able, with sufficient unanimity, to indirectly control Provincial finance by the power they have of consenting to fresh taxation, though it must be recognised that purely provincial taxation is not a field large enough for exercising such control effectively. In the field of expenditure, however, no such constitutional usage has grown up, and the Executive have been supreme therein. The Rules which have now been framed constitute, however, a distinct step in advance and, if acted upon with care and discrimination are ultimately likely to lead to the realisation of a fully developed 'Budget right.'

delivered by  
to be  
of the

**The British  
Budget  
Procedure**

Let us digress for a moment and consider what 'Budget right' means in England. It is really composed of three distinct rights, *viz.*, the right to determine the annual expenditure, the right to consent to the imposition of a fresh tax or the alteration of an existing one, and the right to decide the extent of national borrowing. The Budget, in England, as in all civilised countries, is drafted by the Executive. The King's Speech opening Parliament informs the latter as to the estimated immediate needs of the State. The House of Commons then votes a supply which enables the ordinary work of administration to be carried on while the details of the Budget are being discussed and settled. The next step is the fixing of a day for a discussion in Committee of the expenditure side of the Budget. The House on that day resolves itself into Committee, called the Committee of Supply, for the purpose of considering the supply that has been already voted. The informal procedure in Committee enables the House to thoroughly thresh out every item of expenditure and a general agreement is arrived at as to the total expenditure to be incurred for the year. The House then goes into Committee again, *viz.*, the Committee of Ways and Means, and the Chancellor of the Exchequer opens discussion in it by making his Budget speech. The Budget has afterwards to be passed into law.

It would be idle to expect all the details of such procedure in a government like India. It is only possible in states which have established Constitutional Government, in the strict sense of the term, and which recognise the doctrine of ministerial responsibility. The Constitution of India is, however, different. Party Government and ministerial responsibility are non-existent and the ultimate right of the Executive to determine the Budget is considered necessary to prevent a deadlock in the work of Government. The Executive in India is permanent and cannot be altered. It can, therefore, not afford, at present, to render its hold over the purse weakened by an adverse vote of the representative body. An adverse vote is the same thing as a vote of censure, but the Executive, being permanent, cannot resign and make way for the leaders of those who have censured them. They have to continue in office and must carry on the work of Government. This is the constitutional ground on which the Government of India has, in the Rules now framed, refused to permit the legislatures to vote or veto a Budget. It has, however, been recognised in the new Rules that the representatives of the people should be consulted and their advice taken before the Executive decides on the final form which the Budget should assume. Herein lies the cardinal point of difference between the old practice and the new. Formerly, the details of the Budget were

New Indian  
Budget  
Procedure

determined without any possibility of alteration before it was presented to the Legislative Councils. The latter were, therefore, powerless to effect any amendments in it. Under the new Rules, however, a distinction has been made between the 'Financial Statement' and the 'Budget'. The former may usefully be termed the 'preliminary Budget.' It is ordered to be presented to the Council with an explanatory memorandum. An interval is then allowed and a day fixed for the first stage of the discussion. The Council has, then, the opportunity of moving any resolution relating to (1) any alteration in taxation, (2) any new loan or (3) any additional grant to Local Governments. The resolutions may be voted on. After all the resolutions on these three items have been fully discussed and disposed of, the Council enters upon the second stage of the discussion. It presumably goes into Committee for discussing groups of financial heads under the guidance of the Member in charge of the particular Department. Resolutions can be moved and voted on at this stage also. After this discussion also is closed, the Budget is decided on by the Executive Government—after giving due weight to such resolutions as the Legislative Council may have passed, but on the responsibility of the Executive only—and presented to the Legislative Council by the Finance Member, and it is followed subsequently by the usual general discussion.

To the present writer, these Rules appear to recognise three very important principles of great constitutional significance. The first stage of the discussion and the matters comprised therein enunciate the important maxim that alteration of taxation must be made with reference to the Budget statement, though the alteration itself will presumably have to be passed by a separate legislative measure. In other words, the Members are given the privilege of discussing *before hand* the question of such alteration with reference to the necessities of the Budget. The second stage of the Budget discussion, for the first time in Indian Constitutional History, takes the non-official Members of Council into confidence in regard to the determination of public expenditure. The members have the right of placing on record their views, as to the items not excluded from their cognisance, in the form of resolutions. It is true that a good deal of the value of this concession is lost by the exclusion of important heads of revenue and expenditure from discussion, but the principle has been recognised and it may be hoped that it will gradually be extended in application. The third stage of the Indian Budget is also of very great importance in that it imposes on the Finance Member the obligation to explain why any resolutions that may have been passed in the two first stages have not been accepted by Government. The ability and discretion of Members of the Legislative

Its constitutional importance

Council in rendering this particular obligation of real and lasting constitutional significance, will be measured by the soundness of the suggestions and the practicability of the recommendations that they decide to shape in the form of resolutions. It will be difficult for them to get resolutions passed in the Imperial Council with an official majority ; but further development of constitutional rights is likely to be retarded and endangered if resolutions of an impossible or unpractical character are moved. A few well-considered resolutions may well prevent the Executive from brushing them aside and help to build up constitutional usage, strengthening the rights of the representatives over Indian finance, while a large number of ill-considered and wild-cat schemes will, on the other hand, help to create a body of precedents which will be a standing obstruction to further constitutional progress. What is required to avoid the latter and to build up the former is a satisfactory organisation of the people's representatives and a readiness in them to choose and to follow the leadership of those who are by their knowledges, their patriotism and their sagacity, pre-eminently fitted to lead them.

Scope for  
growth of  
constituti-  
onal conven-  
tions

The progress of Constitutional Government is not dependent so much upon what is expressly declared to be constitutional rights as upon what is silently built up in the form of constitutional conventions. The

Rules now promulgated do not place the Legislative Councils of British India in a position very much worse than that of the Reichstag in Germany. The theory of the German Constitution is that the Reichstag should control expenditure. In actual practice, the Executive has acted several times in defiance of the Reichstag, but the apology which the Government has, soon or late, to make for such unconstitutional action is really the best guarantee for the people's right. The King of Prussia once carried out a reorganisation of the army in spite of the refusal of the legislature to make an appropriation for the purpose. But, four years later, he admitted the unconstitutionality of his act, begged the pardon of the legislature and requested them to legalise his procedure. In India, the legislature has not the power to refuse an appropriation, legally; it can only make a recommendation to the Executive in the form of a resolution that certain expenditure need not be incurred. Of course, the Executive may accept this recommendation or not in its discretion. But it is bound to make an explanation as to why a resolution has not been accepted. The necessity imposed by the Rules for making this explanation is a great moral weapon in the hands of the Legislatures, capable of being wielded with great effect, if only the resolutions which necessitate the apology are such as cannot admit of being explained away.

## CHAPTER XIII

### CONCLUSION

**The Reforms  
and parlia-  
mentary  
Government**

The introductory study which has been made in the foregoing chapters hardly pretends either to exactness or thoroughness, but is only intended as a means of directing attention to the systematic study of the Indian Constitutional System, now being enlarged and developed on the lines of Western institutions. It would, of course, be the height of folly to imagine that the steps now taken lead, or are likely to lead, in the near future to Parliamentary Government, in the sense in which it is understood in Europe. Lord Morley, at any rate, has definitely disclaimed any such intention in the initiation of the reforms with which Lord Minto's and his name will for ever be associated. In the course of a speech, last year, in the House of Lords, he observed: "If I know that my days, either official or corporeal, were twenty times longer than they are likely to be, I shall be sorry to set out for the goal of a Parliamentary system in India. The Parliamentary system in India is not the goal to which I for one moment aspire". It seems, however, to be necessary, in view of misconceptions which have prevailed as to this statement of Lord Morley, to have a clear idea of what he has termed the 'Parliamentary

system'. It is easy to show from Lord Morley's other speeches in regard to Indian Reforms that what he has said is not to be understood as meaning either that he disfavours the development of representative government or is against the gradual concession of self-governing powers to the people of India in their own country. The words 'Parliamentary system' seem to the present writer to have a special significance and are not merely equivalent to 'popular government'. Representative government, for instance, of one kind or another exists at this moment in most Western countries as well as in all countries which have come within the influence of European ideas. As one writer has put it: "There are few civilised states in which legislative power is not exercised by a wholly, or partially, elective body of a more or less popular or representative character." Representative Government, however, does not mean everywhere one and the same thing. It exhibits or tends to exhibit, according to him, "two different forms or types which are discriminated from each other by the differences of the relation between the executive and the legislature. Under the one form of representative government, the legislature or, it may be, the elective portion thereof, appoints and dismisses the executive which under these circumstances is, in general, chosen from among the members of the legislative body. Such an executive may appropriately be termed a 'Parliamentary execu-

tive.' Under the other form of representative government, the executive, whether it be an Emperor and his Ministers, or a President and his Cabinet, is not appointed by the legislature. Such an executive may appropriately be termed a 'non-parliamentary executive.' \*

Lord Morley  
and John  
Bright

If Lord Morley's words are taken in the above significance, it is plain that a Parliamentary system of government for India is a goal to which neither Lord Morley nor anybody who has given more than a superficial consideration to the Indian political problem can aspire in the present state of things. What probably was meant by Lord Morley in the above words—and what possibly was in his mind when he initiated the reforms, as to the political tendencie which they may foster—are explained by what he said in his Budget speech in January 1908, in the House of Commons. He then said:—

"Mr. Bright was, I believe, on the right track at the time in 1858 when the Government of India was transferred to the Crown ; but I do not think he was a man very much for Imperial Dumas. (Laughter). He was not in favour of universal suffrage—he was rather old-fashioned—(Laughter) but Mr. Bright's proposal was perfectly different from that of my honourable friend. Sir Henry Maine and others who had been concerned with Indian affairs came to the conclusion that Mr. Bright's idea was right—that to put one man, a Viceroy, assisted as he might be with an effective Executive Council, in charge of such an area as India and its 300 millions of population, with all its different races, creeds, modes of thought, was to put on one man's shoulder a load which no man, of whatever powers, how-

\* Dicey's Law of the Constitution pp. 411-412.

ever gigantic they might be, could be expected effectively to deal with (Hear, hear.) My hon'ble friend and others who sometimes favour me with criticisms in the same sense seem to suggest that I am a false brother, that, I do not know what Liberalism is. I think I do, and I will even say that I do not think I have anything to learn of the principles or maxims, ay or of the practice of Liberal doctrines, even from my hon'ble friend. You have got to look at the whole mass of the great difficulties and perplexing problems connected with India from a commonsense plane and it is not commonsense, if I may say so without discourtesy, to talk of Imperial Dumas."

Now, if we refer to what John Bright has said as to the future political evolution of this country, we find the following:—

"The point which I wish to bring before the Committee and the Government is this, because it is on that I rely mainly, I think I may say, almost entirely, for any improvement in the future of India. I believe a great improvement may be made, and by a gradual process that will dislocate nothing. What you want is to decentralise your Government . . . . You will not make a single step towards the improvement of India unless you change your whole system of Government—unless you give to each presidency a Government with more independent powers than are now possessed. What would be thought if the whole of Europe were under one Governor who only knew the language of the Feejee Islands, and that his subordinates were like himself, only more intelligent than the inhabitants of the Feejee Islands are supposed to be . . . How long does England propose to govern India? Nobody answers that question, and nobody can answer it. Be it 50, or 100, or 500 years, does any man with the smallest glimmering of common-sense believe that so great a country, with its twenty different nations and its twenty languages, can ever be bound up and consolidated into one compact and enduring Empire? I believe such a thing to be utterly impossible. We must fail in the attempt if ever we make it, and we are bound to look into the future.

with reference to that point. The presidency of Madras, for instance, having its own Government, would in fifty years, become one compact state, and every part of the presidency would look to the city of Madras as its capital, and to the Government of Madras as its ruling power. If that were to go on for a century or more there would be five or six Presidencies of India built up into so many compact states; and if at any future period the sovereignty of England should be withdrawn, we should leave so many presidencies built up and firmly compacted together, each able to support its own independence and its own Government; and we should be able to say we had not left the country a prey to that anarchy and discord which I believe to be inevitable if we insist on holding those vast territories with the idea of building them up into one great empire."

Self-Govern-  
ment and  
federalism

Whether or no Lord Morley subscribes to the whole of the position taken up by Mr. Bright, it has fairly to be inferred that he is against any development of political institutions in India in the direction of constituting a centralised parliamentary system for the whole country. Whether he meant to imply, by his words above referred to, that the progress of self-Government in India should therefore be in the direction of federalism—that is of developing provincial autonomy in the various Councils and the Executive of the Provinces and the Governments of Native States—or merely meant to state that the Indian Government must necessarily be decentralised, whether based on popular government or bureaucratic government, it is useless to speculate; but from what we know of Lord Morley's political views, his disbelief in a thorough-going imperial organisation is pronounced, and his faith in

popular government has always been great. How far both have influenced the scheme of Reforms which he has initiated and how far their spirit is likely to be infused in the actual carrying out and working of his scheme by the Governments in India—both during his tenure of office and subsequent thereto—remains to be seen. In the meanwhile, it is necessary to remember that changes in the mere machinery of Government are but one part, though an important part, of the process which this country has to undergo and is likely to undergo in its political evolution.

It has, moreover, to be remembered that there are a few essential characteristics impressed on the constitutional arrangements of this country which it will be futile to ignore. British India is what is generally spoken of as a dependency. A dependency has been defined by Sir George Cornwall Lewis as "a part of an independent political community which is immediately subject to a subordinate Government." The test of a dependency is that it is substantially governed by the dominant country, and a self-governing dependency is a contradiction in terms. Do the Reforms, which have from time to time been made in the constitutional machinery in India, tend towards reducing this "dependent character of the Indian Constitution? To answer this, it is necessary to look at two aspects of the question. We have to look at the character of the agency of

Dependency  
and Repre-  
sentative  
Government

administration and we have next to look at the character of the institutions which are being developed in the process of political reconstruction. Perhaps the most important step taken for over half a century as regards the former aspect, viz, that implied in India being a dependency, governed by a dominant foreign agency, has been taken by Lord Morley in the highest ranks of public service. Where what has been termed the essentially English element of administration was so long deemed necessary to be preserved, he has introduced changes of a most far-reaching character. The appointment of Indian Members to the Council of the Secretary of State, to the Executive Councils of the Viceroy and the Governors and Lieutenant-Governors of the Provinces and the the appointment of an Indian to the Privy Council in its Judicial Committee—these seem to us likely to go a great way towards rendering the differentiation between the ruling and the ruled elements, much less acute than ever before.

Agency and  
methods of  
Indian  
Government

It may, however, be deemed immaterial, from the point of view of constitutional development, what the agency of administration is, if the methods of government continue bureaucratic. The essence of bureaucracy is centralisation, and decentralisation, in its widest sense, necessarily implies co-operation of the representatives of the people, not merely in legislation, but in the actual working of administration. What the outcome of the recommendations in this

behalf of the Decentralisation Commission in India will be, cannot be stated with any definiteness at present. But the whole feature of the Reform Scheme of Lord Morley may be summed up in (1) the immediate step forward of directly associating Indians in the work of every-day administration, and (2) the attempt to decentralise administrative machinery so as to make Provincial and Local Administration, if not autonomous, at least self-contained, with a strong infusion of the popular element—(3) based upon what Lord Morley deems to be the essential need of enforcing the central control of the Government of India as the responsible representative of His Majesty's Government and the House of Commons in England. These seem to the present writer the three limitations within which constitutional progress will for some time to come have to advance. As to what results are likely to be achieved in the political future of the Indian peoples by the steps now taken, the writer must leave to better minds to judge.

Whatever these results might be, the duty of the Government and the people in the immediate future is clear enough and it cannot be put better than in the words of one of the historic figures who fought in the cause of freedom and of order so early as the beginning of the Civil War in England—John Pym. "The best form of Government," he said, "is that which doth actuate and dispose every part and member of a state to the common good; for as those parts give strength and ornament to the

Progress in  
the future

whole, so they receive from it again strength and protection in their several stations and degrees. If, instead of concord and interchange of support, one part seeks to uphold an old form of Government, and the other part a new, they will miserably consume one another. Histories are full of the calamities of entire states and nations in such cases. It is, nevertheless, equally true that time must needs bring about some alterations . . . Therefore have those commonwealths been ever the most durable and perpetual which have often reformed and recomposed themselves according to their first institution and ordinance. By this means they repair the breaches, and counterwork the natural effects of time."

The true disposition to further the common good in its highest form, so necessary for future progress in India, can only be attained by the rulers of the land ceasing to take narrow views of mere administrative "thoroughness," and by taking and imposing on the administration, broad views. What the people, on the other hand, need at this moment is sound organisation and sage counsel and leadership. They want leaders who possess, in the words of Lord Morley, "the double gift of being at once practical and elevated, masters of tactics and organising arts, and yet the inspirers of solid and lofty principles." Will our rulers in India take broad views and will such leaders of the peoples be forthcoming?

# APPENDIX

## I

### The Government of India Act, 1858<sup>1</sup>

(21 and 22 Vict., C. 106.)

AN ACT FOR THE BETTER GOVERNMENT OF INDIA

[2nd August, 1858.]

Whereas by the Government of India Act, 1853, 16 and 17 Vict., C. 95, the territories in the possession and under the Government of the East India Company were continued under such Government, in trust for Her Majesty, until Parliament should otherwise provide, subject to the provisions of that Act, and of other acts of Parliament, and the property and rights in the said Act referred to are held by the said Company in trust for Her Majesty for the purposes of the said Government :

And whereas it is expedient that the said territories should be governed by and in the name of Her Majesty \* \* \* \* ;

#### TRANSFER OF THE GOVERNMENT OF INDIA TO HER MAJESTY

1. The Government of the territories now in the possession or under the Government of the East India Company and all powers in relation to Government vested in, or exercised by, the said Company in trust for Her Majesty, shall cease to be vested in, or exercised by, the said Company ;

Territories under the Government of the East India Company to be vested in Her

<sup>1</sup> The provisions of this Statute cannot be affected by legislation in India—secs. 24 and 25, Vict., c. 67, s. 22. For digest and notes, see Ilbert's Government of India, pp. 309-313.

**Majesty, and powers to be exercised in her name**      And all territories in the possession or under the Government of the said Company, and all rights vested in or which if this Act had not been passed might have been exercised by the said Company in relation to any territories, shall become vested in Her Majesty, and be exercised in her name ;

And for the purposes of this Act India shall mean the territories vested in Her Majesty as aforesaid, and all territories which may become vested in Her Majesty by virtue of any such rights as aforesaid.

**India to be governed by and in the name of Her Majesty, &c.**      2 India shall be governed by and in the name of Her Majesty ;

And all rights in relation to any territories which might have been exercised by the said Company if this Act had not been passed shall and may be exercised by and in the name of Her Majesty as rights incidental to the Government of India ;

And all the territorial and other revenues of or arising in India and all tributes and other payments in respect of any territories which would have been receivable by, or in the name of the said Company if this Act had not been passed, shall be received for, and in the name of, Her Majesty, and shall be applied and disposed of for the purposes of the Government of India alone, subject to the provisions of this Act.

**Secretary of State to exercise powers now exercised by the Company, &c.**      3. Save as herein otherwise provided, one of Her Majesty's Principal Secretaries of State shall have and perform all such or the like powers and duties in anywise relating to the Government or revenues of India, and all such or the like powers over all officers appointed or continued under this Act, as might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of the said Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India in relation to

THE GOVERNMENT OF INDIA ACT, 1858 iii

such government or revenues, and the officers and servants of the said Company respectively, and all such powers as might have been exercised by the said Commissioners alone ;

And any warrant or writing under Her Majesty's Royal Sign Manual which by the Government of India Act, 1854<sup>1</sup>, or otherwise, is required to be countersigned by the President of the Commissioners for the Affairs of India, shall in lieu of being so countersigned be countersigned by one of Her Majesty's Principal Secretaries of State.

Counter-signing of warrants. 17 & 18 Vict., C. 77

4. \* \* \* \* any four of Her Majesty's Principal Secretaries of State for the time being, and any four of the Under Secretaries for the time being to Her Majesty's Principal Secretaries of State, may sit and vote as members of the House of Commons ;

Four Principal and four Under Secretaries of State may sit as members in the House of Commons

But not more than four such Principal Secretaries and not more than four such Under Secretaries shall sit as members of the House of Commons at the same time.

5. [Rep. 41 and 42 Vict., C. 79 (S. L. R.)<sup>2</sup>]

Salaries of one Secretary of State and his Under Secretaries to be paid out of the revenues of India

6. In case Her Majesty be pleased to appoint a fifth Principal Secretary of State, there shall be paid out of the revenues of India to such Principal Secretary of State and to his Under Secretaries respectively the like yearly salaries as may for the time being be paid to any other of such Secretaries of State and his Under Secretaries respectively.

COUNCIL OF INDIA

7. For purposes of this Act a Council shall be established, to consist of fifteen members, and to be styled the Council of India ;

Council of India established

1. S. 1 of the Government of India Act, 1854 (17 & 18 Vict. C. 77), which contained the provision referred to, was repealed as to the U. K. by 55 & 56 Vict., C. 19 (S. L. R.).

2. There appears to be mistake in this connection in the Statutes revised in which 38 and 39 Vict., C. 66 (S. L. R.) is cited as the repealing enactment.

And henceforth the Council of India now bearing that name shall be styled the Council of the Governor-General of India.

8. (Rep. 41 & 42 Vict., c. 79 (S. L. R.).]

9. (Rep. 55 & 56 Vict., c. 19 (S. L. R.).]

The major part of the Council to be persons who shall have served or resided ten years in India, &c

10. The major part of the persons to be elected by the Court of Directors and the major part of the persons to be first appointed by Her Majesty after the passing of this Act to be members of the Council, shall be persons who shall have served or resided in India for ten years at the least, and (excepting in the case of late and present Directors and Officers on the Home establishment of the East India Company who shall have so served or resided), shall not have last left India more than ten years next preceding the date of their appointment ;

And no person other than a person so qualified shall be appointed or elected to fill any vacancy in the Council unless at the time of the appointment or election nine at the least of the continuing members of the Council be persons qualified as aforesaid.

Tenure of office of Members of the Council

11. Every member of the Council appointed or elected under this Act shall hold his office during good behaviour ;

Provided that it shall be lawful for Her Majesty to remove any such member from his office upon an address of both Houses of Parliament.

Members of Council not to sit in Parliament. Salaries of Members of Council

12. No member of the Council appointed or elected under this Act shall be capable of sitting or voting in Parliament.

13. There shall be paid to each member of the Council the yearly salary of one thousand two hundred pounds, out of the revenues of India.

14. [Rep. 32 & 33 Vict., c. 97. s. 5.].

Establishment of the

15. The Secretaries and other officers and servants on the Home establishment of the said

Company, and on the establishment of the Com- Secretary of State in Council  
 missioners for the Affairs of India, immediately after the commencement of this Act, shall on such commencement be and form the establishment of the Secretary of State in Council ;

And the Secretary of State shall with all convenient speed make such arrangement of the said establishments, and such reductions therein, as may seem to him consistent with the due conduct of the public business, and shall within six months after the commencement of this Act submit a scheme for the permanent establishment to Her Majesty in Council.

And it shall be lawful for Her Majesty, by the advice of Her Privy Council, upon consideration of such scheme, to fix and declare what shall constitute and be the establishment of the Secretary of State in Council, and what salaries shall be paid to the persons on the establishment ;

And the Order of Her Majesty in Council shall be laid before both Houses of Parliament within fourteen days after the making thereof, provided Parliament be then sitting, or otherwise within fourteen days after the next meeting thereof ;

And after such establishment has been formed by such Order in Council, no addition of persons shall be made to such establishment, nor any addition made to the salaries authorized by such Order, except by a similar Order in Council, to be laid in like manner before both Houses of Parliament.

16. After the first formation of the establishment it shall be lawful for the Secretary of State in Council to remove any officer or servant belonging thereto, and also to make all appointments and promotions to and in such establishment : Removal of officers and supply of vacancies in the establishment

Provided, that the Order of Her Majesty in Council of the twenty-first day of May, one thousand eight hundred and fifty-five, or such other regulation as may be from time to time

established by Her Majesty for examinations, certificates, probation, or other tests of fitness in relation to appointments to junior situations in the Civil Service, shall apply to such appointments on the said establishment.

17 [Rep. 41 and 42 Vict., c. 79 (S. L. R).]

18. It shall be lawful for Her Majesty by warrant countersigned as aforesaid to grant to any such Secretary, officer or servant as aforesaid, retained on such last-mentioned establishment, such compensation, superannuation, or retiring allowance on his ceasing to hold office, as might have been granted to him if this Act had not been passed ;

And the transfer of any person to the service of the Secretary of State in Council shall be deemed to be a continuance of his previous appointment or employment, and shall not prejudice any claims which he might have had in respect of length of service, if his service under the said Company or Commissioners had continued ; and it shall be lawful for Her Majesty, by warrant countersigned as aforesaid, to grant to any Secretary, officer or servant appointed on the said establishment after the first formation thereof, such compensation, superannuation, or retiring allowance as, under the Superannuation Act, 1834, or any other Act for the time being in force, concerning superannuations and other allowances to persons having held civil offices in the public service, may be granted to persons appointed on the establishment of one of Her Majesty's Principal Secretaries of State.

4 & 5 Will 4,  
c. 24

#### DUTIES AND PROCEDURE OF THE COUNCIL

Duties of the  
Council, &c.

19. The Council shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India.

But every order or communication sent to India shall be signed by one of the Principal Secretaries of State ;

And, save as expressly provided by this Act, every order in the United Kingdom in relation to the Government of India under this Act shall be signed by such Secretary of State ;

And all despatches from Governments and Presidencies in India, and other despatches from India, which if this Act had not been passed should have been addressed to the Court of Directors or to their Secret Committee, shall be addressed to such Secretary of State.

20. It shall be lawful for the Secretary of State to divide the Council into Committees for the more convenient transaction of business, and from time to time to re-arrange such Committees, and to direct what departments of the business in relation to the Government of India under this Act shall be under such Committees respectively, and generally to direct the manner in which all such business shall be transacted.

21. The Secretary of State shall be the President of the Council, with power to vote ;

And it shall be lawful for such Secretary of State in Council to appoint from time to time any member of such Council to be Vice-President thereof ;

And any such Vice-President may at any time be removed by the Secretary of State.

22. All powers by this Act required to be exercised by the Secretary of State in Council, and all powers of the Council, shall and may be exercised at meetings of such Council, at which not less than five members shall be present ;

And at every meeting the Secretary of State, or in his absence the Vice-President, if present, shall preside ; and in the absence of the Secretary of State and Vice-President, one of the members of

the Council present shall be chosen by the members present to preside at the meeting ;

And such Council may act notwithstanding any vacancy therein ;

Meetings of the Council shall be convened and held when and as the Secretary of State shall from time to time direct :

Provided that one such meeting at least be held in every week.

Procedure at  
meetings.

23. At any meeting of the Council at which the Secretary of State is present, if there be a difference of opinion on any question other than the question of the election of a Member of Council, or other than any question with regard to which a majority of the votes at a meeting is hereinafter declared to be necessary, the determination of the Secretary of State shall be final ;

And in case of an equality of votes at any meeting of the Council, the Secretary of State, if present, and in his absence the Vice-President, or presiding member, shall have a casting vote ;

And all acts done at any meeting of the Council in the absence of the Secretary of State, except the election of a Member of the Council, shall require the sanction or approval in writing of the Secretary of State ;

And in case of difference of opinion on any question decided at any meeting, the Secretary of State may require that his opinion and the reasons for the same be entered in the minutes of the proceedings, and any Member of the Council who may have been present at the meeting may require that his opinion, and any reasons for the same that he may have stated at the meeting, be entered in like manner.

Orders, &c.,  
to be open  
to the perusal  
of Members

24. Every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom by the Secretary of State under this Act, shall, unless the same

has been submitted to a meeting of the Council, of Council  
 be placed in the Council room for the perusal of who may  
 all members of the Council during seven days be- record their  
 fore the sending or making thereof, except in the opinions  
 cases hereinafter provided ;

And it shall be lawful for any member of the Council to record in a minute book to be kept for that purpose, his opinion with respect to each such order or communication, and a copy of every opinion so recorded shall be sent forthwith to the Secretary of State.

25. If a majority of the Council record as Secretary of State acting  
 aforesaid their opinions against any act proposed against the  
 to be done, the Secretary of State shall, if he do opinions of  
 not defer to the opinions of the majority, record the majority  
 his reasons for acting in opposition thereto. to record his

26. Provided that where it appears to the Secretary of State that despatch of any communication, or the making of any order, not being an order for which a majority of the votes at a meeting is hereby made necessary, is urgently required, the communication may be sent or order given notwithstanding the same may not have been submitted to a meeting of the Council or deposited for seven days as aforesaid, the urgent reasons for sending or making the same being recorded by the Secretary of State, and notice thereof being given to every member of the Council, except in the cases hereinafter mentioned.

reasons  
 Provision  
 for cases of  
 urgency

27. Provided also, that any order, not being an order for which a majority of votes at a meeting is hereby made necessary, which might, if this Act had not been passed, have been sent by the Commissioners for the Affairs of India, through the Secret Committee of the Court of Directors to Governments or Presidencies in India, or to the officers or servants of the said Company, may, after the commencement of this Act, be sent to such Governments or Presidencies, or to any officer or servant in India, by the Secretary of

Orders now  
 sent through  
 Secret Com-  
 mittee may  
 be sent by  
 Secretary of  
 State without  
 communica-  
 tion with the  
 Council

State without having been submitted to a meeting, or deposited for the perusal of the members of the Council, and without the reasons being recorded, or notice thereof given as aforesaid.

As to communication of secret despatches from India

28. Any despatches to Great Britain which might if this Act had not been passed have been addressed to the Secret Committee of the Court of Directors, may be marked "secret" by the authorities sending the same ;

And such despatches shall not be communicated to the Members of the Council, unless the Secretary of State shall so think fit and direct.

#### APPOINTMENTS AND PATRONAGE

Appointments to be made by or with the approbation of Her Majesty

29. The appointments of Governor-General of India \* \* \* and Governors of Presidencies in India now made by the Court of Directors with the approbation of Her Majesty, and the appointments of Advocate-General for the several Presidencies now made with the approbation of the Commissioners for the Affairs of India, shall be made by Her Majesty by warrant under Her Royal Sign Manual;

The appointments of the Lieutenant-Governors of provinces or territories shall be made by the Governor-General of India, subject to the approbation of Her Majesty; and all such appointments shall be subject to the qualifications now by law affecting such offices respectively.

Appointments now made in India to continue to be made there

30. All appointments to offices, commands and employments in India, all promotions, which by law, or under any regulations, usage or custom, are now made by any authority in India, shall continue to be made in India by the like authority, and subject to the qualifications, conditions, and restrictions now affecting such appointments respectively ;

Powers of Secretary of State in

But the Secretary of State in Council, with the concurrence of a majority of members present at a meeting, shall have the like power to make

regulations for the division and distribution of Council as to patronage and power of nomination among the several authorities in India, and the like power of restoring to their stations, offices, or employments, officers, and servants suspended or removed by any authority in India, as might have been exercised by the said Court of Directors, with the approbation of the Commissioners for the Affairs of India, if this Act had not been passed.

31. [Rep. 41 and 42 Vict., c. 79 (S. L. R.).]

32. \* \* \* \* regulations shall be made by the Secretary of State in Council, with the advice and assistance of the Commissioners for the time being, acting in execution of Her Majesty's Order in Council of twenty-first May one thousand eight hundred and fifty-five for regulating the admission of persons to the Civil Service of the Crown, for admitting all persons being natural-born subjects of Her Majesty (and of such age and qualification as may be prescribed in this behalf) who may be desirous of becoming candidates for appointment to the Civil Service of India to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall be examined, and generally for regulating and conducting such examinations, under the superintendence of the said last-mentioned Commissioners or of the persons for the time being entrusted with the carrying out of such regulations as may be, from time to time, established by Her Majesty for examination, certificate, or other test of fitness in relation to appointments to junior situations in the Civil Service of the Crown ;

And the candidates who may be certified by the said Commissioners or other persons as aforesaid, to be entitled under such regulations shall be recommended for appointment according to the order of their proficiency as shown by such examinations ;

And such persons only as shall have been so certified as aforesaid shall be appointed or admitted to the Civil Service of India by the Secretary of State in Council :

Regulations made by Secretary of State to be laid before Parliament

Provided always, that all regulations to be made by the said Secretary of State in Council under this Act shall be laid before Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting then, within fourteen days after the next meeting thereof.

Other appointments and admissions to service vested in Her Majesty

33. All appointments to cadetships, naval and military, and all admissions to service not herein otherwise provided for, shall be vested in Her Majesty ;

And the names of persons to be from time to time recommended for such cadetships and service shall be submitted to Her Majesty by the Secretary of State.

Regulations to be made for admitting persons to be examined for cadetships in Engineers and Artillery

34. \* \* \* \* Regulations shall be made for admitting any persons being natural-born subjects of Her Majesty (and of such age and qualifications as may be prescribed in this behalf) who may be desirous of becoming candidates for cadetships in the engineers and in the artillery, to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall be examined, and generally for regulating and conducting such examinations.

Not less than one-tenth of persons recommended for military cadetships to be selected from sons of persons who have served in India

35. Not less than one-tenth of the whole number of persons to be recommended in any year for military cadetships (other than cadetships in the engineers and artillery) shall be selected according to such regulations as the Secretary of State in Council may from time to time make in this behalf from among the sons of persons who have served in India in the military or civil services of Her Majesty or of the East India Company.

36. Except as aforesaid, all persons to be recommended for military cadetships shall be nominated by the Secretary of State and Members of Council, so that out of seventeen nominations the Secretary of State shall have two and each Member of Council shall have one ;

Nominations for cadetship to be made by Secretary of State and Members of Council

But no persons so nominated shall be recommended unless the nomination be approved of by the Secretary of State in Council.

37. Save as hereinbefore provided, all powers of making regulations in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such regulations, which, if this Act had not been passed, might have been exercised by the Court of Directors or Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council ;

Regulations as to appointments and admissions to service

And all regulations in force at the time of the commencement of this Act in relation to the matters aforesaid shall remain in force, subject nevertheless to alteration or revocation by the Secretary of State in Council as aforesaid.

38. Any writing under the Royal Sign Manual, renewing or dismissing any person holding any office, employment, or commission, civil or military, in India, of which, if this Act had not been passed, a copy would have been required to be transmitted or delivered within eight days after being signed by Her Majesty to the chairman or deputy chairman of the Court of Directors shall, in lieu thereof, be communicated within the time aforesaid to the Secretary of State in Council.

Removal of officers by Her Majesty to be communicated to Secretary of State in Council

#### TRANSFER OF PROPERTY

39. All lands and hereditaments, monies, stores, goods, chattels, and other real and personal estate of the said Company, subject to the debts and liabilities affecting the same respectively, and the benefit of all contracts, covenants

Real and personal property of the Company to vest in Her

Majesty for  
the purposes  
of the  
Government  
of India

and engagements, and all rights to fines, penalties, and forfeitures, and all other emoluments, which the said Company shall be seized or possessed of, or entitled to, at the time of the commencement of this Act, except the capital stock of the said Company and the dividend thereon, shall become vested in Her Majesty, to be applied and disposed of, subject to the provisions of this Act, for the purposes of the Government of India.

Powers to  
sell and pur-  
chase, and to  
enter into  
contracts,  
vested in  
Secretary of  
State in  
Council, &c.

40<sup>1</sup>. The Secretary of State in Council, with the concurrence of a majority of votes at a meeting, shall have full power to sell and dispose of all real and personal estate whatsoever for the time being vested in Her Majesty under this Act, as may be thought fit, or to raise money on any such real estate by way of mortgage, and make the proper assurances for that purpose, and to purchase and acquire any land or hereditaments, or any interests therein, stores, goods, chattels and other property, and to enter into any contracts whatsoever, as may be thought fit for the purposes of this Act ;

And all property so acquired shall vest in Her Majesty for the service of the Government of India ; and any conveyance or assurance of or concerning any real estate to be made by the authority of the Secretary of State in Council may be made under the hands and seals of three Members of the Council<sup>1</sup>.

#### REVENUES

Expenditure  
of revenues  
of India sub-  
ject to con-  
trol of Sec-  
retary of  
State in  
Council.

41. The expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council ;

And no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council.

<sup>1</sup> But see further 22 and 23 Vict., C. 41.

42. \* \* \* \* all the bond, debenture and other Existing and future debts and liabilities of the said Company, and all sums of money, costs, charges and expenses, which if this Act had not been passed would after the time appointed for the commencement thereof have been payable by the said Company out of the revenues of India, in respect or by reason of any treaties, covenants, contracts, grants, or liabilities then existing, and all expenses, debts and liabilities which after the commencement of this Act shall be lawfully contracted and incurred on account of the Government of India, and all payments under this Act, shall be charged and chargeable upon the revenues of India alone, as the same would have been if this Act had not been passed, and such expenses, debts and liabilities lawfully contracted and incurred by the said Company; and such revenues shall not be applied to any other purpose whatsoever;

And all other monies vested in or arising or accruing from property or rights vested in Her Majesty under this Act, or to be received or disposed of by the Council under this Act, shall be applied in aid of such revenues \* \* \* \* \*

43. Such part of the revenues of India as shall be from time to time remitted to Great Britain, and all monies of the said Company in their treasury or under the care of their cashier, and all other monies in Great Britain of the said Company, or which would have been received by them in Great Britain if this Act had not been passed, and all monies arising or accruing in Great Britain from any property or rights vested in Her Majesty by this Act, or from the sale or disposition thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of this Act;

And all such monies, except as hereinafter

otherwise provided, shall be paid into the Bank of England, to the credit of an account to be opened by the Governor and Company of the Bank of England, to be intituled "The Account of the Secretary of State in Council of India";

And all monies to be placed to the credit of such account under this Act shall be paid out upon drafts or orders signed by three Members of Council and countersigned by the Secretary of State or one of his Under Secretaries; and such account shall be a public account:

Provided always, that the Secretary of State in Council may cause to be kept from time to time, under the care of their cashier, in an account to be kept at the Bank of England, such sum or sums of money as they may deem necessary for the payments now made out of money under the care of the cashier of the said Company.

44. [Rep. 41 and 42 Vict., c. 79 (S. L. R).]

Stock ac-  
counts to be  
opened at the  
Bank

45. There shall be raised in the books of the Governor and Company of the Bank of England such accounts as may be necessary in respect of any stock or stocks of Government annuities; and all such accounts respectively shall be intituled "The stock account of the Secretary of State in Council of India;" and every such account shall be a public account.

46. [Rep. 41 and 42 Vict., C. 79 (S. L. R).]

Power to  
grant letters  
of attorney  
for sale, &c.,  
of stock and  
receipt of  
dividends

47. The Secretary of State in Council, by letter of attorney, executed by three Members of the Council and countersigned by the Secretary of State or one of his Under Secretaries, may authorize all or any of the cashiers of the Bank of England to sell and transfer all or any part of the stock or stocks standing, or that may thereafter stand in the books of the said Bank to the several accounts of the Secretary of State in Council, and to purchase and accept stock on the said accounts, and to receive the dividends due and to become due

on the several stocks standing or that may thereafter stand on the said accounts, and by any writing signed by three members of the Council and countersigned as aforesaid, may direct the application of the monies to be received in respect of such sales and dividends.

But no stock shall be purchased or sold and transferred by any of the said cashiers, under the authority of such general letter of attorney, except upon an order in writing directed to the said Chief Cashier and Chief Accountant from time to time and duly signed and countersigned as aforesaid.

48. All Exchequer Bills, Exchequer bonds, or other Government Securities, of whatsoever kind, not hereinbefore referred to, which shall be held by the Governor and Company of the Bank of England in trust for or an account of the East India Company at the time of the commencement of this Act shall thenceforward be held by the said Governor and Company in trust for and on account of the Secretary of State in Council ;

Provision as to Exchequer bills, bonds, and other securities

And all such securities as aforesaid, and all such securities as may thereafter be lodged with the said Governor and Company by or on behalf of the Secretary of State in Council, shall and may be disposed of and the proceeds thereof applied as may be authorized by order in writing signed by three members of Council, and countersigned by the Secretary of State or one of his Under Secretaries, and directed to the said chief cashier and chief accountant.

49. All powers of issuing bonds, debentures and other securities for money in Great Britain which, if this Act had not been passed, might have been exercised by the said Company, or the Court of Directors under the direction and control of the Commissioners for the Affairs of India, or otherwise, shall and may be exercised by the

Powers of borrowing transferred to Secretary of State in Council, &c.

Secretary of State in Council, with the concurrence of a majority of votes at a meeting ;

And such securities as might have been issued under the seal of the said Company shall be issued under the hands of three members of the Council, and countersigned by the Secretary of State or one of his Under Secretaries.

50. [Rep. 55 and 56 Vict., C. 19 (S. L. R.)]

Present system of issuing warrants to be continued

51. The regulations and practice now acted on by the Court of Directors on the issue of warrants or authorities for the payment of money shall be maintained and acted on by the Secretary of State in Council of India under this Act until the same be altered by the authority of Her Majesty in Council :

Provided \* \* \* \* that warrants or authorities which have heretofore been signed by the two Directors of the East India Company shall, after the commencement of this Act, be signed by three members of the Council of India.

Audit of accounts in Great Britain

52. It shall be lawful for Her Majesty, by warrant under her Royal Sign Manual, countersigned by the Chancellor of the Exchequer, to appoint from time to time a fit person to be Auditor of the Accounts of the Secretary of State in Council, and to authorize such auditor to appoint and remove from time to time such assistants as may be specified in such warrant, and every such auditor shall hold office during good behaviour ;

And there shall be paid to such auditor and assistants out of the revenues of India such respective salaries as Her Majesty, by warrant as aforesaid countersigned as aforesaid, may direct ;

And such Auditor shall examine and audit the accounts of the receipt, expenditure, and disposal in Great Britain of all monies, shares and property applicable for the purposes of this Act ; and the Secretary of State in Council shall by the officers and servants of the establishment produce

THE GOVERNMENT OF INDIA ACT, 1858 xix

and lay before such auditor from time to time all such accounts, accompanied by proper vouchers for the support of the same, and shall submit to his inspection all books, papers, and writings having relation thereto ;

And such auditor shall have power to examine all such officers and servants in Great Britain of the establishment as he may see fit in relation to such accounts, and the receipt, expenditure, or disposal of such monies, shares, and property, and for that purpose, by writing under his hand, to summon before him any such officer or servant ;

And such auditor shall report from time to time to the Secretary of State in Council his approval or disapproval of such accounts, with such remarks and observations in relation thereto as he may think fit, specially noting any case if there shall be, in which it shall appear to him that any money arising out of the revenues of India has been appropriated to other purposes than those of the Government of India to which alone they are declared to be applicable ; and shall specify in detail in his reports all sums of money, shares and property which ought to be accounted for, and are not brought into account, or have not been appropriated, in conformity with the provisions of this Act, or have been expended or disposed of without due authority, and shall also specify any defects, inaccuracies, or irregularities, which may appear in such accounts, or in the authorities, vouchers, or documents having relation thereto ;

And all such reports shall be laid before both Houses of Parliament by such auditor, together with the accounts of the year to which the same may relate.

53. The Secretary of State in Council shall, within the first fourteen days during which Parliament may be sitting, next after the first day of May in every year, lay before both Houses of Parlia-

Accounts to be annually laid before Parliament

ment an account for the financial year preceding the last completed of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, at each of the several Presidencies or Governments, and of all the annual receipts and disbursements at home and abroad on account of the Government of India, distinguishing the same under the respective heads thereof, together with the latest estimate of the same for the last financial year, and also the amount of the debts chargeable on the revenues of India, with the rates of interest they respectively carry, and the annual amount of such interest, the state of the effects and credits at each Presidency or Government, and in England or elsewhere applicable to the purposes of the Government of India, according to the latest advices which have been received thereof, and also a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof ;

And if any new or increased salaries or pensions of fifty pounds a year or upwards have been granted or created within a year, the particulars thereof shall be specially stated and explained at the foot of the account of such year ;

And such account shall be accompanied by a statement prepared from detailed reports from each Presidency and district in India in such form as shall best exhibit the moral and material progress and condition of India in each such Presidency.

When order to commence hostilities is sent to India the fact to be communicated to Parliament

54. When any order is sent to India directing the actual commencement of hostilities by Her Majesty's forces in India, the fact of such order having been sent shall be communicated to both Houses of Parliament within three months after the sending of such order, if Parliament be sitting, unless such order shall have been in the meantime revoked or suspended, and, if Parliament

be not sitting at the end of such three months, then within one month after the next meeting of Parliament.

55. Except for preventing or repelling actual invasion of Her Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defray the expenses of any military operation carried on beyond the external frontiers of such possessions by Her Majesty's forces charged upon such revenues.

Except for repelling invasion, the revenues of India not applicable for any military operation beyond the frontiers

### EXISTING ESTABLISHMENTS

56. The Military and Naval Forces of the East India Company shall be deemed to be the Indian Military and Naval Forces of Her Majesty, and shall be under the same obligations to serve Her Majesty as they would have been under, to serve the said Company, and shall be liable to serve within the same territorial limits only, for the same terms only, and be entitled to the like pay, pensions, allowances, and privileges, and the like advantages as regards promotion and otherwise, as if they had continued in the service of the said Company; such forces, and all persons hereafter enlisting in or entering the same, shall continue and be subject to all Acts of Parliament, laws of the Governor-General of India in Council, and articles of war, and all other laws, regulations and provisions, relating to the East India Company's Military and Naval Forces respectively, as if her Majesty's Indian Military and Naval Forces respectively had throughout such Acts, laws, articles, regulations, and provisions been mentioned or referred to, instead of such forces of the said company;

Indian Military and Naval Forces to remain under existing conditions of service

And the pay and expenses of and incident to Her Majesty's Indian Military and Naval Forces shall be defrayed out of the revenues of India.

Provision  
for persons  
hereafter  
entering Her  
Majesty's  
Indian  
Forces

57. Provided that it shall be lawful for Her Majesty from time to time by order in Council to alter or regulate the terms and conditions of service under which persons hereafter entering Her Majesty's Indian Forces shall be commissioned, enlisted, or entered to serve ;

And the forms of attestation and of the oath or declaration to be used and taken or made respectively on attesting persons to serve in Her Majesty's Indian Forces shall be such as Her Majesty with regard to the European Forces, and the Governor-General of India in Council with regard to the Naval Forces, shall from time to time direct :

Provided that every such Order in Council shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament be sitting, and, if Parliament be not sitting, then within fourteen days after the next meeting thereof.

Officers, etc.,  
in employ of  
the Com-  
pany at the  
commence-  
ment of this  
Act to be  
deemed to  
hold offices  
under Her  
Majesty

58. All persons who, at the time of the commencement of this Act, shall hold any offices, employments or commissions whatever under the said Company in India shall thenceforth be deemed to hold such offices, employments and commissions under Her Majesty as if they had been appointed under this Act and shall be paid out of the revenues of India ;

And the transfer of any person to the service of Her Majesty shall be deemed to be a continuance of his previous service, and shall not prejudice any claims to pension or any claims on the various annuity funds of the several Presidencies in India, which he might have had if this Act had not been passed.

All orders of  
the Court of  
Directors or  
Board of

59. All orders, regulations, and directions lawfully given or made before the commencement of this Act by the Court of Directors or by the Commissioners for the Affairs of India shall

THE GOVERNMENT OF INDIA ACT, 1858 xxiii

remain in force ; but the same shall, from and after the commencement of this Act, be deemed to be the orders, regulations, and directions under this Act, and take effect and be subject to alteration or revocation accordingly.

Control given before commencement of this Act to remain in force

60 to 62 [Rep. 55 and 56 Vict., c. 19 (S. L. R.) ]

63. In case the person who shall be entitled under any provisional appointment to succeed to the office of Governor-General of India upon a vacancy therein, or who shall be appointed absolutely to assume that office, shall be in India (upon or after the happening of the vacancy, or upon or after the receipt of such absolute appointment, as the case may require), but shall be absent from Fort William in Bengal, or from the place where the Council of the Governor-General of India may then be, and it shall appear to him necessary to exercise the powers of Governor-General before he shall have taken his seat in Council, it shall be lawful for him to make known by proclamation his appointment, and his intention to assume the said office of Governor-General ;

Governor-General may exercise his powers before he takes his seat in Council, &c.

And after such proclamation, and thenceforth until he shall repair to Fort William or the place where the Council may assemble, it shall be lawful for him to exercise alone all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws and regulations ;

And all acts done in the exercise of the said powers, except as aforesaid, shall be of the same force and effect as if they had been done by the Governor-General in Council ;

Provided that all acts done in the said Council after the date of such proclamation but before the communication thereof to such Council, shall be valid, subject nevertheless to revocation or alteration by the person who shall have so assumed the said office of Governor-General ;

And when the office of Governor-General is assumed under the foregoing provision, if there be at any time before the Governor-General takes his seat in Council no Vice-President of the Council authorised to preside at meetings for making laws and regulations (as provided by section 22<sup>1</sup> of the Government of India Act, 1853), the senior ordinary member of Council then present shall preside therein, with the same powers as if a Vice-President had been appointed and were absent.

### CONTINUANCE OF EXISTING ENACTMENTS.

Existing provisions to be applicable to Secretary of State in Council, &c.

64. All Acts and provisions of law in force or otherwise concerning India shall, subject to the provisions of this Act, continue in force, and be construed as referring to the Secretary of State in Council in the place of the said Company and the Court of Directors and Court of Proprietors thereof ;

And all enactments applicable to the officers and servants of the said Company in India, and to appointments to office or admissions to service by the said Court of Directors, shall, subject to the provisions of this Act, remain applicable to the officers and servants continued and to the officers and servants appointed or employed in India and to appointments to office and admissions to service under the authority of this Act.

### ACTIONS AND CONTRACTS

Secretary in Council may sue and be sued

65. The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate ;

And all persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and equitable, against the

<sup>1</sup> S. 22, and 16 & 17 Vict. c. 95, was repealed by 24 and 25 Vict. c. 67, s. 2, see s. 15 of that Act.

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Secretary of State in Council of India as they could have done against the said Company ;

And the property and effects hereby vested in Her Majesty for the purposes of the Government of India, or acquired for the said purposes, shall be subject and liable to the same judgments and executions as they would, while vested in the said Company, have been liable to in respect of debts and liabilities lawfully contracted and incurred by the said company<sup>1</sup>.

66. [Rep. 41 and 42 Vict., c. 79 (S. L. R.).]

67. All treaties made by the said Company shall be binding on Her Majesty ; and all contracts, covenants, liabilities and engagements of the said Company made, incurred, or entered into before the commencement of this Act, may be enforced by and against the Secretary of State in Council in like manner and in the same Courts as they might have been by and against the said Company if this Act had not been passed.

Treaties shall be binding on Her Majesty, and contracts, &c., of company may be enforced

68. Neither the Secretary of State nor any member of the Council shall be personally liable in respect of any such contract, covenant, or engagement of the said Company as aforesaid, or in respect of any contract entered into under the authority of this Act, or other liability of the said Secretary of State or Secretary of State in Council in their official capacity ; but all such liabilities, and all costs and damages in respect thereof, shall be satisfied and paid out of the revenues of India.

Members of Council not personally liable

71. \* \* \* \* the said Company shall not, after the passing of this Act, be liable in respect of any claim, demand, or liability which has arisen or may hereafter arise out of any treaty, covenant, contract, grant, engagement, or fiduciary obligation made, incurred or entered into by the said Company before the passing of this Act,

Company not to be liable in respect of any claim arising out of any covenant made

<sup>1</sup> See *P. & O. S. N. Co. v. Secretary of State for India*, 4 Bom. H. C. Rep. Appendix, pp. 4, 5 per Peacock, C. J.

before the  
passing of  
this Act

whether the said Company would, but for this Act, have been bound to satisfy such claim, demand, or liability out of the revenues of India, or in any other manner whatsoever.

72 & 73 [Rep. 41 & 42 Vict., c. 79 (S. L. R.).]

74 [Rep. 55 & 56 Vict, c. 19 (S. L. R.)].

75 [Rep. 41 & 42 Vict., c. 79 (S. L. R.)]

## II

### The Indian Councils Act (1861).

[1st August 1861.]

*An Act to make better Provision for the Constitution of the Council of the Governor-General of India, and for the Local Government of the several Presidencies and Provinces of India, and for the temporary Government of India in the event of a Vacancy in the Office of Governor-General.*

Whereas it is expedient that the provisions of former Acts of Parliament respecting the constitution and functions of the Council of the Governor-General of India should be consolidated and in certain respects amended, and that power should be given to the Governors in Council of the Presidencies of Fort Saint George and Bombay to make laws and regulations for the government of the said Presidencies; and that Provision should be made for constituting the like authority in other parts of Her Majesty's Indian dominions: Be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as **Short title.**  
"The Indian Councils Act, 1861."

2. Sections forty, forty-three, forty-four, fifty, **Acts and**  
sixty-six, seventy, and so much of sections sixty- **parts of Acts**  
one and sixty-four as relates to vacancies in the **repealed**  
office of ordinary member of the Council of India,  
of the Act of the third and fourth years of King  
William the Fourth, chapter eighty-five, for  
effecting an arrangement with the East India

Company, and for the better Government of Her Majesty's Indian territories, till the thirtieth day of April, one thousand eight hundred and fifty-four, sections twenty-two, twenty-three, twenty-four and twenty-six of the Act of the sixteenth and seventeenth years of Her Majesty, chapter ninety-five, "to provide for the Government of India," and the Act of the twenty-third and twenty-fourth years of Her Majesty, chapter eighty-seven, "to remove doubts as to the authority of the senior member of the Council of the Governor-General of India in the absence of the president," are hereby repealed ; and all other enactments whatsoever now in force with relation to the Council of the Governor-General of India, or to the Councils of the Governors of the respective Presidencies of Fort Saint George and Bombay, shall, save so far as the same are altered by or are repugnant to this Act, continue in force, and be applicable to the Council of the Governor-General of India and the Councils of the respective Presidencies under this Act.

Composition  
of the Council  
of the  
Governor-  
General of  
India

3. There shall be five ordinary members of the said Council of the Governor-General, three of whom shall from time to time be appointed . . . . . from among such persons as shall have been, at the time of such appointment, in the service in India of the Crown, or of the Company and the Crown, for at least ten years ; and if the person so appointed shall be in the military service of the Crown, he shall not, during his continuance in office as a member of Council, hold any military command, or be employed in actual military duties ; and the remaining two, one of whom shall be a barrister or a member of the Faculty of Advocates in Scotland of not less than five years standing, shall be appointed from time to time by Her Majesty by warrant under Her Royal Sign Manual ; and it shall be lawful for the Secretary of State in Council to appoint the

Commander-in-Chief of Her Majesty's Forces in India to be an extraordinary member of the said Council, and such extraordinary member of Council shall have rank and precedence at the Council Board next after the Governor-General.

4. The present ordinary members of the Council of the Governor-General of India shall continue to be ordinary members under and for the purposes of this Act; and it shall be lawful for Her Majesty, on the passing of this Act, to appoint by warrant as aforesaid an ordinary member of Council, to complete the number of five hereby established; and there shall be paid to such ordinary member, and to all other ordinary members who may be hereafter appointed, such amount of salary as may from time to time be fixed for members of the Council of the Governor-General by the Secretary of State in Council, with the concurrence of a majority of members of Council present at a meeting; and all enactments of any Act of Parliament or law of India respecting the Council of the Governor-General of India and the members thereof shall be held to apply to the said Council as constituted by this Act, except so far as they are repealed by or are repugnant to any provisions of this Act.

Present members of Council to continue

Appointment of fifth member, and salaries of members, &c.

5. It shall be lawful for the Secretary of State in Council, with the concurrence of a majority of members present at a meeting, and for Her Majesty, by warrant as aforesaid, respectively, to appoint any person provisionally to succeed to the office of ordinary member of the Council of the Governor-General, when the same shall become vacant by the death or resignation of the person holding the said office, or on his departure from India with intent to return to Europe, or on any event and contingency expressed in any such provisional appointment, and such appointment again to revoke; but no person so appointed to succeed provisionally to such office shall

Provisional appointments of member of Councils

be entitled to any authority, salary, or emolument appertaining thereto until he shall be in the actual possession of such office.

Provisions during absence of Governor-General in other parts of India.

6. Whenever the said Governor-General in Council shall declare that it is expedient that the said Governor-General should visit any part of India unaccompanied by his Council, it shall be lawful for the said Governor-General in Council, previously to the departure of the Governor-General, to nominate some member of the said Council to be president of the said Council, in whom, during the time of such visit, the powers of the said Governor-General in assemblies of the said Council shall be reposed, except that of assenting to or withholding his assent from, or reserving for the signification of Her Majesty's pleasure, any law or regulation, as hereinafter provided; and it shall be lawful in every such case for the said Governor-General in Council by an order for that purpose to be made, to authorize the Governor-General alone to exercise all or any of the powers which might be exercised by the said Governor-General in Council, in every case in which the said Governor-General may think it expedient to exercise the same, except the power of making laws or regulations.

Provisions in case of absence of Governor-General &c. from meetings of Council.

7. Whenever the Governor-General, or such president so nominated as aforesaid, shall be obliged to absent himself from any meeting of Council (other than meetings for the purpose of making laws and regulations, as hereinafter provided, owing to indisposition or any other cause whatsoever, and shall signify his intended absence to the Council, then and in every such case the senior member for the time being who shall be present at such meeting shall preside there at, in such manner, and with such full powers and authorities during the time of such meeting, as such Governor-General or President would have had

in case he had been present at such meeting; provided always, that no act of Council made at any such meeting shall be valid to any effect whatsoever unless the same shall be signed by such Governor-General or President respectively, if such Governor-General or President shall at the time be resident at the place at which such meeting shall be assembled, and shall not be prevented by such indisposition from signing the same: Provided always, that in case such Governor-General or President, not being so prevented as aforesaid, shall decline or refuse to sign such act of Council, he, and the several members of Council who shall have signed the same, shall mutually exchange with and communicate in writing to each other the grounds and reasons of their respective opinions, in like manner and subject to such regulations and ultimate responsibility as are by an Act of the thirty-third year of King George the Third, chapter fifty-two, sections forty-seven, forty-eight, forty-nine, fifty, fifty-one, provided and described in cases, where such Governor-General shall, when present, dissent from any measure proposed or agitated in the Council.

33 Geo 3.  
c. 52. ss. 47  
to 51.

8. It shall be lawful for the Governor-General from time to time to make rules and orders for the more convenient transaction of business in the said Council; and any order made or act done in accordance with such rules and orders (except as hereafter provided respecting laws and regulations) shall be deemed to be the order or act of the Governor-General in Council.

Power of  
Governor-  
General to  
make rules  
for conduct  
of business.

9. The said Council shall from time to time assemble at such place or places as shall be appointed by the Governor-General in Council within the territories of India; and as often as the said Council shall assemble within either of the Presidencies of Fort Saint George or Bombay, the Governor of such Presidency shall act as an extraordinary member of Council; and as often as

Council,  
where to  
assemble.

the said Council shall assemble with any other division, province, or territory having a Lieutenant Governor, such Lieutenant-Governor shall act as an additional councillor at meetings of the Council, for the purpose of making laws and regulations only, in manner hereinafter provided.

Additional members to be summoned for the purpose of making laws and regulations.

10. For the better exercise of the power of making laws and regulations vested in the Governor-General in Council the Governor-General shall nominate, in addition to the ordinary and extraordinary members above mentioned, and to such Lieutenant-Governor in the case aforesaid such persons, not less than six or more than twelve in number, as to him may seem expedient, to be members of Council for the purpose of making laws and regulations only; and such persons shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose: Provided, that not less than one-half of the persons so nominated shall be non-official persons, that is, persons who, at the date of such nomination shall not be in the civil or military service of the crown in India; and that the seat in Council of any non-official member accepting office under the Crown in India shall be vacated on such acceptance.

Such member to be appointed for two years.

11. Every additional member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination.

Resignation of additional members.

12. It shall be lawful for any such additional member of Council to resign his office to the Governor-General; and on acceptance of such resignation by the Governor-General such office shall become vacant.

Power to fill up vacancy in number of additional members

13. On the event of a vacancy occurring by the death, acceptance of office, or resignation accepted in manner aforesaid, of any such additional member of Council, it shall be lawful for

the Governor-General to nominate any person as additional member of Council in his place, who shall exercise the same functions until the termination of the term for which the additional member so dying, accepting office or resigning was nominated; Provided always, that it shall not be lawful for him by such nomination to diminish the proportion of non-official additional members hereinbefore directed to be nominated.

14. No law or regulation made by the Governor-General in Council in accordance with the provisions of this Act shall be deemed invalid by reason only that the proportion of non-official additional members hereby provided was not complete at the date of its introduction to the Council or its enactment.

No law to be invalid by reason of number of non-official members being incomplete

15. In the absence of the Governor-General and of the President, nominated as aforesaid, the senior ordinary member of the Council present shall preside at meetings of the Council for making laws and regulations; and the power of making laws and regulations vested in the Governor-General in Council shall be exercised only at meetings of the said Council at which such Governor-General or President, or some ordinary member of Council and six or more members of the said Council, (including under the term members of the Council such additional members as aforesaid), shall be present; and in every case of difference of opinion at meetings of the said Council for making laws and regulations, where there shall be an equality of voices, the Governor-General, or in his absence the President, and in the absence of the Governor-General and President such senior ordinary member of Council there presiding, shall have two votes or the casting vote.

Senior ordinary member of Council to preside at meetings for making laws and regulations in absence of Governor-General, &c. Quorum

16. The Governor-General in Council shall, as soon as conveniently may be, appoint a place and time for the first meeting of the said Council

Governor-General to appoint first

meeting for making laws and regulations

the Governor-General for making laws and regulations under this Act, and summon thereto as well the additional councillors nominated by and under this Act as the other members of such Council; and until such first meeting the powers now vested in the said Governor-General of India in Council of making laws and regulations shall and may be exercised in like manner and by the same members as before the passing of this Act.

Power to appoint and adjourn meetings for making laws and regulations

17. It shall be lawful for the Governor-General in Council from time to time to appoint all other times and places of meeting of the Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn, or from time to time to authorize such President, or senior Ordinary Member of Council in his absence, to adjourn any meeting for the purpose or making laws and regulations from time to time and from place to place.

Rules for conduct of business at such meetings

18. It shall be lawful for the Governor-General in Council to make rules for the conduct of business at meetings of the Council for the purpose of making laws and regulations under the provisions of this Act, prior to the first of such meetings; but such rules may be subsequently amended at meetings for the purpose of making laws or regulations, subject to the assent of the Governor-General; and such rules shall prescribe the mode of promulgation and authentication of such laws and regulations. Provided always, that it shall be lawful for the Secretary of State in Council to disallow any such rule, and to render it of no effect.

Business to be transacted at such meetings

19. No business shall be transacted at any meeting for the purpose of making laws and regulations, except as last hereinbefore provided, other than the consideration and enactment of measures introduced in the Council for the purpose of such enactment; and it shall not be law-

ful for any member or additional member to make or for the Council to entertain any motion, unless such motion be for leave to introduce some measure as aforesaid into Council, or have reference to some measure actually introduced therein; Provided always, that it shall not be lawful for any member or additional member to introduce, without the previous sanction of the Governor-General, any measure affecting,—

(i) The Public Debt or public revenues of India, or by which any charge would be imposed on such revenues :

(ii) The religion or religious rights and usages of any class of Her Majesty's subjects in India.

(iii) The discipline or maintenance of any part of Her Majesty's Military or Naval Forces :

(iv) The relations of the Government with foreign princes or states.

20. When any law or regulation has been made by the Council at a meeting for the purpose of making laws and regulations as aforesaid it shall be lawful for the Governor-General whether he shall or shall not have been present in Council at the making thereof, to declare that he assents to the same, or that he withholds his assent from the same, or that he reserves the same for the signification of the pleasure of Her Majesty thereon ; and no such law or regulation shall have validity until the Governor-General shall have declared his assent to the same, or until in the case of law or regulation so reserved as aforesaid Her Majesty shall have signified her assent to the same to the Governor-General, through the Secretary of State for India in Council, and such assent shall have been duly proclaimed by the said Governor-General.

Assent of Governor-General to laws and regulations made at such meetings

21. Whenever any such law or regulation has been assented to by the Governor-General, he shall transmit to the Secretary of State for India

Power of the Crown to disallow law

and regulations made at such meetings an authentic copy thereof ; and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, her disallowance of such law ; and such disallowance shall make void and annul such law from or after the day on which the Governor-General shall make known, by proclamation or by signification to his Council, that he has received the notification of such disallowance by Her Majesty.

Extent of the powers of the Governor-General in Council to make laws and regulations at such meetings 22. The Governor-General in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for repealing, amending, or altering any laws or regulations whatever now in force or hereafter to be in force in the Indian territories now under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for all courts of justice whatever, and for all places and things whatever within the said territories, and for all servants of the Government of India within the dominions of princes and states in alliance with Her Majesty\* ; and the laws and regulations so to be made by the Governor-General in Council shall control and supersede any laws and regulations in any wise repugnant thereto which shall have been made prior thereto by the Governors of the Presidencies of Fort St. George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any presidency or other territory for which a Council may be appointed, with power to make laws and regulations, under and by virtue of this Act :

Provided always, that the said Governor-General in Council shall not have the power of making any laws or regulations which shall repeal or in any way affect any of the provisions of this Act:

\* See also 28 Vict., c. 17, s. 1, & 32 & 33 Vict., c. 95, s. 1.

Or any of the provisions of the Acts of the third and fourth years of King William the Fourth, chapter eighty-five, and of the sixteenth and seventeenth years of Her Majesty, chapter ninety-five, and of the seventeenth and eighteenth years of Her Majesty, chapter seventy-seven, which after the passing of this Act shall remain in force:

Or any provisions of the Act of the twenty-first and twenty second years of Her Majesty, chapter one hundred and six, entitled. "An Act for the better government of India," or of the Act of the twenty-second and twenty-third years of Her Majesty, chapter forty-one, to amend the same :

Or of any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India :

Or of the Acts for punishing mutiny and desertion in Her Majesty's Army or in Her Majesty's Indian Forces respectively ; but subject to the provision contained in the Act of the third and fourth years of King William the Fourth, chapter eighty-five, section seventy-three, respecting the Indian Articles of War.

Or any provisions of any Act\* passed in this present session of Parliament, or hereafter to be passed, in anywise affecting Her Majesty's Indian territories, or the inhabitants thereof :

Or which may affect the authority of Parliament, or the constitution and rights of the East India Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of the said territories.

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\* *Queen v. Meares*, 14 Beng. 106, 112.

**Governor-General may make ordinances having force of law in case of urgent necessity**

23. Notwithstanding anything in this Act contained, it shall be lawful for the Governor-General, in cases of emergency, to make and promulgate from time to time ordinances for the peace and good government of the said territories or of any part thereof, subject however to the restrictions contained in the last preceding section ; and every such ordinance shall have like force of law with a law or regulation made by the Governor-General in Council, as by this Act provided, for the space of not more than six months from its promulgation, unless the disallowance of such ordinance by Her Majesty shall be earlier signified to the Governor-General by the Secretary of State for India in Council or unless such ordinance shall be controlled or superseded by some law or regulation made by the Governor-General in Council at a meeting for the purpose of making laws and regulations as by this Act provided.

**No law, &c. invalid by reason of its affecting the prerogative of the Crown**

24. No law or regulation made by the Governor-General in Council (subject to the power of disallowance by the Crown, as hereinbefore provided), shall be deemed invalid by reason only that it affects the prerogative of the Crown.

**Laws made for the non-regulation**

25. Whereas doubts have been entertained whether the Governor-General of India, or the Governor-General of India in Council, had the power of making rules, laws, and regulations for the territories known from time to time as "Non-Regulation Provinces," except at meetings for making laws and regulations in conformity with the provisions of the said Acts of the third and fourth years of King William the Fourth, chapter eighty-five, and of the sixteenth and seventeenth years of Her Majesty, chapter ninety-five, and whether the Governor, or Governor in Council, or Lieutenant-Governor of any presidency or part of India, had such power in respect of any such territories : Be it enacted, that no rule, l. w. or regulation which prior to the passing of this Act

shall have been made by the Governor-General, or Governor-General, in Council, or by any other of the authorities aforesaid, for and in respect of any such non-regulation province, shall be deemed invalid only by reason of the same not having been made in conformity with the provisions of the said Acts, or of any other Act of Parliament respecting the constitution and powers of the Council of India or of the Governor-General, or respecting the powers of such Governors, or Governors in Council, or Lieutenant-Governors as aforesaid.

provinces de-  
clared valid

26. It shall be lawful for the Governor-General in Council, or Governor in Council of either of the Presidencies, as the case may be, to grant to an ordinary Member of Council leave of absence under medical certificate, for a period not exceeding six months; and such member, during his absence shall retain his office, and shall, on his return and resumption of his duties, receive half his salary\* for the period of such absence; but if his absence shall exceed six months, his office shall be vacated.

Provision for  
leave of  
absence to an  
ordinary  
Member of  
Council

27. If any vacancy shall happen in the office of an ordinary Member of the Council of the Governor-General, of the Council of either of the Presidencies, when no person provisionally appointed to succeed thereto shall be then present on the spot, then and on every such occasion, such vacancy shall be supplied by the appointment of the Governor-General in Council, or the Governor in Council as the case may be: and until a successor shall arrive the person so nominated shall execute the office to which he shall have been appointed, and shall have all the powers thereof, and shall have and be entitled to the salary and other emoluments and advantages appertaining to the said office during his continuance therein, every such temporary Member of Council foregoing all salaries

Power of  
making  
temporary  
appointments  
of Members  
of Council,  
&c.

\* See 3 & 4 Wm. IV, C. 85, Sec. 77.

and allowances by him held and enjoyed at the time of his being appointed to such office; and if any ordinary Member of the Council of the Governor-General, or of the Council of either of the Presidencies, shall, by any infirmity or otherwise, be rendered incapable of acting or of attending to act as such, or if any such member shall be absent on leave, and if any person shall have been provisionally appointed as aforesaid, then the place of such member absent or unable to attend shall be supplied by such person; and if no person provisionally appointed to succeed to the office shall be then on the spot, the Governor-General in Council, or Governor in Council, as the case may be, shall appoint some persons to be a temporary Member of Council; and, until the return of the member so absent or unable to attend, the person so provisionally appointed by the Secretary of State in Council, or so appointed by the Governor-General in Council, or Governor in Council as the case may be, shall execute the office to which he shall have been appointed, and shall have all the powers thereof, and shall receive half the salary of the Member of Council whose place he supplies, and also half the salary of his office under the Government of India, or the Government of either of the Presidencies, as the case may be, if he hold any such office, the remaining half of such last-named salary being at the disposal of the Government of India, or other Government as aforesaid: Provided always, that no person shall be appointed a temporary Member of the said Council who might not have been appointed as hereinbefore provided to fill the vacancy supplied by such temporary appointment.

Governors of Fort Saint George and Bombay may make rules for the con- 28. It shall be lawful for the Governors of the Presidencies of Fort Saint George and Bombay, respectively, from time to time to make rules and orders for the conduct of business in their Councils, and any order made or act done in

accordance with such directions, except as hereinafter provided respecting laws and regulations, shall be deemed to be the order or act of the Governor in Council. duct of business in their Councils

29. For the better exercise of the power of making laws and regulations hereinafter vested in the Governors of the said Presidencies in Council respectively, each of the said Governors shall, in addition to the members whereof his Council now by law consists, or may consist, termed herein ordinary members, nominate to be additional members, the Advocate-General of the Presidency or officer acting in that capacity, and such other persons, not less than four nor more than eight in number, as to him may seem expedient, to be members of Council, for the purpose of making laws and regulations only; and such members shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose; provided, that no less than half of the persons so nominated shall be non-official persons, as hereinbefore described; and that the seat in Council of any non-official member accepting office under the Crown in India shall be vacated on such acceptance. Power to summon additional members to the Councils of Fort Saint George and Bombay for the purposes of making laws and regulations

30. Every additional member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years the date of such nomination. Such members to be appointed for two years

31. It shall be lawful for any such additional member of Council to resign his office to the Governor of the Presidency; and on acceptance of such resignation by the Governor of the Presidency, such office shall become vacant. Resignation of additional members

32. On the event of a vacancy occurring by the death, acceptance of office, or resignation accepted in manner aforesaid, of any such additional Member of Council, it shall be lawful for the Governor of the Presidency to Power to fill up vacancy in the number of additional members

summon any person as additional Member of Council in his place, who shall exercise the same functions until the termination of the term for which the additional member so dying, accepting office, or resigning, was nominated : Provided always, it shall not be lawful for him by such nomination to diminish the proportion of non-official members hereinbefore directed to be nominated.

No law to be invalid by reason of incompleteness of number of non-official members

33. No law or regulation made by any such Governor in Council in accordance with the provisions of this Act shall be deemed invalid by reason only that the proportion of non-official additional members hereby established was not complete at the date of its introduction to the Council or its enactment.

Senior civil ordinary Member of Council to preside in absence of Governor of Presidency

34. At any meeting of the Council of either of the said Presidencies from which the Governor shall be absent, the senior civil ordinary Member of Council present shall preside ; and the power of making laws and regulations hereby vested in such Governor in Council shall be exercised only at meetings of such Council at which the Governor or some ordinary Member of Council, and four or more Members of Council (including under the term Members of Council such additional members as aforesaid, shall be present ; and in any case of difference of opinion at meetings of any such Council for making laws and regulations, where there shall be an equality of voices, the Governor, or in his absence the senior member then presiding, shall have two votes or the casting vote.

Governor-General to fix first meeting of Councils of Presidencies for making laws and regulations, &c.

35. The Governor-General in Council shall, as soon as conveniently may be appoint the time for the first meeting of the Councils of Fort Saint George and Bombay respectively, for the purpose of making laws and regulations under this Act ; and the Governors of the said Presidencies respectively shall summon to such meeting as well

the additional Councillors appointed by and under this Act as the ordinary Members of the said Councils.

36. It shall be lawful for every such Governor to appoint all subsequent times and places of meeting of his Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn or from time to time to authorize such senior ordinary Member of Council in his absence to adjourn any meeting for making laws and regulations from time to time and from place to place.

Governors of Presidencies; to appoint subsequent meetings, and adjourn them

37. Previously to the first of such meetings of their Councils for the purpose of making laws and regulations under the provisions of this Act, the Governors of the said Presidencies in Council respectively shall make rules for the conduct of business at such meetings, subject to the sanction of the Governor-General in Council; but such rules may be subsequently amended at meetings for the purpose of making laws and regulations, subject to the assent of the Governor: Provided always, that it shall be lawful for the Governor-General in Council to disallow any such rule, and render the same of no effect.

Rules for conduct of business at such meetings

38. No business shall be transacted at any meeting of the Council of either of the said Presidencies for the purpose of making laws and regulations (except as last hereinbefore provided, other than the consideration and enactment of measures introduced into such Council for the purpose of such enactment; and it shall not be lawful for any member or additional member to make, or for the Council to entertain, any motion, unless such motion shall be for leave to introduce some measure as aforesaid into Council, or have reference to some measure actually introduced thereinto: Provided always, that it shall not be lawful for any member or additional member to introduce, without the previous sanction of the Governor, any measure affecting the public revenues of the

Business to be transacted at such meetings

Presidency, or by which any charge shall be imposed on such revenues.

Governors to  
assent to laws  
and regula-  
tions of Pre-  
sidencies

39. When any law or regulation has been made by any such Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the Governor, whether he shall or shall not have been present in Council at such meeting, to declare that he assents to, or withholds his assent from the same.

Governor-  
General to  
assent to laws  
and regula-  
tions of Pre-  
sidencies

40. The Governor shall transmit forthwith an authentic copy of every law or regulation to which he shall have so declared his assent to the Governor-General; and no such law or regulation shall have validity until the Governor-General shall have assented thereto, and such assent shall have been signified by him to and published by the Governor: Provided always, that in every case where the Governor-General shall withhold his assent from any such law or regulation, he shall signify to the Governor in writing his reason for so withholding his assent.

Power of the  
Crown to  
disallow laws  
and regula-  
tions of Pre-  
sidencies

41. Whenever any such law or regulation shall have been assented to by the Governor-General, he shall transmit to the Secretary of State for India an authentic copy thereof; and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, her disallowance of such law or regulation; and such disallowance shall make void and annul such law or regulation from or after the day on which such Governor shall make known by proclamation, or by signification to the Council, that he has received the notification of such disallowance by Her Majesty.

Extent of  
power of  
Governor of  
Presidency  
in Council to  
make laws

42. The Governor of each of the said Presidencies in Council shall have power, at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained to make laws and regulations for the peace and good government of such

Presidency, and for that purpose to repeal and amend any laws and regulations made prior to the coming into operation of this Act by any authority in India, so far as they affect such Presidency : Provided always, that such Governor in Council shall not have the power of making any laws or regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force or hereafter to be in force in such Presidency.

43. It shall not be lawful for the Governor in Council of either of the aforesaid Presidencies, except with the sanction of the Governor-General, previously communicated to him to make regulations or take into consideration any law or regulation for any of the purposes next hereinafter mentioned ; that is to say,

1. Affecting the Public Debt of India, or the customs duties, or any other tax or duty now in force and imposed by the authority of the Government of India for the general purposes of such Government :

2. Regulating any of the current coin, or the issue of any bills, notes, or other paper currency :

3. Regulating the conveyance of letters by the post office or messages by the electric telegraph within the Presidency :

4. Altering in any way the Penal Code of India, as established by Act of the Governor-General in Council, No. 42 of 1860 :

5. Affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India :

6. Affecting the discipline or maintenance of any part of Her Majesty's Military or Naval Forces :

7. Regulating patents or copyright :

Governor of Presidency, except with sanction of Governor-General, not to make or take into consideration laws and regulations for certain purposes

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\* should be " No : 45."

8. Affecting the relations of the Government with foreign princes or states:

Provided always, that no law or provision of any law or regulation which shall have been made by any such Governor in Council, and assented to by the Governor-General as aforesaid shall be deemed invalid only by reason of its relating to any of the purposes comprised in the above list.

Governor-General may establish Councils for making laws and regulations in the Presidency of Fort William in Bengal, &c.

44. The Governor-General in Council, so soon as it shall appear to him expedient, shall, by proclamation, extend the provisions of this Act touching the making of laws and regulations for the peace and good government of the Presidencies of Fort St. George and Bombay to the Bengal Division of the Presidency of Fort William, and shall specify in such proclamation the period at which such provisions shall take effect, \* and the number of councillors whom the Lieutenant-Governor of the said division may nominate for his assistance in making laws and regulations; and it shall be further lawful for the Governor-General in Council, from time to time and in his discretion, by similar proclamation, to extend the same provisions to the territories known as the North-Western Provinces and the Punjab respectively.

Constitution of such Councils

45. Whenever such proclamation as aforesaid shall have been issued regarding the said division or territories respectively, the Lieutenant-Governor thereof shall nominate, for his assistance in making laws and regulations, such number of councillors as shall be in such proclamation specified; provided, that not less than one-third of such councillors shall in every case be non-official persons, as herein before described, and that the nomination of such councillors shall be subject to the sanction of the Governor-General; and pro-

\* 28th January, 1892, see *Calcutta Gazette*, 1862, pp. 257, 228.

vided further, that at any meeting of any such Council from which the Lieutenant-Governor shall be absent, the member highest in official rank among those who may hold office under the Crown shall preside; and the power of making laws and regulations shall be exercised only at meetings at which the Lieutenant-Governor, or some member holding office as aforesaid, and not less than one-half of the members of Council so summoned as aforesaid, shall be present; and in any case of difference of opinion at any meetings of such Council for making laws and regulations, where there shall be an equality of voices, the Lieutenant-Governor, or such member highest in official rank as aforesaid then presiding, shall have two votes or the casting vote.

46. It shall be lawful for the Governor-General, by proclamation as aforesaid, to constitute from time to time new provinces for the purposes of this Act, to which the like provisions shall be applicable; and further to appoint from time to time a Lieutenant-Governor to any province so constituted as aforesaid, and from time to time to declare and limit the extent of the authority of such Lieutenant-Governor, in like manner as is provided by the Act of the seventeenth and eighteenth years of Her Majesty, chapter seventy-seven, respecting the Lieutenant-Governors of Bengal and the North-Western Provinces.

Power to constitute now provinces, and appoint Lieutenant-Governors

47. It shall be lawful for the Governor-General in Council, by such proclamation as aforesaid, to fix the limits of any presidency, division, province, or territory in India for the purpose of this Act, and further by proclamation to divide or alter from time to time the limits of any such presidency, division, province, or territory for the said purposes: Provided always, that any law or regulation made by the Governor or Lieutenant-Governor in Council of any presidency, division, province, or territory shall continue in force in any part thereof which may be severed therefrom by any such

Power to alter boundaries of presidencies, &c. by proclamation

proclamation, until superseded by law or regulation of the Governor-General in Council, or of the Governor or Lieutenant-Governor in Council of the presidency, division, province, or territory, to which such parts may become annexed.

Powers of newly constituted Lieutenant-Governors in Council

48. It shall be lawful for every such Lieutenant-Governor in Council thus constituted to make laws for the peace and good government of his respective division, province, or territory, and, except as otherwise hereinbefore specially provided, all the provisions in this Act contained respecting the nomination of additional members for the purpose of making laws and regulations for the Presidencies of Fort Saint George and Bombay, and limiting the power of the Governors in Council of Fort Saint George and Bombay for purpose of making laws and regulations; and respecting the conduct of business in the meetings of such Councils for that purpose, and respecting the power of the Governor-General to declare or withhold his assent to laws or regulations made by the Governor in Council of Fort Saint George and Bombay, and respecting the power of Her Majesty to disallow the same, shall apply to laws or regulations to be so made by any such Lieutenant-Governor in Council.

Previous assent of the Crown necessary to give validity to proclamation

49. Provided always, that no proclamation to be made by the Governor-General in Council under the provisions of this Act for the purpose of constituting any Council for the presidency, division, provinces, or territories herein before named, or any other provinces, or for altering the boundaries of any presidency, division, province, or territory, or constituting any new province for the purpose of this Act, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor-General.

Provision for the supply of

50. If any vacancy shall happen in the office of Governor-General of India when no provisional

successor shall be in India to supply such vacancy, then and in every such case the Governor of the Presidency of Fort Saint George or the Governor of the Presidency of Bombay who shall have been first appointed to the office of Governor by Her Majesty, shall hold and execute the said office of Governor-General of India and Governor of the Presidency of Fort William in Bengal until a successor shall arrive, or until some person in India shall be duly appointed thereto; and every such acting Governor-General shall, during the time of his continuing to act as such, have and exercise all the rights and powers of Governor-General of India, and shall be entitled to receive the emoluments and advantages appertaining to the office by him supplied, such acting Governor-General foregoing the salary and allowances appertaining to the office of Governor to which he stands appointed; and such office of Governor shall be supplied for the time during which such Governor shall be supplied for the time which such Governor shall act as Governor-General, in the manner directed in section sixty-three of the Act of the third and fourth years of King William the Fourth, chapter eighty-five.

the office of Governor-General in certain circumstances

51. If, on such vacancy occurring, it shall appear to the Governor, who by virtue of this Act shall hold and execute the said office of Governor-General, necessary to exercise the powers thereof before he shall have taken his seat in Council, it shall be lawful for him to make known by proclamation his appointment and his intention to assume the said office of Governor-General; and after such proclamation, and thenceforth until he shall repair to the place where the Council may assemble, it shall be lawful for him to exercise alone all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws and regulations; and all acts done in the exercise of the said powers, except as aforesaid,

If it appears to the Governor necessary to exercise powers before taking his seat in Council, he may make his appointment, &c. known by proclamation

shall be of the same force and effect as if they had been done by the Governor-General in Council; provided, that all acts done in the said Council after the date of such proclamation, but before the communication thereof to such Council, shall be valid, subject nevertheless to revocation or alteration by such Governor who shall have so assumed the said office of Governor-General; and from the date of the vacancy occurring, until such Governor shall have assumed the said office of Governor-General, the provisions of section sixty-two of the Act of the third and fourth years of King William the Fourth, chapter eighty-five, shall be and the same are declared to be applicable to the case.

Nothing in this Act shall derogate from the powers of the Crown or Secretary of State for India in Council

52. Nothing in this Act contained shall be held to derogate from or interfere with (except as hereinbefore expressly provided) the rights vested in Her Majesty, or the powers of the Secretary of State for India in Council, in relation to the Government of Her Majesty's dominions in India, under any law in force at the date of the passing of this Act; and all things which shall be done by Her Majesty, or by the Secretary of State as aforesaid, in relation to such Government, shall have the same force and validity as if this Act had not been passed.

Meaning of term "in Council"

53. Wherever any act or thing is by this Act required or authorized to be done by the Governor-General or by the Governors of the Presidencies of Fort Saint George and Bombay in Council, it is not required that such act or thing should be done at a meeting for making laws and regulations, unless where expressly provided.

### III

## Amending and Revising Acts

### (i) The Government of India Act, 1865

(28 and 29 Vict., Ch. 17)

An act to enlarge the power of the Governor-General of India in Council at meetings for making laws and Regulations and to amend the law respecting the Territorial Limits of the several Presidencies and Lieutenant-Governorships in India.

[9th May, 1865]

[PREAMBLE RECITES 24 AND 25 VICT., CH. 67, S. 22]

I. The Governor-General of India shall have power at meetings for the purpose of making laws and regulations, to make laws and regulations for all British subjects of Her Majesty within the dominions of Princes and States in alliance with Her Majesty whether in the service of the Government of India or otherwise.

Power to make laws for all British Subjects in territories of allied Princes in India

II. The preceding section shall be read with and taken as part of section twenty-two of the said Act of the twenty-fourth and twenty-fifth years of Her Majesty, chapter sixty-seven.

Preceding section to be read as part of section 22 of recited Act;

III. [Rep : 41 and 42 Vict., Ch. 79 (S. L. R.)

IV. It shall be lawful for the Governor-General of India in Council from time to time to declare and appoint, by proclamation, what part or parts of the Indian territories for the time being under the dominion of Her Majesty shall be or continue subject to each of the Presidencies and Lieutenant Governorships for the time being subsisting in such territories, and to make such distribution

Power to Governor-General to appoint territorial limits of Presidencies &c. by proclamation

and arrangement or new distribution and arrangement of such territories into or among such Presidencies and Lieutenant Governorships as to the said Governor-General in Council may seem expedient.

Power to Secretary of State in Council to signify disallowance of such proclamation. Royal Sanction necessary to transfer of entire districts

V. Provided always that it shall be lawful for the Secretary of State in Council to signify to the said Governor-General in Council his disallowance of any proclamation : and provided further that no such proclamation for the purpose of transferring an entire Zilla or district from one Presidency to another, or from one Lieutenant Governorship to another, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor-General.

(ii) **The Government of India Act, 1869**  
(32 and 33 Vict., Ch. 97)

An Act to amend in certain respects the Act for the better Government of India.

[PREAMBLE RECITES 21 AND 22 VICT., CH. 106].

Vacancies in Council of India

1. After the passing of this Act, all vacancies that shall take place in the said Council shall be filled up by appointment by the Secretary of State.

Term of office

2. Every member of the said Council who shall, after the passing of this Act, be so appointed, shall be appointed for a term of ten years, and except as hereinafter provided, shall not be reeligible.

Re-appointment of a member for further period of five years.

3. It shall be lawful for the Secretary of State to re-appoint for a further period of five years any person whose term of office as member of Council under this Act, shall have expired, provided such re-appointment be made for special reasons of public advantage, which reasons shall be set forth in a minute signed by the said Secretary of State, and laid before both Houses of Parliament.

4. Except as herein otherwise provided all the provisions of the said recited Act, and of any other Act of Parliament relating to members of the Council of India, shall apply to members appointed under the provisions of this Act.

Former Acts to apply to future members

5. [ . . . . omitted as being spent].

6. Any member of Council may by writing under his hand, which shall be recorded in the minutes of the Council, resign his office ; \* \* \* \* .

Resignation of office

7. If at any time hereafter it should appear to Parliament expedient to reduce the number or otherwise to deal with the constitution of the said Council, no member of Council who has not served in his office for a period of ten years shall be entitled to claim any compensation for the loss of his office, or for any alteration in the terms and conditions under which the same is held.

Provision as to future changes in the constitution of Council

8. The appointments of the ordinary members of the Governor-General's Council, and of the members of Council of the several presidencies \* \* \* shall \* \* \* be made by Her Majesty by warrant under her Royal Sign Manual.

Appointment of ordinary members of the Governor-General's Council and of the Presidencies

(iii) **The Indian Councils Act, 1869**

(32 & 33 Vict., Ch. 98)

An Act to define the the powers of the Governor-General of India in Council at meetings for making laws and regulations for certain purposes.

Whereas doubts have arisen as to the extent of power of the Governor-General of India in Council to make laws binding upon native Indian subjects beyond the Indian territories under the dominion of Her Majesty.

And whereas it is expedient that better provision should be made in other respects for the exercise of the power of the Governor-General in Council:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows:—

Power to make laws for native Indian subjects beyond the Indian territories

1. From and after the passing of this Act, the Governor-General of India in Council shall have power at meetings for the purpose of making laws and regulations to make laws and regulations for all persons being native Indian subjects of Her Majesty, Her heirs and successors, without and beyond, as well as within the Indian territories under the dominion of Her Majesty.

Former laws to be valid

2. No law heretofore passed by the Governor-General of India, or by the Governors of Madras and Bombay, respectively in Council, shall be deemed to be invalid solely by reason of its having reference to native subjects of Her Majesty not within the Indian territories under the dominion of Her Majesty.

Power to repeal or amend certain sections of 3 and 5, W. 4. c. 85

3. Notwithstanding anything in the Indian Councils Act or in any other Act of Parliament contained, any law or regulation which shall hereafter be made by the Governor-General in Council in manner in the said Indian Councils Act provided shall not be invalid by reason only that it may repeal or affect any of the provisions of the said Act of the third and fourth years of King William the Fourth, chapter eighty-five, contained in sections eighty-one, eighty-two, eighty-three, eighty-four, eighty-five and eighty-six of the said Act.

**(iv) The Indian Councils Act, 1870***(33 Vict., Ch. 3.)*

An Act to make better provisions for making laws and regulations for certain parts of India, and for certain other purposes relating thereto.

Whereas it is expedient that provision should be made to enable Governor-General of India in Council to make regulations for the peace and good government of certain territories in India otherwise than at meetings for the purpose of making laws and regulations held under the provisions of the Indian Councils Act, 1861, and also for certain other purposes connected with the Government of India:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Every Governor of a Presidency in Council Lieutenant-Governor, or Chief Commissioner, whether the Governorship, or Lieutenant-Governorship, or Chief Commissionership be now in existence or may hereafter be established, shall have power to propose to the Governor-General in Council drafts of any regulations, together with the reasons for proposing the same, for the peace and government of any part or parts of the territories under his Government or administration to which the Secretary of State for India shall from time to time by resolution in Council declare the provisions of this section to be applicable from a date to be fixed in such resolution.

Power to Executive Government of British India to make regulations for certain parts thereof

And the Governor-General in Council shall take such drafts and reasons into consideration; and when any such draft shall have been approved of by the Governor-General in Council and shall have received the Governor-General's assent, it

shall be published in the *Gazette of India* and in the local Gazette, and shall thereupon have like force of law and be subject to the like disallowances as if it had been made by the Governor-General of India in Council at a meeting for the purpose of making laws and regulations.

The Secretary of State for India in Council may from time to time withdraw such power from any Governor, Lieutenant-Governor or Chief Commissioner, on whom it has been conferred, and may from time to time restore the same as he shall think fit.

Copies of regulations to be sent to Secretary of State. Subsequent enactments to control regulations

2. The Governor-General shall transmit to the Secretary of State for India in Council an authentic copy of every regulation which shall have been made under the provisions of this Act; and all laws or regulations hereafter made by the Governor-General of India in Council, whether at a meeting for the purpose of making laws and regulations, or under the said provisions, shall control and supersede any regulation in anywise repugnant thereto which shall have been made under the same provisions.

Lieutenant-Governors and Chief Commissioners to be members *ex-officio* of the Governor-General's Council for the purpose of making laws and regulations

3. Whenever the Governor-General in Council shall hold a meeting for the purpose of making laws and regulations at any place within the limits of any territories now or hereafter placed under the administration of a Lieutenant Governor or a Chief Commissioner, the Lieutenant-Governor or Chief Commissioner respectively shall be *ex-officio* and Additional Member of the Council of the Governor-General for that purpose, in excess (if necessary) of the maximum number of twelve specified by the said Act.

Section 49 of 3 and 4, W. 4, c. 85 repealed.

4. Section forty-nine of the Act of the third and fourth years of King William the Fourth, chapter eighty-five, is hereby repealed.

Procedure in case of difference between

5. Whenever any measure shall be proposed before the Governor-General of India in Council whereby the safety, tranquility, or

interests of the British possessions in India, or any part thereof, may be, in the judgment of the said Governor-General essentially affected, and he shall be of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority in Council then present shall dissent from such opinion, the Governor-General may on his own authority and responsibility, suspend or reject the measure in part or in whole, or adopt and carry it into execution, but in every such case any two members of the dissentient majority may require that the said suspension, rejection, or adoption, as well as the fact of their dissent, shall be notified to the Secretary of State for India, and such notification shall be accompanied by copies of the minutes (if any) which the Members of the Council shall have recorded on the subject.

6. Whereas it is expedient that additional facilities should be given for the employment of natives of India, of proved merit and ability, in the Civil Service of Her Majesty in India: Be it enacted, that nothing in the "Act for the Government of India," twenty-one and twenty-two Victoria, chapter one hundred and six, or in the "Act to confirm certain appointments in India, and to amend the law concerning the Civil Service there," twenty-four and twenty-five Victoria, chapter fifty-four, or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places, and employments in the Civil Service of Her Majesty in India from appointing any native of India to any such office, place, or employment, although such native shall not have been admitted to the said Civil Service of India in manner in section thirty-two of the first-mentioned Act provided but subject to such rules as may be from time to time prescribed by the

Governor-General and the majority of his Council.

Power to appoint natives of India to certain offices without certificate from the Civil Service Commissioners.

Governor-General in Council, and sanctioned by the Secretary of State in Council, with the concurrence of a majority of members present ; and that for the purpose of this Act the words "natives of India" shall include any person born and domiciled within the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only ; and that it shall be lawful for the Governor-General in Council to define and limit from time to time the qualification of 'native of India' thus expressed ; provided that every resolution made by him for such purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

—

**(v) The Indian Councils Act, 1871**

(34 & 35 *Vict.*, *Ch.* 34.)

An Act to extend in certain respects the power of Local Legislatures in India as regards European British subjects.

WHEREAS it is expedient that the power of making laws and regulations conferred on Governors of Presidencies in India in Council by the Indian Councils Act, 24 & 25 *Vict.*, c. 67, sec. 42 should in certain respects be extended:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Power to  
Local Legis-  
latures to  
confer juris-  
diction over  
European  
British  
subjects to

1. No law or regulation heretofore made or hereafter to be made by any Governor or Lieutenant Governor in Council in India in manner prescribed by the aforesaid Act shall be invalid only by the reason that it confers on Magistrates, being justices of the peace, the same jurisdiction over European British subjects as such Governor

or Lieutenant-Governor in Council, by regulation made as aforesaid, could have lawfully conferred or could lawfully confer on Magistrates in the exercise of authority over natives in the like cases.

2. When evidence has been given in and proceeding under this Act before a Magistrate, being a justice of the peace, which appears to be sufficient for the conviction of the accused person, being an European British subject, of an offence for which, if a native, he would under existing law be triable exclusively before the Court of Sessions, or which, in the opinion of the Magistrate, is one which ought to be tried by the High Court, the accused person, if such European British subject, shall be sent for trial by the Magistrate before the High Court.

Committal of defendant (being an European British subject) to the High Court. (Indian Act No. XXV of 1881, s. 226)

3. And whereas by an Act passed by the Governor-General of India in Council, Indian Act No. XXII of 1870, it is provided that certain Acts heretofore passed by the Governors of Madras and Bombay respectively in Council, and by the Lieutenant-Governor of Bengal in Council, shall, so far as regards the liability of European British subject to be convicted and punished thereunder, be and be deemed to be as valid as if they had been passed by the Governor-General of India in Council at a meeting for the purpose of making laws and regulations: Be it further enacted, that the said Governors and Lieutenant-Governor in Council respectively shall have power to repeal and amend any of the said Acts to be passed under the provisions of the Indian Councils Act.

Power to local Legislatures to amend and repeal certain laws

**(vi) The Indian Councils Act, 1874**  
(37 & 38 Vict., Ch. 91).

An Act to amend the Law relating to the Council of the Governor-General of India.

Whereas it is expedient to amend the law relating to the Council of the Governor-General of India:

Be it enacted, etc., etc.  
as follows:

Power to  
appoint  
ordinary  
Member of  
Governor-  
General  
Council for  
public works  
purposes

1. It shall be lawful for Her Majesty, if she shall see fit, to increase the number of the ordinary members of the Council of the Governor-General of India to six, by appointing any person, from time to time, by warrant under Her Royal Sign Manual to be an ordinary member of the said Council in addition to the ordinary members thereof appointed under section three of the "Indian Councils Act, 1861," and under section eight of the Act of the thirty-second and thirty-third years of Her present Majesty, chapter ninety-seven. The law for the time being in force with reference to ordinary members of the Council of the Governor-General of India shall apply to the person so appointed by Her Majesty under this Act, who shall be called the member of Council for public works purposes.

Power to  
reduce num-  
ber of  
members of  
the Council  
of the  
Governor-  
General

2. Whenever a member of Council for public works purposes shall have been appointed under the first section of this Act, it shall be lawful for Her Majesty, if she shall see fit, to diminish, from time to time, the number of the ordinary members of the Council of the Governor-General of India to five, by abstaining so long as she shall deem proper from filling up any vacancy or vacancies occurring in the offices of the ordinary members of the said Council appointed under section three of "The Indian Councils Act, 1861," and under section eight of the Act of the thirty-second and thirty-third years of Her present Majesty, chapter ninety-seven, not being a vacancy in the office of the ordinary member of Council required by law to be a barrister or a member of the Faculty of Advocates in Scotland, and whenever the Secretary of State for India shall have informed the Governor-General of India that it is not the intention of Her Majesty to fill up any vacancy, no temporary appointment shall be made to such

vacancy under section twenty-seven of "Indian Councils Act, 1861," and if any such temporary appointment shall have been made previously to the receipt of such information, the tenure of office of the person temporarily appointed shall cease and determine from the time of the receipt of such information by the Governor-General.

3. Nothing in this Act contained shall affect the provisions of section eight of "The Indian Councils Act, 1861," or the provisions of section five of the Act of the thirty-third year of Her Majesty, chapter three, or any power or authority vested by law in the Governor-General of India in respect of his Council or of the members thereof.

Power of Governor-General in respect of his Council, not affected

**(vii) The Council of India Act, 1876**

(39 Vict., Ch. 7.)

An Act to amend the law relating to certain appointments to the Council of India.

Whereas by an Act of the thirty-second and thirty-third years of the reign of Her present Majesty, chapter ninety-seven (in this Act referred to as the Act of 1869), it was, among other things, provided that the members of the Council of India were to hold their offices for a period of ten years, and for such further period as is in section three of the said Act mentioned.

And whereas, regard being had to the composition of the said Council contemplated in section ten of the Act of the twenty-first and twenty-second years of Her present Majesty, chapter one hundred and six (in this Act referred to as the Act of 1858), it is expedient to amend the said first-mentioned Act in certain particulars.

Be it enacted \* \* \* \* \* as follows :

1. Notwithstanding anything in the Act of 1869, the Secretary of State for India may, if he thinks fit, subject to the condition as to the number of appointments hereinafter laid down, appoint any person having professional or other

Appointment of persons with Professional or other qualifications

peculiar qualifications to be a member of the said Council under this Act ; and every person so appointed shall hold his office in the same manner, and shall be entitled to the same salary, pension, and other rights and privileges, and be subject to the same disabilities, as if he had been elected or appointed before the passing of the Act of 1869.

Where any person appointed under this Act is at his appointment a member of the Council, his period of his service for the purposes of this Act shall be reckoned from the time of his first appointment to the Council.

The special reasons for every appointment under this Act shall be stated in a minute of the Secretary of State for India, and shall be laid before both Houses of Parliament. Not more than three persons appointed under this Act shall be members of the Council at the same time; nor shall the provisions of sections seven and ten of the Act of 1858, with reference to the members of the Council and the qualifications of the major part of the members, be affected by this Act.

### (viii) The Indian Councils Act, 1892.

(55 and 56 Vict., Ch. 14.)

An Act to amend the Indian Councils Act, 1861.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows:—

Provisions  
for increase  
of number of  
members of  
Indian Councils  
for making  
laws and  
regulations

1. (1) The number of additional members of Council nominated by the Governor-General under the provisions of section ten of the Indian Councils Act, 1868, shall be such as to him may seem from time to time expedient, but shall not be less than ten nor more than sixteen; and the number of additional members of Council nomi-

nated by the Governors of the Presidencies of Fort St. George and Bombay respectively under the provisions of section twenty-nine of the 24 & 25 Vict Indian Councils Act, 1861, shall besides the Advocate-General of the presidency or officer acting in that capacity) be such as to the said Governors respectively may from time to time expedient, but shall not be less than eight nor more than twenty. c. 67.

(2) It shall be lawful for the Governor-General in Council by proclamation from time to time to increase the number of Councillors whom the Lieutenant-Governors of the Bengal Division of the Presidency of Fort William and of the North-Western Provinces and Oudh respectively may nominate for their assistance in making laws and regulations: Provided always that not more than twenty shall be nominated for the Bengal Division, and not more than fifteen for the North-Western Provinces and Oudh.

(3) Any person resident in India may be nominated an additional member of Council under sections ten and twenty-nine of the Indian Councils Act, 1861, and this Act, or a member of the Council of the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws and regulations, have been or are hereafter extended or made applicable.

(4) The Governor-General in Council may from time to time with the approval of the Secretary of State in Council, make regulations as to the conditions under which such nominations, or any of them, shall be made by the Governor-General, Governors, and Lieutenant-Governors, respectively, and prescribe the manner in which such regulations shall be carried into effect.

2. Notwithstanding any provision in the Indian Councils Act, 1861, the Governor-General of India in Council may from time to time make rules authorising at any meeting of the Governor-  
Modification of provisions of 24 & 25 Vict., c. 67 as

to business  
at Legislative  
meetings.

General's Council for the purpose of making laws and regulations the discussion of the Annual Financial Statement of the Governor-General in Council and the asking of questions, but under such conditions and restrictions as to the subject or otherwise as shall be in the said rules prescribed or declared: And notwithstanding any provisions in the Indian Councils Act, 1861, the Governors in Council of Fort St. George and Bombay, respectively, and the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws and regulations, have been made or are hereafter extended or made applicable, may from time to time make rules for authorising at any meeting of their respective Councils for the purpose of making laws and regulations the discussion of the Annual Financial Statement of their respective local Governments and the asking of questions, but under such conditions and restrictions as to subject or otherwise as shall in the said rules applicable to such Councils respectively be prescribed or declared. But no member at any such meeting of any Council should have power to submit or propose any resolution, or to divide the Council in respect of any such financial discussion, or the answer to any question asked under the authority of this Act or the rules made under this Act: Provided that any rule made under this Act by a Governor in Council, or by a Lieutenant-Governor, shall be submitted for and shall be subject to the sanction of the Governor-General in Council, and any rule made under this Act by the Governor-General in Council shall be submitted for and shall be subject to the sanction of the Secretary of State in Council: Provided also that rules made under this Act shall not be subject to alteration or amendment at meetings for the purpose of making laws and regulations.

Meaning of 3. It is hereby declared that in the twenty-  
24 & 25 Vict. second section of the Indian Councils Act, 1861,

it was and is intended that the words "Indian territories now under the dominion of Her Majesty" should be read and construed as if the words "or hereafter" were and had at the time of the passing of the said Act been inserted next after the word "now" and further, that the Acts third and fourth, William the fourth, Chapter eighty-five, and sixteenth and seventeenth Victoria Chapter ninety-five respectively, shall be read and construed as if at the date of the enactment thereof respectively, it was intended and had been enacted that the said Acts respectively should extend to and include the territories acquired after the dates thereof respectively, by the East India Company, and should not be confined to the territories at the dates of the said enactments respectively in the possession and under the Government of the said Company.

c. 67, s. 22;  
3 & 4 Will.  
IV, c. 85 ; &  
16 & 17 Vict.  
c. 95

4. Sections thirteen and thirty-two of the Indian Councils Act, 1861, are hereby repealed ; and it is enacted that—

Repeal

(1) If any additional member of Council or any members of the Council of a Lieutenant-Governor appointed under the said Act or this Act shall be absent from India or unable to attend to the duties of his office for a period of two consecutive months, it shall be lawful for the Governor-General, the Governor, or the Lieutenant-Governor to whose Council such additional member or members may have been nominated (as the case may be) to declare, by a notification published in the Government *Gazette*, that the seat in Council of such person has become vacant.

Power to fill up vacancy in number of additional members

(2) In the event of a vacancy occurring by the absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted of any such additional member or members of the Council of a Lieutenant-Governor, it shall be lawful for the Governor-General, for the Governor,

or for the Lieutenant-Governor, as the case may be, to nominate any person as additional member or member, as the case may be, in his place; and every member so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination: Provided always that it shall not be lawful by such nomination, or by any nomination made under this Act, to diminish the proportion of non-official members directed by the Indian Councils Act, 1861, to be nominated.

**Powers of  
Indian pro-  
vincial legis-  
latures**

5. The local legislature of any province in India may from time to time, by Acts passed under and subject to the provisions of the Indian Councils Act, 1861, and with the previous sanction of the Governor-General but not otherwise, repeal or amend as to that province any law or regulation made either before or after the passing of this Act by any authority in India other than that local legislature: Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of the Indian Councils Act, 1861, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this section.

**Definitions**

6. In this Act—The expression “local legislature” means—

(1) The Governor-in-Council for the purpose of making laws and regulations of the respective provinces of Fort St. George and Bombay; and

(2) The Council for the purpose of making laws and regulations of the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws or regulations have been or are hereafter extended or made applicable.

The expression “Province” means any presidency, division, province or territory over which

the powers of any local legislature for the time being extend.

7. Nothing in this Act shall detract from or diminish the powers of the Governor-General in Council at meetings for the purpose of making laws and regulations. Saving power of Governor-General in Council

8. This Act may be cited as the Indian Councils Act, 1892; and the Indian Councils Act, 1861, and this Act may be cited together as the Indian Councils Act, 1861 and 1892. Short title

(ix) **The Indian Councils Act, 1904.**

An Act to amend Indian Councils Act of 1874.

Whereas it is etc. etc.

Be it enacted \* \* \* as follows :—

1. In section one of the Indian Councils Act, 1874, the words "who shall be called the member of council for public works" and in section two of the same Act the words 'for public works' are hereby repealed.

2. The Act shall be cited as the Indian Councils Act, 1904.

(x) **The Council of India Act, 1907.**

An Act to amend the Law as to the Council of India.

: Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. The Council of India shall consist of such number of members, not less than ten and not more than fourteen, as the Secretary of State may from time to time determine.

2. In section ten of the Government of India Act, 1858 (21 and 22 Vict. c. 106), the words "more than five years" shall be substituted for the words "more than ten years."

3. Section thirteen of the same Act shall, as regards any member appointed after the passing of this Act, be read and construed as if the words one thousand pounds were substituted for the words one thousand two hundred pounds.

4. Section two of the Government of India Act, 1869 (32 and 33 Vict. c. 97), shall, as regards any appointment made after the passing of this Act, be read and construed as if the word "seven" were substituted for the word "ten."

5. The Council of India Act, 1876 (39 Vict. c. 7), and the Council of India Reduction Act, 1889 (52 and 53 Vict. c. 65), are hereby repealed.

6. This Act may be cited as the Council of India Act, 1907.

(xi) **The Indian Councils Act, 1909.**

An Act to amend the Indian Councils Acts, 1861 and 1892, and the Government of India Act, 1838. [15th May 1909.]

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Amendment  
of constitu-  
tion of  
Legislative  
Councils

24 & 25 Vict.  
c. 67.  
55 & 56 Vict.  
c. 14

1. (1) The additional members of the Councils for the purpose of making laws and regulations (hereinafter referred to as Legislative Councils) of the Governor-General and the Governors of Fort St. George and Bombay, and the members of the Legislative Councils already constituted, or which may hereafter be constituted, of the several Lieutenant-Governors of Provinces, instead of being all nominated by the Governor, or Lieutenant-Governor in manner provided by the Indian Councils Acts, 1861 and 1892, shall include members so nominated and also members elected in accordance with regulations made under this Act, and references in those Acts to the members so

nominated and their nomination shall be construed as including references to the members so elected and their election.

(2) The number of additional members or members so nominated and elected, the number of such members required to constitute a quorum, the term of office of such members and the manner of filling up casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such Council, be such as may be prescribed by regulations made under this Act :

Provided that the aggregate number of members so nominated and elected shall not, in the case of any Legislative Council mentioned in the first column of the First Schedule to this Act, exceed the number specified in the second column of that schedule.

2. (1) The numbers of ordinary members of the Councils of the Governors of Fort Saint George and Bombay shall be such number not exceeding four as the Secretary of State in Council may from time to time direct, of whom two at least shall be persons who at the time of their appointment have been in the service of the Crown in India for at least twelve years.

Constitution and procedure of Executive Councils of Governors of Fort Saint George and Bombay

(2) If at any meeting of either of such Councils there is an equality of votes on any question the Governor or other person presiding shall have two votes or the casting vote.

3. (1) It shall be lawful for the Governor-General in Council, with the approval of the Secretary of State in Council, by proclamation, to create a Council in the Bengal Division of the Presidency of Fort William for the purpose of assisting the Lieutenant-Governor in the executive government of the province, and by such proclamation—

Power to constitute provincial Executive Councils

(a) to make provision for determining what

shall be the number (not exceeding four) and qualifications of the members of the Council; and

(b) to make provision for the appointment of temporary or acting members of the Council during the absence of any member from illness or otherwise, and for the procedure to be adopted in case of a difference of opinion between a Lieutenant-Governor and his Council, and in the case of equality of votes, and in the case of a Lieutenant-Governor being obliged to absent himself from his Council from indisposition or any other cause.

(2) It shall be lawful for the Governor-General in Council, with the like approval, by a like proclamation to create a Council in any other province under a Lieutenant-Governor for the purpose of assisting the Lieutenant-Governor in the executive government of the province: Provided that before any such proclamation is made a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and, if before the expiration of that time an Address is presented to His Majesty by either House of Parliament against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft.

(3) Where any such proclamation has been made with respect to any province the Lieutenant-Governor may, with the consent of the Governor-General in Council, from time to time make rules and orders for the more convenient transaction of business in his Council, and any order made or act done in accordance with the rules and orders so made shall be deemed to be an act or order of the Lieutenant-Governor in Council.

(4) Every member of any such Council shall be appointed by the Governor-General, with the approval of his Majesty, and shall, as such, be a

number of the Legislative Council of the Lieutenant-Governor, in addition to the members nominated by the Lieutenant-Governor and elected under the provisions of this Act.

The Governor General, and the Governor of Appoint  
of Vice  
sidents  
 Fort Saint George and Bombay, and the Lieutenant-Governor of every province respectively shall appoint a member of their respective councils to be Vice President thereof, and, for the purpose of temporarily holding and executing the office of Governor-General or Governor of Fort Saint George or Bombay and of presiding at meetings of Council in the absence of the Governor-General, Governor, or Lieutenant-Governor, the Vice President so appointed shall be deemed to be the senior member of Council and the member next in rank, and the Indian Councils Act, 3 & 4 W  
c. 85  
 and sections sixty two and sixty-three of the Government of India Act, 1833, shall have effect accordingly.

(1) Notwithstanding anything in the Indian Councils, Act, 1861, the Governor-General in Council, the Governors in Council of Fort Saint George and Bombay respectively, and the Lieutenant-Governor or Lieutenant-Governor in Council of every province, shall make rules authorising at any meeting of their respective legislative councils the discussion of the annual financial statement of the Governor-General in Council or their respective Local Governments, as the case may be, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed by the rules applicable to the several councils. Power to  
extend  
business of  
Legislative  
Councils

(2) Such rules as aforesaid may provide for the appointment of a member of any such council to take part at any such discussion in the place of the Governor-General, Governor, or Lieutenant-Governor, as the case may be, and of any Vice President.

(3) Rules under this section, where made by a Governor in Council, or by a Lieutenant-Governor, or a Lieutenant-Governor in Council, shall be subject to the sanction of the Governor-General in Council, and where made by the Governor-General in Council shall be subject to the sanction of the Secretary of State in Council, shall not be subject to alteration or amendment by the Legislative Council of the Governor-General, Governor, or Lieutenant-Governor.

6. The Governor-General in Council, subject to the approval of the Secretary of State in Council, make regulations as to the conditions under which and manner in which persons resident in India may be nominated or elected members of the Legislative Councils of the Governor-General, Governors, and as to qualifications for being, and for being nominated or elected, a member of any such council, and as to any other matter for which regulation is authorised to be made under this Act, and as to the manner in which those regulations are to be carried into effect. Regulations under this section shall not be subject to alteration or amendment by the Legislative Council of the Governor-General.

7. All proclamations, regulations and rules made under this Act, other than rules made by a Lieutenant-Governor made for the more convenient transaction of business in his Council shall be laid before both Houses of Parliament as soon as possible after they are made.

8. (1) This Act may be cited as the Indian Councils Act, 1909, and shall be construed as if it were one of the Indian Councils Acts, 1861 and 1892, and those Acts, the Indian Councils Act 1869, the Indian Councils Act, 1871, the Indian Councils Act, 1874, the Indian Councils Act, 1904, and this Act may be cited together as the Indian Councils Acts, 1861 to 1909.

This Act shall come into operation on such dates as the Governor-General in Council, the approval of the Secretary of State in Council, may appoint, and different dates may be appointed for different purposes and provisions of this Act and for different Councils.

37 & 38  
c. 91.  
4 Edw.  
26

the date appointed for the coming into operation of this Act as respects any Legislative Council, all the nominated members of the Council in office shall go out of office, but may, if otherwise qualified, be renominated or be elected in accordance with the provisions of this Act.

The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

SCHEDULES

FIRST SCHEDULE

*Maximum Numbers of Nominated and Elected Members of Legislative Councils*

Legislative Council.	Maximum number.
Legislative Council of the Governor-General.	60
Legislative Council of the Governor of Fort St. George ... ..	50
Legislative Council of the Governor of Bombay ... ..	50
Legislative Council of the Lieutenant-Governor of the Bengal division of the Presidency of Fort William ... ..	50
Legislative Council of the Lieutenant-Governor of the United Provinces of Agra and Oudh...	50
Legislative Council of the Lieutenant-Governor of the Provinces of Eastern Bengal and Assam ... ..	50
Legislative Council of the Lieutenant-Governor of the Province of the Punjab ... ..	30
Legislative Council of the Lieutenant-Governor of the Province of Burma ... ..	30
Legislative Council of the Lieutenant-Governor of any Province which may hereafter be constituted ... ..	30

SECOND SCHEDULE  
*Enactments repealed*

Session and chapter.	Short title.	Extent of repeal.
24 and 25 Vict., c. 67.	The Indian Councils Act, 1861.	<p>In section ten, the words "not less than six nor more than twelve in number."</p> <p>In section eleven, the words "for the term of two years from the date of such nomination."</p> <p>In section fifteen, the words from "and the power of making laws and regulations" to "shall be present."</p> <p>In section twenty-nine, the words "not less than four nor more than eight in number."</p> <p>In section thirty, the words "for the term of two years from the date of such nomination."</p> <p>In section thirty-four, the words from "and power of making laws and regulations." to "shall be present."</p> <p>In section forty-five, the words from "and the power of making laws and regulations" to "shall be present."</p> <p>Sections one and two.</p>
55 and 56 Vict., c. 14.	The Indian Councils Act, 1892.	In section four, the words "appointed under the said Act or this Act" and paragraph (2).

## IV

### Constitution of the Indian Legislatures

#### (i) The Regulations

The exercise of the power conferred by section 6 of the Indian Councils Act, 1909. (9th Edw. 7 ch. 1) the Governor-General in Council has, with the approval of the Secretary of State in Council, made Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor-General of India and of the Provincial Legislative Councils.

The following are the Regulations relating to the Imperial Legislative Council :—

1. The Additional Members of the Legislative Council of the Governor-General shall ordinarily be sixty in number and shall consist of—

1.—Members elected by the classes specified in Regulation II, who shall not be less than twenty-five in number; and

2.—Members nominated by the Governor-General, who shall not exceed thirty-five in number, and of whom—

a) not more than twenty-eight may be officials, and

b) three shall be non-official persons to be elected—

i) one from the Indian commercial community,

ii) one from the Muhammadan community in Punjab, and

iii) one from the landholders in the Punjab:

Provided that it shall not be lawful for the Governor-General to nominate so many

non-official persons under these Regulations the majority of all the members of the Council shall be non-officials.

d  
ers II. The twenty-five elected members specified in Regulation I shall be elected as follows namely :—

- (i) By the non-official Additional Members of the Council of the Governor of Fort St. George ... .. 2 Members
- (ii) By the non-official Additional Members of the Council of the Governor of Bombay ... 2 „
- (iii) By the non-official Members of the Council of the Lieutenant-Governor of Bengal. 2 „
- (iv) By the non-official Members of the Council of the Lieutenant-Governor of the United Provinces of Agra and Oudh. 2 „
- (v) By the non-official Members of the Council of the Lieutenant-Governor of the Punjab. 1 „
- (vi) By the non-official Members of the Council of the Lieutenant-Governor of Eastern Bengal and Assam ... 1 „
- (vii) By the non-official Members of the Council of the Lieutenant-Governor of Burma ... 1 „
- (viii) By the District Councils and Municipal Committees in the Central Provinces ... 1 „
- (ix) By Landholders in the Presidency of Fort St. George ... 1 „
- (x) By Landholders in the Presidency of Bombay ... 1 „

- (xi) By Landholders in Bengal ... 1     "
- (xii) By Landholders in the United  
Provinces of Agra and Oudh 1     "
- (xiii) By Landholders in Eastern  
Bengal and Assam ... 1     "
- (xiv) By the Landholders in the  
Central Provinces ... 1     "
- (xv) By the Muhammadan commu-  
nity in the Presidency of  
Fort St. George ... 1     "
- (xvi) By the Muhammadan commu-  
nity in the Presidency of  
Bombay ... .. 1     "
- (xvii) By the Muhammadan commu-  
nity in Bengal ... .. 1     "
- (xviii) By the Muhammadan commu-  
nity in the United Provinces  
of Agra and Oudh ... 1     "
- (xix) By the Muhammadan commu-  
nity in Eastern Bengal and  
Assam ... .. 1     "
- (xx) By the Bengal Chamber of  
Commerce ... .. 1     "
- (xxi) By the Bombay Chamber of  
Commerce ... .. 1     "

Provided that in the case of the second, fourth and succeeding alternate elections by the classes specified in sub-heads (xii) and (xiii), a second member shall be elected by the Muhammadan members of each of the said classes.

*Explanation.*—The expression "alternate elections" shall not be deemed to include elections to fill casual vacancies.

III. The election of the members specified in Regulation II shall be effected by the electorates and electoral procedures and in accordance with the procedures respectively prescribed in the schedules to these Regulations.

gible  
dates

IV. No person shall be eligible for election as a member of the Council if such person—

- (a) is not a British subject, or
- (b) is a female, or
- (c) has been adjudged by a competent Court to be of unsound mind, or
- (d) is under twenty-five years of age, or
- (e) is an uncertificated bankrupt or an undischarged insolvent, or
- (f) has been dismissed from the Government service, or

(g) has been sentenced by a Criminal Court to imprisonment for an offence punishable by imprisonment for a term exceeding six months, or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted, or the offender pardoned, or

(h) has been debarred from practising as a legal practitioner by order of any competent authority, or

(i) has been declared by the Governor-General in Council to be of such reputation and character that his election would, in the opinion of the Governor-General in Council, be contrary to the public interest :

Provided that in cases (f), (g), (h) and (i) such disqualification may be removed by an order of the Governor-General in Council in this behalf.

ification  
candidates

V. No person shall be eligible for election under any sub-head of Regulation II unless he possesses the qualifications prescribed for candidates in the Schedule regulating elections under that sub-head.

qualifica-  
of  
s

VI. No person shall be qualified to vote at an election held under these Regulations if such person—

- (a) is a female, or

(b) is a minor, or

(c) has been adjudged by a competent Civil Court to be of unsound mind.

VII. Every person, who is elected or nominated under these Regulations to be a Member of Council, shall before taking his seat make, at a meeting of the Council, an oath or affirmation of his allegiance to the Crown, in the following form, namely :—

I. A. B., having been <sup>elected</sup>/<sub>nominated</sub> an additional Member of the Legislative Council of the Governor-General, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, His heirs and successors, and that I will faithfully discharge the duty of the office upon which I am about to enter.

VIII. (1) If any person,—

(a) not being eligible for election, is elected under these Regulations, or,

(b) having been elected or nominated, subsequently becomes subject to any of the disabilities stated in clause (c), (e), (f), (g) or (h) of Regulation IV, or fails to make the oath or affirmation prescribed by Regulation VII within such time as the Governor-General in Council considers reasonable,

the Governor-General shall, by notification in the Gazette of India, declare his election or nomination to be void or his seat to be vacant.

(2) When any such declaration is made the Governor-General shall, by notification as aforesaid, call upon the electorate concerned to elect another person within such time as may be prescribed by such notification, or shall nominate another person, as the case may be.

(3) If any person elected at such fresh election

Oath of office

Power to declare seats vacant

is not eligible for election, the Governor-General may nominate any person who is eligible for election by the electorate concerned.

Candidates  
elected by  
several elec-  
torates

IX. (1) If any person is elected by more than one electorate, he shall, by notice in writing signed by him and delivered to the Secretary to the Government of India in the Legislative Department within seven days from the date on the publication of the result of such elections in the Gazette of India, choose, or in his default the Governor-General shall declare, for which of these electorates he shall serve, and the choice or declaration shall be conclusive.

(2) When any such choice or declaration has been made, the votes recorded for such person in any electorate for which he is not to serve shall be deemed not to have been given, and the candidate, if any, who, except for the said votes, would have been declared elected for such electorate, shall be deemed to have been duly elected for the same.

Term of  
office

X. (1) Save as provided in clause (2) and subject to the provisions of Regulation XVIII, the term of office of an Additional Member shall be three years from the date of his election or nomination, on the case may be:

Provided that official members and members nominated as being persons who have expert knowledge of subjects connected with proposed or pending legislation shall hold office for three years or such shorter period as the Governor-General may at the time of nomination determine.

(3) A member elected or nominated to fill a casual vacancy occurring by reason of absence from India, inability to attend to duty, death, acceptance of office or resignation duly accepted, or otherwise, or a member nominated on failure of an electorate to elect an eligible person, shall hold office so long as the member whose place

he fills would have been entitled to hold office if the vacancy had not occurred.

XI. (1) When a vacancy occurs in the case of a Member who represents any interest specified in Regulation II, or at any time within three months of the date when such a vacancy will occur in the ordinary course of events, the Governor-General shall, by notification as aforesaid, call upon the electorate concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by such notification.

(2) When a vacancy occurs in the case of a nominated Member, the Governor-General may nominate any person to the vacancy :

Provided that when a casual vacancy occurs—

(a) in the case of an elected Member, the election shall always be made by the same electorate as that which elected the Member whose place is to be filled and shall be subject to the same conditions in respect of eligibility of candidates for nomination as those which governed the election of such Member, and

(b) in the case of a Member nominated as representing any class specified in Regulation I, sub-head B, clause (b), the person nominated shall be selected from the same class.

XII. If within the time prescribed by a notification issued under Regulation VIII, clause (2) or Regulation XI, clause (1), the electorate concerned fails to elect, the Governor-General may nominate at his discretion any person who is eligible for election by such electorate.

XIII. The power of making laws and regulations or of transacting other business vested in the Legislative Council of the Governor-General shall be exercised only at meetings at which.—

- (a) the Governor-General, or
- (b) the President nominated by the Governor-

General in Council under section 6 of the Indian Councils Act, 1861, or

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

(d) in the case of the discussions referred to in section 5 of the Indian Councils Act, 1909, a Member appointed to preside in pursuance of a rule made under that section,

and fifteen or more Members of the Council, of whom eight at least shall be Additional Members are present.

XIV. (1) No election shall be valid if any corrupt practice is committed in connection therewith by the candidate elected.

(2) A person shall be deemed to commit a corrupt practice within the meaning of these Regulations—

(i) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit or holds out any threat of injury to any person, or

(ii) who gives, procures or abets the giving of a vote in the name of a voter who is not the person giving such vote.

And a corrupt practice shall be deemed to be committed by a candidate, if it is committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

*Explanation.*—A "promise of individual profit" includes a promise for the benefit of the person himself, or of any one in whom he is interested.

XV. No election shall be invalid by reason of a non-compliance with the rules contained in the Schedules to these Regulations, or any mistake

in the use of forms annexed thereto, if it appears that the election was conducted in accordance with the principles laid down in such rules and that such non-compliance or mistake did not affect the result of the election.

XVI. (1) If the validity of any election is brought in question by any person qualified either to be elected or to vote at such election on the ground of the improper rejection or reception of a nomination or of a vote, or of any corrupt practice in connection with such election, or for any other cause, such person may, at any time within fifteen days from the date of the publication of the result of such election in the *Gazette of India*, apply to the Governor-General in Council to set aside such election.

(2) The Governor-General in Council shall, after such inquiry (if any) as he may consider necessary, declare, by notification as aforesaid, whether the candidate whose election is questioned or any or what other person was duly elected, or whether the election was void.

(3) If the election is declared void, the Governor-General shall, by notification as aforesaid, call upon the electorate concerned to elect another person within such time as may be prescribed by such notification.

(4) If within the time so prescribed the electorate fails to elect, the Governor-General may nominate any person who is eligible for election by such electorate.

XVII. The decision of the Governor-General in Council on any question that may arise as to the intention, construction or application of these Regulations shall be final.

XVIII. (1) As soon as conveniently may be after these Regulations come into force, a Council shall be constituted in accordance with their provisions.

(2) For this purpose the Governor-General shall, by notification as aforesaid, call upon the electorates referred to in Regulation III to proceed to elect Members in accordance with these Regulations within such time as may be prescribed by such notification.

(3) If within the time so prescribed any such class fails to elect, the Governor-General may nominate at his discretion for a period not exceeding six months any person who is eligible for election by such class.

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[The Regulations framed by the Governor-General in Council for the nomination and election of Additional Members for the Provincial Legislatures are similar. Regulations I and II, prescribe the strength of the Councils and the proportion of elected to nominated Members. The proviso to Regulation I does not provide for an official majority in the Councils as in the case of the Imperial Legislature, but for a non-official majority in the following terms: "Provided that it shall not be lawful for the Governor or Lieutenant-Governor, as the case may be to nominate so many officials under these regulations that the majority of all the Members of the Council shall be officials." As in the case of the Imperial Legislative Council, it is provided by Regulations II and III in each of the Provincial Regulations that the elected Members specified in Regulation I shall be elected by the electorates specified, in accordance with the procedures respectively prescribed in the schedules to the Regulations. The schedules and the electorates for the election of Members to all the Councils, Imperial and Provincial, are summarised in full in the next section. The rest of the Regulations IV—XII, XIV—XVIII are identical in terms with those made for the Imperial Legislature, reproduced above, with the substitution of the words, 'Governor' or 'Lieutenant Governor', for the words 'Governor-General'

and of 'Governor-in-Council' for 'Governor-General in Council' as the case may be.

In the case of nominations to the Provincial Legislatures, it is provided in the Regulations that Members to the Provincial Legislative Councils of Bengal, the United Provinces of Agra and Oudh, Eastern Bengal and Assam and Burma should be nominated by the respective Lieutenant-Governors with the sanction of the Governor-General. No sanction is required in the case of nominations made to their Legislative Councils by the Governors of Madras and Bombay.

In the Regulation corresponding to Regulation XIII of those relating to the Imperial Council fixing the quorum for Legislative Meetings, in the Regulations of each Province, the quorum has been fixed as follows :—

Excluding the President, 10 or more Members in the Legislative Councils of Madras, Bombay, Bengal, United Provinces of Agra and Oudh and Eastern Bengal and Assam, and 8 or more Members in that of the Punjab and 6 in that of Burma.

(ii) **The Imperial Legislative Council.**

The following is the constitution of the Imperial Legislative Council as approved by the Secretary of State for India in Council:—

- |   |        |
|---|--------|
| A.—Ex-officio Members   | ... 7  |
| B.—Officials representing Provinces   | ... 8  |
| C.—Nominated Members not more than 20 to be officials, while 3 must represent respectively the landholders of the Punjab, the Muhaminadans of the Punjab and Indian Commerce. | ... 28 |
| D.—Elected Members (25):—   |        |
| (1) by the Provincial Legislative Councils and the Central Provinces  | ... 12 |
| (2) by the landholders of Madras, Bombay, Bengal, Eastern Bengal and Assam, the United Provinces and the Central Provinces  | 6      |

(3) by the Muhammadans of Madras, Bombay, Bengal, Eastern Bengal and Assam and the United Provinces	...	5
4 by the Chambers of Commerce, Calcutta and Bombay	...	2
	TOTAL	... 67
or, including His Excellency the Viceroy	...	68

The twenty-five elected Members the Imperial Legislative Council are elected as follows :—

I. *Territorial Electorates* (12) :

i. In Madras, Bombay, Bengal and the United Provinces of Agra and Oudh the non-official Members of the Provincial Legislative Councils elect two Members each for the Viceroy's Council and have cumulative vote, so as to afford an opportunity to a strong minority to secure one of the seats.

ii. In the Punjab, Eastern Bengal, Assam and Burma, the non-official Members of the Provincial Legislative Councils elect one Member each to the Viceroy's Council.

[Any person not ineligible for election under the Regulations and having a place of residence within the Province concerned and such practical connection with that Province as qualifies him to represent it may be nominated for election in the above two cases].

iii. In the Central Provinces the votes of twenty-two delegates from the District Councils and twenty-eight delegates from Municipal Committees elect one Member.

[Any person not ineligible for election under the Regulations who has a place of residence in the Central Provinces and either is a member or has served at least three years as a member of any such District Council or Municipal Committee may be nominated as a candidate for election].

II. *Landholders* (6):

(i) The landholders who elect an Additional Member in Madras must

(a) possess an annual income, calculated according to certain rules, of not less than fifteen thousand rupees from land situated within the Presidency; or

(b) receive from Government a *malikhana* allowance the annual amount of which is not less than fifteen thousand rupees.

(ii) The landholders who elect a Member in Bombay must be

(a) Jagirdhars and Zemindars of Sind,

(b) Sardars of Gujerat and

(c) Sardars of the Deccan.

The Jagirdars and Zemindars of Sind elect one Member in the first year, the third year and so on.

(iii) The landholders who vote in Bengal must be those who

(a) pay land-revenue or road and public works cesses as follows :—

(1) In the case of the Presidency, Burdwan and Orissa Divisions forming one group, land-revenue amounting to not less than twenty-five thousand rupees, or road and public works cesses amounting to not less than five thousand rupees per annum, and

(2) In the case of the Patna, Tirhut, Bhagalpore and Chota Nagpur Divisions forming another group, land-revenue amounting to not less than fifteen thousand rupees or road and public works cesses amounting to not less than three thousand seven hundred and fifty rupees per annum, or

(b) hold titles conferred or recognised by the Government not lower in rank than that of a Raja or Nawab.

(iv) In the United Provinces for the election

of a Member by landholders of Agra and Oudh the election is made by the British Indian Association of Oudh at an extraordinary general meeting and members qualified to vote in the Agra Province must

(a) own in that province land in respect of which land revenue amounting to not less than ten thousand rupees per annum is payable ; or

(b) own in that province land free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either taken by itself or in addition to land revenue payable in respect of other land by such owners amounts to not less than ten thousand rupees per annum ; or

(c) hold the title of Maharaja, Rajah or Nawab conferred or recognised by the Government ;

(d) hold the title of Rajwar, Rai Bahadur, Rao Bahadur, Rai, Mirza, Khan Bahadur Chaudhri or Diwan, if hereditary and recognised by the Government.

(v) In Eastern Bengal and Assam landholders who vote must

(a) hold in their own right as proprietors within the Province one or more estates or shares of estates in respect of which land revenue amounting not less than five thousand rupees or cess amounting to not less than twelve hundred and fifty rupees is payable per annum ; or

(b) hold titles conferred or recognised by the Government not lower in rank than that of Raja or Nawab.

(vi) The landholders in Central Provinces who vote for the election of an additional Member shall be those

(a) whose land is assessed to land revenue at not less than five thousand rupees per annum ; or

(b) whose names are entered in the Durbar list prepared under the authority of the Local Government ; or

(c) who hold the office of Honorary Magistrate

III. *The Muhammadan Community* (5) :—

(i) The Muhammadans in Madras who vote for an additional Member must be those who

(a) are landholders possessing an annual income from land situated within the Presidency of Fort St. George of not less than three thousand rupees ; or

(b) pay on their own account income-tax on an income of not less than six thousand rupees ; or

(c) are members of the Legislative Council of the Governor of Fort St. George ; or

(d) are Ordinary or Honorary Fellows of the University of Madras ; or

(e) are holders of any title conferred or recognised by the Government, or are members of the order of the Star of India or the Indian Empire or holders of the Kaiser-i-Hind Medal ; or

(f) are in receipt of pensions for service as Gazetted or Commissioned Officers of Government.

(ii) The Member to be elected in Bombay for Muhammadan Community is elected by the Muhammadan non-officials on the Provincial Council.

(iii) The Muhammadans who vote for a Member in Bengal must be those who

(a) are members of the Legislative Council of the Lieutenant-Governor of Bengal ; or

(b) holders of any title conferred or recognised by the Government, or are members of the Order of the Star of India or of the Order of the Indian Empire or holders of the Kaiser-i-Hind Medal ; or

(c) are Ordinary or Honorary Fellows of the University of Calcutta ; or

(d) own land in respect of which land revenue amounting to not less than seven hundred and fifty rupees is payable per annum ; or

(e) own land in respect of which road and public works cesses amounting to not less than one hundred and eighty-seven rupees, eight annas, are payable per annum to Government either directly or through a superior landlord ; or

(f) pay on their own account income-tax on an income of not less than six thousand rupees per annum ; or

(g) are in respect of pensions for service as Gazetted or Commissioned Officers of the Government.

(iv) The Muhammadans who vote in the United Provinces for an additional Member must

(a) own land in respect of which land revenue amounting to not less than ten thousand rupees is payable per annum, or

(b) own land free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same either taken by itself or in addition to land revenue payable in respect of other land by such owners, amounts to not less than ten thousand rupees per annum, or

(c) pay on their own account income-tax on an income of not less than ten thousand rupees per annum, or

(d) are Members of the Legislative Council of the United Provinces of Agra and Oudh, or

(e) are Ordinary or Honorary Fellows of the University of Allahabad ; or

(f) are trustees of the Mahomedan Anglo-Oriental College, Aligarh ; or

(g) are holders of any title conferred or recognised by the Government or are members of the Order of the Star of India or the Order of the Indian Empire, or holders of the Kaiser-i-Hind Medal; or

(h) are in receipt of pension for service as Gazetted or Commissioned Officers of the Government; or

(i) are Assistant Collectors, Honorary Magistrates or Honorary Munsiffs.

(v) The Muhammadans who vote for a member in Eastern Bengal and Assam must be those who

(a) hold a title recognised or conferred by the Government of India or are members of the Order of the Star of India, or of the Order of the Indian Empire, or are holders of the Kaiser-i-Hind Medal; or

(b) Honorary or Ordinary Fellows of the University of Calcutta; or

(c) hold in their own right as proprietors or permanent tenure-holders, one or more estates or shares of estates or one or more tenures held direct from the zamidars or shares of such tenures in respect of which land revenue amounting to not less than seven hundred and fifty rupees or cess amounting to not less than one hundred and eighty-seven rupees and eight annas is payable annually; or

(d) have during the financial year immediately preceding the commencement of the election individually paid income-tax in respect of an annual income of not less than six thousand rupees; or

(e) are in receipt of pensions for service as Gazetted or Commissioned Officers of Government.

[It is provided that no elector shall have more than one vote though he may possess more than one of the qualifications described above].

IV. *The Chambers of Commerce* (2) :  
 One Member is elected by the members of each of the Chambers of Commerce of Bengal and Bombay in such manner as a Commissioner for the Port of Calcutta or Trustee for the Port of Bombay is for the time being elected by the members of the respective Chambers.

[Any person not ineligible for election under the Regulations and whose name is on the electoral roll or who is a member of the Chamber as the case may be, is eligible for nomination or election as case may be in the case of II, III and IV].

(iii) **The Provincial Legislative Councils**  
**MADRAS.**

The following is the constitution of the Legislative Council of the Governor of Fort St. George as approved by the Secretary of State for India:—

Ex-officio Members of the Executive Council	2
Advocate-General ... ..	1
Additional:—	
A—Nominated Members, not more than 16 to be officials and one to be a representative of Indian Commerce ... ..	23
B—Nominated experts who may be either officials or non-officials... ..	2
C—Elected Members (19).	
(i) by the Corporation of Madras ...	1
(ii) „ Municipalities and District and Taluk Boards ... ..	8
(iii) „ the University of Madras ... ..	1
(iv) „ Zemindars ... ..	2
(v) „ the Land-holders other than Zemindars	2
(vi) „ the Mahammadan Community ...	2
(vii) „ the Madras Chamber of Commerce.	1
(viii) „ the Madras Trades Association ...	1
(ix) „ the Planting Community ... ..	1

Total ... 47

or including the Governor ... 48

I. Of the eight Members to be elected by Municipalities and District and Taluk Boards, it is provided in Schedule III of the Madras Regulations that one shall be elected for each of the following groups of districts by the Municipal Councils and District and Taluk Boards therein :

- (1) Ganjam and Vizagapatam;
- (2) Godaveri, Kistna and Guntur ;
- (3) Nellore, Chingleput and North Arcot;
- (4) Cuddapah, Kurnool, Bellary and Anantapur ;
- (5) Salem, Coimbatore and the Nilgiris;
- (6) South Canara and Malabar (including Anjengo and Tangasseri);
- (7) Tanjore, South Arcot and Trichinopoly;
- (8) Madura and Tinnevely.

II. Of the two Members to be elected by Zemindars, it is provided that one shall be elected for each of the following groups of districts :—

*Group (1)*—Ganjam, Vizagapatam, Godaveri, Kistna, Guntur, Nellore, North Arcot, Cuddapah, Kurnool, Bellary and Anantapur.

*Group (2)*—Madras, Chingleput, Salem, Coimbatore, South Canara, Malabar (including Anjengo and Tangasseri), the Nilgiris, South Arcot, Tanjore, Trichinopoly, Madura and Tinnevely.

III. Of the two Members to be elected by landholders other than Zemindars, it is provided that one shall be elected for each of the groups of districts divided as for election by Zemindars mentioned above.

IV. Of the two Members to be elected by the Muhammadan community, it is provided that one shall be elected for each of the following groups of districts :—

*Group (1)*—Ganjam, Vizagapatam, Godaveri, Kistna, Guntur, Nellore, Madras, Chingleput

North Arcot, Cuddapah, Kurnool, Bellary and Anantapur.

*Group (2)*—Salem, Coimbatore, South Canara, Malabar (including Anjengo and Tangasseri), the Nilgiris, South Arcot, Tanjore, Trichinopoly, Madura, and Tinnevelly.

V. For the election of one Member to represent the Planting Community, it is provided that each Planters' Association, affiliated to the United Planters' Association of Southern India, shall, at a meeting, elect one candidate for election to the Madras Legislative Council. The Secretary to the United Planters' Association of Southern India, on receiving the reports from the Secretaries of affiliated Associations about the result of the voting, should give to the vote of each of the affiliated Associations the value assigned to it by the rules framed by the United Planters' Association of Southern India to regulate voting at general meetings of that body and should determine which candidate has received the largest number of votes as so valued. In the case of an equality of votes, the Chairman, or the Vice Chairman as the case may be, shall have a casting vote.

### BOMBAY.

The following is the constitution of the Legislative Council of the Governor of Bombay:—

Ex-officio Members of Executive Council	...	...	...	1
Advocate-General	...	...	...	2
Additional :—				
A—Nominated Members, not more than 14 to be officials	...	...	...	21
B—Nominated experts who may be either officials or non-officials	...	...	...	2
C—Elected Members (21) :—				
(i) by the Municipal Corporation of city of Bombay	...	...	...	1

(ii) by the University of Bombay	...	1
(iii) „ the Sardars of the Deccan	...	1
(iv) „ the Sardars of Gujarat	...	1
(v) „ the Jagirdars and Zemindars of Sind.	...	1
(vi) „ the Municipalities	... ..	4
(vii) „ the District Local Boards	...	4
(viii) „ the Muhammadan Community...	...	4
(ix) „ the Indian Commercial Community	...	1
(x) „ the Bombay Chamber of Commerce.	...	1
(xi) „ the Karachi Chamber of Commerce.	...	1
(xii) „ the Millowners' Association of Bombay and the Millowners' Associa- tion of Ahmedabad, alternately	...	1
<b>Total.</b>		<b>47</b>

Or, including the Governor ... .. 48

I. Of the four Members to be elected by the Municipalities and four by District Local Boards, it is provided that one shall be elected by each of the following groups of Municipalities or District Local Boards :—

The Municipalities of the Southern, Northern, Central and Sind Divisions each one 4

The District Local Boards of the Southern Northern, Central and Sind Divisions, each one ... .. 4

II. Four Members are to be elected by the Muhammadan Community for each of the Southern, Northern, Central Divisions and the City of Bombay.

III. The Members to represent the Indian Commercial Community are to be elected by twenty delegates of the Indian Merchants' Chamber and the Bombay Native Piecegoods Merchants' Association. Each of the above bodies elects ten delegates who are to send their votes to the Returning Officer.

[Any person not ineligible for election under

the Regulations, who is or has been a member of one of the above bodies for at least one year at the date of the meeting at which delegates are elected by that body, may be nominated as a candidate for election].

### BENGAL.

The following is the constitution of the Legislative Council of the Lieutenant-Governor of Bengal :—

A—Nominated Members, not more than 17 to be officials and one to be representative of the Planting Community and one of Indian Commerce ... ..	22
B—Nominated experts who may be either officials or non-officials ... ..	2
C—Elected Members (26) :—	
i. by the Corporation of Calcutta ...	1
ii. „ the University of Calcutta ...	1
iii. „ the Municipal Commissioners ...	6
iv. „ the District Boards ... ..	6
v. „ the Landholders ... ..	5
vi. „ the Muhammadan Community ...	4
vii. „ the Bengal Chamber of Commerce.	2
viii. „ the Calcutta Trades Association ...	1
Total ...	50

Or including the Lieutenant-Governor ... 51

I. Of the six Members to be elected by Municipal Commissioners, it is provided that

(a) One shall be elected by the Municipal Commissioners of each of the following five divisions, namely, the Presidency, Burdwan, Patna, Tirhut and Bhagalpur ; and

(b) One shall be elected alternately by the

Municipal Commissioners of the Chota Nagpur and Orissa Divisions, the former Commissioners having the first right of election.

The Municipal Commissioners who take part in elections, should represent the Municipalities notified by the Local Government in the local Gazette as having a local income amounting to not less than Rs. 5,000 per annum, the words 'local income' being defined as the total income of a Municipality excluding the opening balance of the Municipal Fund, grants and contributions, and receipts under the Account Heads, "Extraordinary" and "Debt."

II. Of the six Members to be elected by the District Boards, it is provided that the District Boards of each of the Presidency, Burdwan, Patna, Tirhut and Bhagalpur Divisions shall elect one member; the District Boards of the Chota Nagpur and Orissa Divisions, electing each one Member alternately, the latter Boards having the first right of election.

III. Of the five Members to be elected by the landholders, it is provided that two Members shall be elected by the landholders of the Presidency and Burdwan Divisions forming one group, two by the landholders of the Patna, Tirhut and Bhagalpur Divisions forming one group and one by the landholders of the Orissa and Chota Nagpur Divisions forming one group.

IV. Of the four Members to be elected by the Muhammadan Community, two Members shall be elected for each of the following electoral areas:—

(1) The Presidency, Burdwan and Orissa Divisions:

(2) The Patna, Tirhut, Bhagalpur and Chota Nagpur Divisions.

### THE UNITED PROVINCES

The constitution of the Legislative Council of the Lieutenant Governor of the United Provinces of Agra and Oudh is as follows:—

A.—Nominated Members not more than 20 to be officials, and one to be a representative of Indian Commerce	...	26
B <sup>1</sup> .—Nominated experts who may be either officials or non-officials...	...	2
C.—Elected Members (20):—		
(i) by the Allahabad University	...	1
(ii) „ the large Municipalities in rotation.		4
(iii) „ the District Boards and smaller Municipalities	... ..	8
(iv) „ the Landholders	... ..	2
(v) „ the Muhammadan Community	...	4
(vi) „ the Upper India Chamber of Commerce	... ..	1
	Total	48

Or, including the Lieutenant-Governor ... 49

I. The four Members to be elected by the large Municipalities are to be elected alternately by the four Municipal Boards forming each of the following groups:—

*Group (1)*—the Municipal Boards of Meerut, Agra, Allahabad and Lucknow; and

*Group (2)*—the Municipal Boards of Bareilly, Cawnpore, Benares and Fyzabad.

II. Of the eight Members to be elected by the District Boards and smaller Municipalities, it is provided that one Member shall be elected for each of the Meerut, Agra, Rohilkhand, Allahabad, Benares, Gorakhpur, Lucknow and Fyzabad Divisions.

III. The Members to be elected by the landholders are to be elected, one by landholders of the Province of Agra and the other by landholders of the Province of Oudh.

IV. The four Members to be elected for the Muhammadan community are to be elected for each of the following four groups:

- (1) the Meerut and Agra Divisions;
- (2) the Rohilkhand and Kumaun Divisions;
- (3) the Lucknow and Fyzabad Divisions; and
- (4) the Allahabad, Benares and Gorakhpur Divisions.

EASTERN BENGAL AND ASSAM

The following is the constitution of the Legislative Council of the Lieutenant-Governor of Eastern Bengal and Assam :—

A—Nominated Members not more than 17 to be officials, and one to be a representative of Indian Commerce ... ..	22
B—Nominated experts who may be either officials or non-officials ... ..	2
C—Elected Members (18) :—	
(i) by the Municipal Commissioners ...	3
(ii) „ the District and Local Boards ...	5
(iii) „ the Land-holders ...	2
(iv) „ the Muhammadan Community ...	4
(v) „ the Tea interest... ..	2
(vi) „ the Jute interest... ..	1
(vii) „ the Commissioners of the Port of Chittagong ... ..	1

Total ... 42

Or including the Lieutenant-Governor ... 43

I. It is provided that, for the purpose of electing three Members by the Municipal Commissioners, the Municipalities, possessing an annual

income of not less than Rs. 5,000, shall be formed in the following four Groups :—

*Group (1)*—The Municipalities in the Dacca Division ;

*Group (2)*—The Municipalities in the Rajshahi Division ;

*Group (3)*—The Municipalities in the Chittagong and Surma Valley Divisions; and

*Group (4)*—The Municipalities in the Assam Valley Divisions.

The Commissioners in groups (1) and (2) are to elect each one Member. The Commissioners in group (3) and (4) are to elect the third Member alternately.

II. The five Members to be elected by the District and Local Boards are to be elected one each by the District Boards of each Division of the Province. [The term 'District Board', includes a Local Board in the District of the Surma valley and Assam valley Divisions.]

III. The two Members to be elected by the Land-holders are to be elected one by land-holders of the Dacca and the Rajshahi Divisions alternately and the other by the land-holders of the Chittagong and the Surma Valley and Hill Districts (excluding the Hill Districts) Divisions alternately.

But the landholders of the Dacca and Chittagong Divisions respectively are to have the first right of election. The District of Goalpara is deemed to be included in the Surma Valley and Hill Districts Division.

IV. Of the four Members to be elected for the Muhammadan Community it is provided that one Member shall be elected for each of the following Divisions:—

(1) The Dacca Division ;

- (2) The Chittagong Division (excluding the Chittagong Hill Tracts) ; and
  - (3) the Rajshahi Division;
- and one Member shall be alternately elected for
- (4) the Surma Valley and Hill Districts Division (excluding the Hill Tracts);
  - (5) the Assam Valley Division (excluding the Garo Hill Districts).

It is also provided that the Surma Valley and Hill Districts Division shall have the first right of election.

V. The two Members of the Tea Interest are to be elected by the Assam Branch of the Indian Tea Association, the Surma Valley Branch of the Indian Tea Association and the Duars' Planters' Association.

The first branch has four votes, the second four and the Duars' Planters' Association two and no Association can give to one candidate more than half the number of votes allotted to it.

Any person not ineligible for election under the Regulations may be nominated as a candidate.

Each Association nominates one Member.

Nominations are made and votes given by each Association in the manner laid down in the rules of the Association.

If there is an equality in the number of votes, it is provided that votes shall be taken again under the same procedure to determine which of the candidates shall be declared to be elected.

VI. The Member for the Jute Interest is to be elected by the members of the Naraingunj Chamber of Commerce.

### THE PUNJAB

The following is the constitution of the Legislative Council of the Lieutenant-Governor of the Punjab :—

A—Nominated Members, not more than 10 to be officials—	...	19
B—Nominated experts, who may be either officials or non-officials—	...	2
C—Elected Members (5) :—		
(i) by the Punjab University ...	...	1
(ii) „ the Municipal and Cantonment Committees—	...	3
(iii) „ the Punjab Chamber for Commerce	...	1
	Total ...	26

Or, including the Lieutenant-Governor ...—27

The three Members for the Municipal and Cantonment Committees are to be elected by the following groups of Municipal and Cantonment Committees :—

(1) The Cis—Sutlej group consisting of the Municipal Committees of Delhi, Simla, Ambala, Ludhiana, and Ferozepore, and the Cantonment Committees of Ambala and Ferozepore ;

(2) The Central group consisting of the Municipal Committees of Lahore, Amritsar, and Jullundur, and the Cantonment Committees of Lahore and Jullundur ; and

(3) The Western group consisting of the Municipal Committees of Multan, Rawalpindi and Sialkot and the Cantonment Committees of Multan, Rawalpindi and Sialkot.

#### BURMA

The following is the constitution of the Legislative Council of the Lieutenant-Governor of Burma :—

(A)—Nominated officials	...	6
(B)—Nominated non-officials (8) :—		
(i) to represent the Burmese Population...	...	4
(ii) to represent the Indian Community...	...	1
(iii) to represent the Chinese community ...	...	1
(iv) to represent other interests	...	2

(C)—Nominated experts who may be either officials or non-officials	...	2
(D)—Elected by the Burma Chamber of Commerce	...	1
		Total. 17

Or, including the Lieutenant-Governor... 18

[There is no schedule to the Regulations for the nomination and election of Members of the Legislative Council of the Lieutenant-Governor of Burma. There is only one elected Member and he is sent by the Burma Chamber of Commerce. It is provided in the Regulations that the candidate to be eligible for election must be a member of the Chamber at the date of election. The election is made in the same manner as a Commissioner for the Port of Rangoon is for the time being elected by the Chamber.]

#### (iv) Electoral Groups and Electoral Qualifications

[It is provided in the case of all electoral groups that a candidate for election by each group should, in addition to the qualifications referred to below, not be ineligible for election under the Regulations.]

##### 1.—THE MUNICIPAL CORPORATIONS

*Electoral groups.*—The Corporations of Madras, Bombay and Calcutta elect one Member each to the Provincial Legislative Councils of Madras, Bombay and Bengal respectively.

*Qualifications of electors.*—The electors should be members of the respective Corporations.

*Qualifications of candidates.*—In the case of Madras and Calcutta, any person who is qualified to vote as a Commissioner of the Corporation is eligible to be elected. In the case of Bombay, any person who (a) is, at the

date of the election, a member of the Municipal Corporation of the City of Bombay or (b) has served at least for three years as a member of that Corporation, is eligible for election.

## II.—THE UNIVERSITIES.

The Universities of Madras, Bombay, Calcutta Allahabad and the Punjab elect one Member each to the respective Provincial Legislative Councils.

The electors as well as persons eligible to be elected, should be members of the respective Senates or Honorary Fellows of the respective Universities, having a place of residence in India.

## III.—THE LOCAL AND MUNICIPAL BODIES

### MADRAS

*Electoral groups* :—Eight Members are to be elected, one for each of the following eight groups :—(1) Ganjam and Vizagapatam; (2) Godavari, Kistna and Guntur; (3) Nellore, Chingleput and North Arcot; (4) Cuddapah, Kurnool, Bellary and Anantapur; (5) Salem, Coimbatore and the Nilgiris; (6) South Canara and Malabar (including Anjengo and Tangasseri); (7) Tanjore, South Arcot and Trichinopoly and (8) Madura and Tinnevely.

*Qualifications of electors* :—The election is made by the non-official members of the Municipal Councils and District and Taluq Boards within the electoral area concerned whose appointments as such members have been notified in the Local Official Gazette prior to the date on which they record their votes.

*Qualifications of candidates* :—Candidates, to be eligible for election, must be qualified to vote.

### BOMBAY

*Electoral groups* :—Eight Members are elected, one for each of the following: Municipalities

of the Southern, Northern, Central and Sind Divisions (4 Members); and District Local Boards of the Southern, Northern, Central and Sind Divisions (4 Members).

*Electoral Qualifications* :—(1) The Member to be elected by each of the groups of Municipalities or District Local Boards is elected by the votes of delegates to be selected from among themselves in the manner described below, by the non-official Members of all the Municipalities or District Local Boards of the group.

(2) The number of delegates which Municipalities or District Local Boards are entitled to select is in accordance with the following scale, namely:—

*Municipalities*

	Number of delegates.
Where the population of the Municipality.—	
exceeds 5,000, but does not exceed 10,000    ...    ...    ...    ...	1
do. 10,000 do 20,000    ...	2
and for every 10,000 or part there- of in excess of 20,000    ...    ...	1

*District Local Boards*

	Number of delegates.
Where the population of the district—	
does not exceed 1,00,000    ...    ...	1
where it exceeds 1,00,000 but, does not exceed 2,00,000    ...    ...	2
and for every 1,00,000 or part thereof in excess of 2,00,000    ...	1

(3) The population of each Municipality or district is deemed to be that stated in the returns of the most recent official census.

*Qualifications of candidates* :—Candidates to be eligible for election must have a place of residence in the group for which they seek election and either are non-official members or have served at least three years as such members of any Municipality or District Local Board in those groups.

#### BENGAL

##### (i) *Municipalities.*

*Electoral groups* :—The six Members are to be elected :—

(a) one each by the Municipal Commissioners of the following five divisions, namely, the Presidency, Burdwan, Patna, Tirhut and Bhagalpur Divisions; and

(b) one alternately by the Municipal Commissioners of the Chota Nagpur and Orissa Divisions, the former Commissioners having the first right of election :

Provided that the right of election conferred on Municipal Commissioners is exercised only by those Commissioners who represent Municipalities which are notified from time to time by the Local Government in the Local Official Gazette as having a local income amounting to not less than five thousand rupees per annum.

*Qualifications of voters* :—(1) The election is made by the votes of delegates to be selected, in the manner described below by the Commissioners of the Municipalities in the said Division other than (a) the Chairman, if an official, and (b) the Commissioners appointed ex-officio.

(2) Each delegate has the number of votes assigned to the Municipality by the Commis-

sioners of which he is selected in accordance with the following scale, namely :—

Municipalities with a local income of	Rs.	Rs.	Number of votes for each delegate.
... 5,000 and less than	10,000	10,000	1
Do. ... 10,000 do	20,000	20,000	2
Do. ... 20,000 do	50,000	50,000	3
Do. ... 50,000 do	1,00,000	1,00,000	4
and for every additional Rs. 50,000 or part thereof in excess of 1,00,000			1

(3) The number of votes to which each delegate is entitled on the said scale will be notified from time to time by the Local Government in the Local Official Gazette.

*Qualifications of candidates* :—Candidates to be eligible for election must have a place of residence in the division for the representation of the Municipalities of which they are candidates, if they are Commissioners of any one of such Municipalities, other than (a) the Chairman, if an official, or (b) a Commissioner appointed ex-officio or have for any period aggregating three years been Commissioners.

(ii) *District Boards*

*Electoral groups* :—The six Members are to be elected :—

(a) one each by the District Boards of each of the following five Divisions, namely, the Presidency, Burdwan, Patna, Tirhut and Bhagalpur Divisions, and

(b) one alternately by the District Boards of the Chota Nagpur and Orissa Divisions, the latter Boards having the first right of election.

*Qualifications of electors* :—(1) The election is made by the votes of delegates to be selected in the manner described below by the members of the District Boards of the said Divisions other

than (a) the Chairman, if an official, and (b) the members appointed ex-officio.

(2) Each delegate has the number of votes assigned to the District Board by which he is selected in accordance with the following scale :—

District Boards with an annual income (exclusive of opening balances and receipts from loans) ... ..	Rs.	...	...	of less than	Rs.	Number of votes for each delegate.
				75,000 ...		1
Do. do. ...exceeding 75,000				but less than 1,25,000 ...		2
and for every additional part thereof in excess of				Rs. 50,000 or 1,25,000 ...		1

(3) The number of votes to which each delegate is entitled on the said scale will be notified from time to time by the Local Government in the Local Official Gazette.

*Qualifications of candidates* :—Candidates to be eligible for election must have a place of residence in the Division for the representation of the District Boards of which they are candidates, if they are members of any one of such District Boards, other than (a) the Chairman, if an official, or (b) a member appointed ex-officio or have any period aggregating three years been members.

THE UNITED PROVINCES

(i) *The Large Municipalities*

*Electoral groups and qualifications for electors* :—

For the purpose of the election of the four Members, two groups of Municipal Boards have been formed, namely :—

*Group (1)*—consisting of the Municipal Boards of Meerut, Agra, Allahabad and Lucknow; and

*Group (2)*—consisting of the Municipal Boards of Bareilly, Cawnpore, Benares and Fyzabad.

The four Members above referred to are elected alternately by the four Municipal Boards forming each of the said groups, the Municipal Boards in group (1) having the first right of election.

The members, other than (a) the Chairman, if an official, and (b) the members appointed ex-officio, of each of the four Municipal Boards forming a group, elect one member.

*Qualifications of candidates:*—Any person having a place of residence in the Municipality for the representation of which he a candidate is eligible for election if he—

(a) is qualified as an elector in such Municipality; or

(b) has served as a member of the Municipal Board of such Municipality for a period of not less than three years.

(ii) *The Smaller Municipalities and Boards.*

*Electoral groups:*—The eight Members are elected one for each of the Meerut, Agra, Rohilkhand, Allahabad, Benares, Gorakhpur, Lucknow and Fyzabad Divisions.

*Qualifications of electors:*—The Members are elected by the votes of delegates, to be selected by the Members other than (a) the Chairman, if an official, and (b) the Members appointed ex-officio, of all District Boards and such Municipal Boards within the said Divisions as are established for towns forming district head-quarters or containing more than twenty thousand inhabitants according to the returns of the most recent official census, or are named in the notification of the Lieutenant-Governor of the United Provinces of Agra and Oudh No. 44-C/III-807-A, dated the 19th day of July, 1899.

Provided that nothing in this rule is deemed to apply to any Municipal Board which;—

(a) at the time of holding an election under this Schedule to fill a casual vacancy, is already represented by a Member elected for the larger Municipalities, or

(b) at the time of holding an election to fill a vacancy other than casual, is entitled to elect a Member for the larger Municipalities.

The number of delegates which such District and Municipal Boards are entitled respectively to select is in accordance with the following scale :—

		Delegates.
For districts with a population		
of under	... 500,000 ...	2
Do.	from 500,000 to 750,000 ...	3
Do.	... 750,000 to 1,000,000 ...	4
Do.	... 1,000,000 to 1,250,000 ...	5
Do.	... 1,250,000 to 1,500,000 ...	6
Do.	over 1,500,000 ...	6

		Delegates.
For towns containing		
not more than 20,000 inhabitants	... ..	1
Do. between 20,000 and 50,000 inhabitants	... ..	2
Do. 50,000 and 100,000	do. ...	3
Do. over 100,000	do. ...	4

*Qualifications of candidates* :—Any person having a place of residence in the Division for the representation of which he is a candidate is eligible for election if he—

(a) is a member of any District or Municipal Board in that Division; or

(b) owns land in respect of which land-revenue amounting to not less than three thousand rupees per annum is payable ; or

(c) owns land free of revenue if the land-revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with land-revenue payable in respect of other land by such owner,

amounts to not less than three thousand rupees per annum ; or

(d) pays on his own account income-tax on an income of not less than three thousand rupees; or,

(e) owns land and pays income-tax, when the sum of land-revenue payable annually by him together with the land-revenue nominally assessed on land owned by him, and the income on which he pays income-tax, is not less than three thousand rupees.

#### THE PUNJAB

*Electoral Groups* :—The three Members are elected one for each of the three following groups :—

(1) The Cis-Sutlej group ; (2) the Central group; and (3) The Western group of Municipal and Cantonment Committees.

*Qualifications of Electors*:—Members of these Committees, other than those appointed ex-officio, are entitled to vote for the elections.

*Qualifications of Candidates*:—Any person having a place of residence in the group for which he seeks election is entitled to be a candidate for election if he is, or has served for at least three years, as a member of a Municipal or Cantonment Committee belonging to that group.

#### EASTERN BENGAL AND ASSAM

##### (i) *Municipal Commissioners.*

*Electoral groups and qualifications of electors*:—For the purpose of the election of the three Members, the Municipalities possessing an annual local income of not less than five thousand rupees are formed in the following four groups:—

*Group (1)*—The Municipalities in the Dacca Division.

*Group (2)*—The Municipalities in the Rajshahi Division.

*Group (3)*—The Municipalities in the Chittagong and Surma Valley Divisions.

*Group (4)*—The Municipalities in the Assam Valley Division.

The Commissioners, other than the Chairman, if an official, and the members appointed ex-officio, of the Municipalities in groups (1) and (2) elect each one Member.

The Commissioners other than the Chairman, if an official, and the members appointed ex-officio, of the Municipalities in groups (3) and (4) elect the third member alternately, the Commissioners of the Municipalities in group (4) having the first right of election.

The number of votes which the Commissioners of each Municipality are entitled to give is regulated by the local income possessed by it according with the following scale:—

	Votes.
Municipalities with an annual local income of Rs. 5,000 and less than Rs. 10,000...	1
Do Rs. 10,000 and less than Rs. 20,000...	2
Do Rs. 20,000 and less than Rs. 50,000...	3
Do Rs. 50,000 and less than Rs. 80,000...	4
and for every additional Rs. 30,000 or part thereof in excess of Rs. 80,000 ... ..	1

#### (ii) *District and Local Boards*

*Electoral Groups*:—The five Members are elected, one each by the District Boards of each Division of the Province.

*Qualifications of Electors*:—The election is made by the votes of the Members of the District Boards in the division other than (a) the Chairman, if an official and (b) the Members appointed ex-officio.

The number of votes which the Members of each District Board are entitled to give is regula-

ted by the ordinary income (which is taken to be the total income of the Board, excluding the opening balance, and entries under the account head, "Debt") possessed by it as follows:—

One vote, if the ordinary income of the Board does not exceed Rs. 1,00,00, and one additional vote for every additional Rs. 1,00,000 or portion thereof.

*Qualifications of Candidates* :—Any person who has a place of residence within the division and such practical connection with it as qualifies him to represent it may be nominated as a candidate for election, if he—

- (a) is a member of any District Board in that division; or
- (b) has served as a member of a District Board within that division for a period of not less than three years ; or
- (c) is entered in the electoral roll of landholders entitled to elect a Member or Members for the Legislative Council of the Lieutenant-Governor of Eastern Bengal and Assam.

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#### IV—THE ELECTORATE OF THE LANDED CLASSES

##### MADRAS

##### 1. *Zemindars* :—

*Electoral Groups*—Two Members are elected to the Provincial Legislative Council, one each by two groups of districts.

*Qualifications of Electors* :—The election is made by all Zamindars qualified to vote and having a place of residence within the electoral area concerned, who—

- (a) possess an annual income, calculated according to prescribed rules of not less

than three thousand rupees derived from an estate situated within the Presidency of Fort St. George, or

- (b) receive from Government a malikhana allowance, the annual amount of which is not less than three thousand rupees.

*Qualifications of Candidates:*—Any person whose name appears on the electoral roll is eligible for election.

- ii. *Landholders other than Zemindars :—*

*Electoral groups:*—Two Members are elected, one each by two groups of districts.

*Qualifications of Electors.*—The election is made by all landholders other than Zamindars qualified to vote and having a place of residence within the electoral area concerned who possess an annual income, (calculated according to prescribed rules) of not less than three thousand rupees derived from land within the Presidency of Fort St. George, and not forming a permanently settled estate.

*Qualifications of Candidates :*—Any person whose name is on the electoral roll is eligible for election.

#### BOMBAY

i. *One Member by the Sardars of the Deccan :—*  
The election of one Member by this body is made by all persons who are qualified to vote and whose names appear in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department No. 2363, dated 23rd day of July 1867. Candidates to be eligible of election must be electors themselves.

- ii. *One Member by the Sardars of Gujarat :—*

The election by this body is made by all persons who are qualified to vote and whose names appear in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department No. 6265, dated

the 21st day of September 1909. Candidates to be eligible for election must be electors themselves.

iii. *One Member by the Jagirdars and Zemindars of Sind.*

*Qualifications of Electors:*—The election of the Member is made by all persons qualified to vote who are—

- (a) Jagirdars of the first or second class, or
- (b) Zamindars who for the three years preceding the preparation of the electoral roll have paid not less than one thousand rupees per annum as ordinary land revenue:

Provided that no elector is to have more than one vote though he may possess more than one of the qualifications above described.

*Qualifications of Candidates:*—Candidates to be eligible for election must be electors themselves.

#### BENGAL

*Electoral Groups:*—Five Members are to be elected by three electoral groups of landholders.

*Qualifications of Electors:*—The election is made by landholders qualified to vote and having a place of residence within the electoral group concerned who—

(a) pay either land revenue or road and public works cesses as follows, namely:—

(i) In the case of Group A (the Presidency and Burdwan Divisions, 2 Members) pay land revenue amounting to not less than seven thousand five hundred rupees or road and public works cesses amounting to not less than one thousand eight hundred and seventy-five rupees per annum ;

(ii) In the case of Group B (the Patna, Tirhu and Bhagalpur Divisions—2 Members), pay land revenue amounting to not less than one thousand

rupees or road and public works cesses amounting to not less than one thousand rupees per annum; and

(iii) In the cases of Group C (the Orissa and Chota Nagpur Divisions—1 Member), pay land revenue amounting to not less than six thousand rupees or road and public works cesses amounting to not less than five hundred rupees per annum; or

(b) hold titles conferred or recognised by the Government not lower in rank than that of Raja or Nawab.

Provided that no elector is to have more than one vote though he may possess more than one of the qualifications above described.

*Qualifications of Candidates* :—Candidates to be eligible for election must be electors themselves in the electoral groups in which they are qualified.

#### UNITED PROVINCES OF AGRA AND OUDH.

*Electoral Groups* :—Two Members are elected, one each by the landholders of the Province of Agra and the landholders of the Province of Oudh.

*Qualifications of Electors* :—The election is made in the Province of Agra by all persons qualified to vote and having a place of residence in the Province who—

(a) in that Province own land in respect of which land-revenue amounting to not less than five thousand rupees per annum is payable, or

(b) in that Province, own land free of land revenue if the land-revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land-revenue payable in respect of other land by such owners, amount to not less than five thousand rupees per annum, or

(c) hold the title of Maharaja, Raja or Nawab if conferred or recognised by the Government; or

(d) hold the title of Rajwar, Rao Bahadur, Rai, Bahadur, Mirza, Khan Bahadur, Chaudhri, or Dewan, if hereditary and recognised by the Government :

provided that no elector shall have more than one vote though he may possess more than one of the qualifications described above.

*Qualifications of Candidates*:—Candidates to be eligible for election must be electors themselves.

In the Province of Oudh, the election of a Member,—who should have a place of residence in the Province of Oudh, and must be a member of the British Indian Association of Oudh—is made by the British Indian Association of Oudh at an extraordinary general meeting, in the manner laid down for the time being in the bye-laws of the said Association for carrying resolutions or recording decisions upon questions of business brought before that body.

#### EASTERN BENGAL AND ASSAM

*Electoral Groups* :—Two Members are elected, one by landholders of the Dacca and the Rajshahi Divisions alternately, and the other by landholders of the Chittagong and the Surma Valley and Hill Districts (excluding the Hill Districts) Divisions alternately, the first divisions of the two groups, having the first right of election.

*Qualifications of Electors* :—The election is made by landholders qualified to vote and having a place of residence within the Division concerned, who—

(a) hold in their own right as proprietors or as permanent tenure-holders within the division one or more estates or shares of estates, or one or more tenures held direct from the Zamindar or shares of such tenures, and pay in respect thereof land-revenue or cess as follows, namely :—

(i) in the case of the Surma Valley and the Hill Districts Divisions, land-revenue amounting to not less than five hundred rupees or cess amounting to not less than one hundred and twenty-five rupees per annum ; and

(ii) in the case of the other Divisions, land-revenue amounting to not less than three thousand rupees or cess amounting to not less than seven hundred and fifty rupees per annum ;

(b) hold titles conferred or recognised by the Government, not lower in rank than that of Raja or Nawab :

provided that no elector shall have more than one vote though he may possess more than one of the qualifications above described.

## V. THE MUHAMMADAN ELECTORATES

### MADRAS

*Electoral Groups* :—Two Members are elected, one by each group of Districts referred to already.

*Qualifications of Electors* :—The election is made by all Muhammadans qualified to vote and having a place or residence within the electoral area concerned, who—

(1) are landholders possessing an annual income from land situated within the Presidency of Fort St. George of not less than five hundred rupees ; or

(2) pay on their own account income tax on an income of not less than two thousand rupees ; or

(3) are Ordinary or Honorary Fellows or registered Graduates of the University of Madras ; or

(4) are holders of any title conferred or recognized by the Government or members of the Order of the Star of India or the Order of the Indian Empire or holders of the Kaisar-i-Hine Medal ; or

(5) are in receipt of pensions for service as gazetted or Commissioned Officers of Government.

*Qualifications of Candidates* :—Any person whose name is on the electoral roll may be eligible for election.

#### BOMBAY

*Electoral groups* :—The four Members are elected, one for each of the Southern, Northern and Central Divisions and the City of Bombay.

*Qualifications of Electors* :—The election is made by all Muhammadans qualified to vote and having a place of residence in the division for which the election is being held who—

(a) hold alienated or unalienated land assessed at or of the assessable value of not less than one hundred, or in the City of Bombay of not less than two hundred, rupees ; or

(b) pay on their own account income-tax on an income of not less than one thousand rupees per annum, or in the City of Bombay, two thousand rupees per annum ; or

(c) are practising Advocates or Attorneys ; or

(d) are holders of any title conferred or recognised by the Government or are members of the Order of the Star of India or of the Order of the Indian Empire or holders of the Kaiser-i-Hind Medal ; or

(e) hold diplomas in medicine or engineering granted at least five years previously by any Institution in the British Empire recognised by the Local Government for this purpose ; or

(f) are conciliators under the Deccan Agriculturists' Relief Act, 1879 ; or

(g) are Justices of the Peace or Honorary Magistrates ; or

(h) are graduates of five years' standing of any University in the British Empire :

provided that no elector shall have more than one vote though he may possess more than one of the qualifications above described.

*Qualifications of Candidates:*—Any person whose name is on the electoral roll may be nominated as a candidate for election by the electors of the division in which he resides.

#### BENGAL

*Electoral groups:*—The four Members are elected, two for each of the following groups:—

*Group (1)* The Presidency, Burdwan and Orissa Divisions;

*Group (2)* The Patna, Tirhut, Bhagalpur and Chota Nagpur Divisions.

*Qualifications of Electors:*—The Members are elected by the votes of delegates to be selected from among themselves by all Muhammadans qualified to vote and having a place of residence in the electoral area concerned, who—

(a) hold a title recognised or conferred by the Government, or are members of the Order of the Star of India or the Order of the Indian Empire or hold a Kaisar-i-Hind Medal, or

(b) are Ordinary or Honorary Fellows of the University of Calcutta, or

(c) are Honorary Magistrates, or

(d) are graduates of ten years' standing of any University in the United Kingdom or British India, or

(e) are teachers in any institution maintained or aided by the Government or affiliated to or recognised by the University of Calcutta or recognised by the Director of Public Instruction:

provided that such teachers are not less than thirty years of age and receive a monthly salary

of fifty rupees in Calcutta, or twenty-five rupees in any place other than Calcutta, or

(f) are Registrars authorised to act under the Bengal Muhammadan Marriages and Divorces Registration Act, 1876, or

(g) own land in respect of which land-revenue amounting to not less than one hundred and twenty-five rupees in the Presidency, Burdwan, Orissa and Chota Nagpur Divisions and two hundred and fifty rupees in the Patna, Tirhut and Bhagalpur Divisions, is payable per annum, or

(h) own land in respect of which road and public works cesses amounting to not less than thirty-one rupees and four annas in the Presidency, Burdwan, Orissa and Chota Nagpur Divisions and sixty two rupees and eight annas in the Patna, Tirhut and Bhagalpur Divisions are payable per annum to Government, either directly or through a superior landlord, or

(i) pay on their own account income tax on an income of not less than two thousand rupees in the Presidency, Burdwan, Orissa and Chota Nagpur Divisions, three thousand rupees in Calcutta, as defined by or under the Calcutta Municipal Act, 1899, and four thousand rupees in the Patna, Tirhut and Bhagalpur Divisions, or

(j) are in receipt of pensions from the Government of not less than fifty rupees per mensem :

provided that no elector shall have more than one vote though he may possess more than one of the qualifications above described.

These electors of each of the districts or groups of districts select one delegate who is entitled to give the number of votes assigned below :—

*Group* (1) :—Calcutta—4 ; 24 Parganas—5 ; Nadia—1 ; Murshidabad—4 ; Jessore—2 ; Khulna—3 ; Burdwan—2 ; Birbhum—1 ; Midnapur and Bankura—1 ; Hooghly and Howrah—1 ; Cuttack Puri, Barlasore and Sambalpur—2 ; Total—26.

*Group (2)* :—Patna—5; Gaya—3; Shahbad—2; Saran and Champaran—2; Muzaffarpur—2; Darbhanga—1; Monghyr—1; Bhagalpur and Santhal Parganas—1; Purnea and Darjeeling—3; Ranchi and Palaman—1; Haaribagh, Manbhuan and Singbhum—1; Total—22.

*Qualifications of Candidates* :—Any Muhammadan may be nominated as a candidate for election if he has a place of residence in the electoral area for which he is a candidate and possesses one of the following qualifications, namely :—

(a) is a member of the Legislative Council of the Lieutenant-Governor of Bengal; or

(b) is the holder of any title conferred or recognised by the Government, or is a member of the Order of the Star of India or of the Order of the Indian Empire or the holder of a Kaiser-i-Hind Medal; or

(c) is an Ordinary or Honorary Fellow of the University of Calcutta; or

(d) owns land in respect of which land-revenue amounting to not less than seven hundred and fifty rupees is payable per annum; or

(e) owns land in respect of which road and public works cesses amounting to not less than one hundred and eighty-seven rupees and eight annas are payable per annum to Government either directly or through a superior landlord; or

(f) pays on his own account income-tax on an income of not less than six thousand rupees per annum; or

(g) is in receipt of a pension for service as a gazetted or Commissioned Officer of the Government.

#### THE UNITED PROVINCES OF AGRA AND OUDH.

*Electoral groups* :—The four Members are elected, one by the qualified electors in each of the following groups :—

- (1) The Meerut and Agra Divisions ;
- (2) The Rohilkhand and Kumaun Divisions ;
- (3) The Lucknow and Fyzabad Divisions and
- (4) The Allahabad, Benares and Gorakhpur Divisions.

*Qualifications of Electors.*—The election is made by all Muhammadans qualified to vote and having a place of residence in the United Provinces of Agra and Oudh, who—

(a) own land in respect of which land-revenue amounting to not less than three thousand rupees per annum is payable; or

(b) own land free of land-revenue if the land-revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land-revenue payable in respect of other land by such owners, amounts to not less than three thousand rupees per annum; or

(c) pay on their own account income-tax on an income of not less than three thousand rupees per annum; or

(d) are members of the Legislative Council of the Lieutenant-Governor of the United Provinces of Agra and Oudh; or

(e) are Ordinary or Honorary Fellows of the University of Allahabad; or

(f) are Trustees of the Muhammadan Anglo-Oriental College, Aligarh; or

(g) are holders of any title conferred or recognised by the Government, or are members of the Order of the Star of India or the order of the Indian Empire or holders of the Kaiser-i-Hind Medal; or

(h) are in receipt of pensions for service as gazetted or Commissioned Officers of the Government; or

(i) are Honorary Assistant Collectors, Honorary Magistrates or Honorary Munsifs; or

(j) are graduates of five years' standing of any University in the British Empire:

provided that no elector shall have more than one vote though he may possess more than one of the qualifications above described.

*Qualifications of Candidates.*—Any person whose name is on the electoral roll may be nominated as a candidate for election by the electors of the group in which he resides.

#### EASTERN BENGAL AND ASSAM

*Electoral groups:* The four Members are elected, one by the qualified electors in each of the (1) Dacca, (2) Chittagong (excluding the Chittagong Hill Tracts) and (3) Rajshahi Divisions and one alternately by the qualified electors in (4) the Surma Valley and Hill Districts Division (excluding the Hill Districts) and (5) the Assam Valley Division (excluding the Garo Hill Districts), the electors of the Surma Valley and Hill Districts Division having the first right of election.

*Qualifications of Electors:*—The election is made by the votes of delegates to be selected by Muhammadans qualified to vote and having a place of residence in the electoral area concerned, who—

(a) hold titles conferred or recognised by the Government; or

(b) hold the Kaisar-i-Hind Medal; or

(c) are members of the Order of the Star of India or the Order of the Indian Empire; or

(d) are Ordinary or Honorary Fellows of the University of Calcutta; or

(e) are Graduates of any University in the United Kingdom or British India; or

(f) are Honorary Magistrates ; or

(g) being holders of certificates of having passed the final examination of a recognised Madrassa, are teachers in any High School recognised by the Calcutta University, or any College affiliated thereto, or any Madrassa recognised by the Government, or are Registrars authorised to act under the Bengal Muhammadan Marriages and Divorces Registration Act, 1876 ; or

(h) are holders in their own right as proprietors or permanent tenure-holders within the division of one or more estates or shares of estates, or of one or more permanent tenures held direct from Zamindar, or shares of such tenures, and pay in respect thereof land-revenue or cess as follows, namely ;—

(i) in the case of the Assam Valley Division, land revenue amounting to not less than fifty rupees per annum ; and

(ii) in the other divisions, land-revenue amounting to not less than one hundred rupees, cess amounting to not less than fifty rupees per annum ;

(i) are *jotedars* in the district of Golpara paying rent amounting to not less than two hundred and fifty rupees per annum ; or

(j) pay income-tax on their own account on an income of not less than one thousand rupees per annum ; or

(k) are in receipt of pension from the Government of not less than fifty rupees per mensem ; provided that no elector shall have more than one vote though he may possess more than one of the qualifications above described.

The electors of the districts or sub-divisions are to elect the following number of delegates :—

Dacca Division :—Dacca—7 ; Mymensingh—12 ; Faridpore—5 ; Bakarganj—7 ; Total—31 ;

Chittagong Division:—Chittagong—4; Tipperah—6; Noakhali—4; Total—14;

Rajshahi Division:—Rajshahi—5; Dinajpur—4; Jalpaiguri—1; Rangpur—6; Bogra—3; Pabna—5; Malda—2; Total—26;

Surma Valley and Hill Districts Division:—Cachar—1; Sylhet—5; Total—6;

Assam Valley Division:—Gokalpura—1; Kamrup—1; Darrang—1; Norogong—1; Sibsagar—1; Lakhimpur—1; Total—6.

*Qualifications of Candidates:*—Any person whose name is on the electoral roll of the division concerned may be nominated as a candidate for election.

## VI—THE PLANTING INTEREST

### MADRAS

One Member is elected by the United Planters' Association of Southern India as already described.

### EASTERN BENGAL AND ASSAM

Two Members are elected by the Assam Branch of the Indian Tea Association, the Surma Valley Branch of the Indian Tea Association and the Duars Planters' Association as described already.

One Member is elected by the members of the Naraingunj Chamber of Commerce and any person, not ineligible under the Regulations, may be elected.

## VII—COMMERCE EUROPEAN AND INDIAN

The Chambers of Commerce of Madras, Bombay, Karachi, Bengal, Upper India, elect one Member each for the Madras, Bombay, Bengal, United Provinces Legislative Councils respectively.

The Commissioners of the Port of Chittagong elect one Member to the Legislative Council of Eastern Bengal and Assam.

The Trades' Associations of Madras and Calcutta elect one Member each to the Madras and Bengal Legislative Councils.

The Millowners' Association of Bombay and the Millowners' Association of Ahmedabad elect one member alternately to the Bombay Legislative Council.

The Indian Merchants' Chamber and the Bombay Native Piece-goods Merchants' Association elect together one member to the Bombay Legislative Council by means of delegates in a manner which has already been referred to.

#### V—RULES OF ELECTION

The rules for the nomination and election of Members to the new Councils, set out in detail in the schedules to the Regulations, generally deal with (1) definitions of such terms as 'Attesting officers,' 'Returning Officer,' 'Electoral area,' 'Zemindar' &c., (2) qualifications of electors, (3) preparation of electoral rolls, (4) revision of electoral rolls, (5) qualification and nomination of candidates, (6) scrutiny of nomination papers, (7) voting, (8) counting of votes and declaration of result, (9) publication of result and (10) appointment of dates, times and places.

#### THE ATTESTING OFFICER

The duties of the Attesting Officer are generally the attesting of the nomination papers subscribed by electors, the despatch of these papers to the Returning Officer, the delivery to each elector of a voting paper, together with an envelope at the place and time prescribed for voting for being filled in wherever voting is not done before the returning officer, the despatch of these envelopes, containing voting papers, to the Returning Officer in a sealed packet, at the close of the day appointed for the attestation of voting papers and the despatch to the same officer by registered post a list, in a prescribed form, of the electors whose voting papers he has attested.

The Attesting Officer has also, in the following cases, where voting by delegation is prescribed, to explain to the members of the body or bodies who have met in a meeting for the purpose of electing delegates, the rules that govern the election and then withdraw, namely :—

(i) Election of a Member to the Imperial Legislative Council by the District Councils and Municipal Committees in the Central Provinces, which is done by 50 delegates ;

(ii) election of six Members to the Bengal Legislative Council by Municipal Commissioners ;

(iii) election of six Members to the Bengal Legislative Council by District Boards ;

(iv) election of eight Members to the United Provinces Legislative Council by the District Boards and smaller Municipalities ;

[The other occasions where the system of voting by delegation is prescribed are :—

(v) election of eight Members to the Bombay Legislative Council by Municipalities and District Local Boards ;

(vi) election of four Members to the Bengal Legislative Council by the Muhammadan Community ;

(vii) election of four Members to the Eastern Bengal and Assam Legislative Council by the Muhammadan Community.]

#### THE RETURNING OFFICER

The duties of the Returning Officer comprise all other details connected with the elections, including the despatch of nomination papers, scrutiny of nomination papers, rejection of nomination papers whenever they are not in conformity with the prescribed rules, publication of the names and addresses of candidates duly nominated, the rejection and counting of votes, and the declaration and publication of the results. He has also, in certain cases, to publish electoral rolls.

## ELECTORAL ROLLS

In all cases where electoral rolls have to be published, they have to be published in the Local Government Gazette by the Returning Officer in a prescribed form.

Extracts from this roll have to be published in the Local District Gazettes and have to be posted in a conspicuous place in the office of the Collector or the District Magistrate, or the Deputy Commissioner as the case may be.

The electoral roll is conclusive evidence for the purpose of determining whether any person is an elector or not under the rules.

Elaborate rules are also made to determine questions as to who shall represent a joint family, joint holders of land, firms, etc. In these cases, power is given to the members to nominate one of themselves as voter and if such nomination is not made, no entry will be made in the roll in respect of the particular family, land or firm.

## REVISION OF ELECTORAL ROLLS

The electoral rolls published are subject to revision from time to time as the Local Governments may direct. The Collectors of Districts, Returning Officers, Deputy Commissioners or District Magistrates, as the case may be, may, of their own motion, and also should, on the application of any person whose name appears on the rolls, or who claims to have his name inserted therein, revise the rolls so far as they relate to their particular districts.

In the Presidency of Madras, the decisions of Collectors, in respect of electoral rolls, so far as they pertain to their respective districts, is final, whether the rolls relate to the election of Members by the landholders or the Mahammedan community to the Imperial Legislative Council, or by the Zemindars, or landholders other than Zemindars or the Mahammedan community to the Provincial Legislative Council.

In the Presidency of Bombay, in the case of election to the Local Legislative Council, an appeal lies from the Returning Officer to the Local Government regarding the electoral roll of Jagirdars and Zemindars of Sind ; but the decision of the Returning Officer is final in respect of the electoral roll of the Muhammadan community.

In the Presidency of Bengal, in the case of election to the Imperial and the Local Legislative Councils the decisions of the Returning Officer and the Commissioners of Divisions respectively regarding the electoral rolls of landholders and the Muhammadan community, are final.

In the provinces of Eastern Bengal and Assam and the United Provinces of Agra and Oudh, an appeal lies, in the matter of the electoral rolls for returning members both to the Imperial and Local Legislative Councils, in the case of landholders and the Mahammadan community, from the decision of the District Magistrates to the Commissioners of Divisions.

#### NOMINATION PAPERS

Generally speaking no person can be elected unless he has been duly nominated in the prescribed form, subscribed by two electors as proposer and seconder, the nomination paper being duly attested by the Attesting Officer generally, and the Returning Officer in a few cases. Nomination papers, which are not received by the Returning Officer before the date and time appointed for the scrutiny of nomination papers will be rejected.

On the date and at the time appointed by the Local Governments for the scrutiny of nomination papers, every candidate and his proposer and seconder may attend at the place appointed, and the Returning Officer, it is provided, should allow them to examine the nomination papers of all candidates which have been received by him.

The Returning Officer is empowered to examine the nomination papers and, either

of his own motion or on objection made, to reject any nomination paper on the ground that it does not comply with the provisions of the schedule, and his decision, which should be endorsed upon such paper, is final, subject to reversal by the Governor-General in Council in the case of elections to the Imperial Legislative Council, and the Provincial Governments in the case of elections to the Provincial Legislative Councils.

#### VOTING

If, in an electoral area, the number of candidates duly nominated is the same as the number of Members to be elected, the Returning Officer should forthwith declare such candidate or candidates to be elected.

If, however, more candidates than the number of Members required to be elected, are nominated, the Returning Officer should publish their names in the manner prescribed by the Local Governments.

As a general rule the electors desirous of voting, should attend for the purpose at such place in the district in which their names appear in the electoral roll, and on such date and at such time as may be appointed by Local Governments for this purpose. In these cases, the Attesting Officer should deliver to each elector a voting paper in the prescribed form in which the names of the candidates will be entered, and also an envelope for enclosing the same. The elector should then, before the presence of the Attesting Officer, or in a few cases, before the Returning Officer, sign the declaration regarding his identity, which the Attesting Officer should attest. The elector then should proceed to a place screened from observation, which should be provided by the Attesting Officer, and there mark his vote on the voting paper according to the instructions. The elector should then place the voting paper

on the envelope and after closing it, deliver it to the Attesting Officer. It is provided that neglect on the part of the elector to comply with any of these instructions will render the vote invalid.

The Attesting Officer should, at the close of the day appointed for the attestation of voting papers, or at the close of the day appointed as the latest date for the attestation of voting papers, despatch all the envelopes so delivered to him to the Returning Officer by registered post in a packet securely sealed with his official seal. He should also send to the Returning Officer, on the following day, by registered post, a list of the electors whose voting papers he has attested.

#### COUNTING OF VOTES AND DECLARATION OF

#### RESULT

The following are the general rules which govern the counting of votes and declaration of result :—

On receiving the voting papers, the Returning Officer shall examine them to see whether they have been correctly filled up.

The Returning Officer shall endorse "rejected" on any voting paper which he may reject and mark "discarded" against any vote which he may discard on the ground that it does not comply with the instructions on the voting paper.

The Returning Officer shall then fold the lower portion of every paper, whether valid or invalid, along the dotted line on the back, so as to conceal the names of the delegate and the Attesting Officer, and shall seal down the portion thus folded with his official seal.

The Returning Officer shall attend for the purpose of counting the votes on such date and at such time and place as may be appointed by the Local Government in this behalf.

Every candidate may be present in person, or send a representative, duly authorised by him in writing, to watch the process of counting.

The Returning Officer shall show the voting papers sealed to the candidates or their representatives.

If an objection is made to any voting paper or vote on the ground that it does not comply with the instructions on the voting paper or to the rejection by the Returning Officer of a voting paper or the discarding by him of any vote, it shall be decided at once by the Returning Officer whose decision shall be final, subject to reversal by the Local Government in the event of the election being questioned under Regulation XVI.

In such cases, the Returning Officer shall record on the voting paper the nature of the objection and his decision thereon.

When the counting of votes has been completed, the Returning Officer shall forthwith declare the candidate or candidates, to whom the largest numbers of votes have been given to be elected.

When an equality of votes is found to exist between any candidates and the addition of a vote will entitle any of the candidates to be declared elected, the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine.

Upon the completion of the counting and after the result has been declared by him, the Returning Officer shall seal up the voting papers and all other documents relating to the election, and shall retain the same for a period of six months, and thereafter cause them to be destroyed unless otherwise directed by an order of competent authority.

## PUBLICATION OF RESULT

The Returning Officer should without delay report the result of the election to the Local Government, or the Secretary, in the Legislative Department, of the Government of India, as the case may be, and the name of the candidate or candidates elected should be published in the Provincial official Gazette or the *Gazette of India* as the case may be.

## APPOINTMENT OF DATES, TIMES AND PLACES.

The Local Government should appoint, and notify, in such manner as it thinks fit, such date and, if necessary, such time and place as it may think suitable, for each of the following proceedings, namely :--

- (a) the publication of the electoral rolls ;
- (b) the attestation of nomination papers ;
- (c) reception by the District Magistrate of nominations ;
- (d) the examination and counting of votes ;
- (e) the scrutiny of nomination papers ;
- (f) the attestation of voting papers ; and
- (g) the counting of votes.

In the case of elections by the Universities of Madras, Bombay, Calcutta, Allahabad and the Punjab, and the Corporation of Madras, the electors may either attend the prescribed place at the appointed time, to record their votes, or they may fill in the voting papers themselves in the prescribed manner and send them by registered post to the Returning Officer.

In the case of election by the Corporation of Calcutta, the Commissioners have to meet, (the nomination papers having been received seven clear days before the date of meeting for election), for the purpose of election, when the names of candidates will be read out to them by the Chairman. The voting will be by ballot.

In the case of the Corporation of Bombay, it is provided that the election shall be made by the Corporation in the same manner as though such election was an item of municipal business and the Corporation had met for the despatch of municipal business at a special meeting called by the President under sec. 36, clause (d) of the City of Bombay Municipal Act, 1888, and the election shall be decided in accordance with section 86, clause (g) of the said Act.

Elections to the Imperial Legislative Council by the Bengal and Bombay Chambers of Commerce, and by non-official Members of Provincial Legislative Councils, and elections to the Provincial Legislative Councils by the Madras, Bombay, Karachi, Bengal, Upper India and Punjab Chambers of Commerce, by the Millowners' Association of Bombay and the Millowners' Association of Ahmedabad, by the Trades' Associations of Madras and Calcutta, by the Commissioners of the Port of Chittagong and by the Naraingunj Chamber of Commerce, have to be made at meetings of the respective bodies.

The election of Members to the Provincial Legislative Councils by the planting interests of Madras and Eastern Bengal and Assam have been referred to already.

For most elections in Madras, Bombay and the United Provinces, electors have to meet at a specified time and place in the district under which their names appear in the electoral rolls. In Bengal, Eastern Bengal and Assam, it is provided that electors may present themselves before the Attesting Officer on or before the latest date prescribed for the attesting of voting papers.

Where provision has been made for election by delegates, the delegates have to meet at a prescribed place for the purpose, except in the case of election of Members to the Bombay Legislative Council by municipalities and

District Local Boards, where the delegates have to fill up the voting paper to be attested by the President of the Municipality or District Local Board by which they were elected, and deliver them to the President to be forwarded by him to the Returning Officer, except in the case of election of a Member to the Bombay Legislative Council by the Indian Commercial Community, wherein the delegates of the Indian Merchants, Chamber and the Bombay Native Piecegoods Merchants' Association, have to fill up the voting paper to be attested by the Chairman of the body by which they were elected and send them themselves to the Returning Officer by registered post.

## Practice and Procedure of the Legislatures

### (i) Rules for the Conduct of Legislative business

#### THE IMPERIAL LEGISLATIVE COUNCIL

[As amended on 11th February, 1873 and 16th February, 1883].

In exercise of the power conferred by the Indian Councils Act, 1861, section eighteen, the following rules have been made by the Council of the Governor-General assembled for the purpose of making laws and regulations at the meetings held on the eleventh day of February 1873 and sixteenth day of February 1883, and have received the assent of the Governor-General.

#### I. Preliminary

1. These rules supersede the rules for the conduct of business at the meetings of the Council as amended on the 17th day of December 1862, and the 28th day of February 1868.

2. In these rules—

“Council” means the Council of the Governor-General of India for the purpose of making laws and regulations; “President” means the Governor-General or (during the time of his visit to any part of India unaccompanied by his Council) the President nominated by the Governor-General in Council, under the Indian Councils Act, 1861, section six; or, in the absence of both

the Governor-General and the President so nominated, the Senior Ordinary Member of the Council present and presiding :

“ Member ” means a Member of the Council, whether ordinary, extraordinary, or additional :

“ Secretary means the Secretary to the Government of India in the Legislative Department, and includes every person for the time being exercising the functions of his office : and “ Local Government ” includes a Chief Commissioner.

## II.—*Meetings of the Council*

3. The Council shall ordinarily meet at 11 A. M., and shall not prolong its sitting after 4 P. M., unless the President otherwise direct.

4. The quorum shall be seven, including the President.

5. The Commander-in-Chief shall sit on the right of the President : the Governor or Lieutenant-Governor shall sit opposite the President : the Law Member shall sit wherever it may be convenient ; and, subject to these provisions, the Members shall sit according to seniority, the Junior Member being on the left of the President.

6. The President may adjourn, without any discussion or vote, any meeting or business, whether there be a quorum present or not, to any future day or to any part of the same day.

7. The President shall preserve order, and all points of order shall be decided by him, no discussion thereupon being allowed.

8. A Member desiring to make any observations on any subject before the Council shall address the President without rising from his chair.

9. On all matters brought before the Council, after the Member who makes a motion has spoken, each Member consecutively, beginning with the

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Member on the left of the President, may make such observations as he thinks proper.

After all the Members in turn have had an opportunity of speaking, the Mover may speak once by way of reply, and any other Member may, with the permission of the President, speak once by way of explanation.

Provided that, if the matter be an amendment of a bill, the Member in charge of the bill shall be entitled to speak next after the Mover of the amendment.

10. When, for the purpose of explanation during discussion, or for any other sufficient reason, any Member has occasion to ask a question of another member on any measure then under the consideration of the Council, he shall ask the question through the President.

11. Any member may speak at the request and on behalf of another member who is unable to express himself in English.

12. On every motion before the council, the question shall be put by the President, and shall be decided by a majority of votes.

In case of a division, the votes shall be taken by the Secretary in consecutive order, beginning with the Member on the left of the President.

After the question is put no further discussion upon it shall be allowed.

13. Any Member may ask for any papers or returns connected with any bill before the Council. The President shall determine, either at the time or at the meeting of the Council next following, whether the papers or returns asked for can be given.

14. Communications on matters connected with any bill before the Council may be addressed, either in the form of a petition to the Governor-General in Council, or in a letter to the

Secretary, and must in either case be sent to the Secretary. Ordinarily, such communications will not be answered.

Except in the case of the High Court at Fort William, such communications from courts, officials, or public bodies shall ordinarily be sent through the Local Government.

15. The Secretary shall either cause such communications to be printed and send a copy to each Member, or circulate them for the perusal of each Member.

### III. *Introduction and Publication of Bills*

16. Any Member desiring to move for leave to introduce a bill in accordance with the provisions of section 19 of the Indian Councils Act shall give the Secretary at least three days' previous notice of the title and object of the bill.

If such motion be carried, the bill with a full statement of objects and reasons shall, if not already prepared, be prepared by the Member or (if he so desire) by the Secretary in consultation with the Member.

17. The Secretary shall then cause the bill, together with the statement of objects and reasons, to be printed, and shall send a copy to each Member.

If any of the Members are unacquainted with English, he shall also cause the bill and the statement of objects and reasons to be translated into Hindustani for their use.

17 A. The Council may, at any time after leave to introduce a bill has been granted, direct that the bill be published in such manner as the Council thinks fit.

18. When a bill is introduced, or on some subsequent occasion, the Member in charge of it shall make one or more of the following motions:—

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(a) that it be referred to a Select Committee, or (b) that it be taken into consideration by the Council either at once, or at some future day to be then mentioned, or

(c) that it be circulated for the purpose of eliciting opinion thereon.

19. No such motion shall be made until after a copy of the bill and a copy of the statement of objects and reasons have been furnished to each Member. Any Member may object to the motion unless such copies have been furnished to him at least seven days previously; and such objections shall prevail unless the President, in exercise of his power to suspend any of these rules, allows the motion to be made.

20. On the day on which such motion is made or on any subsequent day to which the discussion is postponed, the principle of the Bill and its general provisions may be discussed.

21. When any motion mentioned in Rule 8 is carried, the bill shall, together with a statement of its objects and reasons, be published in English in the Gazette of India.

The bill and statement shall also be published in such official gazettes and in such vernacular languages (if any) as the Council in each case decides to be necessary for the purpose of giving notice to the communities affected by the bill.

For this purpose the Council shall make an order at the meeting at which motion is carried, and may, from time to time, on the motion of any Member, vary or cancel such order.

22. The Governor-General, if he see fit, may order the publication of a bill, together with the statement of objects and reasons which accompanies it, in such Gazettes and languages as he thinks necessary, although no motion has been made for leave to introduce the bill.

In that case it shall not be necessary to move for leave to introduce the Bill; and if the bill be afterwards introduced, it shall not be necessary to publish it again.

#### IV.—*Select Committees*

23. The Law Member shall be a Member of every Select Committee.

The other Members of every committee shall be named by the Council when the bill is referred, or at any subsequent meeting.

The Law Member, and in his absence the Member in charge of the bill, shall be chairman of the Committee, and, in the case of an equality of votes, the chairman shall have a second or casting vote.

24. After publication of a bill in the *Gazette of India* the Select Committee to which the bill may have been referred shall make a report thereon.

Such report shall be made not sooner than three months from the date of the first publication in the *Gazette of India*, unless the Council orders the report to be made sooner.

Reports may be either preliminary or final.

The Select Committee shall in their report state whether or not, in their judgment, the bill has been so altered as to require re-publication, whether the publication ordered by these rules or by the Council has taken place and the date on which the publication has taken place, or where publication in more than one Gazette or in more than one language is ordered, the date on which the publication in each such Gazette and each such language has taken place.

If, in the judgment of the Committee, the bill has been so altered as to require re-publication, the Secretary shall send a copy of the altered bill to the Secretary of the Department to which it pertains.

When the Committee recommend the re-publication or a bill which was originally ordered by these rules or by the Council to be published in more than one Gazette or in more than one language, they shall, in the absence of anything to the contrary in their report, be taken to recommend that the bill be re-published in every such Gazette and every such languages.

In the Committee are of opinion that it is unnecessary to re-publish the bill in any such Gazette or in any such language, they shall, in their report, state the grounds of the opinion.

25. The Secretary shall cause every report of a Select Committee to be printed, and shall send a copy of such report to each member, and, if the Committee or the President so direct, the Secretary shall cause the report, with the amended bill, to be published in the Gazette of India.

If any of the members present are unacquainted with English, he shall also cause the report to be translated into Hindustani for their use.

26. The report of the Select Committee on a Bill shall be presented to the Council by the Member in charge of the bill, and shall be taken into consideration by the Council as soon as conveniently may be ; but any Member may object to its being so taken into consideration when he has not been furnished for a week with a copy of the report ; and such objection shall prevail, unless the President, in exercise of his power to suspend any of these Rules, allows the report to be taken into consideration.

*V.—Consideration and amendments of bills*

27. When a bill is taken into consideration by the Council, any Member may propose an amendment of such bill.

28. If notice of such amendment has not been sent to the Secretary at least three days before the meeting of the Council at which the bill is to

be considered, any Member may object to the moving of the amendment, and such objection shall prevail, unless the President, in exercise of his power to suspend any of these rules, allows the amendment to be moved.

The Secretary shall cause every such notice to be printed, and shall send a copy for the information of each Member.

If any of the Members present are unacquainted with English, he shall also cause every such notice to be translated into Hindustani for their use.

29. Amendments shall ordinarily be considered in the order of the clauses to which they respectively relate.

29 A. Notwithstanding anything in the foregoing rules, it shall be in the discretion of the President, when a motion that a bill be taken into consideration has been carried, to submit the bill, or any part of the bill, to the Council section by section; when this procedure is adopted the President shall call each section separately, and, when the amendments relating to it have been dealt with, shall put the question that this section or (as the case may be) this section as amended, shall stand part of the Bill.

30. Any Member may move that a bill which has been amended by the Council or by a Select Committee be republished or re-committed, and, if the Council so decide, the President may order the bill to be re-published or re-committed, as the case may be.

31. If no amendments be made, when a bill is taken into consideration by the Council, the bill may at once be passed.

If any amendment be made, any Member may object to the passing of the bill at the same meeting; and such objection shall prevail, unless the President, in exercise of his power to suspend any of these rules, allows the bill to pass.

Where the objection prevails, the bill shall be brought forward again at a future meeting, and may then be passed with or without further amendment.

*VI. Passing of bills and publication of Acts.*

32. When a bill is passed by the Council, a copy thereof shall be signed by the President, and, when the Governor-General has declared his assent thereto, such copy shall be signed by the Governor-General and the bill shall be published as soon as possible in the official Gazette, under the signature of the Secretary, as an Act of the Governor-General in Council.

Such publication shall be made in the Gazette of India in English and in the official Gazettes of the Local Governments in English and in the principal Vernacular languages spoken in the territories subject to such Governments respectively :

Provided that, when the Act does not apply to the whole of British India, it shall be published only in the Gazette of India and in the Gazettes of the Local Governments to whose territories it applies.

*VII. Duties of Secretary.*

33. At least two days before each meeting of Council, the Secretary shall send to each Member a list of the business to be brought forward at such meeting.

34. The Secretary shall keep a journal, in which all the proceedings of the Council shall be fairly entered.

The journal shall be submitted after each meeting to the President for his confirmation and signature, and, when so signed, shall be the record of the proceedings of the Council.

35. The Secretary shall also prepare a report of the proceedings of the Council at each of its meetings, including an abstract of the observa-

tions of the Members, and publish in the Gazette of India as soon as possible after the meeting. He shall send a copy of such report to each member and also to the Permanent Under-Secretary of State for India.

36. In addition to the other duties specially required by these rules, it shall be the duty of the Secretary—

1st, to draft all bills originated by the Government of India, the statements of their objects and reasons, and the reports of the Select Committee to which such bills are referred ;

2nd, to take charge of the copies of the bills signed by the Governor-General and of all the other records of the Council ;

3rd, to keep the books of the Council ;

4th, to keep a list of the business for the time being before the Council ;

5th, to superintend the printing of all papers printed in pursuance of these rules ;

6th, to assist the Council and all Committees in such manner as they may direct ;

7th, to send to the Secretary of the Department to which the bill pertains, any bill which an additional Member has obtained leave to introduce under Rule 16 ;

8th, to examine all bills deposited by Additional Members, and report to the President on those which contain clauses trenching on subjects coming within section 19 or section 22 of the Indian Councils Act, 1861 ;

9th, to write all letters which the Council, or the President, or any Select Committee, or the Law Member, directs to be written.

37. It shall be the special duty of the Assistant Secretary in the Legislative Department to translate into Hindustani Bills, Statements of Objects and Reasons, Reports of Select Committees and

Amendments of Bills, to explain papers to the Members unacquainted with English, and otherwise to assist them in such manner as they may require.

*VIII. Miscellaneous*

38. Strangers may be admitted into the Council Chamber during the sittings of the Council on the order of the President.

Application for orders of admission is to be made to the Secretary.

39. The President on the motion of any Member, may direct, at any time during a sitting of the Council, that strangers withdraw.

40. Any paper relating to any measure before the Council may be published by order of the President. Copies of papers so published shall be sold at such rates as may be fixed by the Secretary.

41. Any bill respecting which no motion has been made in the Council for two years may, by order of the President, be removed from the list of business.

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

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THE PROVINCIAL LEGISLATIVE COUNCILS.

The following are the rules for the conduct of Legislative business of the Madras Legislative Council :—

*I.—Definitions.*

1. In these rules—

“Council” means the Council of the Governor of Fort Saint George for the purpose of making laws and regulations.

“Meeting” means a meeting of the Council.

“President” means the Governor of Fort Saint George or, in his absence, the senior Civil Ordinary Member of Council present.

"Member" means an Ordinary or Additional Member of the Council.

"Secretary" means the Secretary or the Under or Assistant Secretary to the Government of Madras in the Legislative Department.

"Bill" means a proposed enactment in any stage before it has received the assent of the Governor.

In the computation of "clear days", Sundays and holidays are not excluded.

*II.—Summoning and adjournment of Council.*

2. The times and places of meetings shall be fixed by the Governor, and the Secretary shall notify the same in the *Fort Saint George Gazette* and to each Member by letter.

3. When the business before a meeting is concluded, the President shall declare the meeting dissolved. The President may adjourn, without any discussion or vote, any meeting or business, to any future day or to any part of the same day. The Council also may, upon motion made and carried, adjourn any meeting or business.

4. A motion that any meeting or business be adjourned or that the Council pass to the business next in order in the statement of business, may be moved at any time and without previous notice as a distinct question, but not so as to interrupt a speech. If the motion is carried, the Council shall adjourn the meeting or business, or the further consideration of the business then under discussion shall be dropped, as the case may be.

5. A motion of the kind referred to in the last preceding rule shall take precedence of any other motion then before the Council and, if such motion is rejected, no similar motion shall be made until after the lapse of what the President shall deem to be a reasonable time nor by the Member by whom the previous motion was made.

6. If, at the time appointed for holding a meeting or adjourned meeting as aforesaid, or if at any time after the commencement of business at such meeting, the quorum required by section 34 of the Indian Councils Act, 1861 (that is to say, the Governor or some Ordinary Member of Council and four or more Members of Council), is not present, the Members present shall, without proceeding to business of any kind, adjourn until again summoned by the Governor, and the fact shall be noted by the Secretary in the Journal of the Council.

*III.—Course of Business.*

7. At least three clear days before the date fixed for a meeting the Secretary shall send to the Madras address of every Member a printed statement of the business to be transacted at such meeting.

8. No business which is not entered in the printed statement of business prepared under Rule 7, shall be transacted at any meeting unless the permission of the Governor has been obtained previously to the meeting.

9. The President shall have power to regulate the order in which business is transacted, but, ordinarily, the succession of business shall be as described in Rule 10.

10. After the President has taken the chair—  
(1) the Secretary shall report the names of the Members (if any) who have taken their seats for the first time ;

(2) the discussion of the annual Financial Statement and the asking of questions under section 2 of the Indian Councils Act, 1892, shall then take place ;

(3) the President shall report to the Council the Acts which have received the assent of the Governor-General under section 40 of the Indian Councils Act, 1861, or which have been disallow-

ed by the Governor-General or by Her Majesty, since the last meeting ;

(4) the Secretary shall report to the Council the Acts which have received the assent of the Governor under section 39 of the Indian Councils Act, 1861, and the Bills which have been disallowed by the Governor since the last meeting ;

(5) the Secretary shall report to the Council the petitions and other communications relating to the business of the Council which have been received by him since the last meeting and shall, if necessary, read such petitions and communications to the Council ;

(6) Members desirous of obtaining leave to introduce Bills shall move that such leave be granted ;

(7) the Council shall then proceed to dispose of the business left unfinished at the last meeting, if any ; and, this being done,

(8) the Council shall proceed to deal with the remaining business for the day.

#### *IV.—Regulation of Discussions.*

11. The President shall preserve order and shall decide all points of order submitted for his decision by the Members and all questions connected with the interpretation of these rules. There shall be no discussion on any point of order and the President's decision shall be final.

12. Any Member may draw the attention of the President to a violation of order and, while he is doing so, all other Members shall remain silent.

13. In discussing questions coming before the Council for consideration, a Member shall speak from his place, shall rise when he speaks, and address the President. The President also shall rise when he addresses the Council.

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

14. Members may read their speeches and may also read, as part thereof, passages from books or papers bearing upon the question under discussion.

15. No Member shall speak except upon business which is at the time regularly before the Council or, by special permission of the President, in explanation of what he said in a previous debate.

16. Except in discussing amendments, when the Council is settling the several clauses of a Bill, no member other than the Mover shall speak more than once upon a question; but the Mover shall, if he has spoken to the question when making his motion, be allowed a reply.

Provided that, if the matter before the Council be an amendment of a bill, the member in charge of the bill shall be entitled to speak next after the mover and seconder of the amendment.

17. A Member who has spoken upon a motion may speak again upon any amendment of that motion. A Member may also speak again in order to explain what he has previously said, if it has been misunderstood.

18. When, for the purpose of explanation or for any other reason, a Member has occasion to ask of another Member a question relative to the business before the Council, he shall ask the question through the President.

19. Every matter which comes before the Council for decision shall be decided in accordance with the majority of votes after (1) motion has been made and seconded and (2) the question has been put by the President.

20. No discussion whatsoever shall take place after the question has been put by the President.

21. The votes of the Members may be taken by voices or by division or by name but they shall be taken by division or by name if any

Member so desires. The method of taking votes by division or by name shall be in accordance with the instructions of the President.

22. Any Member may ask for any papers, returns or information connected with the business before the Council and the President shall determine whether such papers, returns or information can be furnished.

*V.—Motions generally.*

23. Members who wish to make any motion at any meeting must give notice of their intention at the next preceding meeting or must send such notice in writing to the Secretary at least six clear days before the day fixed for the meeting at which they intend to make the motion: Provided that the President may, at his discretion, permit a motion to be made of which such notice has not been given.

24. All motions of which notice is given under the preceding rule shall be entered in the statement of business prepared by the Secretary under Rule 7.

25. No motion shall be taken into consideration by the Council unless it is seconded.

26. A motion of which due notice has been given may, in the absence and at the request of the Member by whom notice was given, be made by any other Member ; but if not so made, or if a Member announces his intention of withdrawing a motion standing in his name, the motion may be made by any other member and, if not so made, shall not be put unless the Council otherwise orders.

27. If amendments of any motion are moved, the President, when taking the sense of the Council thereon, shall recite the terms of the original motion and of the amendments proposed and it shall be in his discretion to put first to the vote either the original motion or any of the proposed amendments thereon.

28. A purely verbal amendment of a motion may be moved at any time during the discussion upon the motion and without previous notice, but no amendment which is substantially the negative of a motion shall be taken into consideration by the Council.

29. A motion shall not be taken into consideration by the Council if it substantially raises a question already disposed of at the meeting or is inconsistent with any resolution already passed thereat.

30. If any motion, as made, involves several points, the President may, at his discretion, divide it, so that each point may be determined separately.

#### VI.—Introduction of Bills.

31. Any Member may move at a meeting of the Council for leave to introduce a bill in accordance with section 38 of the Indian Councils Act, 1861; provided that at least six clear days' previous notice of the title and subject of the bill has been given to the Secretary.

32. If the motion for leave to introduce a bill be carried, the mover shall send the bill, together with a full statement of the objects of and reasons for the proposed measure and any connected papers, to the Secretary, who will forthwith cause the bill, the statement of objects and reasons and the connected papers to be printed and communicated to each of the Members, and will also cause the bill and the statement of objects and reasons to be published in the *Fort Saint George Gazette* in English and in such Vernacular languages as the Governor may direct.

33. The Governor may, at his discretion, direct the Secretary to publish any bill, together with a statement of the objects of and reasons for it, in the *Fort Saint George Gazette* in English and in such Vernacular languages as he thinks necessary, although leave to introduce the Bill has not

been applied for under Rule 31 ; and the Secretary shall publish it accordingly and shall send a copy of the bill and of the statement of objects and reasons to each of the Members. When a Bill has been published under this rule, it shall not be necessary to move under Rule 31 for leave to introduce it.

34. At any time after leave to introduce a Bill has been granted under Rule 32 or after publication has been ordered under Rule 33, the Member in charge of the Bill may introduce it after giving six clear days' notice to the Secretary ; provided that no bill shall be introduced until fifteen clear days from the date of its publication under Rule 32 or Rule 33, as the case may be.

When introducing a Bill, the member in charge of it shall move that the Bill be read in Council. The principle of the Bill and its general provisions may then be discussed, and, if the motion be carried, the Secretary shall read the title of the Bill. The Council shall then consider the question of referring the Bill to a Select Committee and, if the question be decided in the affirmative, the Council shall appoint the Committee and may further direct that its report shall be submitted within a specified period.

35. At any time during the progress of a Bill the Member in charge of it may move, for permission to withdraw it, and, if such permission is granted, the Bill shall be withdrawn accordingly. The Member in charge of a Bill which has been published under Rule 33, but which has not been introduced and read in Council, may withdraw the same without further formality than a mere announcement of the withdrawal to the Council.

#### *VII.—Select Committees.*

36. Select Committees may be appointed by the Council for any purpose connected with the business of the Council and may sit and submit their reports although the Council is adjourned.

37. When a Bill has been referred to a Select Committee for consideration, it shall be the duty of the Committee to discuss each clause of the Bill and to recommend to the Council such amendments as seem to it to be advisable.

38. If the Council has fixed a period within which the Select Committee shall submit its report upon a Bill and the Committee is unable for any reason to submit its report within that period, the Governor may from time to time extend the period on the application of the Member in charge of the Bill.

39. The report of the Select Committee shall be signed by all the Members of the Committee or by a majority of them; but any Member of a Select Committee may record his views in a separate minute.

40. The report of the Select Committee appointed to consider a Bill shall contain particulars of the principal amendments proposed and of the reasons for such amendments, or it may contain a recommendation that the Bill under consideration be abandoned.

41. The report of the Select Committee, any minutes that may have been recorded by individual Members of the Committee and (if the Bill has been amended) the Bill as amended by the Committee shall be printed and copies furnished to each Member of the Council. The report and minutes (if any) and (if the bill has been amended) such portion thereof as may have been amended, shall also, unless otherwise directed by the Select Committee, be published in the *Fort Saint George Gazette* in the languages in which the original Bill was published.

42. No business shall be transacted at any sitting of the Select Committee unless a majority of Members of the Committee is present.

43. The Member in charge of a Bill shall invariably be a Member and, also, the Chairman of

the Select Committee appointed to consider that Bill and shall have power to report to the Governor the name of any Member of the Select Committee who neglects or is unable to attend its sittings and the Governor may thereupon appoint, out of the Members of the Council, an additional member to the Select Committee.

44. A Select Committee may, for the purpose of obtaining information, invite any person to be present at its sittings.

45. While a Select Committee is sitting to consider a bill, all communications relating to Bill which are received by the Secretary shall be referred to it.

#### *VIII.—Passing of Bills.*

46. When a Bill has been introduced and read in Council under rule 34 and the Council has decided that it is not necessary to refer it for consideration to a Select Committee, the Council shall not proceed to take the Bill into consideration until the expiration of fifteen clear days from the date on which the Bill was read under rule 34.

In this case it shall not be necessary to make, on the day on which the Bill comes on for consideration, a formal motion that the Bill be taken into consideration.

47. When a Bill has been referred to a Select Committee under rule 34, it shall not be taken into consideration by the Council unless copies of the report of the Select Committee and (if the Bill has been amended) of the Bill as amended shall have been sent to the Madras address of each of the Members of the Council at least fifteen clear days beforehand and, in cases in which the Select Committee has not dispensed with the publication referred to in rule 41, until the expiration of twenty-one clear days from the date of such publication. Subject to these conditions, the Member in charge of a Bill, when presenting

the report of the Select Committee to the Council, may move either that the Bill and report be taken into consideration at once or that the consideration of them be postponed to a subsequent meeting.

The discussion upon a motion under this rule that a Bill be taken into consideration shall not extend to the principle of the Bill.

48. Any Member wishing to propose an amendment affecting the substance of a Bill shall send a copy of the proposed amendment to the Secretary in accordance with Rule 28 and the Secretary shall enter the same in the printed Statement of Business prepared under Rule 7; but it shall not be necessary to give previous notice of amendments of a purely verbal character or of amendments consequential upon, or moved in respect of, amendments which have been carried.

49. Proposed amendments of Bills shall not be moved until the Bill is actually taken into consideration and, when moved, they shall be considered in the order of the sections to which they relate.

Proposed amendments of Bills shall be governed by Rules 25, 26, 27, 29 and 30 relating to motions.

50. The President may declare that a proposed amendment of a Bill shall not be discussed or put to the vote on the ground that it is irrelevant or incomplete or that an amendment identical in substance with it has been previously disposed of by the Council in considering the same Bill.

51. If no amendments, other than purely verbal amendments and (if the Bill has been referred to a Select Committee) the amendments proposed by the Select Committee, be made in a Bill by the Council on the day upon which it is taken into consideration, the Bill may, upon motion made, be passed at once. If, however, amendments

other than purely verbal amendments or, amendments proposed by the Select Committee are made, any Member may object to the passing of the Bill at the same meeting; and such objection shall prevail unless the Council, upon motion made, otherwise orders.

52. If the objection referred to in the last preceding rule prevails, the motion that the Bill be passed shall be taken into consideration again at a subsequent meeting and the Bill may then be passed either with or without further amendment; provided that, at this stage, no amendment may be moved without the permission of the President.

#### IX.—*Final Stages of Bills.*

53. When a Bill has been passed by the Council, the Secretary shall revise and complete the marginal abstracts and the numbering of the sections thereof and shall submit it immediately to the Governor for a declaration under section 39 of the Indian Councils Act, 1861, that he assents to, or withholds his assent from, the same.

54. The assent or dissent of the Governor shall be enfaced upon the bill and the fact communicated to the Council at its next meeting by the Secretary.

55. When an Act has received the assent of the Governor-General under section 40 of the Indian Councils Act, 1861, it shall be published in the *Fort Saint George Gazette*, in English and the Vernacular languages of the parts of the Presidency affected by its provisions, as an Act of the Governor in Council assented to by the Governor-General and having the force of law. Such publication shall be deemed to be the publication referred to in section 40 of the Indian Councils Act, 1861.

56. The assent or dissent of the Governor-General or the dissent of Her Majesty to an Act shall be announced by the Governor to the Coun-

cil as soon as conveniently may be and such assent or dissent shall be recorded in the journal of the Council.

57. No Member shall make any motion upon, or otherwise bring under the consideration of the Council, the exercise by Her Majesty, the Governor-General or the Governor of the prerogative of withholding assent to an Act or Bill.

*X.—Rules relating to Petitions.*

58. Petitions to the Council must—

- (1) relate to some matter actually under the consideration of the Council ;
- (2) be addressed to the "Governor in Council";
- (3) be dated and signed by the petitioner or petitioners ;
- (4) be in respectful and temperate language ; and
- (5) conclude with a distinct prayer.

59. If a petition is not in conformity with the preceding rule, or if the Secretary sees reason to doubt the authenticity of any signature appended thereto, he shall certify the same on the back of the petition and report the fact to the Council. The Council may thereupon reject the petition, which shall then be returned to the petitioner or petitioners with a statement of the reason for such rejection.

60. If the petition is in conformity with Rule 58, the Secretary shall, if necessary, make an abstract of it and bring the petition under consideration by reading it, or the abstract, before the Council, which shall deal with the petition in such manner as it may deem proper.

*XI.—Admittance of Strangers.*

61. Persons desirous of admission into the Council Chamber during the sittings of Council shall make application to the Secretary who will take the orders of the President thereon.

62. The President may at any time during a sitting of the Council direct that all strangers withdraw.

63. If a Bill which peculiarly affects private interests be under the consideration of the Council or of a Select Committee thereof and if any person whose interests are so affected apply to the Council or Select Committee for permission to be heard, either personally or by Counsel, on the subject of the Bill, the Council or Select Committee may, upon the motion of any Member, direct that the petitioner or his Counsel be heard at the meeting at which the motion is made or at and on some future specified time and day; and if the petitioner or his Counsel is not present at the said meeting or does not appear at and on the said time and day, as the case may be, the permission granted by the Council or Select Committee shall be held to have lapsed.

64. Except as provided in Rules 44 and 63, no stranger shall be permitted to address the Council or any Select Committee.

65. Any Member may move that the hearing of any person who has been permitted under Rule 63 to address the Council or a Select Committee shall cease if such person is irrelevant or unduly prolix, or for any other sufficient reason.

#### *XII.—Duties of the Secretary.*

66. The Secretary shall be bound to perform the following duties in addition to those specified in the preceding rules :—

- (1) to take charge of the records of the Council;
- (2) to keep the prescribed books;
- (3) to attend all meetings and to take minutes of the proceedings;
- (4) to superintend the printing of all papers ordered to be printed;

(5) to note in bills the amendments ordered by the Council and to scrutinize all Bills and Acts in view to preventing typographical errors ;

(6) to prepare and revise the marginal abstract of Bills and Acts and the headings and arrangement of the chapters and the numbering of the sections thereof ;

(7) to attend the sitting of Select Committees and to draw up the reports of Select Committees when required so to do ;

(8) to carry on correspondence under the orders of the Council ;

(9) to help, when required to do so, in the framing of Bills ;

(10) to generally assist the Council.

*XIII.—Books and Records.*

67. A journal shall be kept containing a brief abstract of the proceedings of the Council. This journal shall be submitted as soon as possible after each meeting to the President for his confirmation and signature.

68. Besides preparing the above journal the Secretary shall publish in the *Fort Saint George Gazette*, in English, as soon as may be after the conclusion of each meeting, an account, which should be as full as possible, of the proceedings of the Council.

69. A register and index of letters and petitions addressed to, or despatched under orders of, the Council shall be maintained.

*XIV.—General.*

70. The Council may, on a motion and at any time, suspend the operation of any of the foregoing rules.

71. Any Bill respecting which no motion has been made in the Council for the space of two

years may, by order of the President, be removed from the list of business and the fact of such removal shall be announced by the President to the Council.

72. A Member in charge of a Bill may entrust it to any other Member and the Member to whom it is so entrusted shall be the Member in charge of the Bill for the purposes of these rules.

73. Any Member may apply to the Secretary for any papers, returns of information connected with the business before the Council, and the Governor shall determine whether such papers, return or information can be furnished.

[Similar rules have been framed for the other Provincial Legislative Councils].

**(ii) Extracts from Legislative Standing Orders.**

A.—PROCEDURE WITH REGARD TO BILLS BEFORE THEIR INTRODUCTION INTO THE VICEROY'S COUNCIL.  
I.—No. 9, Dated, India Office, London, the 31st March 1874.

From—Her Majesty's Secretary of State for India.

To—His Excellency the Right Honorable the Viceroy and Governor-General of India in Council.

My attention has been drawn to the great number and importance of the measures recently passed by the Council of the Governor-General for making Laws and Regulations, which have been brought for the first time to the official knowledge of the Secretary of State for India through enactments sent hither for Her Majesty's approval or disallowance, under section 21 of the Indian Councils Act. The Government of India appears to have taken upon itself the entire responsibility for nearly the whole of these measures throughout their course. The policy

embodied in them was no doubt maturely considered in the first instance by the Governor-General in his executive capacity and in Executive Council when this policy was determined upon, Bills to give effect to it were drafted in your Legislative Department, and were subsequently introduced into the Legislative Council by the Law Member or by some other Member of Council, or by some gentleman who acted as the organ of the Government. In their passage through the legislature they appear to have remained in charge of some representative of the Governor-General in Council up to the time of their final enactment. There is no question that, if measures of equally great moment to the fortunes and interests of the Indian Empire had been adopted by the Governor-General, not in the Council for making Laws and Regulations, but in Executive Council, they would have been reported to me in full detail at a much earlier stage, and I see no sufficient reason why the circumstance, often quite accidental, that Your Excellency's orders take a legislative form should deprive me of all official information concerning them until a period at which it becomes peculiarly difficult to deal with them. Among many inconveniences which attend the present course of proceeding, it may be pointed out that, if the Secretary of State advises Her Majesty to disallow an enactment under section 21 of the Indian Councils Act, he may be annulling, on the score of a single objectionable provision, the results of much conscientious labour on the part of the Legislature, and of much technical skill bestowed by the Legislative Department; and, further, that unless a measure is reserved under section 20 of the above Act for Her Majesty's pleasure (a course which appears to be very rarely followed), its disallowance may cause great difficulty and confusion by rendering useless course of administrative actions which have been entered upon on the footing of the law. It adds to the

force of these observations that of late there has been a considerable increase in the number of petitions and representations addressed to the Secretary of State by natives of India and others on the subject of intended legislative measures, concerning which his information is at least imperfect.

2. The present practice appears to be a departure from older-precedents. I observe that, as recently as 1868, despatches were addressed by the then Government of India to Sir Stafford Northcote (Home Department, Legislative, 30th June 1868; Home Department; Public, 6th November 1868), in which full information was given to him respecting important legislation which was at that time contemplated, and in which his opinion on its policy was invited. I consider that a return to this method of proceeding would be attended with advantage, and I request therefore that Your Excellency in Council will observe in future the following rules with reference to all intended legislative measures which are at the same time of importance and are not urgent.

3. Whenever the Governor-General in (Executive) Council has affirmed the policy and expediency of a particular measure, and has decided on submitting it to the Council for making Laws and Regulations, I desire that a despatch may be addressed to me stating at length the reasons which are thought to justify the step intended to be taken, and the mode in which the intention is to be carried out. This despatch must be accompanied by a copy of the Bill drafted in your Legislative Department, or should be followed by such copy with as brief delay as possible. I do not propose to reply at once in all cases to this communication, but I request that Your Excellency will mention in it the date at which it is intended that the Bill referred to shall be submitted to the Legislative

Council, and that this date may be so fixed as to afford me sufficient time to address to you on the contemplated measure such observations as I may deem proper, if I should desire to observe upon it.

4. I have excepted from the above directions measures of slight importance (of which I am aware that a considerable number pass the Legislative Council annually), and measures urgently requiring speedy enactment. I leave Your Excellency to judge of the degree of importance which will bring a given case within the rule I have laid down, and of the degree of urgency which will withdraw another case from it. In the event, however, of your omitting to give me previous information of an intended enactment on the ground that it is urgently required, I request you to communicate to me subsequently the grounds of the opinion on which you have acted.

5. It is, of course, conceivable that a Bill of which I have approved, or which has been modified in conformity with my desire, may be materially changed during its passage through the Legislative Council. It appears to me that, as a fact, that body early alters Government measures on points of principle; but if the case to which I am referring should happen, I do not apprehend that your Excellency would have any practical difficulty in delaying the progress of the bill until I have a fresh opportunity of expressing my opinion.

6. In making these observations I have not failed to bear in mind the correspondence which took place in 1870 between my predecessor and the Government of Lord Mayo respecting the powers of the Council for making laws and regulations, but it does not appear to me that the questions discussed in that correspondence are raised by the rules which I have requested your Excellency to observe.

7. It is my intention to send a copy of this despatch (omitting the last two paragraphs), to

the Governors in Council of Madras and Bombay for their guidance in matters of legislation, and I request you to transmit a copy (with the like omission) to the Lieutenant-Governor of Bengal, to whose legislative measures I wish my directions, *mutatis mutandis*, to apply.

II. No. 45, dated Fort William, the 28th July 1874.

From—The Government of India in the Home Department.

To—Her Majesty's Secretary of State for India.

We have the honour to acknowledge the receipt of your Lordship's despatch (Legislative) No. 9 of the 31st March 1874.

2. In that despatch the following rules are prescribed for the guidance of the Government of India, the Governments of Madras and Bombay, and the Lieutenant-Governor of Bengal in matters of legislation :—

(1) Whenever the Government, in its executive capacity, has decided to submit a measure of importance, which is not urgent, to the Council for making laws and regulations, a despatch is to be addressed to the Secretary of State, stating at length the reasons for the measure and the manner in which its objects are to be carried out. The despatch is to be accompanied, or followed soon after, by a draft of the bill proposed to be introduced.

(2) When this course is not followed, because a measure of importance is urgently required, the grounds of the opinion on which the Government has acted are to be subsequently communicated.

3. In communicating the motive for these rules and instruction, the despatch alludes to the great number and importance of the measures recently passed by the Council of the Governor-General for making laws and regulations, which have been brought for the first time to the official

knowledge of the Secretary of State through enactments sent home under section 21 of the Indian Councils Act. And your Lordship observes that our present practice in regard to communications with the Secretary of State upon important legislative measures appears to have departed from older precedents. It is added that there has been a considerable increase in the number of petitions and representations addressed to the Secretary of State by Natives of India and others on the subject of intended legislative measure, concerning which his information was at best imperfect.

4. We have no record of the petitions and representations on the subject of intended legislative measures to which your Lordship refers, and we know only one instance of a representation recently made to your Lordship regarding measures under our consideration. In fact, during the last two years, few measures of importance have been introduced into the Legislative Council of the Governor-General ; and official consultations have passed between the Secretary of State and the Government of India in respect to several measures, either introduced or under consideration, during that period. We are not aware that there has been any deviation from former practice in this respect, and we can certainly affirm that none has been intended.

5. Your Lordship's despatch explains that the degree of importance which will necessitate reference of a measure to the Secretary of State before its introduction to one Legislative Council is left to be determined by our judgment. We see no difficulty in giving effect to your Lordship's wishes as thus understood. We assume that they do not contemplate the examination and criticism of the drafts of bills on points of form or detail, and that only their general object and scope would form the subject of correspondence. We believe that we could place before your Lordship suffi-

cient reasons to show that any further discussion of bills previous to their introduction would be likely to cause serious inconvenience. But from the tenor of your Lordship's despatch we do not infer that any argument upon this point is required from us.

6. We observe, however, that your Lordship sees no sufficient reason why the circumstance that our orders take a legislative form should deprive the Secretary of State of all official information concerning them, until a period at which it becomes peculiarly difficult to deal with them. There is, of course, a distinction, which has been observed from the earliest constitution of our Indian Governments, between measures that are put in force by the executive and those that are committed to legislation. It may be true that this distinction makes no difference in the expediency of taking the opinion of the Secretary of State in Council upon any important legislative measure before its policy has been affirmed by the Executive Government. On the other hand when that policy has been settled and announced, and when the measure founded upon it is under consideration by the Council of the Governor-General, which, when assembled for the purpose of making laws, includes additional members, and deliberates in public, we apprehend that the question of subsequent reference to the Secretary of State then takes a different aspect.

7. If any important alteration on a point of principle in a bill of which the Secretary of State has approved, or which has been modified in conformity with his desire, should be made during its passage through the Legislative Council your Lordship apprehends that there will be no practical difficulty in delaying the progress of the bill until the Secretary of State has had a sufficient opportunity of expressing a further opinion.

8. Alterations of great importance, proposed or made during the passage of a bill through the

Legislative Council, would be considered by the Government in its executive capacity. Such alterations may be equivalent to measures which, if they had been affirmed before the introduction of a bill, it would have been proper in our judgment to communicate to the Secretary of State. In that case and in the absence of any practical difficulty as to delaying the progress of the bill, we should refer these alterations to the Secretary of State, we do not gather that your Lordship requests us to frame any rule for the purpose of regulating the manner in which rare cases of this kind should be dealt with in the Legislative Council. In order, however, to guard against risk of misapprehension upon a matter which might materially affect the position of the Legislative Council, we desire to add the expression of our opinion that such a rule would be open to objections which we have not considered necessary on the present occasion to discuss; while the application of your Lordship's directions to any wider class of cases than that to which we have alluded would be likely to give rise to difficulties. We shall be prepared to state our reasons at length if your Lordship should entertain any doubt upon this part of the subject.

9. We foresee considerable impediments to the application of the rules prescribed by your Lordships's despatch to the legislative business of the presidencies of Madras and Bombay and of the Lieutenant-Governorship of Bengal.

10. By the Indian Councils Act, 1861, the Governor-General has certain defined powers with regard to the legislation of the two presidencies and the Lieutenant-Governorship. Under the 43rd section, no bill which affects certain subjects specified in the section (in fact, no bill of real importance) can be taken into consideration except with the Governor-General's previous sanction; and under the 40th section, Acts when passed are to be transmitted to him, and upon

his assent they become valid, subject to subsequent disallowance by the Crown.

11. While the law remains as it is, we cannot avoid the conclusion that these rules will invest the Home Government and the Government of India with a concurrent authority that might be exercised simultaneously in different directions upon these matters. The Governor-General will not be relieved from the responsibility which devolves upon him by law of giving or withholding his sanction to the introduction of certain classes of bills, or from giving or withholding his assent to all Acts. On the other hand, the rules now under discussion have been framed with the object of enabling the Secretary of State to express an opinion upon the propriety of introducing certain bills into the Local Councils and upon important alterations made during their progress. It is obvious that, if the opinion expressed by the Secretary of State to the Local Government should in any case differ from that of the Governor-General the position of the Governor-General would be embarrassing. We consider that such concurrent, and possibly conflicting, action might complicate proceedings, and that the application of the rules to the business of the Local Councils would eventually be found to require an alteration to be made in the law.

12. We have also to observe that, by the Legislative Despatch No. 35 of December 1st, 1862, all bills which contain penal clauses are ordered to be submitted for the previous sanction of the Government of India to those clauses before being introduced into the local legislatures. For reasons similar to those which have been given above in respect to the Governor-General's previous sanction required by statute, we should exercise the executive power henceforward with much hesitation if the Local Governments were simultaneously consulting the Secretary of State upon the Bill containing the penal clauses.

But we think that the free exercise of this power is very useful in controlling the unnecessary multiplication of petty penal enactments and in preserving a general equality of punishments prescribed in different provinces for similar classes of offences. It has been often used with advantage, and we recommend that it be continued in our hands.

13. Moreover, it is in our judgment inexpedient, upon general grounds, to place restrictions upon the direct power to control and guide the proceedings of the local Legislatures, which the present law and practice entrust to the Governor-General, or to the Government of India. We are opposed for many reasons to anything which would bring about such a change. Bills introduced into, and Acts passed by, the local Legislatures require careful consideration as to their bearing towards the laws that have been passed by the Legislative Council of India; they often impose Local and Municipal taxes which are intimately connected with imperial taxation and imperial finance, for which we are primarily responsible; and they frequently deal with matters of considerable importance to the supreme Executive Government. For these considerations it appears to us that the Governor-General and the Government of India should be left to discharge the duties which have been imposed upon them by the Indian Councils Act and by existing administrative regulations. And we therefore trust that your Lordship will agree with us that the rules respecting the communication of bills to the Secretary of State cannot be applied without embarrassment to the legislative measures of the Local Governments.

14. In conclusion, we enclose a list of the business now before the council of the Governor-General for the purpose of making laws and regulations, together with a minute written by the Hon'ble Mr. Hobhouse, which will afford

a full explanation of the several measures included in the list.

III. No. 33 (Legislative). Dated India Office, London, the 15th October 1874.

From—Her Majesty's Secretary of State for India.

To—The Government of India.

I have received and considered in Council your Excellency's despatch (Home Department, Public) of July 28th, No 45 of 1874.

2. In my despatch of 31st March 1874, to which you reply, I requested Your Excellency to furnish me (save in cases of urgency) with full and timely information concerning the policy of all important measures which, it was your intention to submit to your council for making laws and regulations. Your Excellency now intimates that you see no difficulty in complying with this request, and you further state that, where alterations of great importance have been made in a bill during its passage through the Legislative Council, you will, in the absence of any practical difficulty as to delaying the progress of the measure, communicate such alterations to the Secretary of State. But in regard to this last point you do not think it expedient that there should be any fixed rule for the purpose of regulating the manner in which cases of the kind should be dealt with in the Legislative Council. You have rightly gathered from my language that I do not consider such a rule necessary or desirable.

3. Your Excellency, however, foresees considerable impediments to the application of the rules prescribed in my despatch to the legislative business of the presidencies of Madras and Bombay, and of the Lieutenant-Governorship of Bengal. You observe that, by the 43rd section of the Indian Councils Act, 1861, no bill which affects certain subjects specified in the section

can be taken into consideration without the previous sanction of the Governor-General, whose assent to an enactment of a local legislature is also rendered necessary by the 40th section of the same statute. You apprehend that the control over local legislation thus reserved by law to the Governor-General may be interfered with or weakened if the Local Governments are instructed to supply the Secretary of State with the same information respecting their bills which I have requested you to furnish concerning legislative measures which Your Excellency's Government may have in contemplation. I am unable to perceive that any evil can arise from my being kept informed respecting all intended Indian Legislation. My possession of that information will not diminish the power now vested in Your Excellency by law of rejecting, either before or after its enactment, any legislative proposal of the Subordinate Governments. The circumstance that in any given case a discretion has been given to the Governor-General by statute will at all times have due weight attached to it by the Secretary of State when the question of commenting on a particular measure is under consideration. At the same time, to obviate all chance of concurrent or conflicting action, I will always state to Your Excellency's Government, and not to that of Madras or Bombay, any objections I may think it right to make to their legislative proposals.

4. The object of the instructions which I have given to Your Excellency on this subject is not to fetter the discretion which the law has vested in the various legislative authorities of India, nor in any case to renounce, on behalf of the crown, the power of disallowance which belongs to it. I therefore think it desirable to add that the mere fact of my not having replied to a despatch explaining to me the policy of any intended legislation is not to be regarded as necessarily implying

on the part of Her Majesty a final approval of such legislation. Considerations may arise in particular cases which may make it expedient to defer the expression of my opinion until the period at which the measure is sent to England for the assent or disallowance of the Crown.

IV.—No. 72, dated Fort William, the 24th December 1874.

From—The Government of India in the Home Department.

To—Her Majesty's Secretary of State for India.

We have the honour to acknowledge your Lordship's despatch (Legislative) No. 33, dated 15th October last.

2. With respect to communication with the Secretary of State in Council after a measure has once been publicly launched, and while it is in the hands of the Legislative Council, we understand Your Lordship to make full allowance for the practical difficulties which we pointed out in our despatch of the 28th July. Subject to such difficulties, we shall bear carefully in mind Your Lordship's wish to receive intelligence of any alterations of great importance that may be made in a bill in such time as will enable the Secretary of State in Council to express an opinion before the measure has passed into law.

3. With regard to the receipt of answers to the communications which will be made to Your Lordship upon proposed legislation, we still feel some difficulty. We do not mean to suggest that the Secretary of State should, by the expression of his opinion upon any measure before its introduction, forestal or prejudice the exercise of his important function of advising the Crown when the measure has reached its maturity; but the object of the instructions now under consideration is to afford time for intervention in case the Secretary of State in Council thinks fit to intervene, and that time must vary according to the pressure of business in the India Office, and according to the

difficulty presented by the measures themselves. We should be rather at a loss to judge of the time required for the contemplated purpose in each particular case ; and we need hardly say that when a measure is once determined on, and a bill drawn to carry it into effect, it is desirable to proceed with it so as to give room for the smallest amount of inconvenience resulting from the frequent changes in Indian official life. We would suggest to Your Lordship that the difficulty we are now speaking of would be reduced to a minimum if, instead of a date being fixed by us with respect to each measure, it were understood that whenever no reply is received to a communication within two months after it has been despatched, or whenever the reply is a simple acknowledgment of receipt, we shall take it as an intimation that the Secretary of State in Council wishes to reserve the expression of his opinion until the measure comes up in a natural state for the pleasure of the Crown. We say only two months, because if more time should be required for consideration, we could be so informed either by a despatch or by telegraph, and we should hold our hands accordingly. Such an understanding would be in accordance with the principles expressed in Sir C. Wood's despatch No. 58, dated 31st December 1863.

4. Your Lordship has assured us generally that the instructions which have been given with regard to legislation are not intended to better the discretion which the law has vested in the various legislative authorities of India, and in particular that their application to legislation in the local Legislative Councils " will not diminish the power now vested in the Governor-General by law of rejecting, either before or after its enactment, any legislative proposal of the subordinate Governments."

These observations, coupled with the arrangement mentioned at the end of the 3rd paragraph

of the despatch under reply, appear to us to obviate the difficulties which we apprehended from the application of the distinctions to the legislative business of the Local Governments.

We presume that Your Lordship intends that, not only any objections which may be made by the Secretary of State in Council to measures proposed, but, also any concurrence which may be expressed to their introduction, will be stated through this Government and not to the Local Governments directly.

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**B.—PROCEDURE WITH REGARD TO BILLS BEFORE  
THEIR INTRODUCTION INTO THE MADRAS  
PROVINCIAL LEGISLATIVE COUNCIL.**

1. All bills relating to the matters specified in section 43 of the Indian Councils Act, 1861, should be submitted for the sanction of the Governor-General before they are taken into consideration in the Legislative Council, or forwarded for report to the Secretary of State.

[Government of India, Home, dated 7th July 1875, No. 1130, recorded in G. O., dated 15th September 1875, No. 48, Legislative, and despatch from Secretary of State to Government of India, No. 50, dated 7th October 1875, in G. O., dated 11th January 1876, No. 4, Legislative].

2. The same rule applies under the instructions of the Secretary of State of the 1st December 1862 to all bills containing penal clauses.

Extracts from Secretary of State's despatch to the Government of India, No. 35, dated 1st December 1862, recorded in G. O., dated 22nd January 1863, No. 92, Judicial.

2. Cases no doubt will occasionally occur where special legislation by the Local Governments for offences not included in the Penal Code will be required. In these cases the general rule should be to place such cases under penalties already assigned in the code to acts of a

similar character. This mode of legislation, though an addition to, cannot be deemed an alteration of, the Penal Code. But if any deviation is considered necessary, then the law requires that your previous sanction should be obtained.

“3. It was the intention of Her Majesty’s Government that, except in local and peculiar circumstances, the code should contain the whole body of penal legislation, and that all additions or modifications suggested by experience should, from time to time, be incorporated in it. And the duty of maintaining this uniformity of course devolves upon Your Excellency in Council.

“4. As a general rule for the guidance of the local Councils it would probably be expedient, and this appears also to be your own view, that all bills containing penal clauses should be submitted for your previous sanction.”

(See also Government of India, Home, dated 7th July 1875, No. 1130, in G.O., dated 15th September 1875, No. 48, Legislative, and Despatch from Secretary of State to Government of India, No. 50, dated 7th October 1875, in G. O., No. 4, dated 11th January 1876, Legislative).

3. Funds have been created by various laws and orders, the appropriation of which is restricted to defined purposes. It is often found inconvenient that the action and discretion of the executive authority should be thus hampered and confined : moreover, such funds are apt to be forgotten and sometimes misused. The Governor-General in Council has, therefore, been pleased to decide that in future no provision should be made in any bill to be introduced into any Legislative Council in India for the creation of such a fund until the expediency of the measure has been specially considered in the Financial Department of the Government of India. As a rule, objections are felt to the creation of such funds, and especially to their creation by an act of the legislature unless in any case, as in that of

the University Fee Fund, the assets and liabilities are altogether separate and distinct from the general assets and liabilities of the State.

(Government of India, Financial Resolution, dated 19th June 1877, No. 1273 in G. O.; Financial, dated, 5th July 1877 No. 1843).

4. Section 67 of the Indian Penal Code, as amended by Act VIII of 1882, provides that, if an offence is punishable with fine only, the imprisonment which the Court imposes, in default of payment of the fine shall be simple. The word "offence" in that section has by section 21 of Act X of 1886 been so defined as to denote a thing punishable under a local or special law as well as under the code; and an enactment of the local legislature prescribing rigorous imprisonment, or imprisonment, rigorous or simple, at the discretion of the Magistrate in default of payment of fine, where the offence is punishable with fine only, would now be open to objection under section 42 of 24 and 25 Vict., Cap. 67, as being in conflict with a law passed by the Governor-General in Council after the passing of that statute.

(Government of India, Legislative, dated 31st May 1886, No. 1076, in G. O., Legislative, dated 17th June 1886, No. 120.)

5. The Legislative Department is not in respect of Government measures an originating or initiating department, and its proper function in respect of such measures is to clothe with a technical shape projects of law of which the policy has been affirmed elsewhere. Accordingly all legislative proposals emanating from Local Governments and Administrations should be addressed, not to the Legislative Department, but to the proper Executive Department of the Government of India. When once a measure has been referred to the Legislative Department that department corresponds directly with the Local Governments and Administrations, and all correspondence with Her Majesty's Government

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relating to bills and acts of the Imperial and Local Councils is conducted in the Legislative Department.

(Government of India, Home, dated 12th July 1874, No. 2301, in G. O., Judicial, dated 24th July 1873, No. 1162.)

6. Bills brought before the Legislative Council will be translated into the vernaculars and circulated with the District as well as the Fort St. George Gazettes.

(G. O., dated 16th February 1883, No. 39, Legislative.)

7. Bills emanating from non-official members of the Council should after introduction be dealt within the same way as measures brought forward by Government.

(Government of India, Legislative, No. 1430, dated 14th August 1888, in G.O., dated 4th September 1888, No 70, Legislative.)

8. Whenever the Government in its executive capacity has decided to submit a measure of importance, which is not urgent to the Council for making laws and regulations, a despatch is to be addressed to the Secretary of State, stating at length the reasons for the measure and the manner in which its objects are to be carried out. The despatch is to be accompanied or followed soon after by a draft of the bill proposed to be introduced.

When this course is not followed, because a measure of importance is urgently required, the grounds of the opinion on which the Government has acted are to be subsequently communicated.

(Secretary of State's Despatch, No. 9, dated 31st March 1874, in G. O., dated 22nd July 1874, No. 28, Legislative, and G. O., dated 16th January 1875, No. 3, Legislative.)

9. The bill should not be proceeded with in the Legislative Council until a communication has been received from the Government of India in the Legislative Department to the effect either that the Secretary of State has no objection

to the proposed bill, or that no reply has been received from the Secretary of State within two months from the date of the report.

(Government of India, Home, No. 1130, dated 7th July 1875, in G. O., dated 15th September 1875, No. 48, Legislative.)

10. Any objections which may be made by the Secretary of State in Council to legislative measures proposed by Local Governments, as well as any concurrence which may be expressed therewith, are, as a rule, conveyed through the Government of India.

(Government of India Despatch to Secretary of State, dated 24th December 1874, No. 72, in Legislative G. O., dated 16th January 1875, No. 3, Secretary of State's Despatch to Government of India, dated 11th February 1875, No. 8, in Legislative G. O., dated 1st May 1875, No. 29.)

11. The report of a bill or amendment to the Secretary of State and the receipt of no opinion adverse to it from him is not to be considered as necessarily implying on the part of Her Majesty a final approval of such legislation ; considerations may arise in particular cases which may make it expedient to defer the expression of the Secretary of State's opinion until the period at which the measure is sent to England for the assent or disallowance of the Crown.

(Government of India, Home, dated 7th July 1875, No. 1130, in G. O., dated 15th September 1875, No. 48, Legislative.)

12. Copies of bills pending before the Legislative Council should be transmitted to the Secretary of State, in all their stages, with connected papers.

(Secretary of State's, Despatch, No. 1, dated 11th May 1882, in G. O., dated 22nd June 1882, No. 39, Legislative.)

13. When a bill, which has been approved by the Secretary of State, is materially changed during its passage through the Legislative Council, the progress of the bill should be delayed as provided in para. 5 of the despatch from the

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Secretary of State, dated 31st March 1874, No. 9, in G. O., dated 22nd July 1874, No. 28, until the Secretary of State has a fresh opportunity of expressing his opinion.

14. The decision as to whether any measure has or has not undergone such material change during its passage through the Council as to bring it within the preceding rule, rests with the Local Government and in the despatch forwarding an amended bill to the Secretary of State in accordance with para. 2 of the Government of India Despatch to the Secretary of State dated 24th December 1874, No. 72, in G. O., dated 16th January 1875, No. 3, it should mention what the decision is, and whether it is intended to proceed with the bill at once or to delay the progress of the measure until the receipt of a communication from the Secretary of State or the Government of India as the case may be.

(Government of India, Legislative, dated 14th August 1888, No. 1430, in G. O., dated 4th September 1888, No. 70, Legislative.)

15. When a letter is despatched to the Secretary of State relating either to a bill or an amendment, copies of the letter, with enclosures, should be sent to the Government of India in the Legislative Department for information.

(Government of India, Home, dated 7th July 1875, No. 1130, in G. O., dated 15th September 1875, No. 48, Legislative.)

16. The Government of India in the Legislative Department is to be supplied with 27 copies

(1) of every bill and accompaniments referred to in the foregoing paragraph including the covering letter ;

(2) of every bill, with annexure, which is despatched to the proper Executive Department of the Government of India for the previous sanction of the Governor-General under section 43 of the Indian Councils Act, or of the Govern-

ment of India under the instructions of the Secretary of State of the 1st December 1862

	No. of Copies.
Bill as introduced	27
Annexure	27
Reports of Select Committees	27
Amended bills	27
Papers (printed) relating to bills	27
Bill as passed	27
Abstract of Proceedings of Legislative Council connected with each stage of the measures.	27

(3) of every bill submitted for the assent of the Governor-General under section 40 of the Indian Councils Act, together with the papers specified in the margin.

(Government of India, Legislative, dated 14th July 1879 No. 751, in G.O., dated 1st August 1879; No. 97, Legislative, as modified by Government of India, Legislative, dated 14th May 1889, No. 1020, G.O., dated 27th May 1889; No. 14, Legislative.)

17. If in any case Abstract Proceedings of the Legislative Council are forwarded with a bill under the foregoing rule, such extracts only of the proceedings as refer to the bill should accompany it and not the entire proceedings of the day.

(Government of India, Legislative endorsement, dated 23rd December 1886, No. 2524, in G.O., dated 10th January 1887, No. I. R., Legislative Government of India, Legislative, dated 26th April 1888, No 727, in G.O., dated 17th May 1888, No. 47, Legislative. Government of India, Legislative, dated 30th June 1888, No. 1118, in G.O., dated 14th July 1888, No. 57, Legislative.)

18. When any bill either pending before, or about to be introduced into the Legislative Council, is submitted for the consideration of the Government of India or for previous sanction, or when any bill is passed and is submitted for

the assent of His Excellency, the Governor-General, any existing law on which any of the sections are based should be noted in the margins of those sections.

(Government of India, Legislative, dated 19th December 1878, No. 1584, in G.O., dated 26th December 1878, No. 185)

19. Two or more bills forwarded for His Excellency the Governor-General's assent should not be sent under one covering letter, but each bill is to be forwarded separately, so that it may be dealt with in the department to which it appertains, and the disposal of one bill may not be delayed for the consideration of another.

(Government of India, Home Department, Official Memorandum, Nos. 738-39, dated 6th February 1869, in G. O., dated 18th February 1869, No. 68, Legislative.)

20. It may happen that the Governor-General may find it inexpedient to sanction an Act having retrospective effect, and may consequently have to refuse his assent, therefore Acts should be so framed as to enable the assent of His Excellency the Governor-General to be procured before the date fixed for their coming into force.

(Government of India, Legislative, dated 15th January 1883, No. 113, in G. O., dated 30th January 1883, No. 23, Legislative.)

21. The Governor-General having once formally disallowed a bill, it is impossible for him to revoke that disallowance. The bill has ceased to have any vitality and cannot be revived except by re-introduction as a new bill into the local Legislative Council.

(Government of India, Home dated 22nd January 1883, No. 508, in G. O., dated 4th February 1863, No. 173, Judicial.)

22. When Local Governments have occasion to introduce bills which may possibly conflict with some Statute or Act of the Governor-General in Council which the Local Legislature is precluded from affecting or restrict the jurisdiction

of the High Court, it is recommended that copies of the bills be first submitted to His Excellency the Governor-General in Council for examination through the Legislative Department. It is not the desire of the Government of India to press this suggestion on Local Governments; but if any Local Government thinks fit to act on it in any case, it will arrange for the examination of the draft submitted and for communicating at an early date the result of its examination.

(Government of India, Legislative, dated 23rd May 1879, No. 570, in G. O., dated 9th June 1879, No. 73, Legislative, [Similar Standing orders have been framed from time to time in regard to the Legislative business in the Provincial Legislative Councils.]

(iii) **Rules for the Discussion of the Budget.**

**IN THE IMPERIAL LEGISLATIVE COUNCIL.**

In exercise of the powers conferred by section 5 of the Indian Councils Act, 1909, the Governor-General in Council has, with the sanction of the Secretary of State for India in Council, made the following rules authorising, at any meeting of the Legislative Council of the Governor-General, the discussion of the annual financial statement of the Governor-General in Council.

**DEFINITIONS.**

1. In these rules—
  - (1) "President" means—
    - (a) the Governor-General, or
    - (b) the President nominated by the Governor-General in Council under section 6 of the Indian Councils Act, 1861, or
    - (c) the Vice-President appointed by the Governor-General under section 4 of the Indian Councils Act, 1909, or
    - (d) the Member appointed to preside under rule 27;

(2) "Member in charge" means the Member of the Council of the Governor-General to whom is allotted the business of the Department of the Government of India to which the subject under discussion belongs, and includes any member to whom such Member in charge may delegate any function assigned to him under these rules ;

(3) "Finance Member" means the Member in Charge of the Finance Department of the Government of India ;

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

(5) "Financial Statement" means the preliminary financial estimates of the Governor General in Council for the financial year next following ; and

(6) "Budget" means the Financial Statement as finally settled by the Governor-General in Council.

#### A.—THE FINANCIAL STATEMENT.

##### *General order of discussion.*

2. (1) On such day as may be appointed in this behalf by the Governor-General, the Financial Statement with an explanatory memorandum shall be presented to the Council every year by the Finance Member, and a printed copy shall be given to every member.

(2) No discussion of the Financial Statement shall be permitted on such day.

3. (1) On such later day as may be appointed in this behalf by the Governor-General, the first stage of the discussion of the Financial Statement in Council shall commence.

(2) On this day, after the Finance Member has stated any changes in the figures of the

Financial Statement which, in circumstances may since have rendered necessary, and has made any explanations of that Statement which he may think fit, any Member shall be at liberty to move any resolution entered in his name in the list of business relating to any alteration in taxation, any new loan, or any additional grant to Local Governments proposed or mentioned in such statement or explanatory memorandum, and the Council shall thereupon proceed to discuss each such resolution in the manner hereinafter prescribed:

4. (1) The second stage of the discussion of the Financial Statement shall commence as soon as may be after all the resolutions which may be moved as aforesaid have been disposed of.

(2) In this stage each head or group of heads specified in the statement contained in the Schedule appended to these rules as being open to discussion, shall be considered separately according to such grouping as the member in charge may determine.

(3) The consideration of a particular head or group of heads shall be introduced by the member in charge with such explanations, supplementing the information contained in the Financial Statement, as may appear to him to be necessary.

(4) Any Member shall then be at liberty to move any resolution relating to any question covered by any such head or group of heads which may be entered in his name in the list of business, and the Council shall thereupon proceed to discuss every such resolution in the manner hereinafter prescribed.

*Subjects excluded from discussion.*

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

(a) any subject removed from the cognizance of the Legislative Council of the Governor-

General by section 22 of the Indian Councils Act, 1861 ; or

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

(c) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

*Resolutions.*

6. No resolution shall be moved which does not comply with the following conditions, namely:

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

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

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

(d) it shall not challenge the accuracy of the figures of the Financial Statement; and

(e) it shall be directly relevant to some entry in the Financial Statement.

7. A Member, who wishes to move a resolution, shall give notice in writing to the secretary at least two clear days before the commencement of the stage of the discussion to which the resolution relates, and shall together with the notice submit a copy of the resolution which he wishes to move.

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

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

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

10. Resolutions admitted by the President shall be entered in the list of business in such order as he may direct.

*Discussion of Resolutions.*

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

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

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

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

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

14. A Member who has moved a resolution may withdraw the same unless some Member desires that it be put to the vote.

15. When, in the opinion of the President, a resolution has been sufficiently discussed, he may close the discussion by calling upon the mover to reply and the Member in charge to submit any final observations which he may wish to make:

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

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

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

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

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

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

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

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

20. When a question has been discussed at a meeting of the Council, or when a resolution has been disallowed under rule 8 or withdrawn under rule 14, no resolution raising substantially the question shall be moved within one year.

### B.—THE BUDGET.

21. (1) On or before the 24th day of March in every year the Budget shall be presented to the Council by the Finance Member, who shall describe the changes that have been made in the figures of the Financial Statement, and shall explain why any resolutions passed in Council have not been accepted.

(2) A printed copy of the Budget shall be given to each member.

22. (1) The general discussion of the Budget in Council shall take place on such latter day as may be appointed by the President for this purpose.

(2) At such discussion, any member shall be at liberty to offer any observations he may wish to make on the budget, but no member shall be permitted to move any resolution in regard thereto, nor shall the budget be submitted to the vote of the Council.

(3) It shall be open to the President, if he thinks fit, to prescribe a time limit for speeches.

23. The Finance Member shall have the right of reply, and the discussion shall be closed by the President making such observations as he may consider necessary,

C.—GENERAL.

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

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

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

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

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

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

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

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

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

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

[The Rules for the discussion of the Annual Provincial Financial Statements in the Provincial Legislative Councils have not yet been published.]

THE SCHEDULE.

*Heads open to or excluded from discussion under Rule 4.*

A. REVENUE.		B. EXPENDITURE.	
Heads open to discussion.	Heads not open to discussion.	Heads open to discussion.	Heads not open to discussion.
I.—Land Revenue.	IV.—Stamps.	1.—Refunds and Drawbacks	2.—Assignments and Compensations.
II.—Opium.	VII. Customs.	3.—Land Revenue.	13.—Interest on Debt.
III.—Salt.	VIII.—Assessed Taxes.	4.—Opium.	23.—Ecclesiastical.
V.—Excise.	XI.—Tributes from Native States.	5.—Salt.	25.—Political.
VI.—Provincial Rates.	XVI-A.—Courts.*	6.—Stamps.	27.—Territorial and Political Pensions.
IX.—Forest.	XXXII.—Army.	7.—Excise.	38.—State Railways.†
X.—Registration.	XXXIII.—Marine.	8.—Provincial Rates.	42. Major Works : Interest on Debt.
XII.—Interest.	XXXIV.—Military Works.	9.—Customs.	46.—Army.
XIII.—Post Office.	<i>All purely Provincial revenue and revenue accruing from divided heads in Provinces possessing Legislative Councils.</i>	10.—Assessed Taxes.	46-A.—Marine.
XIV.—Telegraph.		11.—Forests.	47.—Military Works.
XV.—Mint.		12.—Registration.	47-A.—Special Defences.
XVI-B.—Jails.		14.—Interest on other obligations.	<i>All statutory charges.</i>
XVII.—Police.		15.—Post Office.	<i>All Purely Provincial expenditure and expenditure accruing under divided heads in Provinces possessing Legislative Councils.</i>
XIX.—Education.		16.—Telegraphs.	
XX.—Medical.		17.—Mint.	
XXI.—Scientific and other Minor Departments.		18.—General Administration.†	
XXII.—Receipts in aid of Superannuation, etc.		19-A.—Courts of Law.†	
XXIII.—Stationery and Printing.		19-B.—Jails.	
		20.—Police.	

- XXIV.—Exchange.  
 XXV.—Miscellaneous.  
 XXVI.—State Railways.  
 XXVIII.—Subsidised Companies.  
 XXIX.—Irrigation, Major Works,  
 19 XXX.—Minor Works and Navigation.  
 XXXI.—Civil Works.

- 22.—Education.  
 24. Medical.  
 26.—Scientific and other Minor Departments.  
 28.—Civil Furlough and Absentee Allowances.  
 29.—Superannuation Allowances and Pensions.  
 30.—Stationery and Printing.  
 31.—Exchange.  
 32.—Miscellaneous.  
 33.—Famine Relief.  
 34.—Construction of Protective Railways.  
 35.—Construction of Protective Irrigation Works.  
 36.—Reduction or Avoidance of Debt.  
 40.—Subsidised Companies ; Land, etc.  
 41.—Miscellaneous Railway Expenditure.  
 42.—Irrigation ; Major Works — Working Expenses.  
 43.—Minor Works and Navigations.  
 45.—Civil Works.  
 48.—State Railways ; Capital Expenditure not charged to Revenue.  
 49. Irrigation Works ; Capital Expenditure not charged to Revenue

\* Mainly Court-fees and fines.

† These heads include certain statutory charges, which will be excluded from debate.

‡ This head deals purely with interest, sinking funds and annuities.

(iv) **Rules for the Discussion of Matters of Public Interest.**

**IN THE IMPERIAL LEGISLATIVE COUNCILS.**

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

**DEFINITIONS.**

1. In these rules—

(1) "President" means—

(a) the Governor-General, or

(b) the President nominated by the Governor-General in Council under section 6 of the Indian Councils Act, 1861, or

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

(d) the Member appointed to preside under rule 27 ;

(2) "Member in charge" means the Member of the Council of the Governor-General to whom is allotted the business of the Department of the Government of India to which the subject under discussion belongs, and includes any member to whom such member in charge may delegate any function assigned to him under these rules ; and the Secretary.

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

MATTERS OPEN TO DISCUSSION.

2. Any matter of general public interest may be discussed in the Council subject to the following conditions and restrictions :—

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

(a) any subject removed from the cognizance of the Legislative Council of the Governor-General by section 22 of the Indian Councils Act, 1861 ; or

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

(c) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

RESOLUTIONS.

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

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

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

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

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

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

and shall together with the notice submit a copy of the resolution which he wishes to move :

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

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

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

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

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

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

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

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

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### *Discussion of Resolutions.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) It shall be in the discretion of the President to put first to the vote either the original motion

or any of the amendments which may have been brought forward.

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

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

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

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

*General.*

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

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

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

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

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

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

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

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

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

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

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

#### (v) Rules for the Asking of Questions.

##### IN THE IMPERIAL LEGISLATIVE COUNCIL.

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

1. In these rules—

(1) "President" means—

(a) the Governor-General, or

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

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

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

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

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

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

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

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

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

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

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

(b) it shall not be of excessive length,

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

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

5. In matters which are or have been the subject of controversy between the Governor-General in Council and the Secretary of State or

a Local Government no question shall be asked except as to matters of fact, and the answer shall be confined to a statement of facts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## VI

### Lord Morley's Reform Despatch.

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The following is the full text of Lord Morley's Despatch on the Proposals for Constitutional Reform sent by the Governor-General in Council on the 1st October 1908:—

INDIA OFFICE, LONDON,

Public, No. 193.

27th November 1908.

To

HIS EXCELLENCY THE RIGHT HONOURABLE THE  
GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Proposals for Constitutional Reform.*

MY LORD,

I have to acknowledge the important Despatch of the 1st October, 1908, in which you had submitted for approval and decision a group of constitutional reforms framed by Your Excellency in Council, in pursuance of a policy initiated more than two years ago. Your proposals in their present shape are the outcome of a tentative project placed, in August last year, in the hands of Local Governments in India with instructions to consult important bodies and individuals representative of various classes of the community before putting their own conclusions before the Government of India. Those instructions, as you are very evidently justified in assuring me, were carried out with great care and thoroughness. After examining, moreover, the enormous mass of material gathered together in a prolonged operation, I gladly recognise the admirable industry, patience, thought and candour with which that material has been sifted by your Government and worked out into practical proposals, liberal in their spirit and comprehensive in their scope. I have taken all the pains demanded by their importance to secure special consideration of them

in Council. It is a sincere satisfaction to me to find myself able to accept the substantial part of Your Excellency's scheme, with such modifications as would naturally occur to different minds in handling problems of remarkable difficulty in themselves and reasonably open to a wide variety of solution.

#### THE IMPERIAL ADVISORY COUNCIL

The original proposal of an Imperial Advisory Council was based on the interesting and attractive idea of associating ruling Chiefs and territorial magnates of British India in guardianship of common and Imperial interests, and as a means of promoting more intimate relations among component parts of the Indian Empire. The general opinion of those whose assent and co-operation would be indispensable has proved adverse, and Your Excellency in Council now considers that the project should for the present not be proceeded with.

You still favour an Imperial Council composed only of ruling Chiefs. Lord Lytton made an experiment in this direction, but it remained without successful result. Lord Curzon afterwards proposed to create a Council composed exclusively of Princes contributing Imperial Service Troops, and deliberating on that subject exclusively. The opinion is pronounced that this also is likely to be unfruitful and ineffectual in practice. Your Excellency's project is narrower than the first of these two and wider than the second. I confess that, while entirely appreciating and sympathising with your object, I judge the practical difficulties in the way of such a Council assembling under satisfactory conditions to be considerable, expense, precedence, and housing, for instance, even if there were no others, yet if not definitely discontinued with a view to assembly it could possess little or no reality. It would obviously be a mistake to push the project unless it commands the clear assent and approval of those whose presence in the Council would be essential to its success, and the opinions expressed in the replies with which you have furnished me lead me to doubt whether that condition can be secured. But in case Your Excellency still favours this proposal, which is in itself attractive, I do not

wish to express dissent at this stage, and if, after consultation with the leading Chiefs, you are able to devise a scheme that is at once acceptable to them and workable in practice, I am not inclined to place any obstacle in the way of a full and fair trial and, in any event, the doubt I have expressed must not be taken as discouraging consultation with individual Chiefs according to the existing practice, for nobody with any part to play in Indian Government can doubt the manifold advantages of still further developing not only amicable but confidential relations of this kind with the loyal rulers in Indian States, possessed as they are of such peculiar authority and experience.

#### PROVINCIAL ADVISORY COUNCILS.

Next I agree with Your Excellency in the judgment that the question of a Council of notables for British India only should not be entertained. I am inclined, furthermore, for my own part, to doubt whether the creation of Provincial Advisory Councils is likely to prove an experiment of any marked actual value. The origin of the demand for bodies of that character, whatever the strength of such a demand amounts to, is undoubtedly the desire for greater facilities in the discussion of public measures. Your Excellency indicates what strikes me as pointing in a more hopeful direction in the proposition that this claim for increased facilities of discussion should be met "rather by extending the powers of the existing Legislative Councils than by setting up large rival Councils which must to some extent conflict with them." Large or small, such rivalry would be almost certain to spring up, and from the first the new species of Council would be suspected as designed to be a check upon the old. As in the case of ruling Chiefs or of notables in British India, so here, informal consultation with the leading men of a locality would have most or all of the advantages of an Advisory Council without the many obvious disadvantages of duplicating political machinery.

#### ENLARGEMENT OF LEGISLATIVE COUNCILS.

From these proposals I pass to what is, and what you declared to be, the pith and substance of the Despatch under reply. "The enlargement of the Legislative Councils

## LORD MORLEY'S REFORM DESPATCH ccvii

you say, "and the extension of their functions to the discussion of administrative questions are the widest, most deep-reaching and most substantial features of the scheme, which we now put forward." This perfectly correct description evoked and justified the close scrutiny to which these features have been subjected in my Council, and I am glad to believe that the result reveals few elements of material difference.

Your Government have now felt bound to deal first with the Imperial Legislative Council and from that work downwards to the Councils in the Provinces. I gather, however, from your Despatch of the 21st March, 1907, that you would at that time have preferred, as Lord Lansdowne had done in 1892, to build up the higher fabric on the foundation of the Provincial Councils. In your circular letter of the 21st August, 1907, you observed that the most logical and convenient mode of dealing with the question would have been first to discuss and settle the composition, the electorates and the powers of the Provincial Legislative Councils, and then to build up on the basis of these materials a revised constitution for the Imperial Council. In the absence of proposals from the Local Governments and Administrations, you were precluded from adopting this course, and, therefore, you set tentatively before them the line on which first the Legislative Council of the Governor-General and thereafter those of Governors and Lieutenant-Governors might be constituted.

In your present letter you have followed the same order, but with the full materials before me such as are now supplied by local opinions, it appears to be both more convenient and, as you said, more logical to begin with the Provincial Councils and afterwards to consider the constitution of the Legislative Council of the Governor-General.

### PROVINCIAL LEGISLATIVE COUNCILS.

The first question that arises touches the principle of representation. This is fully discussed in paragraphs 18 to 20, 26 to 31, and 34 of your letter. Citing previous discussions of the subject and referring to the precedent of the measures taken to give effect to the Statute of 1892, you

adhere to the opinion that, 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 (paragraph 18.) You justly observe that the principle to be borne in mind is that election by the wishes of the people is the ultimate object to be secured, whatever may be the actual machinery adopted for giving effect to it. (paragraph 29.) You consider that for certain limited interests, Corporations of Presidency towns, Universities, Chambers of Commerce, planting communities and the like, limited electorates must exist as at present, and you foresee no serious obstacle in carrying out arrangements for that purpose. Difficulties come into view when you go beyond these limited electorates and have to deal with large and widespread interests or communities, such as the landholding and professional classes, or with important minorities, such as Mahomedans in most provinces in India, and Sikhs in the Punjab. You dwell upon the great variety of conditions in the various provinces of the Indian Empire and the impossibility of applying any uniform system throughout, and your conclusion generally appears to be that class electorates should be framed where this is practicable and likely to lead to good results, and in their failure or defect, it will be necessary to have recourse to nomination.

With the general principles advanced by Your Excellency in this chapter of our discussion, I am in entire accord. I agree that to some extent class representation must be maintained in the limited electorates to which you refer, and here, as you point out, no serious obstacle is to be anticipated. I agree also that the Legislative Council should reflect the leading elements of the population at large and that no system of representation would be satisfactory if it did not provide for the presence in the Councils of sufficient representatives of communities so important as are the Mahomedans and the landed classes. But, in examining your plans for obtaining their representation, I am struck with the difficulty of securing satisfactory electoral bodies under them and with the extent to which, as you expect, nomination will be demanded to

## LORD MORLEY'S REFORM DESPATCH CCIX

supply the deficiencies of election. The same awkwardness and perplexity appear in obtaining satisfactory representation of the Indian commercial classes where, as is found generally throughout India with very few exceptions, they have not established Associations or Chambers to represent their interests.

The case of landholders is discussed in paragraphs 27 to 29 of your letter with immediate reference to the Imperial Legislative Council, and the situation is just the same—if separate representation is to be secured—for local Councils. You “find it impossible to make any definite proposal which would admit of general application.” (Para. 27). You see difficulties in devising a constituency that should consist only of landholders deriving a certain income from land (Para. 28), and you point out with much force the objections to election by voluntary Associations. In these observations I agree, and especially in your remark that the recognition of Associations as electoral agencies should be regarded as a provisional arrangement to be maintained only until some regular electorate can be formed.

The same difficulties, as you observe in paragraph 30, encounter the proposal to have a special electorate for Mahomedans. In some Provinces, as in Bombay the Mahomedans are so scattered that common organisation for electoral purposes is thought impracticable. In other Provinces, it is proposed to found a scheme partly on a property qualification and partly on a literary attainment; in others, again, it is suggested that recourse might be had to voluntary associations. One difficulty in regard to Mahomedans is not mentioned in your letter, for, the provision in any Province of a special electorate giving them a definite proportion of the seats on the Councils, might involve the refusal to them in that Province of a right to vote in the territorial electorates of which rural and Municipal Boards will afford the basis. If that were not done, they would evidently have a double vote, and this would probably be resented by other classes of the population.

### ELECTORAL COLLEGES.

Without rejecting the various expedients suggested by Your Excellency for adoption in order to secure the

adequate representation of these important classes on the Councils, I suggest for your consideration that the object in view might be better secured, at any rate in the more advanced Provinces in India, by a modification of the system of a popular electorate founded on the principle of Electoral Colleges. The use of this method is not in itself novel. It already exists in the group of District Boards and of Municipalities, which in several Provinces return members to the Provincial Councils. The election is not committed to the Boards or Municipalities directly. These bodies choose electors, who then proceed to elect the representative of the group. I will briefly describe the scheme that at present commends itself to me, and in order to make the method of working clear I will assume hypothetical figures for a given Province. Let it be supposed that the total population of the Province is 20 millions, of whom 15 millions are Hindus and 5 millions Mahomedans, and the number of members to be elected 12. Then since the Hindus are to Mahomedans as three to one, nine Hindus should be elected to three Mahomedans. In order to obtain these members, divide the Province into three electoral areas, in each of which three Hindus and one Mahomedan are to be returned. Then in each of these areas constitute an Electoral College consisting of, let us say, a hundred members. In order to preserve the proportion between the two religions, 75 of these should be Hindus and 25 Mahomedans. This Electoral College should be obtained by calling upon the various electorates, which might be (a) substantial landowners paying not less than a fixed amount of land-revenue, (b) the members of rural or sub-divisional Boards, (c) the members of District Boards, and (d) the members of Municipal Corporations, to return to it such candidates as they desired, a definite number being allotted to each electorate. Out of those offering themselves and obtaining votes, the 75 Hindus who obtained the majority of votes should be declared members of the College, and the 25 Mussalmans who obtained the majority should similarly be declared elected. If the Mussalmans returned did not provide 25 members for the Electoral College, the deficiency would

be made good by nomination. Having thus obtained an Electoral College containing 75 Hindus and 25 Mussalmans, that body would be called upon to elect three representatives for the Hindus and one for the Mahomedans. Each member of the College would have only one vote and could vote for only one candidate. In this way, it is evident that it would be in the power of each section of the population to return a member in the proportion corresponding to its own proportion to the total population.

In the same way, the desired proportion could be obtained of any representatives of any particular interest, as, for instance, of landowners. All that is necessary would be to constitute the Electoral College in such a way that the number of electors representing the land-owning interest should bear to the total number the same proportion as the members of Council representing the interest to be elected bear to the total number to be elected.

In this manner, minorities would be protected against exclusion by majorities and all large and important sections of the population would have the opportunity of returning members in proportion to their ratio to the total population. Their choice could in that event be exercised in the best possible way, that, namely, of popular election, instead of requiring Government to supply deficiencies by the dubious method of nomination.

I do not wish definitely to prescribe such a scheme for adoption, whether locally or universally, but I commend it to your consideration. It appears to offer an expedient by which the objections against a system of nomination may be avoided, and it would work through a choice freely exercised by the electorate at large instead of by artificial electorates specially constituted for the purpose. No doubt it removes the primary voter by more than one stage from the ultimate choice and it does not profess to be simple. I can only say that it is quite as simple as any scheme for representation of minorities can ever be. The system of a single vote, which is an essential part of it is said to work satisfactorily in places where it is in existence, and it is easy of apprehension by the electors. It would have several great advantages.

It would bring the classes specially concerned within the popular electorate, and so meet the criticisms of the Hindus to which you refer in paragraph 30; second, it establishes a principle that would be an answer to further claims for representation by special classes or associations; third, it would ensure the persons chosen being actually drawn from the locality that the Electoral College represents; fourth, it would provide a healthy stimulus to interest in local self-government by linking up local bodies (rural and Municipal Boards) more closely with the Provincial Legislative Councils. To this end, it might be provided that the candidate for election to the Provincial Council must himself have taken part in local administration.

The due representation of the Indian mercantile community on which you touch in paragraph 31 of your letter, might be included in the scheme if the commercial classes fail to organise themselves as you suggest that they may arrange to do, in Associations similar to the European Chambers of Commerce.

To meet possible objections founded on the difficulty of bringing together Electoral Colleges to vote in one place, I may add that this is not contemplated in the scheme. You refer at the close of paragraph 28 to the success of the Calcutta University in organising the election of Fellows by a large number of graduates scattered all over India. The votes of the electors in each College could, I imagine, be collected in the same manner without requiring them to assemble at a common centre.

#### OFFICIAL MAJORITY TO BE DISPENSED WITH.

From the electoral structure I now turn to the official element in the constitution of Provincial Legislative Councils, dealt with in paragraphs 43 to 56 of your letter. I first observe that in all of them you provide for a bare official majority, but you contemplate that in ordinary circumstances, only the number of official members necessary for the transaction of business shall be able to attend. The first question, therefore, is the necessity of maintaining in these Councils the majority of officials.

We have before us to begin with the leading fact that in the important Province of Bombay there is in the

## LORD MORLEY'S REFORM DESPATCH CCXiii

Council, as at present composed, no official majority, and that the Bombay Government, even in the smaller of its alternative schemes presented to Your Excellency in Council, is willing to dispense with such a majority. Considering the character of the Legislation ordinarily coming before the Provincial Council. is it not possible with due representation given to the various classes and interests in the community to do without a majority of officials. After a careful consideration, I have come to the conclusion that in the Provincial Councils such a majority may be dispensed with provided that a substantial official majority is permanently maintained in the Imperial Legislative Council.

I do not conceal from myself the risks in such an arrangement. The non-official majority may press legislation of a character disapproved by the Executive Government. This should be met by the exercise of the power to withhold assent possessed by the head of the Government? Although the Local Legislature is vested with power to make laws for the peace and good government of the territories constituting the Province, still the range of subjects is considerably narrowed by the statutory exclusions now in force. Thus, for example, the Local Legislature may not without the previous sanction of the Governor-General make or take into consideration any law affecting the Public Debt of India or the Customs duties or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India, or regulating currency or postal or telegraph business, or altering in any way the Indian Penal Code, or affecting religion or religious rites or usages, or affecting the discipline or maintenance of Naval or Military forces, or dealing with patents or copyrights, or the relations of the Government with foreign Princes or States. It is difficult to see how any measures of such urgency that delay might work serious mischief can come before a Provincial Council, for, mere opposition to a useful and beneficial project would not come within this description

On the other hand, and perhaps more often, there may be opposition on the part of the non-official Members to legislation that the Government desires. With a Council, however, representing divergent interests and realising, together with its increased powers, greater responsibility, a combination of all the non-official members to resist a measure proposed by the Government would be unlikely, and some non-officials at least would probably cast their votes on the side of the Government. If, however, a combination of all the non-official members against the Government were to occur, that might be a very good reason for thinking that the proposed measure was really open to objection, and should not be proceeded with.

Your Excellency will recall since you came into the authority of Governor-General, an Act proposed by a Local Government which a representative Legislative Council would almost certainly have rejected. Your Excellency's action in withholding assent from the Act shows that in your judgment it would have been an advantage if the Local Government had been induced by a hostile vote to reconsider their Bill. If, in spite of such hostile vote, the comparatively rare case should arise where immediate legislation were still thought absolutely necessary, then the constitution, as it at present stands, provides an adequate remedy. The Governor-General in Council to-day possesses a concurrent power to legislate for any Province, and though I strongly favour a policy that would leave to each local Legislature the duty of providing for its own requirements, still I recognise in this power an ample safeguard, should, under exceptional circumstances, a real demand for its exercise arise.

#### CONSTITUTION OF PROVINCIAL COUNCILS

This decision will make it necessary to modify to some extent the constitution of the several Provincial Councils proposed by you and will enable you to secure a wider representation. Subject to consideration of these details (which will not involve the postponement of the proposed Parliamentary legislation for the amendment of the Indian Councils Act, 1892, and for other purposes), I am ready to

## LORD MOALEY'S REFORM DESPATCH   CCXV

accept generally the proposals for the numbers and the constitution of the Councils set forth in your letter.

### THE IMPERIAL LEGISLATIVE COUNCIL.

Your proposals in relation to the Imperial Legislative Council are necessarily entitled to the greatest weight. I am glad to find myself able to accept them practically in their entirety. While I desire to liberalise as far as possible the Provincial Councils, I recognise that it is an essential condition of this policy that the Imperial supremacy shall be in no degree compromised. I must, therefore, regard it as essential that Your Excellency's Council, in its legislative as well as its 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. I see formidable drawbacks that have certainly not escaped Your Excellency to the expedient which you propose, and I cannot regard with favour the power, of calling into play an official majority while seeming to dispense with it. I am unable to persuade myself that to import a number of gentlemen to vote down something upon which they may or may not have heard the arguments will prove satisfactory. To secure the required relations, I am convinced that a permanent official majority in the Imperial Legislative Council is absolutely necessary, and this must outweigh the grave disadvantages that induce us to dispense with it in the Provincial Legislatures. It need not be in any sense an overwhelming majority, and this Your Excellency does not seek, but it must be substantial as it is certainly desirable that the Governor-General should be removed from the conflict of the division list and that the fate of any measure or resolution should not rest on his vote alone.

I have already dealt in the earlier paragraphs of this Despatch with elective principle, and it will be for Your Excellency to consider how far the popular electorate can be utilised for the return to your Legislative Council on landholders and Mahomedans. Some modifications of the scheme suggested for the Provinces will no doubt be necessary and the Electoral Colleges would probably have to

be on the basis of Provinces and not of Divisions, and the case of the Central Provinces would probably (in view of the disappearance of Advisory Councils) have to be met by nomination until the local Legislature is provided.

I accept your proposals for securing the representation of commerce, both European and Indian.

I also agree to your proposals as to nomination, but it will be a matter for your consideration whether, to meet requirement of a substantial official majority, the number of nominated officials should not be raised.

Your plan for securing occasional representation for the interests of minorities such as the Sikhs, the Parsis, the Indian Christians, the Buddhists and the Domiciled Community meets with my entire approval, and I am complete sympathy with your intention sometimes to appoint one or two experts in connection with legislation impending before the Councils.

#### INCREASED FACILITIES FOR DEBATE.

I turn to the proposals contained in paragraphs 57-59 of your Despatch affording further facilities for debate. This subject, as Your Excellency remarks, was not dealt with in the earlier correspondence out of which your present proposals arise, but I am entirely in accord with Your Excellency's Government in regarding it as of cardinal importance.

The existing law which confines discussion, except on the occasion of the Annual Financial Statement, to the Legislative proposals actually before the Council, imposes a restriction that I am convinced is no longer either desirable or necessary. The plan of Your Excellency's Government contemplates a wide relaxation of this restriction, and in sanctioning it generally, I am confident that these increased facilities, judiciously used, will be pronounced of the greatest advantage, not only by Councils and those whom they represent, but also by Government who will gain additional opportunities both of becoming acquainted with the drift of public opinion and of explaining their own actions.

#### EFFECT OF THE RESOLUTIONS.

Taking the proposals in detail, I agree that the Resolutions to be moved should take the form of recommendations

## LORD MORLEY'S REFORM DESPATCH CCXVII

to Government, having only such force and effect as Government after consideration shall deem due to them. The introduction and discussion of Resolutions should not extend to subjects removed from the cognizance of Legislative Councils by statute, and must obviously be subject to rules and restrictions. These, as Your Excellency observes, may best be laid down, in the first place, when the rules of business are drawn up and developed thereafter as experience may show to be desirable. Meanwhile, I agree generally with the conditions suggested in paragraph 59 of your Despatch. I must, however, remark upon the first of the suggested conditions that isolated incidents of administration or personal questions may be and often are at the same time matters of public and general importance. It would, in my opinion, be sufficient to lay down that Resolutions must relate to matters of public and general importance, inasmuch as the President of the Council will have the power of deciding finally whether any proposed Resolution does, or does not, satisfy this condition.

### INTERPELLATIONS

In respect of rules on the asking of questions, I have come to the conclusion that subject to such restriction as may be found requisite in practice and to the existing general powers of the President, the asking of supplementary questions should be allowed. Without these, a system of formal questions met by formal replies must inevitably tend to become unreal and ineffective and in an assembly in which, under proper safeguards, free discussion and debate is permitted and encouraged, there can be no sufficient reason for prohibiting that method of eliciting information and expressing indirectly the opinions and wishes of the questioners.

### DISCUSSION OF THE IMPERIAL BUDGET

Special importance attaches to rules as to the discussion of the Imperial Budget and I recognise with much satisfaction the liberality of the proposals that you have placed before me. The changes under this head constitute a notable step in the direction of giving to the representatives of Indian opinion a part in the most important administrative operation of the political year. I approve the dates suggested for the promulgation of the Financia

Statement and for the beginning and ending of its discussion in Committee, and I anticipate valuable results from the knowledge which your Government will acquire in these debates of the views of those whom the proposed measures will chiefly and directly affect, and which it will be able to utilise in shaping its final financial proposals for the year. Generally, also, I approve the rules sketched in paragraph 64 for the regulation of discussions in Committee and of the moving of Resolutions and I concur in your opinion that the form of procedure should be such as to show clearly that the power of executive action resides exclusively in Government, who, while inviting the free expression of opinion in the form of Resolutions do not thereby forego any part of the power and responsibility which has been and must continue to be in their hands.

#### PROVINCIAL BUDGETS

Your proposals for the discussion of the Provincial Budgets seem entirely sound. As in the case of the Imperial Budget, so with respect to the Provincial Finances, I observe with satisfaction that provision is made for full and free discussion and for the consideration by Government of the results of such discussion before the final proposals for the year are framed, and I believe that under the system suggested by you the Local Governments will retain that ultimate control over the financial policy of their Provinces, without which not only the authority of the Government of India but also that of the Secretary of State in Council and Parliament would inevitably disappear.

#### FURTHER REFORMS

Your Excellency claims for your scheme as a whole "that it will really and effectively" associate the people of India in the work not "only of occasional legislation but of actual every-day administration." The claim is abundantly justified, yet the scheme is not and hardly pretends to be a complete representation of the entire body of changes and improvements in the existing system that are evidently present to the minds of some of those whom your Government has consulted and that, to the best of my judgment, are now demanded by the situation described in the opening words of the Despatch. It is evidently Desirable,

Your Excellency will agree, to present our reformed constitutional system as a whole. From this point of view, it seems necessary to attempt without delay an effectual advanced in the direction of Local self-Government.

#### LOCAL SELF-GOVERNMENT

The principles that should inspire and regulate measures with this aim can hardly be laid down in sounder or clearer terms than in the Resolution published by the Government of India on the 18th May, 1882. I do not know where to look for a better expression of the views that should govern our policy under this important head, and I will venture to quote some passages in this memorable deliverance. Explaining the proposal for Local self-Government of that date the Government of India place themselves on ground which may well be our ground also. "It is not primarily," they say, "with a view to improvement in administration that this measure is put forward and supported, it is chiefly derivable as an instrument of political and popular education;" and again, "there appears to be great force in the argument that so long as the chief Executive officers are, as a matter of course, Chairmen of the Municipal and District Committees there is little chance of these committees affording any effective training to their members in the management of local affairs or of the non-official members taking any real interest in local business. The non-official members must be led to feel that real power is placed in their hands and that they have real responsibilities to discharge." This anticipation has been, to some extent, warranted by experience. Funds have not existed for an efficient Executive staff. The official element within the local bodies has been in many places predominant. Non-official members have not been induced, to such an extent as was hoped, to take a real interest in local business because, their powers and their responsibilities were not real. If Local self-Government has so far been no marked success as a training ground, it is mainly for the reason that the constitution of the local bodies departed from what was affirmed in the Resolution to be "the true principle" that "the control should be exercised from without rather than from within; the Government should revise and check the acts of local bodies but not

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dictate them." I have no doubt that the Government of India to-day will affirm and actively shape their policy upon the principle authoritatively set forth by their predecessors in 1882:—"It would be hopeless to expect any real development of self-Government if the local bodies were subject to check and interference in matters of detail, and the respective powers of Government and of the various local bodies should be clearly and distinctly defined by statute, so that there may be as little risk of friction and misunderstanding as possible within the limit to be laid down in each case. However, the Governor-General in Council is anxious that the fullest possible liberty of action should be given to local bodies."

#### THE STARTING POINT IN PUBLIC LIFE

Your Excellency will recall that the Resolution from which I have quoted treats the sub-division, taluka or the tahsil as the smallest administrative unit. It is a question whether it would not be a wise policy to go further. The village in India (generally) has been the fundamental and indestructible unit of the social system, surviving the downfall of dynasty after dynasty. I desire Your Excellency in Council to consider the best way of carrying out a policy that would make the village the starting point of public life.

#### A SPECIAL DEPARTMENT

The encouragement of Local self-Government being an object of this high importance in the better organisation of our Indian system, it remains to be considered how far in each province it would be desirable to create a department for dealing exclusively with these local bodies, guiding and instructing them and correcting abuses in a form analogous to the operations of the Local Government Board in this country. That, however, is a detail, though a weighty one, in a question on which as a whole I confidently expect that Your Excellency will find much light in the forthcoming report of the Royal Commission on Decentralisation.

#### EXECUTIVE COUNCILS : ADMISSION OF INDIANS

In the closing page of your letter Your Excellency raises a question of a high order of importance. You recognise as you inform me that the effect of our proposals will be

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to throw a greater burden on the heads of Local Governments, not only by reason of the actual increase of work caused by the long sittings of the Legislative Councils, but also because there will be considerable responsibility in dealing with the recommendations of those Councils. You then suggest the possibility that experience may show it to be desirable to strengthen the hands of the Lieutenant-Governors in the large Provinces by the creation of Executive Councils and of assisting the Governors of Madras and Bombay by enlarging the Executive Councils that now exist in these Presidencies.

I have to observe with respect to Bombay and Madras that the original scheme under the Act of 1833 provided for the appointment of three members in these Presidencies. It seems conformable to the policy of this Despatch to take power to raise to four the numbers of each of these Executive Councils, of whom one, at least, should be an Indian. I would not, however, propose to make this a provision of a statute, but would leave it to practice and usage growing into confirmed rule.

### MORE EXECUTIVE COUNCILS IN THE LARGER PROVINCES

As to the creation of Executive Councils in the larger Provinces, I am much impressed by both of the considerations that weigh with Your Excellency in throwing out the suggestion and more especially by the second of them. All will depend for the wise and efficient despatch of public business upon right relations between the supreme head of the Executive power in the Province and the Legislative Council. The question is whether these relations will be the more likely to adjust themselves effectively if the judgment of the Lieutenant-Governor is fortified and enlarged by two or more competent advisors with an official and responsible share in his deliberations.

Your Excellency anticipates longer sittings of the Legislative Council with increased activity of discussion, and the effectual representation of Provincial opinion and feeling as a guide to executive authority is the central object of the policy of Your Excellency's Despatch. The aim of that policy is twofold, at to once enable Government the better to realise the wants, interests and sentiment of the governed; and on the

other hand to give the governed a better chance of understanding, as occasion arises, the case for the Government against the misrepresentations of ignorance and malice. That double object, as Your Excellency fully appreciates, is the foundation of the whole system in India and all over the world of administration and legislation either through or subject to the criticism of deliberative bodies, whether great or small.

The suggestion for the establishment of Executive Councils for Lieutenant-Governors, as Your Excellency is aware, is not new. A really new problem or new solution is in truth surprisingly uncommon in the history of British rule in India and of the political or administrative controversies connected with it. Indeed, without for an instant undervaluing the supreme necessity for caution and circumspection at every step and motion in Indian Government, it may be open to some question whether in some of these controversies before now even an erroneous conclusion would not have been better than no conclusion at all. They are now considering what was much discussed in obedience to the orders of the Secretary of State in 1868 by men of the highest authority on Indian questions and I do not conceive that after all the consideration given to the subject then and since, further consultations could be expected to bring any new arguments of weight and substance into view.

It has sometimes been argued that the creation of Executive Councils in the major provinces would necessarily carry with it as in Bombay and Madras the appointment in each case of a Governor from Home. This would indeed be a "large departure from the present system of administration," almost amounting to the confusion and overthrow of that system reposing as it does upon the presence at the head of the highest administrative posts of officers trained and experienced in the complex requirements and diversified duties of the Indian Government. I take for granted, therefore, that the head of the Province will be, as now, a member of the Indian Civil Service appointed in such mode as the law prescribes.

#### THE POWER OF VETO

I propose, therefore, to ask for power to create Executive Councils from time to time as may be found

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expedient. In this connection, we cannot ignore the necessity of securing that a constitutional change designed both to strengthen the authority and to lighten the labours of the head of the Province shall not impair the prompt exercise of Executive power. It will therefore, be necessary to consider most carefully what decree of authority over the members of his Council in case of dissent should be vested in the head of a Province in which an Executive Council may be called into being. It was recognised by Parliament more than a century ago that the Governors of Madras and Bombay should be vested with a discretionary power of overruling these Councils in cases of high importance and essentially affecting the public interest and welfare. A power no less than this will obviously be required in the Provinces in which a Council may come to be associated with the head of the Executive, and I shall be glad if you will favour me with your views upon its definition. Your Excellency will readily understand that the use of such a power, while not to be evaded in the special cases for which it is designed, is not intended for a part of the ordinary mechanism of Government. Rather, in the language of the historical Despatch of 1834, it is my belief that "in a punctual, constant and ever fastidious adherence to your ordinary rules of practice you will find the best security not only for the efficiency and also for the despatch of your Legislative proceedings."

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## VII

### The Resolution on the Reforms, 1909.

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The following is the Resolution of the Governor-General in Council, dated the 16th November 1909, issued when bringing the Indian Councils Act, 1909 into operation :—

**No. 4213.**—With the approval of the Secretary of State in Council, the Governor-General in Council has to-day brought into operation the Indian Councils Act, 1909, and has published the rules and regulations relating to the nomination and election of the members of the enlarged Legislative Councils. This act marks the completion of the earnest and prolonged deliberations that was initiated by the Viceroy more than three years ago, when he appointed a Committee of his Executive Council to consider and report on the general question of giving to the peoples of India a larger measure of political representation and wider opportunities of expressing their views on administrative matters.

2. The various stages of inquiry and discussion which followed need not be viewed at length. In the Home Department letter of the 24th August 1907, the Government of India put forward certain provisional and tentative proposals, and invited the local Governments to submit their matured conclusions, after consulting important bodies and individuals representing the various classes of the community. The voluminous opinions elicited by that letter were fully dealt with in the Despatch which the Government of India addressed to the Secretary of State on the 1st October 1908, and in Lord Morley's Despatch of the 27th November following. Since those papers were published, the Government of India have been engaged, in communication with the Secretary of State, in working out the principles accepted by him, and the scheme finally adopted for the future constitution of the Legislative Councils is embodied in the Indian Councils Act and in the Regulations which are published to-day. The Governor-General in Council will now proceed to state briefly the extent and nature of the changes introduced and to indicate in what

## THE RESOLUTION ON THE REFORMS CCXXV

respects they differ from the proposals contained in the papers already published.

3. The maximum strength of each Council fixed is by the first schedule of the Act. Excluding the head of the Government and the members of the Executive Councils, it varies from 6 for the Council of the Governor-General to 30 for the Councils of the Punjab and Burma, the number for each of the other five Provincial Councils being 50. The actual strength of each Council is determined by the Regulations: the statutory maximum will at present be worked up to only in the Imperial and Bengal Councils, but as will be seen from the annexed statements the numbers are in every case slightly larger than those shown in the Despatch of the 1st October 1908.

4. For the reasons given by the Secretary of State in his Despatch of 27th November 1908, there will continue to be a majority of officials in the Governor-General's Council but the Regulations provide not only that there may be, but that there must be, a majority of non-official members in every Provincial Council. The following statement, from which the head of the Government is in each case excluded, shows the effect of this great constitutional change on the composition of each Council. It will be within the power of a local Government to increase the non-official majority by nominating less than the maximum number of officials and substituting non-officials, but that majority cannot be reduced except to the limited extent indicated below and then only for a specified period or in connection with a particular measure:—

### Legislative Council of Officials. Non-officials. Majority

India ... ..	35	32		<i>Official.</i>		3
				<i>Non-Official</i>		
Madras ... ..	19	26				7
Bombay ... ..	17	28				11
Bengal ... ..	17	31				14
United Provinces ... ..	20	26				6
Eastern Bengal and Assam ... ..	17	23				6
Punjab ... ..	10	1				4
Burma ... ..	6					3

These figures relate to the ordinary constitution of the Councils and leave out of account the two experts who may be appointed members of each Provincial Council.

when the legislation in hand is of a nature to demand expert advice. If these members are non-officials the majority will be strengthened, and even if both are officials it will not be entirely neutralised. The strength of the non-official majority varies with local conditions.

5. Special provision has been made for the representation of the professional classes, the landholders, the Muhammadans, European commerce, and Indian commerce. The first of these interests will be represented on the Governor-General's Council by the members elected by the Provincial Legislative Councils and by the district Councils and Municipal Committees in the Central Provinces; and on the Provincial Councils by the representatives of the District Boards, the Municipalities, the Corporations of the Presidency towns and the Universities. The others will be represented upon all the Councils by members elected by special electorates or nominated under an express provision of the Regulations. The representative of the Bombay landholders on the Governor-General's Council will be elected at the first, third and subsequent alternate elections by the landholders of Sind, a great majority of whom are Muhammadans, while at other elections he will be elected by the Sardars of Gujerat or the Sardars of the Deccan, a majority of whom are Hindus. Again the landholders of the Punjab consist of about equal numbers of Muhammadans, and non-Muhammadans and it may be assumed that their representative will be alternately a Muhammadan and non-Muhammadan. It has accordingly been decided that at the second, fourth, and succeeding alternate elections when these two seats will presumably not be held by Muhammadans, there shall be two special electorates consisting of the Muhammadan landholders who are entitled to vote for the member who represents in the Governor-General's Council the landholders of the United Provinces and Eastern Bengal and Assam respectively. In some Provinces there are special interests, such as the tea and jute industries in Eastern Bengal and Assam and the planting communities in Madras and Bengal, for which special provision has been made. The representation of minor interests and smaller classes will be provided for by nominations made from time to time as the particular needs of the moment and the claims of each community may require.

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6. In the Despatch of the 1st October 1908 it was explained that some of the seats there shown as elective might at first have to be filled by nomination, pending the formation of suitable electorates. Further inquiry has shown this course to be unavoidable at present in respect of (1) the representative of Indian Commerce in all Councils except that of the Governor of Bombay ; (2) the representatives of the landholders and the Muhammadan community of the Punjab on the Governor-General's Council; and (3) the representative of the planting community on the Bengal Council. The Regulations, however, provide that a member must be nominated to represent each of these interests ; and it is the intention of the Governor-General in Council to substitute election for nomination wherever a workable electorate can be formed.

7. It will be seen that the Regulations have been divided into two parts, first, the substantive Regulations, which deal with all matters of general application, and, secondly, a series of separate Schedules defining the constitution of each electorate and prescribing the electoral procedure to be adopted in each case.

8. The qualifications required for both candidates and voters are specified in the Schedules, but the disqualifications, which apply generally, are given in the Regulations. The only voters disqualified are females, minors, and persons of unsound mind, but for candidates wider restrictions are obviously necessary and these are set forth under nine heads in Regulation IV. The last of these provides that no person shall be eligible for election if he has been declared by the Government of India or the local Government to be of such reputation and antecedents that his election would, in the opinion of the Government, be contrary to the public interest. The Act of 1892 laid down that an elected candidate must be nominated by the head of the Government before he could take his seat on the Council. It thus gave power to exclude a candidate whose presence would bring discredit upon the Council, and although this power was never exercised, yet it served a useful purpose in deterring such persons from coming forward for election. If the dignity and representative character of the Legislative Councils are to be maintained, there-

must be some means of excluding unworthy candidatures, though recourse to it would be of rare occurrence, and the disqualification imposed would not necessarily be permanent.

9. In accordance with the practice of the House of Commons and of other British Legislatures, members of the enlarged Councils must, before taking their seats, make an oath or affirmation of allegiance to the Crown.

10. If a candidate is elected for more than one electorate he is required by Regulation IX to choose for which electorate he will sit. The votes recorded for him in any electorate for which he decides not to sit will be deemed not to have been given, and the seat will go to the candidate who would have been elected but for such votes. This is in accordance with the procedure prescribed for ward elections in the city of Bombay, and it has the advantage of rendering a fresh election unnecessary.

11. The normal term of office has been extended from two to three years, but a member elected to fill a casual vacancy will sit only for the unexpired portion of the out-going member's term. This provision is necessary to meet the case of electorates which elect by rotation. To deprive such a constituency of its representation for what might be a considerable portion of the term allotted to it would be unfair ; while to allow the constituency of the out-going member (who might have sat for nearly the full term) to elect another member for a further period of three years would be open to still greater objections. The provision is also required to secure the retention of the advantages of cumulative voting in two-member constituencies.

12. It has been expressly laid down that corrupt practices shall render an election invalid. There is no such provision in the existing Regulations, but the great extension of the principle of election and the probability of keen contests render it desirable to provide safeguards against the employment of improper practices. The definition of "corrupt practices" is taken from the Bombay District Municipalities Act. It covers false personation on the part of a voter and the use of threats of injury, as well as the actual purchase of votes by the candidate or his agent.

## THE RESOLUTION ON THE REFORMS CCXXXIX

13. Any person who is qualified as a voter or a candidate may question the validity of an election and apply to the Government of India or the local Government, as the case may be, to set it aside. After such inquiry as may be necessary, the Government may declare whether the candidate whose election is questioned was duly elected; or whether any, and if so, what other person was duly elected; or whether the election was void (Regulation XVI). An election will not, however, be set aside on the ground of minor irregularities which do not affect the result (Regulation XV).

14. In most cases the electorates are sufficiently defined in the Regulations; where more detailed information is necessary, this has been given in the Schedules prescribing the electoral procedure. Where the electorates are scattered, as is the case with the landholders and the Muhammadans, provision has been made for the preparation and publication of an electoral roll containing the names of all persons qualified to vote. After the first election this roll will be brought under revision from time to time, when claims and objections will be decided; but the roll actually in force at the time of any election will be conclusive evidence on the question whether any person has the right to vote. The Governor-General in Council regrets that it has not been possible to allow claims to be made or objections to be taken in respect of the first roll. The qualifications upon which each roll is based could not be announced until the Regulations had received the approval of the Secretary of State, and no revision of the roll could be undertaken until the new Act had been brought into operation. At least two months would have to be devoted to the disposal of claims and objections, and it is probable that even at the end of that period some cases would still be pending. It would thus be impossible to constitute the Provincial Councils before March 1910, and the Governor-General's Council could not assemble before the end of that month or the beginning of April. The consequent loss of the whole of the legislative season would cause so much inconvenience that it would be necessary to defer putting the Act into operation and to postpone the

assembling of the new Councils until the session of 1910-11. The Governor-General in Council is sensible of the objection to holding an election on a register which has not been subjected to the test of revision, but he is convinced that those objections are greatly outweighed by the keen disappointment that would be caused by further delay in introducing the constitutional changes which have now been under discussion for more than three years. Moreover, the danger of improper omission or inclusion is comparatively small. The two principal qualifications are payment of land revenue and income-tax, the records of which are detailed and complete, and steps were taken beforehand to ensure, as far as possible, that doubtful cases and claims based on other qualifications should be brought to notice. The Governor-General in-Council believes that the great majority of those interested in the question will recognise the difficulties of the situation, and will acquiesce in the decision to prefer the possibility of some small degree of error affecting only a few individuals to the certainty of further prolonged delay in the assembling of the new Councils.

15. The qualifications prescribed for electors in the cases of the landholders and the Muhammadans vary greatly from province to province. They are in accordance for the most part, with the specific recommendations of the Local Governments, and these recommendations again were based upon inquiries made by a special officer appointed in each province to ascertain by personal consultation the wishes of the members of the two communities. The Governor-General in Council would have preferred some nearer approach to uniformity ; but the principle he has borne in mind is that election by the wishes of the people is the ultimate object to be secured, and he has felt that he must be guided by the advice of the local authorities as to what those wishes are. The status and circumstances both of the landholders and of the Muhammadan community differ widely from province to province, and qualifications which would produce a satisfactory constituency in one case would in another give an electorate insignificant in numbers and deficient in representative character.

## THE RESOLUTION ON THE REFORMS CCXXXI

16. The qualification for candidates are, as a rule, the same as those prescribed for voters, but in some cases, such as that of candidates for election to the Governor-General's Council by the non-official members of a Provincial Council, any such restriction would be inappropriate. In other instances, there has been some difference of treatment in different provinces, but the object in all cases has been to secure that the member shall really represent the electorate.

17. The different kinds of electoral machinery may be broadly classified under two main heads,—one under which the electors vote direct for the members and the other under which they select direct delegates by whom the members are elected. A subsidiary distinction in each case is that the electors or delegates either vote at a single centre before a Returning Officer, or vote at different places before an Attesting Officer, who despatches the voting papers to the Returning Officer. A further distinction in the case of delegates is that in Bengal each delegate has a varying number of votes, the number depending in the case of District Boards and Municipalities upon the income of those bodies, and in the case of a Muhammadan community upon the strength and importance of the Muhammadan population of a district or group of districts. Elsewhere the same object has been attained by varying the number of delegates on like grounds, each delegate then having only one vote. In the Central Provinces, however, the number of delegates to be elected by each District Council and Municipal Committee has been fixed, not with sole reference to income or population, but with regard to a number of factors, of which those two are perhaps the most important.

18. A special case of voting by delegates is that of the election of a member of the Governor-General's Councils to represent the Muhammadan community of Bombay. The delegates in this case are not appointed *ad hoc*, but consist of the Muhammadan members of the Provincial Council. This exceptional method has been admitted on the assurance of the Governor in Council that the Muham-

madan community of the Presidency as a whole would be better represented by the Muhammadan members of the Provincial Council than by any form of direct electorate that could be devised.

19. The procedure for voting is generally similar to that prescribed by the English Ballot Act. In some cases, however, such as the elections by the Corporations of the Presidency Towns, the Chambers of Commerce and the Trades' Associations, the voting will, as at present, be regulated by the procedure usually adopted by those bodies for the transaction of their ordinary business.

20. The rules authorising the moving and discussion of resolutions, the discussion of the Budget, and the asking of questions have been framed in accordance with the decisions on these matters which have already been announced. In the rules relating to the discussion in the Governor-General's Councils of matters of general public interest it is provided that no discussion shall be allowed in regard to subjects removed from the cognisance of the Council by the Indian Councils Act of 1861, or matters affecting the foreign relations of His Majesty's Government or the Government of India, or matters which are *sub-judice*. The President may also disallow any resolution on the ground that its introduction is opposed to the public interest, or that it should be moved in the Legislative Council of a Local Government. Subject to these necessary restrictions, a resolution may be moved regarding any matter of general public interest and all such resolutions may be fully discussed and put to the vote. The President may assign such time as he may consider reasonable for the discussion of resolutions or of particular resolution.

The examination of the annual financial proposals in the Governor-General's Council will be divided into three parts. There will first be an opportunity for discussing any alteration in taxation, any new loan, or any grant to Local Governments proposed or mentioned in the financial statement or the explanatory memorandum accompanying it. In the second stage, each head or group of heads of revenue or expenditure not excluded from discussion

## THE RESOLUTION ON THE REFORMS CCXXXIII

will be explained by the member in charge of the administrative department concerned, and any member may then move a resolution relating to these subjects. The final stage consists of the presentation of the Budget by the Finance Member, who will explain why any resolutions passed by the Council have not been accepted. A general discussion of the Budget will follow, but at this stage no resolution may be moved.

The rules for the asking of questions are substantially the same as those hitherto in force, with the important exception that they permit a member who has asked a question to put a supplementary question.

In respect of these matters each Provincial Council is governed by rules of its own, which in essentials differ but little from those of the Governor-General's Council. One distinguishing feature, however, is that the Local Financial Statement is first examined by a Committee of the Council consisting of twelve members, of whom six will be nominated by the head of the Government and six elected by the non-official members of the Council.

21. The Governor-General in Council is conscious that many of the details of the scheme which is being introduced may be found on trial to be unsatisfactory or capable of improvement. Experience alone can show how far methods which are new to India give to the different classes and interests a measure of Representation proportionate to their importance and influence, and to what extent an untried electoral machinery is suitable to the varying circumstances of the different provinces and the numerous electorates. Defects will no doubt be discovered when the rules are put into operation, but, if this proves to be the case, the law admits of the regulations being amended without difficulty.

22. Under the arrangements that have been made the new Provincial Councils will assemble at the beginning of January 1910, and the Council of the Governor-General in the course of that month. It is a source of great satisfaction, both to the Viceroy personally and to the Members of his Council, that the deliberations which have extended

over the greater part of Lord Minto's Viceroyalty should have achieved their purpose before he lays down the office of Governor-General. The constitutional changes that have been effected are of no small magnitude. The Councils have been greatly enlarged ; the maximum strength was 126 : it is now 370. All classes and interests of major importance will in future have their own representatives. In the place of 39 elected members there will now be 135 ; and while the electorates of the old Councils had only the right to recommend the candidate of their choice for appointment by the head of the Government, an elected member of the new Councils will sit as of right and, will need no official confirmation. Under the Regulations of 1892 officials were everywhere in a majority ; the Regulations just issued establish a non-official majority in every Provincial Council. Nor has the reform been confined to the constitution of the Councils : their functions also have been greatly enlarged. A member can now demand that the formal answer to a question shall be supplemented by further information. Discussion will no longer be confined to legislative business and a discussive and ineffectual debate on the Budget, but will be allowed in respect of all matters of general public interest. Members will in future take a real and active part in shaping the financial proposals for the year ; and as regards not only financial matters but all questions of administration they will have liberal opportunities of criticism and discussion and of initiating advice and suggestions in the form of definite resolutions. The Governor-General in Council feels that these momentous changes constitute a generous fulfilment of the gracious intention, foreshadowed in the King-Emperor's message, to entrust to the leaders of the Indian peoples a greater share in legislation and government, and he looks forward with confidence to these extensive powers being loyally and wisely used by them, in association with the holders of executive authority, to promote the prosperity and contentment of all classes of the inhabitants of this great country.

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## VIII

### Resolution on Local Self-Government, 1882.

The following is the Resolution on Local Self-Government issued by the Governor-General in Council during the Viceroyalty of the Marquis of Ripon initiating measures of Local Self-Government in India, in 1882 :—

THE Governor-General in Council in the Resolution of the Financial Department, dated the 30th September 1881, set out, for the information of the Local Governments, the principles upon which it was proposed to revise the agreements then in force for the administration of the Provincial Services, and to establish the decentralised system of finance on a uniform and extended basis. It was explained that intimately connected with this general scheme for the decentralisation of finance was the very important question of developing Local self-Government. Considerable progress in the direction had, it was admitted, been made since 1870. A large income from local rates and cesses had been secured, and in some provinces the management of this income had been freely entrusted to local bodies. Municipalities had also increased in number and usefulness. But there was still, it was remarked, a greater inequality of progress in different parts of the country than varying local circumstances seemed to warrant. In many places services admirably adapted for local management were reserved on the hands of the central administration, while everywhere heavy charges were levied on Municipalities in connection with the Police, over which they had necessarily no executive control.

Paragraph 11 of the Resolution went on to say:—"His Excellency the Governor-General in Council is therefore of opinion that the time has now arrived when further

practical development may be afforded to the intentions of Lord Mayo's Government, and that the Provincial agreements should no longer exclude from all consideration the mass of taxation under Local and Municipal management, together with the similar resources still retained in provincial control, and ignore the question of Local Self-Government. The Provincial Government, while being now largely endowed from imperial sources, may well, in their turn, hand over to Local Self-Government considerable revenues, at present kept in their own hands, but similar in kind to many which have long been 'locally managed with success by Committees, partly composed of non-official members and subject only to a general remedial control reserved to the State by the Legislature. At the same time, such items should be generally made local as the people are most likely to be able to understand the use of and to administer well. His Excellency would therefore invite the Local Governments to undertake a careful scrutiny of Provincial, Local, and Municipal accounts, with the view of ascertaining (1) what items of receipt and charge can be transferred from 'Provincial' to 'Local' heads, for administration by Committees comprising non-official and, wherever possible elected members, and what items already 'Local,' but not so administered, might suitably be so; (2) what re-distribution of items is desirable, in order to lay on Local and Municipal bodies those which are best understood and appreciated by the people; (3) what measures, legislative or otherwise, are necessary to ensure more Local Self-Government. Incidentally to the scrutiny they will probably notice, and might carefully consider (4) ways of equalising Local and Municipal taxation throughout the Empire, checking severe or unsuitable imposts, and favouring forms most in accordance with popular opinion of sentiment. The Government of India have already made some preliminary enquiries in the same direction, the results of which will shortly be communicated to the several Local Governments for consideration in conjunction with their own."

2. Accordingly on the 10th October 1881 letters were addressed to the various Local Governments indicating those branches of expenditure which appeared to the Government of India most suited for local control, and inviting each Government to examine any other heads of accounts which might seem to cover items capable of transfer to such control. It was pointed out that it was not the intention of the Government of India that the proposed transfer of the control of expenditure of a specially local character to local bodies should involve any addition to existing local burdens; and it was, therefore, shown to be necessary to arrange for the simultaneous transfer of receipts sufficient to meet any net balance of additional expenditure which in any instances might arise. The receipts to be thus transferred should, it was suggested, be such as to afford a prospect that, by careful administration, with all the advantages due to local sympathy, experience and watchfulness, they would be susceptible of reasonable increase. In cases where larger assignments of funds were required, the receipts from pounds, or a share of the assessed taxes collected within the jurisdiction of local body, were indicated as suitable sources of revenue to be made over. But on this, as on other points, a wide discretion was left to the Local Governments.

3. As regards the character of the local bodies to whom those powers of control and administration were to be entrusted, it was remarked that already in most parts of British India there were in existence Municipal Committees whose powers might in many cases be advantageously extended, and District Committees for various purposes, which might very well be consolidated into single homogeneous working bodies, with ancillary subordinate committees for each tahsil or sub-division of the district. It was suggested that the Magistrate and Collector should be President of the District Committee, and the Assistant or Deputy Magistrate in charge of the sub-division, President of the subordinate committees; but in each case the local bodies should, it was said, comprise persons not in the service of Govern-

ment, and elected or nominated, as might seem best, in a proportion of not less than from one-half to two-thirds of the whole numbers. For the satisfactory development of this plan, it was admitted that legislation would probably be necessary in most provinces, and the Local Government were invited in their replies to explain the general outline which such legislation should follow. In regard to this it was said—

“Special attention will be required in settling the relations between the various local bodies and the officers of the general administration, and in providing for a certain measure of control and inspection on the part of Government. It would be hopeless to expect any real development of self-Government, if the local bodies were subject to check and interference in matters of detail; and the respective powers of Government and of the various local bodies should be clearly and distinctly defined by statute, so that there may be as little risk of friction and misunderstanding as possible. Within the limits to be laid down in each case, however, the Governor-General in Council is anxious that the fullest possible liberty of action should be given to local bodies.”

4. The policy thus enunciated by the Government of India has, on the whole, been loyally, and in some cases warmly accepted by the Local Governments, several of which have already drawn up schemes for giving effect to it, and have submitted these for the information of the Government of India. The Governor-General in Council desires to acknowledge the care and thought with which some of these schemes have been worked out. Upon each the Government of India will communicate hereafter its views in detail to the local Government concerned. Meantime, however, it will be convenient that the Governor-General in Council should explain somewhat more fully than he has hitherto done the general mode in which he would wish to see effect given to the principle of Local Self-Government throughout British India outside the Presidency Towns. This is the more necessary, as further considerations of the subject and examination of the schemes pre-

pared for the different provinces have suggested the propriety of certain modifications of the plan sketched out in the Circular letters of the 10th October last.

5. At the outset, the Governor-General in Council must explain, that in advocating the extension of local self-Government, and the adoption of this principle in the management of many branches of local affairs, he does not suppose that the work will be in the first instance better done than if it remained in the sole hands of the Government District officers. It is not, primarily, with a view to improvement in administration that this measure is put forward and supported. It is chiefly desirable as an instrument of political and popular education. His Excellency in Council has himself no doubt that in course of time, as local knowledge and local interest are brought to bear more freely upon local administration, improved efficiency will in fact follow. But at starting there will doubtless be many failures, calculated to discourage exaggerated hopes, and even in some cases to cast apparent discredit upon the practice of self-Government itself. If, however, the officers of Government only set themselves, as the Governor-General in Council believes they will, to foster sedulously the small beginnings of independent political life; if they accept loyally and as their own the policy of the Government, and if they come to realise that the system really opens to them a fairer field for the exercise of administrative tact and directive energy than the more autocratic system which it supersedes, then it may be hoped that the period of failures will be short, and that real and substantial progress will very soon become manifest.

6. It is not uncommonly asserted that the people of this country are themselves entirely indifferent to the principle of self-Government; that they take but little interest in public matters; and that they prefer to have such affairs managed for them by Government officers. The Governor-General in Council does not attach much value to this theory. It represents no doubt the point of view which commends itself to many active and well-intentioned District officers; and

the people of India are, there can be equally no doubt, remarkably tolerant of existing facts. But as education advances, there is rapidly growing up all over the country an intelligent class of public-spirited men whom it is not only bad policy, but sheer waste of power, to fail to utilise. The task of administration is yearly becoming more onerous as the country progresses in civilisation and material prosperity. The annual reports of every Government tell of an ever-increasing burden laid upon the shoulders of the local officers. The cry is every where for increased establishments. The universal complaint in all departments is that of over-work. Under these circumstances it becomes imperatively necessary to look around for some means of relief; and the Governor-General in Council has no hesitation in stating his conviction that the only reasonable plan open to the Government is to induce the people themselves to undertake, as far as may be, the management of their own affairs; and to develop, or create if need be, a capacity for self-help in respect of all matters that have not, for imperial reasons, to be retained in the hands of the representatives of Government.

7. If it be said that the experiments hitherto made in this direction have not been encouraging, the Governor-General in Council must avow his belief that the principle has not as yet been, in any general or satisfactory fashion, fully and fairly tried. There is reason to fear that previous attempts at Local Self-Government have been too often over-ridden and practically crushed by direct, though well-meant, official interference. In the few cases where real responsibility has been thrown upon local bodies and real power entrusted to them, the results have been very gratifying. There is even now a vast amount of assistance rendered to the administration by Honorary Magistrates, Members of Municipal Corporations and other Committees; and there is no antecedent improbability in the theory that if non-official auxiliary agency were more thoroughly organised and more fully trusted, there would be a speedy and marked improvement, not only in its amount, but in its efficiency.

8. Holding therefore, that it is the duty and interest of the ruling power to take care that the further advance which it is now proposed to make in the direction of local self-Government shall be, though cautious, yet at the same time real and substantial, the Governor-General in Council will proceed to indicate, for the guidance of the Provincial Administration, the general principles upon which, in the judgment of the Government of India, these measures should be shaped. The subject may, for the purposes of this Resolution, be divided into two parts—the first, relating to the mode in which Local Boards, whether Municipal or District, should generally be constituted; and the second, to the degree of control which the Government should retain over such bodies, and the manner in which that control should be exercised.

9. In regard to the first of these points, the Governor-General in Council would observe that he is quite aware of the absurdity of attempting to lay down any hard-and-fast rules which shall be of universal application in a country so vast, and in its local circumstances so varied, as British India. It would be unreasonable to expect that any uniform system of Local Government could be applied with equal success in Provinces differing as the Punjab, for instance differs from Madras, or Bengal from Burmah. A large latitude of application must, therefore, in every case be left to the local authorities. Indeed, we are really as yet so much in the infancy of self-Government, and have, perhaps so little knowledge of the directions in which it would naturally develop itself among the people, that there is a distinct advantage in having different schemes tried in different places, in order to test, by practical experience, what arrangements are best suited to the ways of thinking, habits, and other idiosyncrasies of the heterogeneous populations of the Empire. But there are, nevertheless, fundamental principles which, after every allowance has been made for local peculiarities, must be universally followed and frankly adopted, if the system is to have anywhere a fair trial.

10. The Government of India desires, then, 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 Governor-General in Council considers it very important that the area of jurisdiction allotted to each Board should in no case be too large. If the plan is to succeed at all, it will be necessary to secure among the members both local interest and local knowledge. Experience proves that District Committees are, as a rule, very badly attended by members not actually residing in the vicinity of the headquarters station. Those who do attend have frequently no intimate acquaintance with the wants of outlying parts of the district. The consequence is, either that undue attention is given to the requirements of the immediate neighbourhood of the central station, or that the business falls entirely into the hands of the District officer, the Committee contenting itself with formally endorsing his proposals. Modifying, therefore, to some extent the suggestions made in paragraph 8 of the Circular letters of the 10th October last, the Governor-General in Council desires that the smallest administrative unit—the sub-division, the taluka or the tahsil—shall ordinarily form the maximum area to be placed under a Local Board. He would not indeed object to even smaller jurisdiction were these deemed suitable. In some Provinces it may be found possible to leave these sub-divisional Boards to their own independent working, arranging for a periodical District Council, to which delegates from each Local Board might be sent, to settle such common matters as the rate of land-cess to be levied during the year, allotment to be made of district funds, and other questions of general interest. In other Provinces, again, it may be thought best to have a District Board with controlling power over the smaller Local Boards. But whatever system is followed, the cardinal principle, which is essential to the success of self-Government in any shape, is this, that the jurisdiction of the primary Boards must be so limited in area as to ensure both

## IX

### Queen Victoria's Proclamation, 1858.

*Proclamation, by the Queen in Council, to the Princes, Chiefs, and People of India (published by the Governor-General at Allahabad, November 1st, 1858.*

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the Colonies and Dependencies thereof in Europe, Asia, Africa, America, and Australasia, Queen, Defender of the Faith.

Whereas, for divers weighty reasons, We have resolved by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, to take upon Ourselves the Government of the Territories in India, heretofore administered in trust for Us by the Honorable East India Company:

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 hereby call upon all Our subjects within the said territories to be faithful, and to bear true allegiance to Us, Our heirs and successors, and to submit themselves to the authority of those whom We may hereafter, from time to time, see fit to appoint to administer the Government of Our said territories, in Our name and on Our behalf:

And We, reposing especial trust and confidence in the loyalty, ability, and judgment of Our right trusty and well beloved cousin and councillor, Charles John Viscount Canning, 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 from Us through one of Our principal Secretaries of State :

And We do hereby confirm in their several Offices, Civil and Military, all persons now employed in the service of the Honorable East India Company, subject to Our future pleasure, and to such Laws and Regulations as may hereafter be enacted.

We hereby announce to the Native Princes of India that all treaties and engagements made with them by or under the authority of the Honorable 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 own 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 fulfil.

Firmly relying Ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, We disclaim alike the right and the desire to impose Our convictions on any of Our subjects. We declare it to be Our royal will and pleasure that none be in any wise favored, 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.

local knowledge and local interest on the part of each of the members.

11. The Municipal Committees will, of course, remain the Local Boards for areas included within town limits. The relations between such Municipal Boards and the Sub-divisional or District Boards within whose jurisdiction the towns lie, must be carefully settled in each case. In some instances the Town Boards will be left entirely independent and apart. In others it may be found desirable to give the Rural Boards a certain share in the settlement of questions of common interest. In others, again, the Town Boards would be required to send delegates to the District Board or Council.

12. The Local Boards, both urban and rural, must everywhere have a large preponderance of non-official members. In no case ought the official members to be more than one-third of the whole, unless in places in which the elective system is followed, when there would be no ground for objecting to an elected member merely on the ground that he was in the service of Government. The Governor-General in Council is disposed to think that the non-official members of the Boards should hold office for at least two years after election or appointment ; but probably the best plan to follow would be that of the compulsory retirement by rotation of a fixed proportion of members, those retiring being eligible to sit again. A detail of this description may, however, fitly be left to the Local Government.

13. Members of the Boards should be chosen by election wherever it may, in the opinion of the Local Governments, be practicable to adopt that system of choice. The Governor-General in Council does not require the adoption of the system of election in all cases, though that is the system which he hopes will ultimately prevail throughout the country, and which he wishes to establish now as widely as local circumstances will permit. Election in some form or other should be generally introduced in towns of any considerable size, but may be extended more cautiously and gradually to the smaller Municipalities and to back

ward rural tracts. Even as regards these last, however, the Governor-General in Council is disposed to think that if the Government officers cordially accept the principle, and set themselves to make it successful, a great advance might be made with comparatively little difficulty. Thus when the Local Governments had determined the nature of the qualifications suited to such a district (and these might ordinarily at first be fairly high); each Sub-Divisional Officer might be instructed to prepare a list or register of candidates qualified to sit upon the Local Board, and might invite all those residing in any particular area, such as a Police (thana) jurisdiction, to meet him on a day fixed at some convenient spot near their homes. He might then explain to them the objects of Government, and the nature of the duties they were invited to undertake, and call upon them to elect then or on a future day the number of representatives that had been fixed for the area in question. In the course of a few years, when the members of the Board find that they have real powers and responsibilities entrusted to them, any Government interference will become unnecessary. The electors may safely then be left to conduct their own elections under such rules as may be from time to time laid down.

14. As to the system of election to be followed, the Governor-General in Council would here also leave a large discretion to the Local Governments. Experience is wanting to determine the most suitable general system for each province; and it is desirable that a variety of plans should be tried in order to a future comparison of results. The simple vote, the cumulative vote, election by wards, election by the whole town or tract, suffrage of more or less extended qualification, election by castes or occupations—these and other methods might all be tried. New methods unthought of in Europe, may be found suitable to India; and after a time it will probably be able to say what forms suit best the local peculiarities and idiosyncrasies of the different populations. The Provincial Governments should, through their District officers, consult the leading Natives of each locality, not only as to the possibilities of introducing the elective system, but as to the arrangements most

likely to meet their local circumstances; and should use every effort to make the schemes adopted as consonant as possible to the feelings and habits of the people.

15. Doubtless the first consequence of this mode of proceeding will be that the electoral system, viewed as a whole, will present for a time a very diversified appearance, and in some places arrangements made will turn out badly and call for change; but the Governor-General in Council is not disposed to attach undue importance to this. The problem before the Government is one of no slight difficulty; being that of discovering in what manner the people of the town and districts of British India can be best trained to manage their own local affairs intelligently and successfully. The attempts hitherto made with this object have met with but little success. The best men in many cases do not at present themselves as candidates for Municipal Office. The number of voters is generally insignificant compared with the number on the registers. And yet there can be no doubt that among the more intelligent classes of the community there is a real and growing interest being taken in administrative matters. It may be suspected, therefore, that the cause of comparative failure in the efforts hitherto made is to be found rather in the character of those efforts than in the nature of the object pursued. They have been, it seems to the Governor-General in Council, wanting to a great degree in earnestness and in real endeavours to adopt the system adopted to the feelings of the people by whom it has to be worked. If this is so, the remedy must lie in ascertaining by patient and practical experiment how best to call forth and render effective desire and capacity for self-Government which all intelligent and fairly educated men may safely be assumed to possess.

16. With a view to stimulating the candidature of men of respectable standing in Native society, and to mark the importance of the functions of these Local Boards in the eyes of Government, the Governor-General in Council is pleased to direct that the courtesy titles of "Rai (or Rao) Bahadur" or "Khan Bahadur" shall in all official correspondence be applicable to Native members of all Local Boards during their term of office.

<sup>c</sup> 17. Turning now to the second division of the subject—the degree of control to be retained by the Government over the Local Boards, and the manner in which that control should be exercised—the Governor-General in Council observes that the true principle to be followed in this matter is that the control should be exercised from without rather than from within. The Government should revise and check the acts of the local bodies but not dictate them. The executive authorities 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 in other than duly authorised forms, the alienation of Municipal property, interference with any matters involving religious questions or affecting the public peace, and the like. (The cases in which such sanction should be insisted upon would have to be carefully considered by each Government, and they would at the outset be probably somewhat numerous, but, as the Boards gained in experience, might be reduced in number.) In the second place, the Local 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 suspend the Board temporarily, by the appointment of persons to execute the office of the Board until the neglected duty had been satisfactorily performed. That being done, the regular system would be re-established, a fresh Board being elected or appointed. This power of absolute supersession would require in every case the consent of the Supreme Government. A similar power is reserved to the Executive Government under several English statutes; and if required in England, where Local self-Government is long established and effective, it is not probable that it could be altogether dispensed with in India. It should be the general function of the executive officers of Government to watch, especially at the outset, the proceedings of the Local Boards, to point out to them matters calling for their consideration, to draw their attention to any neglect of duty on their part, and to check by official remonstrance any attempt to exceed their proper functions, or to act illegally or in an arbitrary or unreasonable manner.

18. It does not appear necessary, for the exercise of these powers, that the chief executive officers of towns, sub-divisions or districts should be Chairmen or even members of the Local Boards. There is, indeed, much reason to believe that it would be more convenient that they should supervise and control the acts of those bodies, without taking actual part in their proceedings. The Governor-General in Council is aware that many high authorities hold that the District officer should always be *ex-officio* Chairman of all the Local Boards within the district, and should directly guide and regulate their proceedings. This was indeed the view taken by the Government of India itself in the Circular letters of the 10th October last, so far as the constitution of District Boards was concerned. But even then the Governor-General in Council did not see his way to accepting the principle in the case of Municipal Boards; and further consideration has led him to the belief, that on the whole, it is better to lay down no such general rule in the case of any class of Local Boards. There appears to him to be great force in the argument that so long as the chief executive officers are, as a matter of course, Chairmen of the Municipal and District Committees, there is little chance of these Committees affording any effective training to their members in the management of local affairs, or of the non-official members taking any real interest in local business. The non-official members must be led to feel that real power is placed in their hands, and that they have, real responsibilities to discharge. It is doubtful whether they have under present arrangements, any sufficient inducement to give up their time and attention to the transaction of public business. There is this further objection to the District officer acting as Chairman, that if the non-official members are independent and energetic, risk may arise of unseemly collision between the Chairman and the Board. The former would be in a far more dignified and influential position if he supervised and controlled the proceedings of the Board from outside, acting as arbiter between all parties, and not as leader of any.

19. The Governor-General in Council, therefore, would

wish to see non-official persons acting, wherever practicable, as Chairmen of the Local Boards. There may, however, be places where it would be impossible to get any suitable non-official Chairman, and there may be districts where the chief executive officer must for the present retain these duties in his own hands. But His Excellency in Council trusts that the Local Governments will have recourse sparingly to the appointment of executive officers as Chairmen of Local Boards; and he is of opinion that it should be a general rule that when such an officer is Chairman of any Local Board, he shall not in that capacity have a vote in its proceedings. This arrangement will, to some extent, tend to strengthen the independence of the non-official members, and keep the official Chairman, where there must be such, apart from the possible contentions of opposing parties.

The appointment of Chairman should always be subject to the approval of the Local Government, but need not be always made by it. The Governor-General in Council would be glad to see the Boards allowed, in as many cases as possible, to elect each its own Chairman. But this matter is one which must be left to discretion of Local Governments.

20. These, then, are the principles upon which the Governor-General in Council desires to see the experiment of Local self-Government introduced throughout the several provinces of India; and he would ask the Local Governments to revise their several schemes and shape any proposed legislation in general accordance with these principles. On such of the local schemes as have already come before the Government of India separate orders will, as already intimated, be passed in accordance with the foregoing exposition of policy. There are, however, one or two points to which attention has been drawn by a perusal of the orders of the Local Governments, which, though matters of detail, are still of sufficient importance to warrant their being noticed in this resolution.

21. In the orders of the 10th October last the Government of India laid special stress on the importance of entrusting to the Local Boards, not merely the expenditure of fixed allotments of funds, but the management of certain

local sources of revenue. Sufficient regard does not as yet appear to have been paid to this part of the scheme. Not only should every Local Board have the entire control over the proceeds of all local rates and cesses levied within its jurisdiction for its own special purposes, but along with the charge of any expenditure that is at present Provincial should be transferred, where possible, the management of equivalent revenue. The License Tax assessments and collections for example, might very well be made over to the Local Boards, municipal and rural in many parts of the country, subject to the control provided by the existing law. Pounds and ferry receipts have been already indicated as suited for transfer. The allotment of lump grants from Provincial revenues should be reserved as much as possible to balance receipts and expenditure of the Local Boards. The Governor-General in Council hopes that this part of the scheme will receive very careful consideration from all Local Governments, with a view to giving full effect to the policy which the Government of India has laid down on this point.

22. Another point deserving of notice is the control, that should be exercised over the execution of local works. It will not always be possible for a Local Board to entertain a competent engineer of its own: and in any case when Government buildings and important works of other kinds are made over, for maintenance, there must be some effective guarantee for thoroughness of execution. It will probably be most convenient that, while all subordinate establishments are entirely under the control of the Boards, Government should supply the District Engineer, and furnish professional supervision, the Boards defraying in such manner as may be determined by the Local Governments with reference to the amount of work done for each Board, the payments to be made to Government on this account. Care must, however, be taken that the Boards are left unfettered in the initiation and direction of operations and that the Engineer is placed in the position of their servant and not of their master. The power of check vested in the District officer will suffice to remedy any carelessness or improper working on the part of the Boards. If this arrangement is carried out, it will probably be found possible to make over to the charge of

the Boards most of the public buildings in the districts, and other works of various kinds which would otherwise have to be kept in the hands of the Government officers. Double establishments will thus be avoided, and public money saved.

## QUEEN VICTORIA'S PROCLAMATION ccliii

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 offices 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, usages, and customs of India.

We deeply lament the evils and misery which have been brought upon India by the acts of ambitious men, who have deceived their countrymen, by false reports, and led them into open rebellion. Our power has been shewn by the suppression of that rebellion in the field; We desire to shew Our mercy, by pardoning the offences of those who have been thus misled, but who desire to return to the path of duty.

Already in one province, with a view to stop the further effusion of blood, and to hasten the pacification of our Indian dominions, Our Viceroy and Governor-General has held out the expectation of pardon, on certain terms, to the great majority of those who, in the late unhappy disturbances, have been guilty of offences against Our Government, and has declared the punishment which will be inflicted on those whose crimes place them beyond the reach of forgiveness. We approve and confirm the said act of Our Viceroy and Governor-General, and do further announce and proclaim as follows:—

Our clemency will be extended to all offenders, save and except those who have been, or shall be, convicted of having directly taken part in the murder of British subjects. With regard to such, the demands of justice forbid the exercise of mercy.

To those who have willingly given asylum to murderers, knowing them to be such, or who may have acted as leaders or instigators in revolt, their lives alone can be guaranteed; but in apportioning the penalty due to such persons, full consideration will be given to the circum-

stances under which they have been induced to throw of their allegiance, and large indulgence will be shewn to those whose crimes may appear to have originated in too credulous acceptance of the false reports circulated by designing men.

To all others in Arms against the Government, We hereby promise unconditional pardon, amnesty, and oblivion of all offence against Ourselves, Our Crown and dignity, on their return to their homes and peaceful pursuits.

It is Our Royal pleasure that these terms of Grace and Amnesty should be extended to all those who comply with their conditions before the first day of January next.

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 its Government for the benefit of all our subjects residents 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.

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