READINGS IN

Indian Constitution & Administration.

A collection of extracts from the sources chosen with the purpose of illustrating the chief phases of the development of INDIAN CONSTITUTION AND ADMINISTRATION under British rule and explaining their working at present.

By

H. L. CHABLANI, M.A.,
Economics Department, Delhi University;

AND

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PREFACE.

The object of this compilation is to place in the hands of College students and teachers a handy volume of readings on Indian Constitution and Administration from Official reports, blue-books and other sources. The task of selection involved more complications and difficulties than one who has not attempted it would suspect. The compilers do not claim in every case to have discovered the most pertinent and illuminating extract to illustrate or explain a particular point; but they trust that they have omitted no important topic and included everything that was likely to be of educational value.

The volume is intended primarily to supply the need of a satisfactory text-book for the Intermediate classes of the Bombay University. The new course in Indian Administration lays down that Indian History is to be studied only so far as it is relevent to the development of Indian Administration. In selecting our material, we have throughout kept in view the needs of the Intermediate classes in the Bombay University. But we hope that the volume will prove useful not only to students in other Universities but also to the publicist and the citizen.

With a view to encourage independence of thinking and give perfect freedom to the teacher, the compilers have scrupulously refrained from expressing their views on various controversial topics.

The compilers are under obligations to Prof. Rushbrook Williams, Director, Central Bureau of Information for his valuable help and suggestions, to the Oxford University Press for permission to reprint pages 6-13 of the Imperial Gazetter Vol. IV, to Mr. Wattal for permission to reproduce a passage from his 'Financial Administration in India,' and lastly to the Home Department of the Government of India for raising no objection to the reprinting of extracts from various Government publications.

H. L. CHABLANI,
G. N. JOSHI.

June 1925.

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BIBLIOGRAPHY.

Government of India Act, 1915 and 1919.
Moral and Material Progress Report 1882 (Decennial).
Moral and Material Progress Report 1892 (Decennial).
Moral and Material Progress Report 1913 (Decennial).
Montagu-Chelmsford Report.
Crewe Committee's Report.
Reports of the Joint Select Committee on the Government of India Bill.
Reforms Enquiry Committee's Report.
Devolution Rules.
Report of the Functions Committee.
Meston Committee's Report.
Report of the Franchise Committee.
Rules published in the Gazette of India, 1920.
First Despatch on Reforms of the Government of India.
Indian Legislative Rules.
The Instrument of Instructions.
Report of the Decentralisation Commission.
Report of the Lee Commission.
Report of the Public Services' Commission 1916.
India in 1922-3, and India in 1923-4.
Report of the Police Commission 1903.
Jail Committee's Report.
Financial Statistics.
Report of the Fiscal Commission.
Memorandum on the results of 50 years of British Administration.
Government of India's Resolution on Land Revenue Policy.
Famine Commissions' Reports.
Triennial Review of Irrigation.
Report of the Irrigation Commission.
Irrigation Review 1917-8.
Report of the Railway Board 1923-4.
Acworth Committee's Report.
Report of the Education Commission 1882.
Progress of Education in India 1917-22.
Bombay in 1921-2.
Bombay in 1922-3.
Bombay in 1923-4.
Bombay Government's Note on the Land Revenue System in Bombay.
U. P. Administration Report 1921-2.
The Land of the Five Rivers 1921-2.
Madras Administration Report 1921-2.
Imperial Gazeteer Vols. III and IV.
Land Revenue in India by Baden Powell.

INTRODUCTION

I—Development of British Dominion in India

SOURCE:—IMPERIAL GAZETEER, VOL. IV (PAGES 6—13).

Periods in the history of British India.

THE history of British India falls, as observed by Sir C. P. Ilbert in his Government of India, into three periods. From the beginning of the seventeenth to the middle of the eighteenth century the East India Company is a trading corporation, existing on the sufferance of the native powers and in rivalry with the merchant companies of Holland and France. During the next century the Company acquires and consolidates its dominion, shares its sovereignty in increasing proportions with the Crown, and gradually loses its mercantile privileges and functions. After the Mutiny of 1857 the remaining powers of the Company are transferred to the Crown, and then follows an era of peace in which India awakens to new life and progress. It is not the function of the present chapter to enter into the details of this history. But political institutions cannot be rightly understood without some study of their growth; and in India the development of the administrative system has followed so closely the course of territorial acquisition that it will be necessary to pass in brief review the salient incidents of the rise of British power.

The East India Company to the middle of the eighteenth century.

On September 24, 1599, a few years before the deaths of Queen Elizabeth and Akbar, the merchants of London resolved to form an association for the purpose of establishing direct trade with the East. On the last day of the sixteenth century (December 31, 1600), the Queen granted a Charter incorporating George, Earl of Cumberland, and 215 Knights, Aldermen, and Burgesses, by the name of the 'Governor and Company of Merchants of London trading with the East Indies.' The Charter conferred on this company a monopoly of the trade with all countries lying between the Cape of Good Hope and

the straits of Magellan. For a century and a half the pursuit of trade was the object of the Company's existence. Its monopoly was continued by successive Charters of the Stuart monarchs, as also by Cromwell, and its powers were extended to meet the needs occasioned by the growth of its enterprise and the establishment of its settlements. Trading relations were instituted with Masulipatam on the east, and Surat on the west coast in the years 1611 and 1612. Madras was rented from a local Raja in 1639. Bombay was ceded by Portugal to the British Crown as part of the dower of Catherine of Braganza in 1661, and granted in 1668 to the East India Company to be held of the crown 'as of the Manor of Greenwich in free and common soccage.' Leave to trade with Bengal was obtained from the Mughal emperor in 1634; the factory at Hooghly was established in 1640; and Calcutta owes its foundation to the events of 1686, when Job Charnock was forced to quit Hooghly by the deputy of Aurangzeb and settled farther down the river. The Revolution of 1688 imperilled the position of the old or London Company. It had to struggle for its privileges with a new 'English' Company, and after several years of contention the two were amalgamated by Lord Godolphin's award of 1702 as the 'United Company of Merchants of England trading to the East Indies.' From this period the Company's status was regulated by Acts of Parliament instead of by Charters from the Crown

Administration of affairs in England and in India.

Queen Elizabeth's Charter empowered the Company to assemble and hold court for the purpose of making laws for its government and vested the direction of its affairs in a Governor and twenty-four pesons who were elected annually. By the end of the seventeenth century this constitution had developed into the General Court of Proprietors and the Court of Directors. Every holder of £500 stock had a vote in the court of Proprietors, and the possession of £2,000 stock was the qualification for a Director. The Directors were still twenty-four in number, and were still elected annually by the Proprietors, who could also overrule their proceedings, a power which they exercised towards the

close of Warren Hastings' administration by maintaining him in office in the teeth both of the Directors and of resolutions of the House of Commons. At the close of this period the factories of the Company on the east and west coasts of India, and in Bengal, were administered, at each of its principal settlements of Madras (Fort St. George), Bombay, and Calcutta (Fort William), by a President (or Governor) and a Council consisting of the senior servants of the Company. Power was exercised by the President and Council collectively, and orders were issued in accordance with the votes of the majority. The three 'Presidencies' were independent of one another and subordinate only to the Directors in England. The servants of the Company were classified, beginning from the lowest rank, as writers, factors, senior factors, and merchants. Promotion was usually by seniority. Salaries were extremely small, but large fortunes were made by private trade, supplemented occasionally by less honourable means.

Political condition of India in the middle of the eighteenth century.

In the middle of the eighteenth century, when the East India Company first began to play a part in the political affairs of India, the Mughal power was tottering to its fall, and the great Maratha confederacy, the chief officers of the empire, the old Hindu princes, and newly-risen soldiers of fortune were warring incessantly for the mastery of its possessions. The emperor still nominally held the greater part of Northern India, but over most of this territory his authority was but a shadow of past dominion. Ahmad Shah, the Afghan, wrested the Punjab from him in 1752; and this country remained under Afghan rule until, some fifty years later, it was conquered by Ranjit Singh and his Sikhs. Rohilkhand, the country lying in the angle between the Upper Ganges and the Himalayas, had been appropriated by daring adventurers, known as Rohillas, from the Afghan hills. The viceroys of Oudh and Bengal had converted their provinces into virtually independent kingdoms. The Rajputana States had fallen under the supremacy of the Marathas, who levied at their pleasure large contributions from the

Rajput Chiefs. The Marathas had by this time become the foremost power in India; and, although their empire had not yet reached its fullest limits, they had already spread across the Peninsula from the west coast to the confines of Bengal, and from the Tungabhadra in the south to the Jumna in the north. In the Deccan the most powerful ruler, outside the Maratha territories, was the Nizam-ul-mulk, another Mughal viceroy who had shaken off the control of Delhi and whose successor still rules at Hyderabad. His nominal subordinate, the Nawab of the Carnatic, ruled over the territory on the east coast which now forms the principal part of the Madras Presidency. In the south of the Peninsula were various Hindu principalities, of which the largest was Mysore, under a Hindu prince of ancient family, destined to fall ere long into the power of Haidar Ali, a Muhammadan adventurer. Such was the position of the main actors in the drama. None of them had an assured dominion, and their boundaries changed incessantly with the varying chances of war.

Lord Clive. First conquests of the East India Company.

In this hotbed of strife the Company found the role of peaceful trader impossible to maintain. When the central authority could no longer afford it protection, it had to arm itself against the caprice or the covetousness of the local potentates, and also against the rivalry of the French. It was the action of the French in the Carnatic which first drove the British to take an active share in the struggle for power which convulsed the South of India. Dupleix, the Governor of the French possessions, realised the possibilities resulting from the decline of the Mughal empire, and conceived the idea of founding a European dominion, by taking part in the war of factions and supporting the cause he espoused with native troops armed and disciplined in the fashion of the West. He pursued this policy with such skill and success that he established his nominees at Hyderabad and in the Carnatic, and secured a paramount influence in this part of India. The British, finding themselves in danger of being

driven from their establishments on the east coast, were compelled to support the cause of rival candidates. The further course of the struggle, the brilliant part which Clive took in it, and the causes of the French failure, cannot be recounted in this place. The crucial point is that when in 1761, Pondicherry was captured by Sir Eyre Coote and the power of the French finally overthrown, the East India Company was left in a position of political and military ascendancy and had to accept the responsibilities and duties of this new situation.

The forward policy of the British in Northern India likewise arose indirectly from rivalry with the French. Alarmed by the prospect of a declaration of war in Europe, they began to strengthen the defences of Fort William, in face of a prohibition from Siraj-ul-Daula, the Nawab of Bengal. It was this encroachment upon his rights of sovereignty, combined with other causes for displeasure, that induced the Nawab to march upon Calcutta with a large army. He took the town and perpetrated, or suffered to take place the tragedy of the Black Hole. In the war which followed Clive routed the Nawab at Plassey (1757), and at once secured the virtual mastery of the richest province in India, thereby transferring the centre of the Company's troops. The plan worked badly, and a period of misgovernment culminated in the invasion of Bengal by the Nawab Wazir of Oudh, who carried in his camp the titular emperor of Delhi. He was defeated by Major Hector Munro at Buxar, on the Ganges, in the year 1764. Clive, who had returned to India after an absence of some years, then obtained from the emperor the Diwani or administration of the revenues of Bengal, Bihar, and Orissa, which carried with it the exercise of civil jurisdiction, though the Nizamat, or criminal jurisdiction, and police powers remained with the Nawab. The management was, however, left under native control until 1772, when the company 'stood forth as Diwan' and took over the direct administration of the revenue, which was soon followed by the assumption also of criminal jurisdiction. The full rights of territorial sovereignty over Bengal thus passed to the Company. The victory

of Buxar carried the British arms to Allahabad; Oudh was at their mercy; and Clive saw clearly, and stated explicitly, that the whole Mughal empire lay within their grasp. But neither he nor the Company was willing to entertain so vast a scheme of conquest; and they therefore restored the territories on the northern side of the Ganges to the Nawab Wazir of Oudh, and concluded a treaty with that prince which helped to secure peace on the Bengal frontier for a period of forty years.

Warren Hastings. The existence of British dominion imperilled.

The period of Warren Hastings' Rule (1772-85) was one of great peril for the British dominion in India, as in other parts of the world. Britain was at war with all the great maritime powers—France, Holland, and Spain—and with her own colonies in North America. In India she had to face Haidar Ali, who had by this time carved out a great kingdom in the south of the Peninsula and also the formidable Maratha power. Both were in league with the French, who endeavoured, as in America, to cut off the British forces from their home base. But the English fleet succeeded in keeping the command of the sea; and when Hastings resigned the Governor-Generalship in 1785, ten years' war had left the British with their position unshaken. The only new territories acquired during this period were the domain of the Raja of Benares, adjoining the Company's possessions in Behar, and Salsette island in the neighbourhood of Bombay. In the north the Rohilla War had strengthened the Frontier against the Marathas, by transferring Rohilkhand from its Afghan rulers to the Nawab Wazir of Oudh.

Lord Cornwallis, Maratha and Mysore complications.

Lord Cornwallis succeeded to the Governor-Generalship in 1786. He came out with the instruction and the desire to pursue a pacific and moderate policy. In 1784 an Act of Parliament had declared that 'to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour and policy of this nation.' But no Act of Parliament could stay the march of events. Lord Cornwallis found Tipu

Sultan, the son of Haider Ali, scheming with the French and with every other power which he thought could aid him to retaliate on the British. The Marathas were at the height of their power, and disturbed or menaced the peace of every State in India. Sindhia had gained the chief place in the confederacy and had carried his conquests far into the north. The Oudh Government was becoming weak and inefficient, and that State was falling more and more completely under British protection. Cornwallis succeeded in avoiding actual hostilities with the Marathas, but Tipu Sultan forced a war on him by an unjustifiable attack on Travancore, a State under British protection. He was defeated in 1792 by the allied forces of the Company, the Nizam, and the Marathas, and was stripped of a large part of his dominions, including several districts added to the Madras Presidency.

Lord Welleseley. Extension of the power and territories of the Company.

From 1792 to 1798 the British maintained a rigid attitude of non-interference, with the result that the Sultan of Mysore and the Maratha Chiefs extended their territories at the expense of their neighbours. In April, 1798, Lord Mornington (afterwards Marquis Welleseley) landed in India and during seven years pursued a very different policy. He determined to establish the ascendancy of the British power over all other states in India by a system of subsidiary treaties, so framed as 'to deprive them of the means of prosecuting any measure or of forming any confederacy hazardous to the security of the British empire, and to enable us to preserve the tranquility of India by exercising a general control over the restless spirit of ambition and violence which was characteristic of every Asiatic government.'

He executed his plan with complete success; and when he left India, the Punjab, Sind, and Nepal were the only territories which remained completely outside the paramount British influence, while the area of direct occupation had also been

greatly enlarged. Events had been hastened by the Napoleonic wars. Tipu Sultan, who still retained a seaport on the Malabar coast, entered into negotiations for an alliance with France, and received into his capital a small body of French volunteers. War was declared against him; he was slain in the storm of Seringapatam and his territories were confiscated. A portion was given to our ally, the Nizam of Hyderabad; the present State of Mysore was restored to the ancient Hindu dynasty by which it is now ruled; and the rest was incorporated in the Madras Presidency. In 1801 the Carnatic, which had for many years been in complete dependence on the Company, was brought under direct administration. Thus in a few months the Madras Presidency developed from some scattered districts into the great Province now known by that name. The state of confusion in Oudh, and the danger to be apprehended in this direction from the Marathas, necessitated a resettlement of affairs there. The Nawab ceded all his frontier districts, including Rohilkhand, and the revenue of this territory was taken as an equivalent for the subsidy payable for the troops employed in the defence of this state. This annexation confronted the British and the Maratha chief, Sindhia along the whole line of the latter's possessions in Northern India. The Maratha confederacy, which extended from Malabar almost to the Himalayas, was now the only power which seriously threatened the British dominion. But the great chiefs and the Peshwa (the titular head of the confederation) were at strife among themselves. Sindhia was the most important of the chiefs and held possession of the Mughal emperor's person. Lord Wellesley intervened on behalf of the Peshwa. War broke out in 1803, and after a well contested series of engagements the Marathas were defeated and sued for peace. A British force was stationed at Poona, the capital of the Peshwa; and in the north a large tract of territory was ceded to the Company which, with the districts already acquired from the Nawab of Oudh, now goes to form the greater part of the Province of Agra.

Lord Wellesley's Policy had been carried out in despite of the Directors, and when he left India another period of reaction set in. The British, retiring within their borders, declared that they would abstain from interference in the affairs of the Native States. But they had already assumed the position of paramount power, and it was impossible that they could remain uninterested spectators of the violence and anarchy which soon filled all India outside their immediate jurisdiction. Lord Hastings' endeavours to restore order and to put down the hordes of freebooting Pindaris resulted in another Maratha war (1817-18) which finally broke up the confederation and extinguished the power of the Peshwa. A large tract of country was annexed in Western India, thus giving to the Bombay Presidency a territorial importance similar to that already possessed by Bengal and Madras. At the same time the Saugor and Nerbudda territories, which now form a part of the Central Provinces, were taken from the Maratha Raja of Nagpur. A tract along the Himalayas had previously been won from Nepal, while the principality of Coorg, in the south, was annexed as the result of misgovernment in 1834.

Lord Hastings. The last Maratha War.

From the Sutlej to the Brahamaputra no power was left to challenge the predominance of British rule, and henceforth the north western and eastern frontiers became the chief spheres of political and military activity. In 1824 depredations on the Bengal frontier first brought the Burmese into collision with the Government of India. The war which followed ended in the acquisition of Assam, Arakan, and Tenasserim. Two Native States extended along the British border from the Arabian Sea to the Himalayas. To the south Sind was ruled by Muhammadan Amirs: to the north the military and religious brotherhood of the Sikhs occupied the Punjab. Sind was conquered by Sir Charles Napier in 1833 and the British frontier pushed on to Baluchistan. The Sikhs were a formidable military power and

The North-Western and Eastern Frontiers. The Burmese and Sikhs wars. Acquisition of Sindh, the Punjab and Baluchistan.

had contended successfully with the Afghans. In the anarchy and confusion which followed the death of Ranjit Singh, the Lion of the Punjab, the Sikh army crossed the border (1845) and invaded British territory. After a series of desperate engagements they were driven back across the Sutlej, and for two years the State was administered under the general protection and superintendence of the Indian Government. In 1848 the military classes rose in insurrection, and after a second hard-fought campaign were finally overthrown. The Punjab was annexed by Lord Dalhousie in 1849, and since then the border line has run between British India and Afghanistan. The wars with Afghanistan, which belong to the external politics of British India, need not be noticed here. The only territory acquired beyond the Sulaiman range on the northwest frontier is the minor Province of Baluchistan, which includes the Military base of Quetta first occupied in 1876. The Kurram Valley, which was first occupied during the Afghan War (1878-80) was finally taken over at the request of the Turi inhabitants in 1893; and the Waziristan tract has been brought under British political administration by gradual stages, beginning in 1892.

Acquisition of lower Burma. Nagpur, Oudh, and Upper Burma.

In 1852, Pegu was annexed, as the result of the second Burmese War, to become, with Arakan and Tenasserim, the Province of Lower Burma. In 1850 the Nizam of Hyderabad made over certain districts called the Berars to be held in trust as payment for the force maintained for his protection, and the British occupation of these has recently (1902) been confirmed by a perpetual lease from the Nizam. Nagpur lapsed in 1854, on the death of its Raja without heirs, and became the nucleus of the Central Provinces. The kingdom of Oudh was annexed in 1856, to protect its people from continued misgovernment and oppression. In 1857 came the Mutiny; and in the following year the Government of India was formally transferred from the Company to the Crown, while accompanying the transfer the Queen's celebrated Proclamation promised maintenance

of the rights of Native Princes, enjoined the strictest religious neutrality, and notified that 'so far as may be, our subjects of whatever race and creed (shall) 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.' From this time onwards the history of India is mainly concerned with administrative improvement and the development of the arts of peace. Beyond the advance on the north-west frontier above referred to, the only important addition made to the empire since the Mutiny is the large province of Upper Burma, acquired by conquest in 1886.

One noticeable feature of the history of British India, which is apparent even from the rough sketch just concluded, is that the tide of conquest never turned against the Company. Once it had taken a province under its direct administration it was able to ensure permanent peace to the inhabitants, however distracted might be the condition of these parts of India which had not been brought under its sway. From this most important circumstance it followed that the building up of the administrative system proceeded almost without interruption from the days of the Company's earliest conquests.

II—Bombay under British Administration.

HISTORICAL SUMMARY.

SOURCE:—BOMBAY 1921-2, PAGES 26-42.

The frame-work of the system that is still in force in the Presidency dates from the Governorship of Mountstuart Elphinstone, many of whose reforms are now part of the general public law of India. His aim was to govern on the best native lines, avoiding changes until the people should be fitted for them by education. He adopted the existing division of duties between the judge and the collector, but increased the

powers of the former and abolished the Provincial Court, setting up in its place a new Sadar Adalat distinct from the Governor and Council. He took steps to ascertain and record native customary law, and codified the whole of the existing regulations, to which he added a penal code and other useful enactments. In revenue matters his sympathies were with the Ryotwari system, but he would make no hasty settlements without full enquiry. He employed natives freely in positions of trust, and laid down a liberal policy for the encouragement of education both in English and in the vernaculars. In Gujarát he maintained the old arrangements, but posted a separate Political Agent to Káthiawar. The full system of courts was not at once introduced into the Deccan, where the revenue and criminal work of Khandesh, Nagar, Poona and Dharwar was done by British officers under the supervision of a commissioner, while civil cases were mostly tried by Panchayats. The robbers of Khandesh were drafted into Outram's Bhil Corps (1824-35); the grosser abuses of Bajirao's days were stopped; and the peasantry were contented and orderly. The Brahmans and the soldiery felt the loss of their former chances of distinction and plunder, but there was no open rebellion, except at Kittur, where the Collector of Dharwar was murdered and that outbreak was quickly put down. Chikodi and Manoli, however, were resumed from the Kolhapur States on account of mismanagement. In 1827 Khandesh, Poona and Nagar were brought under the regulations, and the Judges and District Magistrates were given the wide powers which they still exercise. The Bhor Ghat road linking Bombay to Poona was begun at this time. In Bombay, the Recorder's Court was replaced in 1823 by the Supreme Court, which busied itself chiefly in quarrels with the executive. Municipal affairs were managed by the Court of Petty Sessions.

Elphinstone's Governorship was followed by a period of retrenchment and slower progress. The legislative powers of the local Government were withdrawn and twelve Governors succeeded each other in the space of 21 years (1827-1848). The

Presidency was enlarged by the cession of the hill station of Mahableshwar, by the lapse of Nipani, Chinchni and Mandvi, Kolaba, parts of Miraj, Tasgaon and the State of Satara, by the occupation of Aden, and above all, by the addition of Sind on the retirement of Sir C. Napier from the Governorship of that province. The Bombay army took part in the first Afghan war (1838-1842) but the Presidency itself was for the most part peaceful, though Koli robbers were troublesome on the Ghats down to 1830, the Mahi Kantha was disturbed in 1833, and a small rebellion took place at Nipani after the lapse of the State. In Kolhapur a more dangerous rising took place (1843-1845) in which the Savants of Vadi took part, and which led to strained relations with the Portuguese at Goa owing to their harbouring of the rebels. Otherwise the chief events affecting Native States were the establishment of a Criminal Court for Kathiawar, and the deposition of the Raja of Satara for intrigues against the British power. The Gaikwar's misgovernment (1832-1841) was dealt with less drastically. Little change was made in the form of the administration beyond the grant to the Sessions Judges in Gujrat of the same powers as in the Deccan, and the consequent abolition of the circuit system; and the appointment of a second Revenue Commissioner for the north of the Presidency. In 1847 a third commissioner was appointed for Sind. Provision was made for the better performance of the duties of hereditary village and other officers and for the abolition of transit and town duties. A Board of Education was formed in 1840, and the Grant Medical College was founded in 1845 for the training of native medical practitioners. Dharwar was brought under the regulations in 1830, and the districts of Belgaum and Sholapur were formed.

The British Government, however, had the defects of its qualities. Taxation was lighter than before, but more strictly exacted. Criminal trials were more regular, but punishment was less certain. Now that orders reigned, more land was tilled and trade was safer, but for that very reason there

followed a great and general fall of prices, which increased the pressure of the land tax. In Gujarat and Thana the situation was met by a gradual extension of the Ryotwari system with lower rates of assessment. In the Deccan a premature attempt at a new settlement, based on imperfect information, led to gross abuses on the part of native officials, decreased cultivation and emigration to native States. The new rates were at once reduced, and very careful enquiries, beginning in 1835, led to the formulation in 1847 of principles which have since been applied throughout the Presidency, and are still the basis of the Bombay Land Revenue system. The operations of the new survey generally resulted in a reduction of assessment, and there ensued a period of great agricultural prosperity.

The East India Company ceased to be a trading Corporation in 1833, but the commerce of Bombay continued to grow with the development of Steam Navigation. The Bombay Chamber of Commerce was formed in 1836, regular monthly mails to Europe were started in 1838, and the Bank of Bombay was opened in 1840. Finally in 1844 the Great Indian Peninsula Railway was projected, although its construction was not begun till 1850.

Under Lord Falkland the peace of the Presidency was unbroken, but a portion of the Khairpur territory was confiscated as a punishment for the forgery of a treaty (1852); and relations with Baroda continued unsatisfactory. In Sind regular Civil and Criminal Courts were set up, and the Eastern Nara Canal was begun. In Gujarat, the Panch Mahal were leased from Sindia. In the Deccan the Revenue Survey had brought to light many cases of lands held rent-free without authority, and the Inam Commission was appointed to inquire into all such claims (1852). The public health had hitherto been treated as a matter of Police, but now began to be entrusted to Municipalities. The opening of dispensaries was encouraged by grants-in-aid. The control of the Police was transferred from the Sadar Adalat to Government in 1852.

Under Lord Elphinstone the Presidency passed through the crisis of the mutiny without any general rising. (Outbreaks among the troops at Karachi, Ahmedabad and Kolhapur were quickly put down, and two regiments disbanded, and the local rebellions in Gujarat, among the Bhils and in the Southern Maratha Country, lacked concert and cohesion. The landholders had been alarmed by the inquiries of the Inam Comission, and by the free use of the doctrine of lapse, and the classes who had lost by British rule thought they saw a chance of shaking it off. They had, however, no leader, and local conspiracies were foiled by the firmness and vigilance of the officers on the spot. The most dangerous rebel, Tatia Topi, was repeatedly defeated by a Bombay field force under Sir Hugh Rose and was finally headed off from Gujarat and hunted down in 1859. These disturbances did not check the progress of the Presidency.) Education, especially in primary schools, received a great impulse from the organisation of the present Educational Department (1855) and the foundation of the Bombay University (1857). New railways were begun in Sind and Gujarat, and the mail service to Europe became fortnightly. The development of manufacturing industry began with the opening of the first cotton mill at Bombay in 1857. Lord Elphinstone did much for the water-supply and drainage of Bombay City, which he placed in the hands of three Municipal Commissioners. A beginning was made in the settlement of the powers of the Kathiawar Chiefs, but the Government of India took into their own hands for a time (1854-1860) the management of relations with Baroda.

The Presidency passed from the government of the Company to that of the Crown in 1858. The local Legislative Council was re-established during the brief administration of Sir George Clark (1860-1862).

Under Sir Bartle Frere agricultural prosperity reached its highest point, owing to the enormous demand for Indian cotton in Europe during the American Civil War (1861-1865).

The wealth thus poured into the country led to an extraordinary epidemic of speculation, known as the "Share Mania," which ended in a serious commercial crisis and the failure of the Bank of Bombay. But the peasantry on the whole gained more than they lost, and in the long run the trade of Bombay was not seriously injured. In Sind a separate Judicial Comission was appointed, and settlement work and canal clearances were pushed on. In the Presidency the present High Court was formed by the union of the Supreme Court and the Sadar Adalat. Provision was made for the settlement of the debts of large landholders in Gujarat, and the uncertainty and alarm caused by the work of the Inam Commission were put an end to by the offer of a summary settlement to the holders of rent-free estates. The districts of Satara and Kaladgi (now Bijapur) were formed out of the old Satara State, and the district of Kanara was transferred from the Madras Presidency to that of Bombay. Sir Bartle Frere's best monuments, however, are his public works. By imposing a local fund cess and obtaining grants from the Government of India he was enabled to cover the Presidency with a network of roads. He encouraged in every way the completion of the great trunk lines of railway, and with the funds obtained by the demolition of the town walls he began the magnificent series of public buildings that now adorns Bombay. In his time also large sums were expended on public improvements by private donors and by the Bench of Justices, who were placed in charge of Municipal affairs in 1865. He also gave great encouragement to education, to which one-third of the local fund cess was and still is devoted.

The Governorship of Sir Seymour Fitz Gerald (1867-1872) was notable for the reorganisation of the district and village Police and for the establishment of the present system of Civil Courts. The administration of the local funds was placed in the hands of district committees, and a Municipality with an elective element was constituted for Bombay city. In Sind progress was made with new canals and with the construction of the Indus Valley Railway. In the Presidency

ment had to deal with a religious rising among the Naikdas of the Panch Mahals and with a rebellion against the Chief of Janjira. The failure of the rains in 1868 caused some distress in Gujarat and the Northern Deccan, and about Rs. 6,30,000 were spent upon measures of relief.

The Bombay Government obtained partial control over their expenditure under the provincial contract of 1872, but the system was not yet fully developed.

The leading events of Sir Phillip Wodehouse's Governorship (1872-1877) were the crisis at Baroda and the beginning of the famine in the Deccan. But to this time also belong the creation of the Bombay Port Trust, better provision for the establishment and working of District Municipalities, and for the settlement of the claims of hereditary officers; the reorganization of the Salt Department; measures for the relief of encumbered estates in Sind and Gujarat and the exemption of certain revenue matters from the jurisdiction of the Civil Courts, a measure which caused a somewhat heated controversy (1876). Fresh trouble in Janjira led Government to appoint a Karbhari to manage the State, and two outbreaks of dacoity occurred among the Kolis of the Ghats. Malhar-rao Gaikwar was tried by a special commission for misgovernment and for an attempt to poison the Resident, and was found guilty on the first count and deposed, after which, the State was administered by a regency under the direct control of the Government of India (1875). In the Deccan the peasantry had fallen into debt, owing to the bad season of 1868-1869 and the case with which they could raise money on their transferable holdings. Their creditors, wishing to forestall the action of the Limitation Act, brought pressure to bear, which led to numerous riots and outrages upon money-lenders. The facts were inquired into by a special commission, but before any action was taken on their report, the monsoon of 1876 failed and the great famine set in. It was severe throughout the Deccan and intense in the south-eastern districts, where the movement of supplies was hampered by the absence of railways. It was met by the employment of

the able-bodied to the number of 285,000 on large public works and by the grant of gratuitous relief in the villages. The monsoon of 1877 was again irregular, and was followed by epidemic fever and a plague of rats. Relief measures were not discontinued until 1879, and cost 128 lakhs of rupees; yet it is supposed that 800,000 persons died in the famine. The direct result of the famine was the construction of new railways (Dhond and Manmad, Hotgi-Gadag and Londa-Margao) and irrigation works (Nira and Gokak Canals) in the Deccan, and the creation of Government forests on a large scale for the purpose of improving the rainfall and securing the supply of wood. Action was also now taken on the report of the Deccan Riots Commission, and a measure passed to protect agriculturists against the grosser forms of fraud. The Excise Department was also reorganized and land revenue laws reduced to the form of a code (1879). Towards the end of the period of distress the Deccan was disturbed by bands of Ramoshis under a Brahman leader who had been a Government clerk. On the outbreak of the Afghan war (1879) the Presidency was called upon to furnish supplies and transport on a large scale.

The leading measure of Sir James Fergusson's Governorship (1880-1885) was the reconstitution of the Local Boards and Municipalities with a greater recognition of the elective element. In Sind a staff of village officers were organized, and the present system of irrigation settlements was introduced, under which the assessment depends upon the means of irrigation used. In Cambay a peaceful rebellion took place against the measures of the Divan who was removed for a time and quiet was apparently restored. In 1884, after the Egyptian withdrawal from the Soudan, the Somali Coast was occupied by troops from Aden. The trade of the Presidency was fostered by a Customs union with Portugal and the cotton industry flourished, 26 new mills being opened between 1880 and 1885.

The Governorship of Lord Reay (1885-1890) was chiefly notable for the reconstruction of the Bombay City Municipality,

again on a more popular basis, for the great encouragement given to private enterprise in education by the system of grants-in-aid, which had been recommended by the Education Commission, and for the impetus given to technical education by the opening of the Victoria Jubilee Technical Institute for the training of Mill-foremen and Engineers (1888). The peace of the Presidency was broken only by an outbreak among the low caste Talavys of Broach (1885). The cotton industry flourished and trade was good, especially in Karachi, which was becoming the chief outlet for the exports of the Punjab. Railway extension was pushed on in Kathiawar and the Southern Deccan, but, from 1887, owing to imperial needs, a stringent policy of retrenchment hampered administrative improvements, though the working of the Forest and Excise Departments were carefully enquired into and a measure was passed for the improvement of village sanitation (1889).

The leading events of Lord Harris' Governorship (1890-1895) were the enlargement of the Legislative Council under the Indian Councils Act of 1892, and the series of riots arising out of disputes betwen Hindus and Mohammadans that took place at Bombay and other places in 1893-1894. It was a time of financial pressure and depression in trade. In no year of the five were the crops above the average, and in one (1891-1892) famine conditions prevailed in Bijapur and parts of the neighbouring districts. Liberal grants of Takavi were the chief measure of relief. The provincial contract of 1892 was still more unfavourable than its predecessor, and the Government of India twice called upon the Bombay Government for contributions out of balances. The mill industry began to feel Japanese competition about 1890. The new Factories Act came into force in January 1892, and the cotton excise duty was imposed in 1894. The money-market was much disturbed until the mints were closed in 1893 ; and the new import tariff came into force in March 1894. The local Government passed measures for the consolidation of the Salt Laws and the regulation of the District Police, &, in spite of all financial difficulties, the

Hyderabad-Umarkot Railway was begun, and the District Police reorganised. Work was also begun on the Jamrao Canal.

In 1890-1892 Hindu feeling was much excited by discussions on the age of Consent Bill, and by the preaching of the Cow Protection Societies, which last led to the riots of 1893-1894. In Bombay the riots lasted for three days and had to be put down by Military force. In 1890 there was a second bloodless revolution at Combay, which ended in the final withdrawal of the obnoxious Divan; and in 1892 a troublesome gang of Miana outlaws was put down in Kathiawar.

Under Lord Sandhurst's Governership (1895–1900) the Presidency met with more severe trials than ever. The rains of 1895 were below the average, and the failure of those of 1895 caused famine throughout the Deccan in 1896-1897. Up to 438,000 persons were daily employed in relief works at a cost of Rs. 128 lakhs. After one poor and one fair season there followed the great famine of 1899-1900, which desolated Gujarat and the Northern and Western Deccan, and was accompanied in its later stages by a virulent outbreak of cholera. In July 1900 the number of persons on relief works rose to $1\frac{1}{2}$ millions, and that of recipients of gratuitous relief to half a million. The loss of human life and of cattle was enormous, in spite of the relief measures, on which, down to the end of March 1900 alone, Rs. 115 lakhs were spent directly, and Rs. 40 lakhs in the form of advances to landholders.

Plague appeared in Bombay City in September 1896, and has since spread by land and sea to every part of the Presidency. It was dealt with at first chiefly by disinfection and hospital treatment, but isolation of the sick was not enforced in Bombay for reasons of policy and in the districts for want of legal powers. After the passing of the Epidemic Diseases Act in February 1897, much more stringent segregation was enforced under European supervision, detention camps for travellers were established, and the hospitals were staffed with doctors and nurses from England. In some places

inoculation proved useful but the measure most generally effective was the evacuation of infected localities. The inspection of sea-going passengers was successful in preventing the conveyance of infection to Europe. But the plague measures caused great alarm and discontent, and were violently opposed in 1898 at Sinnar and Bombay. When the most stringent and costly measurers failed to stamp out the disease, it became clear that a permanent plague policy could not be based on them. From October 1898, therefore, more use was made of Native Volunteer Agency, the restrictions on travelling were relaxed and the discretional relief fund was started to help the poorer sufferers. The enquiries of the Plague Commission (1898-1899) resulted in still further relaxations, which came into force under the orders of the Government of India from July 1900. The people are now generally accustomed both to the plague and to the plague measures, and accept both with resignation. Down to the end of October 1902 over 531,000 deaths had been reported in the Presidency as due to plague.

An immediate result of the plague was the creation of a Board of Trustees for the improvement of Bombay City, which took office in November 1898, with large powers for clearing insanitary areas and laying out new streets.

Riots at Porbandar and Dhulia in 1898 showed that Hindus and Musalmans were not yet reconciled. Moreover, bitter feelings against Government found vent in the Native Press, in an attempted strike against the payment of revenue, and in disturbances arising out of forest grievances in Thana, and culminated in the murder of the Chairman of the Poona Plague Committee and another officer by a band of Brahman fanatics in June 1897. The disaffection was quelled by the prosecution of several newspapers for sedition, the removal from Poona of two leading Brahmans under Regulation XXV of 1827, and the arrest and punishment of the murderers. Of a more normal kind were outbreaks of dacoity in Sind, Kathiawar and Belgaum and among the Kolls of the Ghats, as well as displays of religious fanaticism in Sind and Kaira.

Trade and industry suffered very severely during these years. Rigid economy was enforced in every department, and all large schemes of improvement were postponed. Hopeful signs were the undertaking of feeder railways by private enterprise and the opening of the Jamrao Canal of Sind.

Lord Northcote arrived in Bombay on February 15th, 1900, to assume as heavy a burden as ever fell to the lot of a Provincial Governor. Western India had not recovered from the great famine of 1896-97 and had been scourged by repeated epidemics of plague; and at the moment of his arrival the Presidency had been overtaken by a drought of exceptional severity, while the plague continued to rage with disastrous effect in the City of Bombay. In 1899-1900 no fewer than fifteen districts were included in the famine-stricken area, the affected tract comprising 60,665 square miles and embracing a population of 9·8 millions. Gujarat and Kathiawar were most seriously affected and the people, less used than the people of the Deccan to seasons of drought and scarcity, showed little power of resistance. The season of 1899-1900 was followed by two years of crop failure, necessitating a comprehensive programme of relief in which the system of payment by results and of daily wages was adopted with great advantage. Closely associated with the Government's relief policy in Gujarat was the protracted controversy regarding the collection of land revenue in certain talukas of Broach and Surat, which eventually resulted in a special enquiry being instituted by Government while the institution of a cattle farm at Chharodi, better known as the Northcote Gaushala, for the maintenance of which His Excellency subscribed the major portion of the necessary funds, operated to prevent the extinction of one of the most notable products of Gujarat. Proposals were also submitted to the Government of India for the automatic suspension of assessment over whole areas affected by failure of rain or other calamities, the object being to prevent debts for assessment being allowed to hang for an indefinite period round the necks of the poorer cultivators.

The most important legislative enactment was a bill to amend the Bombay Land Revenue Code which aroused much controversy. The main feature of the bill was the limitation of the right of transfer of land by the occupant, and it empowered the heads of districts to forfeit any lands for which the revenue might be in arrears and to regrant such lands without encumbrance to cultivating occupants, subject to the condition that the right of occupancy should lapse if the lands were alienated without permission. The bill was passed in 1901-02 after considerable opposition of a curiously misguided and exaggerated character. Another measure of importance was the District Municipalities Bill of 1900-01 which reduced the proportion of nominated councillors, gave greater facilities for the collection of rates and taxes, empowered Government to entrust committees in certain areas with Municipal functions, and consolidated the existing laws into a single act. In addition to these the Record-of-Rights Act was passed in 1901-02 as a complement to existing legislation governing the Bombay Land Revenue system; while the Bombay City Police Act of 1902 extended the powers of the police in preserving public order and controlling traffic.

Lord Northcote's tenure of office synchronized with a period of great financial stringency, during which the Provincial Government was dependent for such progress as was made upon special grants from the Imperial Government. The administration was fully taxed in coping with the problems arising from three years of famine, while the overmastering activity of the Government of India necessarily tied the hand of the Provincial authorities in dealing with such questions as education, police and irrigation. Nevertheless a good deal of unostentatious work was accomplished. A commission was appointed to enquire into the improvement of Aden Harbour; a special officer was entrusted with the duty of investigating the position and condition of the Gujarat talukdars and a considerable measure of decentralization was introduced into the administration of plague measures. Increased grants for

education were made to Municipalities and local bodies, vernacular training colleges were developed, new hostels were built and agricultural education was improved. Technical education was stimulated by a scheme for an institute at Ahmedabad, by the development of workshop classes and electrical engineering at the Poona College of Science, and by the reorganization of the School of Art in Bombay. The experimental farms at Poona, Kirkee and Surat were developed, and in general the foundations were laid for the creation of a machinery for the scientific study of economic botany and agriculture. Much was also done to bring hospital equipment more in line with modern requirements. New women's wards at St. George's Hospital and a new Police Hospital were sanctioned; land was acquired for an extension of the Grant Medical College, and Government consented to an arrangement whereby they guaranteed a moiety of the cost of nursing in all public hospitals.

During this period the City Improvement Trust completed their Nagpada Scheme and erected certain experimental chawls for the poor, while substantial progress was made with the new road from Queen's Road to Carnac Bridge, with the Colaba reclamation scheme and with the laying out of the Chaupati estate. The mill industry which in 1900 was paralysed by the depressed state of the China Market had recovered by 1903; while from 1901 the value of trade showed a steady rise upwards, which was reflected in the annual receipts of the Port Trusts at Bombay, Karachi and Aden. In 1900-01 the Great Indian Peninsula Railway was purchased by the State, but continued under a new agreement to be managed by the old proprietary company. The most important changes in police administration were the introduction in 1900-01 throughout the Presidency of the system of identification by means of fingers impressions and the formation in the following year of a Criminal Investigation Department.

Apart from the improvements mentioned above, the regime of Lord Northcote.....was marked by a famine of great severity, incessant plague, an empty exchequer and a succession of indifferent business seasons.

In December 1903 Lord Lamington received charge of the Presidency from Sir James Monteath who had acted as Governor since Lord Northcote's departure in the preceding September. The chief features of his administration which was unfortunately cut short in 1907, were the restoration of the financial independence of the Presidency, in consequence of the revision of the Provincial contract and of new arrangements for financing the cost of famine relief, the revival of irrigational projects throughout the Presidency; and the visit of their Royal Highness the Prince and Princess of Wales in 1905. The brief visit of His Majesty the Amir of Afghanistan in 1906-7 loses importance by comparison with the Royal Visit of the preceding year. Landing on the 9th November 1905 His Royal Highness the Prince of Wales made two royal progresses through the city and laid the foundation stones of the Prince of Wales Museum Western India and of the Alexandra Dock; while His Royal Highness the Prince of Wales opened Princess Street, which the City Improvement Trust had constructed on the site of an ancient and very insanitary quarter.

Plague still continued in epidemic form, being excessively virulent in 1903-04 when the total number of deaths rose to 316,253. In 1904-05 it showed a tendency to decline in extent, being combated to a slight degree by attempts to popularize inoculation, but manifested itself seriously again in 1906-07.

On the whole the period of Lord Lamington's regime was one of increased prosperity and gradual recuperation from the serious scarcity of previous years. The Bombay Municipal Corporation witnessed a satisfactory development of its resources by a careful revision of property assessments; the Bombay Port Trust, which profited greatly from a considerable expansion of foreign trade, placed a contract for new docks which were estimated to cost 332 lakhs; great activity in building was witnessed in Bombay City; and a committee was appointed in 1904-05 to advise upon future extensions of the Port of Karachi. Under the head of Railway Administration Lord Lamington saw sanction granted for the construction of a light railway from

Neral to Matheran in 1903-04; the conversion in 1904-05 of the Wadhwan-Rajkot Section of the Morvi Railway to the metre gauge; the commencement of work upon the Harbour Branch of the Great India Peninsula Railway in 1905-06; the termination of the old contract of the Bombay Baroda and Central India Railway and the purchase of the latter by the State in the same year, and considerable advance in railway construction in the territories of Native Chiefs.

In connection with the revenue administration the preparation of the Record of Rights was gradually introduced in parts of each district; the area under cotton cultivation increased by 700,000 acres in 1903-04; a separate Director of Land Records was appointed in 1905-06, the organization and registration of co-operative credit societies resulted in an increase to 69 in 1906-07; and in 1905-06 a large area of land was acquired at Poona for an Agricultural College. The opening of gold mines in Dharwar in 1903-04, the exploitation of deposits of manganese ore in 1904-05, and a considerable rise in the number of joint stock companies, mostly mills and presses, testified to the gradual recovery of the Presidency from the financial stringency of the preceding administration. Broach and Bijapur were constituted new judicial districts in 1904-05, and in 1906-07 the Sind Courts Amendment Act was passed whereby the final appellate Court for Sind was strengthened and amalgamated with the District Court of Karachi. An Act to regulate the use of motor vehicles in the Presidency, passed in 1904-05, the Khoti Settlement Amendment Act of the same year, and the Bombay Tramways Amendment Act in 1906-07 in connection with the introduction of electric traction were among the chief legislative enactments of this period.

Meanwhile considerable attention was being paid to police administration. In 1903-04 the whole force was re-armed with Martini Henry rifles; three new schemes for the accommodation of the Bombay City Police were prepared by the City Improvement Trust; a covenanted civilian was appointed

Inspecter-General of Police, two posts of Deputy Inspector-General were created, and the Criminal Investigation Department was reorganized in 1905-06; while in the following year the superior ranks were regraded and a training school was established in Poona.

These years were marked by much material progress; by a liberal revenue policy which led in 1905-06 to the suspension of 94 lakhs & the remission of 23 lakhs of revenue; by the progress of great irrigational schemes, such as the Godavari-Pravara and Gokak projects in the Presidency proper and the Nira Right Bank project in Sind; and by increased support to education, as exemplified in a rise in the number of technical and industrial schools, the establishment of a Teachers' Training College, and the opening of 300 new educational institutions in 1904-05. At the same time, however, the period was remarkable for increased rancour and virulence in a certain section of the Native Press.

In October 1907 Sir John Muir Mackenzie, who had acted as Governor of the Presidency from the date of Lord Lamington's departure in July, handed over the reins of office to Sir George Sydenham Clarke. The earlier portion of the period was characterized by the preaching of sedition in the vernacular press and by serious unrest, which found vent in July 1908 in a strike of mill operatives in Bombay fomented as a protest against the arrest and conviction for sedition of Bal Gangadhar Tilak, in an anarchical attempt upon Lord Minto's life at Ahmedabad in November 1909, and in the murder of Mr. Jackson, Collector of Nasik, in the following month. Action by the Police also led to the discovery of a secret conspiracy in the Sholapur District with ramification in Satara. Condign punishment was awarded in the latter case, as well as in the Nasik murder and conspiracy cases, while drastic action was taken against the more virulent publications under the Press Act of 1910. This action synchronizing with a general feeling of satisfaction arising from the promulgation of Lord Morley's Scheme of reforms in 1909, led for the time

being to the temporary extinction of active sedition, and enabled Their Majesties the Kind-Emperor and Queen-Empress to visit India with safety at the close of 1911 and to announce at Delhi further concessions and alterations of far reaching significance. In connection with the general scheme of reform the first Indian Member of the Executive Council took his seat in March 1910.

The active campaign against sedition was contemporaneous with a thorough revision of the educational administration of the Presidency. In 1907-08 the total expenditure on education rose by seven lakhs to one hundred and thirteen lakhs of rupees; in 1909-10 the salaries of teachers in primary schools were increased; and important proposals for the improvement of the University curricula were under discussion. While special grants were made for primary education, resulting in 1909-10 in an increase of $7\frac{1}{2}$ per cent. in the number of primary educational institutions, the whole system of secondary education was subjected to anxious scrutiny. One of the chief features of the unrest which embraced India during this period was the participation of many pupils and ex-pupils of High Schools in political agitation and the attention of Government was directed towards providing secondary education with a curriculum which would afford the youth of the Presidency a clearer grasp of facts and circumstances concerning India's position in the Empire and a better chance of serving her economic needs. Two results of this general policy were the preparation in 1910-11 of a series of moral and religious handbooks for use in schools and the inauguration of Science Institutes in Bombay and Ahmedabad.

Meanwhile considerable advance was made in general administration by the withdrawal of much of the former official control, Government conceding to urban municipalities the privilege of electing two-thirds of the total number of councillors, and to all municipalities the right to select non-official

presidents, provided that the executive was strengthened by the appointment of a Government official as Chief Officer. In 1910-11 special grants were allotted by Government for the improvement of water-supply and sanitation in country towns. In 1909-10 the total number of Co-operative Credit Societies in the Presidency rose to 208, while in 1910-11 the whole question of forest conservancy in the Deccan was subjected to investigation by a special committee, which ultimately resulted in 628 square miles of reserved forest being handed back to the Revenue Department for the general benefit of the agricultural population.

Police administration naturally occupied increased attention. In 1907-08 the Bombay City Police Charges Act was passed, which gave legal sanction to certain financial arrangements between Government and the Municipal Corporation; in 1909-10 a new Criminal Investigation Department was created for Bombay City; and throughout the period the reorganization of both the City and the District Police was actively pushed forward. The Excise Department similarly underwent reorganization in 1907-08, as a result of which the status of the subordinate staff was considerably improved. In the earlier portion of Sir George Clarke's Governorship every effort was made to popularize plague inoculation; but the results were not so encouraging as those attained by the Bombay City Pilgrim Department in a sustained endeavour to persuade Musalman pilgrims to Mecca to submit to vaccination before embarking, for the Hedjaz. In 1910-11 a special enquiry was conducted into the causes of Malaria in Bombay, which resulted inter alia in the Municipality commencing a crusade against many old and insanitary wells in the city.

Among the chief legislative measures of this period were the Karachi Port Trust Amendment Act of 1909-10, which empowered the Trustees to raise loans; the Act for the erection and management of the Prince of Wales Museum of Western India, which was approaching a partial completion in 1912; and the Act to control racing in Western India which was passed in

1912 and was designed to control excessive gambling upon the race courses in Bombay and Poona.

The City Improvement Trust, which made considerable progress in the work of housing the poor classes, received a special grant of 50 Lakhs from the Government of India in 1910-11 and was enabled to notify a much-needed scheme for a wide thoroughfare through the eastern portion of the Island. The Port Trust in the meanwhile was actively prosecuting the construction of the new docks and the reclamation of land between Mazagon and Sewri. In 1908-09 a scheme for deepening Aden harbour was sanctioned, and in 1910-11 nearly eight lakhs were expended on the construction of overbridges across the railways in Bombay City.

Excluding the political disturbances alluded to above, the public peace was unbroken save by a somewhat 'serious' disturbance at the Muharram of 1910-11, which resulted from an attempt on the part of the Police to purge the festival of its more objectionable features. The period was one of advancing prosperity, but slightly marred by the partial failure of the monsoon of 1911; trade increased; new banks were opened and in the domain of administration much was done towards the removal of grievances, the revision of the educational system, and the initiation of public works of permanent utility.

The ten years ending with the 31st of March 1922 were the most important in the modern history of the Bombay Presidency. The Great War and the reform of the constitution were events not comparable with any that have taken place since the Province came under the rule of the British.

For nearly one hundred years the record of Bombay had been one of ordered progress in administration and economic and industrial expansion The wars in Europe and the campaigns on the frontiers of India itself had left the life of the Presidency virtually untouched. But the outbreak of the Great War of 1914 and the rapid extension of the area of operations

to the Near and the Far East brought the Presidency at a bound into the forefront of events. The two great seaports of Bombay and Karachi became military bases of vital importance. Its public buildings were turned into hospitals and local industries harnessed to the needs of war. At Poona, Ahmednagar and Deolali great camps sprang up. At Belgaum were confined civilians belonging to the enemy countries. The Presidency, which heretofore had contributed but slightly to the armed forces of the Crown, raised a force of 74,000 men for service in the combatant and non-combatant ranks of the army, while the crew of the transports and merchant vessels engaged in war work were drawn largely from the maritime districts of the Konkan.

The personnel of the higher ranks of the administration was cut down to the absolute minimum in order to release as many men of the public services as possible for more active service with the forces. Expenditure was rigidly curtailed and restricted to essentials, with the result that, while Provincial taxation was not increased during the war, the budget showed each year a surplus.

The people of Bombay subscribed generously and freely to the many appeals for funds for war relief and war purposes, contributing 11 crores to the first war loan and nearly 14 crores to the second.

To the administration the war brought many problems. The sudden and artificial inflation of prices by those who sought to profit at the expense of the poor was met by the issue of stern warnings to the profiteers and the formation of an unofficial prices committee. Later, when the partial failure of the rains in 1918 sent up the price of foodstuffs a controller of Prices was appointed and supplies arranged for from outside the Presidency. When mad speculation threatened to dislocate the staple manufacturing industry of the Presidency action was taken under the Defence of India Act and measurers adopted by legislation to place the cotton trade on a more satisfactory basis. Profiteering in rents was stopped by the Rent Acts.

To the industrial centres of the Presidency the war brought prosperity. The cotton mills made huge profits, while the trading community generally made money, with the result that the year 1920 saw a great boom in speculation both in land and in public companies. Seaborne trade and Shipping rose to record heights.

Politically the Presidency has always been well advanced and the publication in 1919 of the terms of the Government of India Act was received on the whole with satisfaction by the political leaders of Bombay. As a result of the agitation against the Rowlatt Act and the Satyagraha movement started by Mr. Gandhi there was in April 1919 severe rioting at Ahmedabad and Viramgam involving loss of life. The outbreak was handled with firmness and decision and the disturbances did not spread beyond a small area in Gujarat. Lord Willingdon, who had succeeded Lord Sydenham as Governor in 1913 and held office during the whole period of the war, was succeeded in December 1918 by Sir George Lloyd.

The first elections under the new constitution were held in November 1920 and the first session of the elected Legislative Council was opened by His Royal Highness the Duke of Connaught on February 23rd 1921.

CHAPTER I.
Parliament and the Secretary of State In Indian Affairs.

The selections in this chapter deal with the origin and growth of Parliamentary control over the East India Company (Section I.), Parliamentary control and authority before 1919 (Section II), powers of the Secretary of State (Section III), changes under the Act of 1919, Actual working of the Reforms, changes suggested by the Reforms Enquiry Committee (Sections, IV, V, and VI), and the India Council (Sections VII).

I.—Origin and growth of parliamentary control over the East India Company.

SOURCE :—DECENNIAL REPORT ON MORAL AND MATERIAL PROGRESS 1882.

The East India Company traces its origin to a Charter of Incorporation granted by Queen Elizabeth on the last day of the year 1600. At first merely a body of merchants united for purposes of trade, the Company gradually became under pressure of circumstances a territorial potentate. The Royal Charters, as renewed from time to time, were inadequate to meet this change and in the year 1773 Parliament "first" undertook the responsibility of legislating for India. After that date, a series of statutes were passed, usually at intervals of 20 years when the powers of the Company came up for reconsideration, which had the general result of tightening the authority of Parliament and the Crown and of transforming the Company itself from a trading corporation into an administrative machine. Finally, in 1858, as a consequence of the Mutiny, the Government of India was transferred by statute to the Crown, and the Company ceased to exist as a governing body. But it is important to observe, that the East India Company was at no time sovereign, in the technical sense of that word. Its powers, however great and undefined, were all derivative. They were drawn partly from charters, partly from Acts of Parliament, and, where these failed, from the constitutional maxim that no subject can acquire sovereign rights except for the Crown. The early statutes modifying the

The East India Company

Government were expressly stated to be " without prejudice to the claims of the public ". In 1810 (50 Geo. 3, C. 155), we find for the first time an express reservation of the " undoubted sovereignity " of the Crown over the territorial acquisition of the Company; and the statutes, from 1803 downwards, always declare that the company is trustee for the Crown as regards its possessions and its rights and powers. The important change, therefore, effected in 1858 was not a transfer of sovereignty, but the resumption of a delegated authority to be exercised thereafter directly by servants of the Crown.

For the present purpose it will not be necessary to examine any of the charters that date from before 1773.....

Regulating Act.

The Act of 1772-73 known as the Regulating Act (13 Geo 3, C. 63), reconstituted the Council of Bengal, changed the style from Governor to Governor General and subjected the other two Presidencies to Bengal so far as regards the declaration of war or the conclusion of peace. The first Governor General (Warren Hastings) and his Council of four members (of whom Phillip Francis was one) were named in the Act; thereafter they were to be appointed by the Court of Directors. The power of making " rules, ordinances, and regulations " was conferred upon the Governor-General and Council. A Supreme Court of Judicature, composed of a chief and four persons nominated by the Crown, was established for Bengal. The Court of Directors was required to communicate to the Treasury all despatches from India relating to revenue, and to a Secretary of State all despatches relating to public affairs.

Pitt's India Bill, Act. 1784.

This first interference of Parliament in the Government of India was due to Lord North. The second is associated with the greater names of Fox and Pitt. In 1783, Fox on behalf of the Ministry introduced a Bill which in substance transferred the authority belonging to the Court of Directors to a new body, named in the Bill for a term of four years, who were afterwards to be appointed by the Crown. This Bill passed the House of Commons by a majority of two to one, but was rejected by the House of Lords. The

king, who was known to disapprove the Bill forthwith dismissed Fox from office and summoned Pitt to be First Lord of the Treasury. In the following year (1784), after a dissolution, Pitt carried through Parliament his own India Act (24 Geo. 3, C. 25). Its effect was two fold. First, it constituted a department of State in England, under the official style of "Commissioners for the Affairs of India," whose special function was to "control" the policy of the Court of Directors. Second, it reduced the number of members of council at Bengal to three, of whom the Commander-in-Chief must be one; and it remodelled the Councils at Madras and Bombay on the pattern of that at Bengal.

The Board of Control

The Commissioners for the Affairs of India "were directed to form themselves into a Board which, as finally modified by a subseqent Act (33 Geo. 3, C. 52), consisted of five members of the Privy Council, of whom the two Secretaries of State and the Chancellor of the Exchequer must be three. But it was never intended that these high officers should take an active part, and therefore the first commissioner named in the letters patent was appointed President of the Board and a casting vote was given to him in matters of difference, which practically made him supreme. Thus arose the popular title of "President of the Board of Control." The first President was Henry Dundas (afterwards Lord Melville), the friend of Pitt, who held the office from 1784 to 1801. One of his earliest acts was to pass a Statute (26 Geo. 3, C. 16), by which authority was for the first time given to the Governor General to over rule the majority of his Council in certain cases. This matter, however, was dealt with more thoroughly in the Act of Parliament which has now to be described.

The Secret Committee 1793

In 1793, the question of continuing to the East India Company their right of exclusive trade in the East came under the consideration of Parliament. The monopoly was renewed for a further term of 20 years; and advantage was taken of the opportunity to codify, as it were, the constitution of the Indian Government. By this Act

33 Geo., 3 C. 52), the Board of Control was modified as mentioned above, and the Court of Directors were required to appoint a "Secret Committee" of three of their own members through whom the Board of Control was to issue instructions to the Governors in India regarding questions of peace or war. The Councils at Bengal, Madras, and Bombay were remodelled. Each was to consist of three members, appointed by the Court of Directors, from among "senior merchants" (i.e. civil servants) of 10 years standing; and the directors were empowered to appoint the Commander-in-Chief of each Presidency as an additional member. The appointment of the three Governors and the Commander-in-Chief was vested in the Court of Directors, subject to the approval of the Crown. The Directors also retained their power of dismissing any of these officials. The Governor-General was empowered to override the majority of his Council "in cases of high importance and essentially affecting the public interest and welfare," or (as it is elsewhere worded) "when any measure shall be proposed whereby the interests of the Company or the safety and tranquility of the British possessions in India may, in the judgment of the Governor-General, be essentially concerned." A similar power was conferred upon the Governors of Madras and Bombay. The Governor-General was authorised to "superintend" the subordinate Presidencies "in all such points as shall relate to negotiations with the country powers, or levying war or making peace or the collection or application of the revenues, or the forces employed, or the civil or military Government." The form of procedure in Council was regulated; and it was enacted that all orders, etc., should be expressed and be made "by the Governor-General (or Governor) in Council," a style that has continued to the present day. The Governor in Council at Madras first received legislative powers in 1800, by an Act (39 and 40 Geo. 3, C. 79) which also founded a supreme Court of Judicature at Madras on the Bengal pattern with judges appointed by the Crown. Bombay did not obtain legislative powers until 1807, nor a Supreme Court until 1823.

The Renewal in 1813.

In 1813 the territorial authority of the East India Company, and its monopoly of trade with China, were again renewed for 20 years; but the right of trade in India was thrown open to all British subjects. The Act passed on this occasion established a bishop for India and an archdeacon for each of the three Presidencies. It also authorised the expenditure of one lac of rupees (say £10,000) on education and the encouragement of learning.

The Renewal in 1833.

When the time came round for renewing the powers of the Company in 1833 for another 20 years, far more extensive changes were carried into effect. By the Act then passed (3 and 4 Will 4 C. 85), the monopoly of trade with China was withdrawn, and the Company (now for the first time officially styled "the East India Company") ceased altogether to be a mercantile corporation. At the same time the Island of St. Helena was vested in the Crown. It was also enacted that no official communications should be sent to India by the Court of Directors until they had first been approved by the Board of Control. The Governor-General received the title of "Governor-General of India." His Council was augmented by a fourth or extraordinary member, who was not entitled to sit or vote except at meetings for making laws and regulations. He was to be appointed by the Directors, subject to the approval of the Crown from among persons not servants of the Company. The first such member was Thomas Babington Macaulay, afterwards Lord Macaulay. The Governor-General in Council was empowered to make "Laws and Regulations" for the whole of India, and legislative functions were withdrawn from Madras and Bombay. A Law Commission was appointed to which we owe the Penal Code. A new Presidency was created, with its seat at Agra; but this clause was suspended two years later by an Act (5 and 6 Will 4 B. 52) which authorised the appointment of a "Lieutenant-Governor of the North-Western Province." At the same time the Governor-General was authorised to appoint a member of his Council to be Deputy Governor of Bengal. Two new

bishoprics were constituted for Madras and Bombay. By a special clause, it was for the first time enacted that "no native of India shall, by reason of his religion, place of birth, descent, or colour, be disabled from holding any office under the Company."

The Renewal in 1853.

In 1853, the powers of the East India Company were again renewed, but "only until Parliament shall otherwise provide." Further important changes were effected by the Act passed on this occasion (16 and 17 Vict. C. 95). Six members of the Court of Directors, out of a total of 18, were henceforth to be appointed by the Crown. The appointment of ordinary members of Council in India, though still made by the Directors, was to be subject to the approval of the Crown. The Commander-in-Chief of the Queen's army in India was declared Commander-in-Chief of the Company's forces. The Council of the Governor-General was again remodelled, by the admission of the fourth member as an ordinary member for all purposes; while special members were added for the object of legislation only, namely, one member from each presidency or Lieutenant-Governorship, the chief justice of Bengal, and a puisne Judge of the Supreme Court. The Lower Provinces of Bengal were constituted a Lieutenant-Governorship. A Law Commission was appointed in England to consider the reforms proposed by the Indian Law Commissioners. Finally, admission to the civil service, the army, and the medical service was thrown open to public competition.

The Act for the better Government of India, 1858.

The Mutiny of 1857 caused the downfall of the East India Company, after a history of more than two and a half centuries. The "Act for the better Government of India" (21 and 22 Vict. C. 106), enacted that henceforward "India shall be governed by and in the name of the Queen" and vested in the Queen all the Territories and powers of the Company. A Secretary of State was appointed with a Council, to transact the affairs of India in England.

II.—Parliamentary Control and Authority before 1919.

SOURCE:—MONTAGUE-CHELMSFORD REPORT.

Para 33 M.C.R:—

Let us now consider how Parliament actually exercises control over Indian affairs. Whatever other elements originally entered into it, India's constitution has been in the main derived from Parliament and, indeed, has very recently been embodied, to the great convenience of all concerned, in a consolidating statute (5 and 6 Geo. V.C. 61). The powers of the various Governments and legislatures and high courts in India, indeed the establishment of the Secretary of State in Council, are thus due to Parliamentary enactment.

It is open to Parliament to exercise control either by means of legislation, or by requiring its approval to rules made under delegated powers of legislation; or by controlling the revenues of India; or by exerting its very wide powers of calling the responsible Minister to account for any matter of Indian administration. Some of these things however, Parliament does not do. As a general rule, it does not legislate specially for India; though from time to time it passes measures such as the Merchant Shipping Act or the Copyright Act, drawn after consulting with the India Office, which apply to India in common with other British possessions. Parliament as a rule legislates for India alone in two important directions only—amendments in the constitution of India and loans raised by the Secretary of State. The bulk of Indian legislation it leaves to the Indian legislatures which it has itself created, though it exercises through the Secretary of State complete control over the character of such law-making. But it insists that decisions on certain matters, such as rules for the nomination or election of additional members of council, or for appointments to the Indian Civil Service, or defining the qualifications for persons to be appointed to listed posts, or notifications setting up executive councils for lieutenant-governors shall be laid before it. Nor are Indian revenue and expenditure controlled by Parliament.

The revenues apart from loans are not raised, nor are the charges except for military expenditure beyond the frontiers incurred with its direct approval. The Home expenditure is met from Indian revenues and therefore the salaries of the Secretary of State and his Office are not included in the estimates. A motion in favour of placing these amounts on the estimates was made in 1906, and defeated by a large majority, on the ground that the change would tend to bring the Indian administration into party politics. Accordingly all that at present* happens is that a detailed account of receipts and charges is annually laid before Parliament together with a report, the quality of which has incurred some criticism, upon the moral and material progress of the country. A motion is made that Mr. Speaker do leave the chair for the House to go into Committee on the East India revenue accounts; the actual motion made in Committee is declaratory and formal; a general debate on Indian affairs is in order, and the Secretary or Under-Secretary of State usually takes this opportunity to inform the House about any important matters of administration. All sums expended in England on behalf of India are also examined by an auditor who lays his report before both Houses. Because Parliament does not vote the revenues of India, it has not the same opportunity of exercising the control over its administration as over the great departments of the public service in Great Britain. It is, of course, true that when any matter of Indian administration attracts public interest, Parliament has the ordinary and perfectly effective means of making its opinion felt, by questions, by amendments to the address, by motions to adjourn, by resolutions or by motions of no confidence. We have no hesitation in saying, however, that the interest shown by Parliament in Indian affairs has not been well-sustained or well-informed. It has tended to concern itself chiefly with a few subjects, such as the methods of dealing with political agitation, the opium trade, or the cotton excise duties. It may be well to record that in India such spasmodic interferences are

* Before 1919.

apt to be attributed to political exigencies at Home. We note that Her Majesty's Ministers did not feel it necessary to give effect to resolutions of the House of Commons on the opium trade in 1889 and 1891, nor about simultaneous examinations in India and England for the Indian Civil Service in 1893, because they felt assured that the House would not on reflexion constrain them to carry out measures which on enquiry proved to be open to objection. No one questions the competence of Parliament to interfere as drastically or as often as it chooses. Our point, however, is that it does not make a custom of interfering. There may be good reasons for this. The press, the telegraph, improved communications, the steady advance of India to Western methods and standards of administration, and the beginnings of representative institutions in India itself may all have helped to promote a feeling that India's welfare was generally safe in the hands of the Indian Government. Nor can it be denied that constant interference by Parliament in the affairs of a distant Asiatic country would have greatly increased the difficulties of its administration or that India has been fortunate in rarely becoming a subject of party strife. But whatever advantages may have attended this comparative immunity from criticism of the Indian administration, we think that there have been losses as well. We have seen how in the days of the Company it was Parliament's habit before renewing the Charter to hold a regular inquest into Indian administration. That practice has lapsed since 1858. Indeed we have the paradox that Parliament ceased to assert control at the very moment when it had acquired it.

Para 34 M. C. R. :—

The absolute character of the supremacy of Parliament may be judged from the fate of attempts that have occasionally been made to impugn it. After the Councils Act of 1861 had made the legislative councils into something recognisably different from the executive councils and encouraged the idea that they enjoyed some measure of deliberative independence,

we at once find signs of that conflict of principle which inevitably exists between allegiance to Parliament and amenability to any representative body in India. Questions vitally affecting the structure of the government were thereby raised. The unity of the executives in India, the subordination of provincial Governments to the Government of India, and the ultimate supremacy of Parliament in legislative matters, all became questions in issue. Members of the Governor-General's executive council who differed from the views of the majority on legislative questions wished to reserve their freedom of action when the Bill came before the legislative council. Some claimed actually to oppose the Government measure if they chose; others said that they would be content if allowed to abstain from voting. Mr. Gladstone's Government at first dealt tenderly with the claim of individual liberty of conscience and declined to order official members to vote at dictation; they suggested that a proper sense of the necessity for upholding the authority of the Government should suffice to secure unity. But when Lord Mayo's Government as a whole protested at being required to pass the bills which became the Contract Act and the Evidence Act in the shape in which the Secretary of State on the report of the Indian law Comissioners approved them, on the ground that such a course deprived the legislative councils of all liberty of action, the Home Government proceeded to assert their rights of control in the most emphatic manner.....

Again when Lord Northbrook's Government attempted to assert the independence of his Government in fiscal matters Mr. Disraeli's Government were equally decided in affirming their constitutional rights.....

Further when in 1878 a member of the Madras Executive Council moved an amendment which had been rejected by the Government of India to a Bill that was before the provincial legislative council, the Secretary of State declared that his action was constitutionally improper.

The debate on the cotton duties in 1894 was the last occasion on which the issue was raised. Sir Henry Fowler then laid it down positively that the principle of the united and indivisible responsibility of the Cabinet which was recognised as the only basis on which the government of the United Kingdom could be carried on, applied to the Indian executive councils, in spite of the different nature of the tie which held its members together.

The supremacy of Parliament over the Government of India and that of the Government of India over local Governments was thus finally established and also the principle of unity within the Indian executives.

Para 35 M.C.R.:—

Parliament may sometimes be a sleepy guardian of Indian interests; but the feeling that it may call him at any time to account certainly leads the Secretary of State and his Council to exercise with some straightness both the specific powers of control with which they are particularly invested and also the general power of superintendence which the Government of India Act gives them. We need not dwell on the fact that they manage directly the Home charges (which amount to one-fifth of the total expenditure of India) on account of military equipment, stores, pensions, leave allowances, and the like; and that they also control the raising of sterling loans. The greater part of their duties consists in the control of the Government of India. The Governor-General in Council is required by section 33 of the Government of India Act, 1915, "to pay due obedience to all such orders" as he may receive from the Secretary of State; and we have to see how this obedience is in fact exacted. Obviously the intensity of control must vary with the interest shown by Parliament on whose behalf the Secretary of State exercises his powers. The relations between Simla and Whitehall vary also with the personal equation. If resentment has been felt in India that there has been tendency on occasions to treat Viceroys of India as "agents" of the British Government, it is fair to add that there have been

periods when Viceroys have almost regarded Secretaries of State as the convenient mouth-piece of their policy in Parliament. Certainly there have been times when the power of Government of India rested actually far less upon the support of the Cabinet and Parliament than on the respect which its reputation for efficiency inspired. The hands of the Government of India were strong; and there was little disposition to question the quality of their work, so long as it was concerned chiefly with material things and the subtler springs of action which lie in the mental development of a people were not aroused.

III.—Powers of the Secretary of State before 1919.

SOURCE:—MONTAGUE-CHELMSFORD REPORT.

Para 36 M. C. R.:—

"We must distinguish, however, between the measure of control which has been exercised and the powers of control which the existing system provides. These are very great. All projects for legislation, whether in the Indian or provincial legislatures, come Home to the Secretary of State for approval in principle. Before him are laid all variations in taxation or other measures materially affecting the revenues and in particular the customs; any measures affecting the currency operations or debt; and generally speaking, any proposals which involve questions of policy or which raise important administrative questions or involve large or novel expenditure. To set out all the Secretary of State's specific powers would be a long task; but we may mention the construction of public works and railways; the creation of new appointments of a certain value, the raising of the pay of others, or the revision of establishments beyond a certain sum; large charges for ceremonial or grants of substantial Political pensions; large grants for religious or charitable purposes; mining leases and other similar concessions; and additions to the military expenditure, as classes of public business in respect of which he has felt bound to place close restrictions upon the powers of the Government of India. For some such restraints we have no doubt that there is solid

constitutional justification. The Government of India exercise immense powers over a vast populous country, and in the absence of popular control in India it is right that they should, in matters of importance, be made to feel themselves amenable to Parliament's responsible Minister and that he should exercise conscientiously the powers which Parliament entrusts to him. Nor should we under-rate the value of the permanent officials at the India Office in contributing to maintain continuity of policy in a country where the high authorities are constantly changing. This consideration is of great importance. But as we shall show hereafter we think that the time may now have come when the detailed control of the India Office might with advantage be relaxed.

IV.—Changes under the Government of India Act 1919.

1. Relaxation of Control of both the Secretary of State for India and the Parliament.

A Underlying Ideas:—

SOURCE:—MONTAGUE-CHELMSFORD REPORT.

Para 291 M. C. R.:—

'It has been, of course, impossible in practice that the affairs of a vast and remote Asiatic dependency should be administred directly from Whitehall; and as we have seen, large powers and responsibilities have always been left by the Secretary of State to the Government of India and again by the Government of India to local Government. At the same time, the Secretary of State's responsibility to Parliament has set very practical limits to the extent of the delegation which he can be expected to sanction. Now that His Majesty's Government have declared their policy of developing responsible institutions in India we are satisfied that Parliament must be asked to assent to set certain bounds to its own responsibility for the internal administration of the country. It must, we think, be laid down broadly that, in respect of all matters in which responsibility is entrusted to representative bodies in India, Parliament must be prepared to forego

the exercise of its own power of control, and that this process must be "pari passu" with the development of responsible government in the provinces and eventually in the Government of India. The process should, we think, begin with the conclusions arrived at on the report of the committee which will consider the question of transferred subjects. Having taken their report and the views of the Government of India upon it into consideration the Secretary of State would, we imagine, ask parliament's assent to his declaring by statutory orders which he would be empowered to make under the Act that such and such subjects in the various provinces have been transferred; and when Parliament has assented to such orders the Secretary of State would cease to control the administration of the subjects which they covered. The discussion of such matters by Parliament in future would be governed by the fact of their transfer. We appreciate the difficulties of the situation; but it must be recognised that it will be impossible for Parliament to retain control of matters which it has deliberately delegated to representative bodies in India. At the same time it will be necessary to ensure that the Secretary of State is in a position to furnish Parliament with any information upon Indian affairs that it desires; and nothing in our proposals should be taken as intended to impair the liability of the Government of India and the provincial Governments to furnish such information to the India Office at any time.

Para 292 M. C. R.:—

So far we have had in mind only the transferred subjects. But even as regards reserved subjects, while there cannot be any abandonment by Parliament of ultimate powers of control, there should, as we have indicated already, be such delegation of financial and administrative authority as will leave the Government of India free, and enable them to leave the provincial Governments free, to work with the expedition that is desirable. On the purely financial side, this delegation will involve an examination of the various codes and other regulations and orders, which we have already described as limiting too straightly

the power of the authorities in India. This matter is already being examined in India, and the Government of India will make proposals to the Secretary of State in Council. On the purely administrative side there are as we have seen no general orders, like those embodied in the financial codes, prescribing the matters for which the Secretary of State's sanction is required. But in an earlier chapter we gave an illustrative list of the subjects regarded as falling within that category; and generally speaking, it is well understood that all important new departures require his previous approval. The drawing of the line between the important and the unimportant can only be left to the common sense of the authorities in India and at Home. But we are agreed that a wider discretion ought henceforth to be left to the Governor-General in Council; and that certain matters which are now referred Home for sanction might in future be referred merely for the information of the Secretary of State in Council. The exact definition of these particular matters must also be pursued at greater leisure and the Government of India will take this question in hand. It will follow in such cases in future that when the policy of the executive Government in India is challenged Parliament must be asked to accept the explanation that in accordance with deliberate policy the Government of India have been given discretion in respect of the topic in question and that for this reason the Secretary of State is not prepared to interfere with what has been settled in India. It is not part of our plan to make the official Governments in India less amenable to the control of Parliament than hitherto. It must be for Paliament itself to determine the limits which it will set to the exercise of its own powers. On the other hand, intervention by Parliament may involve intervention by the Government of India in matters which otherwise would be recognised as of Provincial concern. It will be distracting both to the Government of India and the provincial Governments if the operation of this principle of discretionery delegation is left either to the idiosyncracies of Secretaries of State, or to the disposition of party forces in Parliament. We

hope therefore that Parliament will assent to facilitate the working of our reforms by a provision authorising the Secretary of State, by rules to be laid before Parliament, to divest himself of control of the Government of India in some specified matters even although these continue to be the concern of the official Governments, and to empower the Government of India to do likewise in relation to provincial Governments. On large matters of policy in reserved subjects there can, of course, be no question of such delegation.

B. Details:—

SOURCES:—THE GOVERNMENT OF INDIA ACT AND RULES MADE UNDER IT.

1. Section 33 of the Government of India Act of 1919.

SECTION 33:—The Secretary of State in Council may, notwithstanding anything in the Principal Act, by rule regulate and restrict the exercise of the powers of superintendence, direction, and control, vested in the Secretary of State and the Secretary of State in Council, by the Principal Act, or otherwise, in such manner as may appear necessary or expedient in order to give effect to the purposes of this Act.

Before any rules are made under this section relating to subjects other than transferred Subjects, the rules proposed to be made shall be laid in draft before both Houses of Parliament, and such rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications or addition to which both Houses agree, but upon such approval being given the Secretary of State in Council may make such rules in the form in which they have been approved, and such rules on being so made shall be of full force and effect.

Any rules relating to transferred subjects made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an Address is presented to His Majesty by either House of Parliament within the next

thirty days on which that House has sat after the rules are laid before it praying that the rules, or any of them, may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

REMARKS OF THE JOINT SELECT COMMITTEE ON CLAUSE 33 OF THE BILL:—The Committee have given most careful consideration to the relations of the Secretary of State with the Government of India, and through it with the provincial governments. In the relations of the Secretary of State with the Governor-General in Council the Committee are not of opinion that any statu tory change can be made, so long as the Governor-General remains responsible to Parliament, but in practice the conventions which now govern these relations may wisely be modified to meet fresh circumstances caused by the creation of a Legislative Assembly with a large elected majority. In the exercise of his responsibility to Parliament, which he cannot delegate to any one else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature of India are in agreement.

This examination of the general position leads inevitably to the consideration of one special case of non-intervention. Nothing is more likely to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall in the interests of the trade of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiation between India and the rest of the Empire, but negotiation without power to legislate is likely to remain ineffective. A satisfactory solution of the question can be guaranteed by the grant of liberty to the Government

of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. It cannot be guaranteed by statute without limiting the ultimate power of Parliament to control the administration of India, and without limiting the power of veto which rests in the Crown; and neither of these limitations finds a place in any of the statutes in the British Empire. It can only therefore be assured by an acknowledgement of a convention. Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa. In the opinion of the committee, therefore, the Secretary of State should as far as possible avoid interference on this subject when the Government of India and its Legislature are in agreement and they think that his intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire to which His Majesty's Government is a party.

The relations of the Secretary of State and of the Government of India with provincial governments should, in the Committee's judgement, be regulated by similar principles, so far as the reserved subjects are concerned. It follows, therefore, that in purely provincial matters, which are reserved, where the provincial government and legislature are in agreement, their view should ordinarily be allowed to prevail; though it is necessary to bear in mind the fact that some reserved subjects do cover matters in which the central government is closely concerned. Over transferred subjects, on the other hand, the Control of the Governor-General, and thus of the Secretary of State, should be restricted in future within the narrowest possible limits, which will be defined by rules under sub-clause 3 of clause 1 of the Bill.

DIVESTMENT OF CONTROL BY STATUTORY RULE UNDER SECTION 33* OF GOVERNMENT OF INDIA ACT, 1919:—"The powers of superintedence, direction and control vested in the Secretary of State and the Secretary of State in Council under the Act or otherwise shall, in relation to TRANSFERRED SUBJECTS, be exercised only for the following purposes, namely:—

(1) to safeguard the administration of central subjects;

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

(3) to safeguard Imperial interests;

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

(5) to safeguard the due exercise and performance of any powers and duties possessed by or imposed on the Secretary of State or the Secretry of State in Council under or in connection with or for the purposes of the following provisions of the Act, namely, section 29A, section 30 (IA), Part VII A, or of any rules made by or with the sanction of the Secretary of State in Council (Vide notification No. 835G in the Gazette of India December 18, 1920)

Except to the extent indicated by the above rule, there has been no statutory divestment of control by the Secretary of State for reasons stated by the Joint Select Committee in the following extract:—"The committee consider that no statutory divestment of control, except over the transferred field, is either necessary or desirable. It is open to the Secretary of State to entrust large powers, administrative and financial, to the Governor-General in Council and the provincial Governors in Council, and he will no doubt be largely influenced in deciding whether or not to require reference to himself in any given cases, or whether to interpose his orders when reference has been

*Same as 19A of the amended principal Act.

made, by the attitude of provincial public opinion as expressed in the Legislative Council. But these matters cannot be regulated by statutory rules, and any authority which the Secretary of State may decide to pass on to the official governments in India will be a mere delegation of his own authority and responsibility, for the exercise of which in relation to central and reserved subjects he must remain accountable to Parliament."

DELEGATION BY THE SECRETARY OF STATE:—The extent to which the Secretary of State has delegated his powers in matters of expenditure to the Government of India and the provincial governments is shown in the extracts in Chapters X & II.

2 Section 35 of the Government of India Act, 1919.

Transfer of agency functions to a High Commissioner.

His Majesty may by order in Council make provision for the appointment of a High Commissioner for India in the United Kingdom, and for the pay, pension, powers, duties, and conditions of employment of the High Commissioner and of his assistants; and the order may further provide for delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of State in Council whether under the principal Act or otherwise in relation to making contracts, and may prescribe the conditions under which he shall act on behalf of the Governor-General in Council or any local government.

3. No division of responsibility for the Development of Self-Government in India.

SOURCE.—THE PREAMBLE OF THE GOVERNMENT OF INDIA ACT 1919.

THE PREAMBLE:—Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the empire:

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken:

And whereas the time and manner of each advance can be determind ONLY BY PARLIAMENT, upon whom responsibility lies for the welfare and advancement of the Indian peoples:

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of resposnsibility:

And whereas concurrently with the gradual development of self-governing institutions in the provinces of India it is expedient to give to those provinces in provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities

Be it therefore enacted.....

REMARKS OF THE JOINT SELECT COMMITTEE:—The Preamble of the Bill, as drafted, was based on the announcement of His Majesty's Government in Parliament of the 20th August 1917, and it incorporated that part of the announcement which pointed to the progressive realisation of responsible government in British India as an integral part of the Empire, and to the expediency of gradually developing self-governing institutions in India, and it referred to the granting to the provinces of India of a large measure of independence of the Government of India. It did not, however, deal with those parts of the announcement which spoke of the increasing association of Indians in every branch of the administration, and declared that the progress of of this policy could only be achieved by successive stages, and that Parliament, advised by His Majesty's Government and by the Government of India on whom the responsibility lies for the welfare and advancement of the Indian people, must be the judge of the time and measure of each advance, and be guided

by the co-operation received from those upon whom new opportunities of service are conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

The Committee have enlarged the preamble so as to include all parts of the announcement of the 20th August, 1917. Their reason for doing so is that an attempt has been made to distinguish between the parts of this announcement, and to attach a a different value to each part according to opinion. It has been said, for instance, that whereas the first part is a binding pledge, the later part is a mere expression of opinion of no importance. But the Committee think that it is of the utmost importance, from the very inauguration of these constitutional changes, that Parliament should make it quite plain that the responsibility for the successive stages of the development of self-government in India rests on itself and on itself alone, and that it cannot share this responsibility with, much less delegate it to, the newly-elected legislatures of India.

They also desire to emphasise the wisdom and justice of an increasing association of Indians with every branch of the administration, but they wish to make it perfectly clear that His Majesty's Government must remain free to appoint Europeans to those posts for which they are specially required and qualified."

ii. Provisions to ensure greater interest of Parliament.

A. Proposals of the Montague-Chelmsford Report.

Paras 294-295 of the M. C. R:—

But whatever control over Indian affairs the Secretary of State keeps, he keeps in the name of Parliament; and it will not suffice to improve the agent so long as his relations with his principal are not what they should be. Of all the great departments of the State the India Office is at present the least concerned with Parliament. Parliamentary control cannot in fact be called a reality. Discussion

is often out of date and ill-informed; it tends to be confined to a little knot of members, and to stereotype topics; and it is rarely followed by any decision. We fully realise the other preoccupations of Parliament, and yet we are sure that means must be found of enabling it to take a real and continuous interest in India. No one would wish matters that ought to be discussed and settled in India to be debated and decided in Parliament but there remain large questions of policy with which only Parliament can deal. We are anxious that Parliament should be in a position to take them up with interest and to decide them with knowledge. We have already made one important proposal—that for periodic commissions to deal with the political progress of India—which will be of value for this purpose. We will add two further suggestions. We advise that the Secretary of State's salary, like that of all ministers of the Crown, should be defrayed from home revenues and voted annually by Parliament. This will enable any live questions of Indian administration to be discussed by the House of Commons in Committee of Supply. On previous occasions when this proposal has been made it has encountered the objection that it would result in matters of Indian administration being treated as party questions. Without entering into speculations as to the future of parties in Parliament we do not see why this result would follow from such a debate more than from the existing debate on the budget; and in any case the proposal which we make in the next paragraph would do something to prevent it. It might be thought to follow that the whole charges of the India Office establishment should similarly be transferred to the Home Exchequer but this matter is complicated by a series of past transactions, and by the amount of agency work which the India Office does on behalf of the Government of India; and we advise that our proposed committee upon the India Office organisation should examine it and, taking these factors into consideration, determine which of the various India Office charges should be so transferred, and which can legitimately be retained as a burden on Indian revenues.

But the transfer of charges which we propose, although it will give reality to the debates on Indian affairs, will not ensure in Parliament a better informed, or a more sustained, interest in India. We feel that this result can only be accomplished by appointing a select committee of Parliament on Indian affairs. We have considered whether such a committee should be drawn jointly from both Houses. But it is in the House of Commons that effective control over the Indian administration will be exercised by means of the debate on the estimates; and also it is to the House of Commons that the comments in the preceding paragraph mainly apply. We recommend therefore that the House of Commons should be asked to appoint a select Committee on Indian affairs at the beginning of each season. Such a select committee would, like other select committees, exercise its powers by informing itself from time to time upon Indian questions, and by reporting to the House before the annual debate on the Indian estimate. Like other select committees it would have no administrative functions. The Secretary of State would appear before it to answer questions about those aspects of Indian administration in which he, and therefore Parliament, continued to exercise the right to interfere. Thus by means of interrogations and requisitions for papers the members of the committee would keep themselves informed upon Indian questions. To such a select committee Indian Bills might be referred after their second reading. There would thus soon grow up a body of men in Parliament who took a continuous and well-informed interest in Indian questions, and by the committee's reports the House of Commons would be invited to focus their attention in the debate on the budget on matters of importance which had arisen during the year. There is, we may repeat, no inconsistency in distinguishing between the general direction and the execution of policy, nor in desiring at one and the same time that the directing power shall be more interested and better informed and that the executive agents shall be given a larger measure of discretion within the limits laid down for them.

B. Changes introduced by the Government of India Act of 1919.

(1) SECTION 30 (sub s. 3):—The salary of the Secretary of State, the salaries of his under-secretaries, and any other expenses of his department may, not-with-standing anything in the principal Act, instead of being paid out of the revenues of India, be paid out of moneys provided by Parliament, and the salary of the Secretary of State shall be so paid.

Salary of the Secretary of State transferrd to British exchequer.

(2) PARA 6 OF THE JOINT SELECT COMMITTEE'S REPORT:—The change which this Bill will make in the political structure and life of India is very important. It marks a great step in the path of self-government and it is a proof of the confidence reposed by His Majesty's Government in the loyalty, wisdom and capacity of our Indian fellow-subjects. At the same time, it points to the desirability of keeping Parliament in closer touch with Indian affairs than has recently been possible. The Committee accordingly propose that a Standing Joint Committee should be appointed by both Houses of Parliament for that purpose. It should have no statutory functions, but a purely advisory and consultative status, and among its tasks is one of high importance, the consideration of amendments to rules made under this Bill. For the plan on which the Bill has been drafted, and in the opinion of the Committee rightly drafted, will necessitate the completion of some of its main provisions by a large number of rules and other documents which will have to be framed before the machinery established by the Bill can come into working order. Many of those rules and documents will be drafted in India for the approval of the Secretary of State. When they come to England, it may be found convenient that the present Committee be reappointed to advise Parliament in regard to them.

Appointment of a standing Joint Committee

(3) SECTION 41 OF THE ACT:—

Provision for appointing a Statutory Commission after ten years.

(1) At the expiration of ten years after the passing of this Act, the Secretary of State, with the concurrence of both Houses of Parliament, shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section. (2) The personsw hose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government, then existing therein, including the question of whether the establishment of second chambers of the local legislatures is or is not desirable. (3) The commission shall also inquire into and report on any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.

V.—Actual Working of the Reforms.

SOURCE:—REPORT OF THE REFORMS ENQUIRY COMMITTEE.

PARA 36 OF THE MAJORITY REPORT:—We do not think it necessary to refer in detail to the evidence regarding the control over the Ministers by the Government of India and the Secretary of State. The general powers of superintendence, direction and control over local government in the transferred field are restricted to those embodied in rule 49 of the Devolution Rules and in the rule made by the Secretary of State in Council under section 19 A of the Act. It is true that Sir K. V. Reddi, in regard to the latter rule, states that the powers retained by the Secretary of State are big enough to eat up the rule. He admits, however, that it is difficult to suggest an amendment of the rules. We shall deal with this

point later in our report. Mr. Chintamani states that he believed that the amount of control exercised or sought to be exercised over the Transferred Departments, whether in matters of legislation or of administration, had been less than over the Reserved Departments. He claims, however, that there have been cases of interference or attempted interference where he was convinced that there should have been none. It is true that in regard to the members of the permanent services serving in departments dealing with transferred subjects, control was retained and intended to be retained by the Secretary of State in Council under the reforms. The Ministers will, however, obtain greater powers in this respect if the proposals of the Royal Commission on the Services are accepted and given effect to.

The only other point to which we consider it necessary to refer in this connection relates to the control over provincial legislation. It is admitted both by the Government of India and by the provincial governments that the provisions of section 80A of the Government of India Act in regard to the requirement of previous sanction to local legislation are unduly restrictive, and we shall refer to this point again later. We consider, however, that the detailed information given in the written and oral evidence of Mr. Spence in regard to the particular provincial legislative proposals to which witnesses have referred indicates clearly that the local governments have not had very serious grounds for complaints as to the manner in which the existing law has been applied.

VI—Recommendations of the Reforms Enquiry Committee.

Paras 122-123 of the Majority Report:—

The powers of superintendence, direction and control of the Secretary of State in Council have been restricted in regard to transferred subjects by the rule made under section 19A of the Act to the five purposes mentioned in the rule. The corresponding powers of the Governor-General in Council have been

similarly limited by Rule 49 of the Devolution Rules. These powers of interference are identical save for the inclusion in the rule relating to the Secretary of State in Council of the following additional purposes:—

(i) to safeguard Imperial interest; and

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

We have therefore decided to refer to these two connected questions together.

Sir K. V. Reddy has stated that the rule framed under section 19A of the Government of India Act has so many exceptions that they eat up the rule. He says that it is difficult to suggest an alteration of the rule, but the powers now retained by the Secretary of State are still too large. On the other hand, in regard to the control of the Governor General in Council, the Deccan Sabha, for example, recommend that the powers of control should be limited to the purposes of safeguarding the interests of central subjects only. We have examined the existing restrictions in both cases. It seems to us that in all the cases provided for it is necessary to retain the limitations upon the divestment of control which have been provided. More important than any amendment of the rules is the manner in which the powers still retained are exercised, and no amendment of the rules will affect this.

Finally, we turn to those subjects in the administration of which the Governments in India remain responsible to Parliament. The Joint Committee in their remarks on clause 33 of the Government of India Bill of 1919 suggested that in the exercise of his reponsibility to Parliament which he cannot delegate to any one else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the legislature in India are in agreement. We recognise the importance which attaches to the

relation of the powers of control of the Secretary of State and of the Secretary of State in Council over the official Governments in India. It would, however, involve an examination of the actual working of the administration in detail, which has of course not been possible for us to undertake, before we could arrive at a definite conclusion as to whether the existing control is being unreasonably exercised. One witness before us referred to the growth of expenditure upon telegrams as an indication of the excessive control. We have examined the point and find there is no basis for the suggestion. We fully endorse the view of the Joint Committee that the relaxation of the control over the Government of India and the provincial governments exercised by the Secretary of State and by the Secretary of State in Council in matters of purely Indian interest is the goal to be aimed at. We have considered what steps should be taken towards obtaing such a relaxation. We recognise that there is a difference in theory between delegation and devolution of powers, but we think that in their practical application, little difference is likely to be experienced between the two methods of securing relaxation. Difficulties arise when an attempt is made to define the circumstances in which the control should be relaxed, and in fact the cases in which relaxation of control may perhaps be expected appear to depend not only upon the subject to which they relate but mainly upon the magnitude of the issues which they involve. In financial and service matters, action may be taken by definite delegation of powers by rule. In matters of administration, however, the step which should, in our opinion, be taken is to work towards establishing a practice in conformity with the position taken by the Joint Committee that control in cases affecting purely Indian interests should not be exercised. We notice with pleasure that an important practice in regard to fiscal matters has already been established. Relaxation of control on these lines is, in our opinion, a most important channel for constitutional advance within the scope of the Act.

EXTRACT FROM THE MINORITY REPORT:—*It has been urged that an advance can be made by action under section 19A of the Act and without any radical amendment of the Act itself. With all respects to those who maintain this view, we entirely differ from it. In the first place, it is obvious that under section 19A the Secretary of State can only "regulate and restrict" the exercise of the powers of superintendence, direction and control vested in him. In the second place, such regulation and restriction of powers must be with a view to give effect to the purposes of the Government of India Act. These purposes are defined in the preamble, and we think, that even if the Secretary of State felt so disposed, he could not, by the mere exercise of his powers under this section, abolish dyarchy. In the third place, reading the second and third parts of section 19A with the first part, it seems to us that the relaxation of control contemplated by section 19A can only be with regard to Provincial Governments and cannot have any relation to the Central Government. The words "subjects other than transferred subjects" in the second part of the section, and the words "any rules relating to transferred subjects" in the third part of the section seem clearly to indicate the limits of the relaxation of the control of the Secretary of State contemplated by the rule-making power under this section. We also think that the relaxation of control provided for by this section cannot mean the same thing as divestment.

**We also desire to draw attention to section 131 of the Government of India Act which provides that nothing in this Act shall derogate from any powers of the Secretary of State in Council in relation to the Government of India. In our opinion, so long as this section stands on the Statute Book the control of the Secretary of State must constitutionally remain unimpaired, and it is difficult to see how any action taken by him under section 19A can divest him of that ultimate control.

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***We have discussed the constitutional position at length with reference to section 19A at an earlier stage. We do not think that the regulation and restriction of the exercise of his powers of superintendence, direction and control under section 19A can at all amount to a divetsment of control. As to how far he can further relax his control consistent with his statutory obligations under the present Act is a question which has not been discussed by the majority and we think that no real relaxation of such control in any greater degree is possible under the present Constitution over the transferred subjects. (paragraph 107)

****As regards Control of the Secretary of State in Council over Central and provincial reserved subjects we think that consistently with his responsibility to Parliament any divestment of such control is out of question, and any relaxation of it by definite delegation of powers by rule must be of a very limited character. We note that the majority are of opinion that the step which, in their opinion, should be taken is to work towards establishing a practice in conformity with the position taken by the Joint Committee that control in cases affecting purely Indian interests should not be exercised. We venture to doubt whether such a convention would be of any permanent value or could effectively put a stop to the powers of control, particuarly when it is realised that it is extremely difficult to define the expression "purely Indian interests." Bearing in mind the present Indian constitution we do not feel justified in building much hope on such a convention.

VII.— The India Council.

i. The India Council before 1919

SOURCES:—(1) THE DECENNIAL REPORT ON MORAL AND MATERIAL PROGRESS 1913. (2) PARAS 11-12 CREW COMMITTEE'S REPORT.

(1) The Council of India conducts under the direction of the Secretary of State the business transacted in the United

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Kingdom in relation to the Government of India, and the correspondence with India. One meeting of the Council at least must be held in every week. The powers of the Council and its position in relation to the Secretary of State are defined by the Act of 1858; it is, as has already been indicated in the main a consultative body, with a limited veto, and without the power of initiation. Its constitution has been altered from time to time, most recently by the Council of India Act, 1907 (7Edw. 7. C. 35). The Council established in 1858 consisted of 15 members, at least 9 of whom, it was laid down, must have served or resided in India for 10 years at least, and must not have left India more than 10 years before appointment to the Council. The members held office during good behaviour, and the salary was £1,200 a year. An Act of 1869 (32 and 33 Vict C.97) fixed the term of office at 10 years, at the same time giving the Secretary of State power to reappoint for a further period of 5 years for special reasons of public advantage. In 1889 the Secretary of State was given power (52 and 53 Vict. C. 65) to reduce the number of members, by refraining from refilling vacancies to 10. The Act of 1907, referred to above, fixed the number of members at not less than 10 and not more than 14, and reduced the maximum interval between the date of leaving India and the date of appointment to the Council of members with Indian experience from 10 years to 5 years, the normal term of office from 10 years to 7 years, and the salary from £1,200 to £1,000 a year. Vacancies in the Council are, and have been since 1869, filled by appointment by the Secretary of State.

The Council consists at the present time of 12 members of whom 10 have served in various capacities in India. The other two members have special knowledge of finance. Since 1907 the Council has included two Indian members. From the Council are appointed seven committees, to which matters connected with the various branches of the administration are referred before being finally laid before the Secretary of State in Council.

(2) *The functions assigned to the Council of India were in some respects derived from the position previously held by the Court of Directors. Under the direction of the Secretary of State, and subject to the provisions of the Act, they "conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India." But at the same time they were given a special function, which was presumably intended to act as a counterpoise to the centralisation of powers in the hands of the Secretary of State. In regard to certain decisions and notably in regard to "the grant or appropriation of any part of the revenues of India," the concurrence of a majority of votes at a meeting of the Council of India is required. This provision, usually referred to as the financial veto, has, not without reason, been regarded as the symbol of the special status assigned to the Council in its relationship with the Secretary of State. It is emphasised, though in a lesser degree, by the enactment that in all other matters, with two exceptions, the Secretary of State must consult his Council either at a weekly meeting or by the formal procedure of depositing his proposed orders on the Table of the Council Room for seven days prior to their issue, though he is empowered to overrule the Council's recommendations. The two exceptions are, first, that in cases of urgency he may issue orders without previously consulting the Council, provided that he subsequently communicates to the members his reasons for his action; and secondly, that "where an order or communication concerns the levying of war, or the making of peace, or the public safety, or defence of the realm, or the treating or negotiating with any prince or State, or the policy to be observed with respect to any prince or State, and a majority of votes therefor at a meeting of the Council of India is not required," the Secretary of State may act on his own initiative without reference to the Council, if he considers that the matter is of a nature to require secrecy. Our description of the statutory functions of the Secretary of State and the Council of India is designedly brief, because we feel that the enumeration of their legal powers

*Para 11 of the Crewe Committee's Report.

creates a very inadequate impression of the actual principles which have been evolved in the working of the system. There are some elements which, as we have tried to show, have been derived from the days of a chartered company yielding more and more to Parliamentary control, and others which were grafted on to the structure at the time when Parliament assumed complete responsibility through its ministerial representative; but the whole organism has been moulded by the instinctive process of adaptation to a form which does not lend itself easily to definition in set constituional terms. We are content for our purposes to envisage the system in its present working and in its reaction to the new conditions of Indian administration.

*The Councilis.....in the main a body differing in status but not in nature from the authorities in India whose activities come under its review. The Secretary of State in Council represents in fact the supreme element of export control at the higher end of the chain of official administration. In his corporate capacity he has delegated wide powers to the Indian administrations without divesting himself of his ultimate responsibilities, as the governing authority. The main provisions of the Act of 1858, as we understand them, had the effect of giving prominence to these official duties of the corporation it established. But the Secretary of State, as distinct from the Secretary of State in Council, is generally responsible as a Minister for the co-ordination of Indian and Imperial policy. The Council are by law in a position to obstruct his policy, or indeed the policy of His Majesty's Government, by interposing their financial veto if Indian revenues are affected; but in practice they have acknowledged the supremacy of the Imperial Executive by accepting proposals communicated to them as decisions of the Ministry, in so far as those proposals raise issues on which they are legally competent to decide. We mention this demarcation of functions to illustrate the way in which the

* Para 12 of the Crewe Committee's Report.

hard outlines of legal definition have been rounded off by constitutional usage.

ii. Recent changes.

1. Modification of its constitution:—

SOURCE:—SECTION 31 OF THE GOVERNMENT OF INDIA ACT 1919.

REMARKS OF THE JOINT SELECT COMMITTEE ON CLAUSE 31:—The Committee are not in favour of the abolition of the Council of India. They think, that at any rate for some time to come, it will be absolutely necessary that the Secretary of State should be advised by persons of Indian experience, and they are convinced that, if no such council existed, the Secretary of State would have to form an informal one if not a formal one. Therefore, they think it much better to continue a body which has all the advantages behind it of tradition and authority, although they would not debar the readjustment of its work so as to make it possible to introduce what is known as the portfolio system. They think, also, that its constitution may advantageously be modified by the introduction of more Indians into it and by shortening the period of service upon it in order to ensure a continuous flow of fresh experience from India and to relieve Indian members from the necessity of spending so long a period as seven years in England.

In accordance with these recommendations, section 3 of the principal act has been amended by section 31 of the Government of India Act 1919 so as to read as follows:—

(1) The Council of India shall consist of such number of members, not less than *EIGHT and not more than TWELVE as the Secretary of State may determine.

PROVIDED THAT THE COUNCIL AS CONSTITUTED AT THE TIME OF THE PASSING OF THE GOVERNMENT OF INDIA ACT, 1919, SHALL NOT BE AFFECTED BY THIS PROVISION, BUT NO FRESH APPOINTMENT OR RE-APPOINTMENT THERETO SHALL BE MADE IN EXCESS OF THE MAXIMUM PRESCRIBED BY THIS PROVISION.

*The amendments are shown in this type.

(2) The right of filling any vacancy in the Council shall be vested in the Secretary of State.

(3) Unless at the time of an appointment to fill a vacancy in the Council ONE HALF of the then existing members of the Council are persons who have served or resided in India for at least ten years, and have not last left India more than five years before the date of their appointment, the person appointed to fill the vacany must be so qualified.

(4) Every member of the Council shall hold office, except as by this section provided, for a term of FIVE years.

PROVIDED THAT THE TENURE OF OFFICE OF ANY PERSON WHO IS A MEMBER OF THE COUNCIL AT THE TIME OF THE PASSING OF THE GOVERMENT OF INDIA ACT, 1919, SHALL BE THE SAME AS THOUGH THAT ACT HAD NOT BEEN PASSED."

(5) The Secretary of State may, for special reasons of public advantage, re-appoint for a further term of five years any member of the Council whose term of office has expired. In any such case the reasons for the re-appoinment shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament. Save as aforesaid, a member of the Council shall not be capable of re-appointment.

(6) Any member of the Council may, by writing signed by him, resign his office. The instrument of resignation shall be recorded in the minutes of the Council.

(7) Any member of the Council may be removed by His Majesty from his office on an address of both Houses of Parliament.

(8) THERE SHALL BE PAID TO EACH MEMBER OF THE COUNCIL OF INDIA THE ANNUAL SALARY OF TWELVE HUNDRED POUNDS: PROVIDED THAT ANY MEMBER OF THE COUNCIL WHO WAS AT THE TIME OF HIS APPOINTMENT DOMICILED IN INDIA SHALL RECEIVE, IN ADDITION TO THE SALARY PROVIDED, AN ANNUAL SUBSISTENCE ALLOWANCE OF SIX HUNDRED POUNDS.

SUCH SALARIES AND ALLOWANCES MAY BE PAID OUT OF THE REVENUES OF INDIA OR OUT OF MONIES PROVIDED BY PARLIAMENT.

(9) NOTWITHSTANDING ANYTHING IN ANY ACT OR RULE, WHERE ANY PERSON IN THE SERVICE OF THE CROWN IN INDIA IS APPOINTED A MEMBER OF THE COUNCIL BEFORE COMPLETION OF THE PERIOD OF SUCH SERVICE REQUIRED TO ENTITLE HIM TO A PENSION OR ANNUITY, HIS SERVICE AS SUCH MEMBER SHALL, FOR THE PURPOSE OF ANY PENSION OR ANNUITY WHICH WOULD HAVE BEEN PAYABLE TO HIM ON COMPLETION OF SUCH PERIOD, BE RECKONED AS SERVICE UNDER THE CROWN IN INDIA WHILST RESIDENT IN INDIA.

2. **Transfer of some of its functions to a High Commissioner.**

SOURCES :—(1) SECTION 35 OF THE GOVERNMENT OF INDIA ACT, 1919.

(1) SECTION 35:—(See page 52).

(2) PARA 29 CREWE COMMITTEE'S REPORT :—We proceed to the subsidiary heads of our enquiry, of which the first is the organisation of the India Office establishment. We have interpreted this reference to imply that we should indicate general lines of reconstruction, without entering into technical questions of departmental arrangements. We are satisfied that the time has come for a demarcation between the agency work of the India Office and its political and administrative functions, and that the step would commend itself to all classes of opinion in India as marking a stage towards full Dominion Status. Accordingly, we recommend that preliminary action should be taken with a view to the transfer of all agency work to a High Commissioner of India or some similar Indian Governmental representative in London. We suggest that, in the first instance, communications should be entered into with the Government of India with the object of transferring to the direct control of that Government the Stores Department and also the Accountant-General's Department (subject to any necessary reservations including the retention of work connected with higher finance), and that the Government of India should at the same time be invited to make suggestions for the transfer to their control of any other agency business, such as that transacted by the Indian Students Department.

CHAPTER II.

The Government of India and the Relations Between The Central and Provincial Governments.

The selections in this chapter deal with the development of the Central Government into a supervising and directing authority over the whole of India (section I), the functions of government in India (section II), and the divisions of powers between the provincial and the imperial governments before and after the Reforms (sections III, IV, V, VI and VII).

I Its development into a supervising and directing authority.

SOURCE:—MONTAGUE-CHELMSFORD REPORT.

Para 37 M. C. R:—

We will now describe how the executive government of the country is constructed and conducted in India itself. The old settlements were administered by a president or governor and a council, composed of from twelve to sixteen of the senior servants of the Company. Everything was decided by a majority vote, an arrangement that Clive found so unworkable for serious business in Bengal that he set up a select committee as the real instrument of government. The three presidencies were independent of each other, and each government was absolute within its limits, subject to the distant and intermittent control of the Directors at Home. But the need for a common policy in the face of foreign enemies was apparent; and when the disorder of the Company's finances and suspicions about the fortunes amassed by its servants in India drove Parliament to intervene, it was wisely decided to create one supreme government in the country. The grant of the DIWANI in 1765 made Bengal the predominant presidency, and therefore the Regulating Act converted its Governor in Council into a Governor-General in Council and gave him superintending authority over Bombay

and Madras. How shadowy Warren Hastings found his authority at first is well-known; against his will the aggressive policy of first the Bombay and later on the Madras government involved him in wars, which taxed to the utmost his courage and resources. A curious echo of this state of things lingers in the language of section 45 (2) of the Government of India Act, 1915, which still contemplates the possibility of a provincial Government making peace and war. For a long time indeed the mere isolation of the western and southern presidencies attenuated the authority of the Governor-General in Council over them. His control became affective only as the British dominions extended till they became contiguous and communications between them improved. The Madras presidency took practically its present shape after the fall of Tipu Sultan in 1799; and the presidency of Bombay was settled on almost its present lines in 1818 after the third Maratha war. But the Bengal presidency under the Governor-General in Council continued to grow. Lord Lake's campaign against the Marathas added what is roughly the province of Agra to the Company's dominions. From that time forward the security of the Bengal Presidency was the dominant reason for further extension of the frontiers, and thus Lower Burma, Assam, the Punjab, Jhansi, Nagpur, and Oudh, as they were successively absorbed, were added unto it. Sind, which was annexed before the conquest of the Punjab, was attached to Bombay as being the only base from which it could be convenienty administered. The Governor-General in Council was looked upon as in immediate control of all new territories; but it was apparent that he could not directly administer so unwieldy a charge. The idea of instituting a fourth presidency was entertained, and for a very brief space actually put into practice, but it was shortly afterwards abandoned in favour of the creation of the lieutenant-governorship of the North Western Provinces in 1836; and in 1854 the Governor-General in Council divested himself of direct responsibility for Bengal, which also came under a lieutenant-governor. An Act of that year also gave the

Governor-General in Council authority to provide for the administration of any territory which there was no legal power to place under a lieutenant governor by creating it into a chief commissionership. From that time onwards this power was regularly used, and so the Government of India came to assume its present character of a supervising and directing authority over the administration of the entire country.

II Functions of Government in India.

SOURCE:—EXTRACT FROM THE REPORT OF THE DECENTRALIZATION COMMISSION.

The Government (in India) claims a share in the produce of the land; and save where, as in Bengal, it has commuted this into a fixed land tax, it exercises the right of periodical reassessment of the cash value of its share. In connection with its revenue assessments, it has instituted a detailed cadastral survey, and a record-of-rights in the land. Where its assessments are made upon large landholders, it intervenes to prevent their levying excessive rents from their tenants; and in the Central Provinces it even takes an active share in the original assessment of landlord's rents. In the Punjab, and some other tracts, it has restricted the alienation of land by agriculturists to non-agriculturists. It undertakes the management of landed estates when the proprietor is disqualified from attending to them by age, sex, or infirmity, or, occasionally, by pecuniary embarrassment. In times of famine it undertakes relief works and other remedial measures upon an extensive scale. It manages a vast forest property and is a large manufacturer of salt and opium. It owns the bulk of the railways of the country and directly manages a considerable portion of them and it has constructed, and maintains, most of the important irrigation works. It owns and manages the postal and telegraph systems. It has the monopoly of note issue, and it alone can set the mints in motion. It acts, for the most part, as its own banker, and it occasionally makes temporary loans to the presidency banks in times of financial stringency. With the co-operation of the Secretary of State

it regulates the discharge of the balance of trade, as between India and the outside world, through the action of the India Council's drawings. It lends money to municipalities, rural boards, and agriculturists, and occasionally to the owners of historic estates. It exercises a strict control over the sale of liquor and intoxicating drugs not merely by the prevention of unlicensed sale, but by granting licenses for short periods only and subject to special fees which are usually determined by auction. In India, moreover, the direct responsibilities of Government in respect of police, education, medical and sanitary operations and ordinary public works are of a much wider scope than in the United Kingdom. The Government has further intimate relations with the numerous Native States which collectively cover more than one-third of the whole area of India, and comprise more than one-fifth of its population. Apart from the special functions narrated above, the Government of a sub-continent containing nearly 1,800,000 square miles and 300,000,000 people is in itself an extremely heavy burden, and one which is constantly increasing with the economic development of the country and the growing needs of populations of diverse nationality, language, and creed.

III.—Relations between Government of India and the Provincial Governments before the Reforms.

SOURCE :—MONTAGUE-CHELMSFORD REPORT.

1 Sphere of the Government of India.

Para 46 M. C. R.—

It is time to see how the tasks of government are apportioned between the Government of India and the local Governments. At the outset, it is obvious that their responsibility for the entire country constrains the Government of India to keep some functions of government entirely in their own hands. Since the Madras and Bombay military commands were abolished in 1893, the defence of India has been treated formally, as it had long been in fact, as undivided charge. Connected

with defence is the diplomatic business of relations with bordering Asiatic powers and with this again the administration of bastions of territory like the Frontier Province and British Baluchistan. There is also the business of political relations with the numerous Native States, which is mainly, though not yet wholly, the sole concern of the Government of India. In a separate category come the administration of tariffs, the currency and the exchanges, and the debt, and also of the great commercial services like the post office and the railways, all of which concern the whole country. Again the central Government controls the business of audit and accounting, and has maintained it on a uniform system for the whole country. But responsibility for everything else is shared in greater or lesser measure by the Government of India with the provinces: and it is well to understand on what basis the distribution rests, if we are to be on sure ground in making proposals which must radically affect it.

ii Government of India as supervising authority.

Para 49 M. C. R.—

Let us glance at the list of work which the administrative departments of the Government of India deal with not at first-hand, but as supervising and appellate authority. To the Home Department are referred questions from provinces affecting the Indian Civil Services, internal politics, jails, police, the civil medical service, law and justice, and courts; the departments under the Revenue Member are similarly concerned with revenue, surveys, forests, agriculture, veterinary administration, meteorology, and famine and public works and irrigation; the Political Department with such Native States as are in political relations with local governments; the Finance Department with opium, stamps, income-tax, and the pay, leave and pensions of the services; the Department of Commerce with commerce, exhibitions, factories, mining, explosives, emigration, fisheries, salt and excise; the Department of Education with education, local self-government, sanitation and so forth. All these

spheres of business are primarily the concern of local Governments, but in all of them the Government of India excercises an unquestioned right of entry, either of their own instance or appeal. The measure of interference actually practised varies with circumstances, and to a great extent depends on the financial system.

Para 50 M. C. R.—

The text-books generally describe the Government as interfering very little with details of provincial administration. Sir Bampfylde Fuller, writing as an ex-Lieutenant Governor, says that the Government of India, as a rule, content themselves with laying down general principles and watching the effect that is given to them, but keep a very strict hand upon the creation of new appointments or augmentation of salaries. We have no doubt that this correctly expresses the general aim. But in such a matter all opinion is relative. Compared with past days, provincial Governments enjoy great liberty of action; but as we shall show in due course, substantial restrictions are imposed on them by the dominant conception that the entire government system is one indivisible whole and amenable to Parliament.

iii Bonds between the Government of India and the Provincial Governments.

A. Their general character:—

Para 103 M. C. R.—

The bond between the Governor-General in Council and a provincial Government resembles in theory, but in practice differs from that between the Secretary of State and the Government of India. It is true that the obligation to obey orders is expressed almost as strictly in section 33 of the Statute of 1915 as in section 45; but the construction placed upon the law in the latter case is wider, if for no other reason, because the Government of India are nearer to the cause of action, and are more likely to be moved to intervene, and to

have more immediate knowledge of it than the Secretary of State. Legally speaking, their control over provincial Government rests not merely on their executive, but also on their legislative powers; but in practice we may sub-divide the former, and so discern three strands—legislative, financial and administrative—in the bond of subordination; and of these three far the most important for day-to-day purposes is the financial strand.

B. **Financial Relations:—**

(1) SETTLEMENT SYSTEM—ITS EVOLUTION.

Para 105-9 M. C. R.—

The commercial principles which underlay the Company's rule sufficiently explain the original decision that the Central Government should keep full control of all revenues in their own hands, and though a complete reorganisation of the finance of the country followed soon after the transfer of India to the Crown no innovation in this respect was for some time attempted. Provincial Governments had in other respects extensive powers, but they could incur no actual expenditure without the formal orders of the Government of India. Sir Richard Strachey (who was the real author of the changes that followed) wrote at the time that the distribution of the public income degenerated into some thing like a scramble, in which the most violent had the advantage, with very little attention to reason. As local economy brought no local advantage, the stimulus to avoid waste was reduced to a minimum, and as no local growth of income led to local means of improvement, the interest in developing the public revenues was also brought down to the lowest level.

Lord Mayo's Government has the credit of the first attempt to make the provincial Governments responsible for the management of their own local finances. Each local Government was given a FIXED GRANT for the upkeep of definite

services, such as police, jails, education, and the medical services, with power, subject to certain conditions, to allocate it as seemed best, and also to provide for additional expenditure by the exercise of economy and if necessary by raising local taxes. All the residuary revenues the Government of India retained for its own needs. Experience of this initial step not only justified a futher advance, but also pointed the direction which it should take. What was clearly wanted was to give local Governments an effective inducement to develope the revenues collected in their territories, to encourage economy, and to ensure that all parts of the administration received a due share of the growing revenues to meet the growing needs. It was recognised also that less interference by the Government of India in the details of the provincial administration was desirable. The final effect of the important changes made in Lord Lytton's time was to delegate to local Governments the control of the expenditure upon all the ordinary provincial services, and in place of the fixed grants previously given to hand over to them the WHOLE OR PART OF SPECIFIED HEADS OF revenue, wherewith to meet such charges. Here for the first time we meet with a classification of revenue heads into Indian, provincial, and divided. The heads of revenue made over in whole, or in part, to provincial Governments were those which were thought to offer most prospect of development under careful provincial management—forests, excise, license-tax (now income-tax), stamps, registration, provincial rates, law and justice, public works and education. But the difficulty of exactly adjusting means to needs remained and as the revenue from the transferred heads was not ordinarily sufficient for provincial requirements, it was supplemented by a percentage of the important head of land revenue, which otherwise remained an all-India receipt. Settlements on these lines were made with the provinces for five years in 1882, and were revised in 1887, 1892 and 1897, not without controversy and some provincial discontent. At these revisions no changes of principle were introduced; but the growing needs of the provinces were

met by treating land revenue as one of the sources of income divided between the central and the provincial governments, and further by supplementing the provincial revenues by means of fixed cash assignments adjusted under the same head.

In the year 1904 we meet an important new departure—the introduction of the system of QUASI-PERMANENT SETTLEMENTS. Thenceforward the revenues assigned to a province were definitely fixed, and were not subject to alteration by the central Government save in case of extreme and general necessity, or unless experience proved that the assignment made was disproportionate to normal provincial needs. The object was "to give the local Governments a more independent position and a more substantial and enduring interest in the management of their resources than had previously been possible." Under the old system it every now and then happened that the supreme Government were forced by financial stress to resume balances standing to the credit of the provinces when the settlement expired. This killed any motive for economy, as provincial Governments knew that if they economised in one direction in order to accumulate money for other needs their savings were imperilled, while their reduced standard of expenditure would certainly be taken as the basis for the next settlement. Improved financial conditions and a more liberal outlook combined to remove these difficulties. Local Governments could count on continuity of financial policy, and were able to reap the benefit of their own economies without being hurried into ill-considered proposals in order to raise their apparent standard of expenditure. But the Government of India were also gainers. Their relations with the provincial Governments were smoothed by the the cessation of the standing quinquennial controversies, and they were also left in a better position to calculate their own resources.

A little later on the provinces gained still further. Hitherto the liability for famine had lain upon them, and the central

Government stepped in only when their resources were exhausted. There was devised instead a NEW FAMINE INSURANCE SCHEME by which the Government of India placed to the credit of each province exposed to famine a fixed amount, on which it should draw in case of famine without trenching on its normal resources. When this fund was exhausted further expenditure would be shared equally by the central and provincial Governments, and in the last resort the Government of India would give the province further assistance from their own revenues. In 1917 this arrangement was simplified by making FAMINE RELIEF EXPENDITURE A DIVIDED HEAD, the outlay being borne by the central and provincial Governments in proportion of three to one, which coincided approximately with the actual incidence under the previous system.

The Decentralization Commission went into the whole question of the financial relations of the central and the provincial Governments and proposed no radical change; but Lord Hardinge's Government decided to take the final step in the development of the system, and in 1912, they made the settlements PERMANENT. They further improved the position by reducing the fixed assignments and increasing the provincial share of growing revenues; and they conferred a minor, but still important benefit on the provinces by curtailing their intervention in the preparation of provincial budgets.

We are not concerned with the arguments, some of admitted cogency, that have been used to defend this intricate arrangement. They may be found in the report of the Decentralization Commission. But what we are concerned to do is to point out how seriously it operates as an obstacle to provincial enfranchisement. Because provincial settlements have been based not on provincial revenues, but on provincial needs, a central control over provincial expenditure is not merely justifiable but inevitable. The Government of India could not allow a province to go bankrupt. But if the Government of India were responsible for provincial solvency, they

must be in a position to control provincial expenditure; indeed, in view of their own competing needs, they could hardly avoid feeling a direct interest in keeping down provincial charges. Again as regards revenues, so long as the Government of India take a share in the proceeds they have a strong motive for interfering in details of administration. Their interest in land revenue, for example, inevitably leads them to a close supervision over revenue settlements; and the control tends to become tighter in cases where expansion and development, as in the case of irrigation, depend on capital outlay. The existing settlements are an undoubted advance upon the earlier centralised system, but they constitute no more than half-way stage. If the popular principle is to have fair play at all in provincial Governments, it is imperative that some means be found of securing to the provinces entirely separate revenue resources.

(2) Restrictions on Provincial taxation.

Para 110 M. C. R.:—

In the second place, the Government of India completely control all taxation imposed in British India, apart from the local taxes which are raised by local bodies. Taxation can, of course, be only levied by law, and section 79 (3) (a) of the Government of India Act forbids a local legislature, without the previous sanction of the Governor-General, to consider "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." This is the natural corollary of the statutory hypothecation of all Indian revenues to all-India needs. It is true that the law would not inhibit a provincial legislature from exploiting for provincial purposes any new source of taxation which it had the igenuity to discover; but even in that case the central Government has its remedy at hand. It has been its practice to control all legislation in provincial councils by means of "instructions" to local

Governments, which presumably depend for their authority upon the powers conferred by section 45 of the Act, and which require all projects of laws to be approved by the Secretary of State. A proposal for provincial taxation, like any other project for provincial legislation, would therefore be referred for sanction to the Government of India and the Secretary of State, and would, before being translated into action, have to secure the assent of the Finance Department, which would consider closely if it trespassed on the Central Government's resources of taxation. Here again it is not our purpose to examine the validity of the arguments for maintaining the practice existing. If many buckets are dipping into one well, and drought cuts short the supply of water, obviously the chief proprietor of the well must take it upon himself to regulate the drawings. All that we are concerned to do is to point out how this power of controlling the levy of fresh sources of income contributes to the close subordination in which provincial Governments are at present held; and to observe that, if possible, some means of enlarging their powers must be found.

(3) Restrictions on Provincial borrowing.

Para 111 M. C. R.:—

A third restriction upon the powers of provincial Governments has also been accepted hitherto as almost an axiom of the Indian financial system. The power of borrowing has never been conceded to the provinces. Port Trusts and Municipalities may raise loans within defined limits, but because the revenues of India are legally one and indivisible and are liable for all debts incurred for the purposes of the Government of India, provincial Governments have possessed no separate resources on the security of which they could borrow. Sterling loans are always raised in England by the Secretary of State under the authority of Act of Parliament, and rupee loans in India by the Government of India with the Secretary of State's sanction. We recognise that there were strong practical reasons for this arrangement also. The total market was limited; the Home market is sensitive. It was considered advisable to control the total borrowings of India by one agency, if rates were not to

be forced up and the market dislocated, and credit possibly impaired by indiscreet ventures. Accordingly it has been the practice to reserve entry to the public loan market entirely for the Central Government and for the latter to lend money to the provincial Governments when circumstances required. The Decentralization Commission went into the question in 1908 and declined to recommend any change. It seems to us, however, that if provincial Governments are to enjoy such real measure of independence as will enable them to pursue their own development policy, they must be given some powers, however limited, of taking loans.

(4) Control over Provincial expenditure.

Paras 112-13 M. C. R.—

A powerful instrument by means of which the Government of India exercises control over expenditure in the provinces is the series of the codes of instructions, such as the Civil Service Regulations, the Civil Account Code, the Public Works Code, and the like. In part these deal with the mechanism of finance, such as the maintenance of a uniform system of audit and accounting, the custody of public money, remittances, economy, and such matters: but they also impose definite restraints upon the powers of provincial Governments to create new appointments or to raise emoluments. Such restrictions arise largely out of the need for preventing a ruinous competition in generosity between provinces or for providing for officers who are liable to transfer from one province to another. These reasons have led to a mass of regulations affecting such matters as recruitment, promotions, leave, foreign service, and pensions, upon which the codes really constitute a digest of the case-law laid down from time to time by the Government of India. Another praiseworthy object which, however, the growing complexity of the codes has tended to defeat was to make the right principles of public business intelligible to a scattered army of subordinate officials throughout the country and so to avoid incessant applications for guidance to higher authority.

The bad name which attaches to the codes is partly explained by their size and obscurity, which probably helps to occasion the very increase of business that it was hoped to avoid, partly by the conviction that they are construed in a narrow and meticulous fashion with the avowed object of keeping charges down. But we cannot doubt that the intention of the codes was sound, and that they have played a valuable part in checking extravagance and undesirable divergencies. The paramount justification for restrictions on the spending powers of local Governments and subordinate authorities, which the latter find irksome, was the need of ensuring that, in a poor country, official Governments were fully sensible of the duty of economy, and of making good the lack of effective popular criticism by close control from above. Indeed such control has not obviated much criticism in the legislative councils of the cost of official establishments. Regulations of this nature were therefore appropriate to the state of things for which they were devised; but they are also an impediment to be dealt with before the road to responsible government in the provinces lies open.

C. Legislative Control.

Para 114 M. C. R.:—

Now let us see how the Government of India, which has power in its legislative council to make laws for the whole of British India, exercises its control over legislation in the provinces.....The Statute declares that the local legislature of each province has power, subject to certain specified restrictions to make laws "for the peace and good government of the province." At first sight the restrictions are not stringent. It is reasonable that a local council should not be allowed to affect any Act of Parliament, nor as a general rule to repeal or alter without previous sanction any Act of the Governor-General's Legislative Council or indeed of any legislature but itself. These general limitations might easily be so re-drafted as to

make superfluous some of the further inhibitions, surviving from earlier laws, which are embodied in the Act of 1915—such as those relating to the public debt of India, or customs or other taxes imposed by the Central Government, or coin or currency notes, or posts and telegraphs, or the Penal Code, or the Army and Navy—because any effective provincial legislation on these matters would necessarily affect legislation by the Government of India. In addition, a provincial council may not, without the previous sanction of the Governor-General, consider any law affecting the religion or religious rites and usages of any class of British subjects in India, or regulating patents or copyright, or affecting the relations of the Government with foreign Princes or States.

Para 115 M. C. R.—

Evidently there is left an extensive field in which the legislative competence of the provincial councils is legally unfettered. Actually, however, the discretion of the local councils is curtailed in two ways. In the first place owing to the fact that in their present existence all the local councils are younger, and most of them much younger, institutions than the legislative council of the Governor-General, a great part of the field that would otherwise be open to them is covered by Acts of the elder body, which has always retained a concurrent power of legislation for the country at large.....On examining the Indian statute book we find that, apart from military and marine and political questions, or finance, or communications, the Government of India have passed laws in their legislative council for all kinds of matters which might have been dealt with by provincial legislatures, but are doubtless far better handled on uniform lines. The Penal and Procedure Codes and the Evidence Act are the great monuments of this policy, but it has been pursued in many spheres of business. Under the head of crime we have laws for prisons, jails, reformatory schools, police, and whipping. Where the personal law affecting different communities has been codified, in such matters as marriage, minors, and succession, attempts have been made

to make it uniform and to prevent provincial variations, to the great benefit of the people. In civil law we have Acts regulating contracts, trusts, specific relief, transfer of property, easements and arbitration. Business has been regulated by laws for patents, trade-marks, weights and measures, securities, insurance companies, insolvency, and usury. Laws for forests, mines, factories, boilers, electricity, and explossives have smoothed the course of industry; and labour questions have been dealt with in laws controlling compulsory labour disputes, breaches of contract, emigration, and apprentices. The course of public business in certain respects and the management of the public estate have been standardised. Essential matters affecting the public health, such as poisons, leprosy, lunacy, vaccination, and epidemics, have also been regulated by a uniform code of law. Finally in a wide miscellany of matters, such for example, as religious endowments, charitable societies, plays and kinematographs, motor vehicles, ancient monuments, and treasure trove, India has been given a uniform law, which works well because conditions are everywhere sufficiently similar.

Para 116 M. C. R.-

In the next place the power of the Secretary of State and Parliament to control all Indian legislation has been made operative by means of executive directions, which have made it incumbent on provincial Governments to submit for the previous sanction of the Government of India and the Secretary of State all their projects for legislation before introduction. It is quite true that these directions do not apply to private members' Bills; but in as much as a Bill can only be introduced with the leave of the council, and the local government has in most cases been in a position, if it chose to do so, to oppose such a motion successfully the Government of India, by directions to local Governments, have been in a position to control all private provincial legislation almost as effectively as the local Government's Bills. Moreover, if a private member's

Bill affects the revenues the previous sanction of the Governor is necessay to its introduction; and in a recent case the Secretary of State has ruled that such sanction should not be given until he has had an opportunity of considering the proposals. This system will strike the reader who has federal models in mind as an instance of excessive centralisation. It is due to the fact that the provincial legislative councils are even now in theory only an enlargement of the Executive Government for the purpose of law making, and that the legislative power has not been recognised as residing in the provincial councils as distinct from the provincial Governments, over whom official control is justified and necessary. Nor has the system been without advantage in the past, as it has enabled the central Government to curb unprofitable divagations and incidentally to maintain standards of legislative drafting which are acknowledged to be good. None the less, it is apparent that an effective measure of devolution is required before provincial councils can possibly acquire any genuine independence in legislation.

D. Administrative Control.

Paras 117-119 M. C. R. :—

We have now to consider how the Government of India wield the administrative control over provincial business with which section 45 of the Statute invests them. In part, this rests on Financial considerations. In part, it is due to Parliament or the Indian Legislature having reserved certain matters such as appointments to high office or statutory rules on important subjects for the sanction of the Central Government. But in the main it is too general and extensive to admit of easy analysis. All that we can do is to suggest some general reasons which explain what has occurred. It is easy to see that in many respects India is one single and undivided country in which work must be done on uniform lines. The main services which execute the orders of provincial Governments have been recruited from England on terms guaranteed by the Secretary

of State, with the result that many questions affecting them cannot be determined by any provincial Government. Again, the development of trade and industry and science throughout India has favoured the tendency at headquarters to formulate and pursue a uniform policy. Business and industry might be seriously hampered if (even with one law for all India) the provinces were left to administer such matters as statistics, patents, copyright, insurance, income-tax, explosives, or mining on different lines. Particularly, in the more scientific spheres such as bacteriology, or agricultural and veterinary science, advance has tended to concentration, because the expert services were much too small to be organised on a provincial basis, and also because the experience and resources of any one institution would not be fully used unless they were placed at the disposal of the whole country.

Moreover, in the past the Government of India have regarded themselves as distinctly charged with the duty of framing policy and inspiring reforms for the whole of India. It is the penalty of absorption in the heavy task of daily administration to concentrate unduly on detail. There is a tendency at times for the wheels to become clogged and to sink into the ruts of routine. At such times, the Government of India, standing apart from immediate details and often actuated by the strong personality of their central figure, have set themselves to survey the whole field of some branch of the administration and to enunciate and enforce fresh principles. . . . . We hope to find a substitute for them in future in the stimulus afforded by popular criticism. But official inspirations from above have as a side consequence certainly increased the disposition to intervene in provincial details. The Government of India have not been content to set the ball rolling; they have insisted on watching its pace and course. It is fair to add that in recent years we find a perceptible tendency in the opposite direction. The Decentralisation Commission inculcated the principle of devolution and its spirit was embodied in the orders which followed on it. The resolutions in which

Lord Hardinge's Government dealt with the large questions of education and local self-government certainly cannot be accused of Prussian rigidity and precision.

Among the reasons which have tended to the tightening of control has been the consciousness that while local Governments were largely immune from popular criticism in India both they and the Government of India themselves were accountable to Parliament. The problems presented by criminal activities of a political complexion will illustrate our meaning well. The Government of India were constrained to control local Governments closely in such matters, if for no other reason, because of their responsibility to Parliament. But their control has been by no means actuated solely by this consideration. They have felt the serious responsibility which lay upon them as the supreme authority for its good government, and for the maintenance of high standards of public and personal conduct. In the absence of popular control their general attitude was right. With the introduction of such control its justification is diminished.

IV —Indian constitution not federal.

Para 120 M. C. R. :—

The problem not of federalising but of devolution.

We have dwelt at some length with the strong tie which binds the provinces to the central government. It seemed to us necessary to analyse it, because it constitutes the chief obstacle across our path, and also affords a plain warning to those who are disposed to be misled by facile analogies from federal constitutions. Granted the announcement of August 20, we cannot, at the present time, envisage its complete fulfilment in any form other than that of a congeries of self-governing Indian provinces associated for certain purposes under a responsible Government of India, with possible what are now the Native States of India finally embodied in the same whole, in some relation which we will not now attempt to define. For such an organisation the English language has no word but "federal."

But we are bound to point out that whatever may be the case with the Native States of the future, into the relation of provincial and central governments the federal element does not, and cannot, enter. There is no element of pact. The government of the country is at present one; and from this point of view the local governments are literally the "agents" of the Government of India. Great powers have been delegated to them because no single administration could support the Atlantean load. But the process before us now is not one of federalising. Setting aside the obstacles presented by the supremacy of Parliament, the last chance of making a federation of British India was in 1774, when Bombay and Madras had rights to surrender. The provinces have now no innate powers of their own, and therefore have nothing to surrender in a FOEDUS. Our task is not like that of the fathers of the Union in the United States and Canada. We have to demolish the existing structure, at least in part before we can build the new. Our business is one of devolution, of drawing lines of demarcation, of cutting long-standing ties. The Government of India must give, and the provinces must receive; for only so can the growing organism of self-government draw air into lungs and live. It requires no great effort of the imagination to draw a future map of India which shall present the external semblance of a great new confederation within the Empire. But we must sedulously beware the ready application of federal arguments or federal examples to a task which is the very reverse of that which confronted Alexander Hamilton and Sir John Macdonald.

V.—Main ideas underlying the Changes introduced by the Reforms

SOURCE:—MONTAGUE-CHELMSFORD REPORT.

1. More power to provinces.

Para 189 M. C. R.:—

The provinces are the domain in which the earlier steps towards the progressive government should be taken. Some

measure of responsibility should be given at once and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measures of independence, legislative, administrative, and financial of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.

Paras 201-2 M. C. R. :—

We start with a change of standpoint. If provincial autonomy is to mean anything real clearly the provinces must not be dependent on the Indian Government for the means of provincial development. Existing settlements do indeed provide for ordinary growth of expenditure but for any large and costly innovations provincial Governments depend on doles out of the Indian surplus. Our idea is that an estimate should first be made of the scale of expenditure required for the upkeep and development of the services which clearly appertain to the Indian sphere; that resources with which to meet this expenditure should be secured to the Indian Government; and that all other revenues should then be handed over to the provincial Governments, which will thenceforth be held wholly responsible for the development of all provincial services. This, however, merely means that the existing resources will be distributed on a different basis, and not get over the difficulty of giving to the central and provincial Governments entirely separate resources. Let us see how this is to be done.

Almost everyone is agreed that a complete separation is in theory desirable. Such difference of opinion as we have met with have mostly been confined to the possibility of effecting it in practice. It has been argued for instance that it would be unwise to narrow the basis on which both the central and provincial fiscal systems are based. Some of the revenues in India, and in particular land revenue and excise, have an element of precariousness; and the system of divided heads, with all its drawbacks, has the undeniable advantage that it spreads the risks. This objection will, however, be met if, as we claim,

our proposed distribution gives both the Indian and provincial Governments a sufficient measure of security. Again we have been told that the complete segregation of the Government of India in financial matters will lower its authority. This argument applies to the whole subject of decentralisation and provincial autonomy. It is not necessary for us to meet it further. Our whole scheme must be even and well-balanced, and it would be ridiculous to introduce wide measures of administrative and legislative devolution and at the same time to retain a centralised system of finance.

Paras 208-209, M. C. R.—

It follows from our proposed separation of revenues that there will in future be also a complete separation of the central and provincial budgets; and that the former will henceforward include only the direct transaction of the Government of India, and not as at present those of the provinces also. It likewise follows that there will be no more earmarking of any portion of provincial balances; and that portions previously earmarked will be available for general purposes.

Generally speaking provincial Governments enjoy the same detailed financial powers in divided heads as in those which are wholly provincial. The mere provincialisation of heads of revenue and expenditure will therefore not of itself suffice to free the provinces from the restrictions on their spending powers which the provisions of the codes and other standing orders impose upon them. Nor can the Government of India, except to a relatively minor extent, enlarge their powers, since they themselves have to conform to the restrictions on expenditure imposed by the Secretary of State in Council. If provinces are to have a relatively freer hand in expenditure in future it will be necessary to relax the India Office control.

Para 212 M. C. R. :—

These measures will give provincial Governments the liberty of financial action which is indispensable; but the provinces must also be secured against any unnecessary

interference by the Government of India in the spheres of legislative and administrative business. It is our intention to reserve to the Government of India a general overriding power of legislation for the discharge of all functions which it will have to perform. It should be enabled under this power to intervene in any province for the protection and enforcement of the interests for which it is responsible ; to legislate on any provincial matter in respect of which uniformity of legislation is desirable either for the whole of India or for any two or more provinces ; and to pass legislation which may be adopted either SIMPLICITER or with modifications by any province which may wish to make use of it. We think that the Government of India must be the sole judge of the propriety of any legislation which it may undertake under any one of those categories and that its competence so to legislate should not be open to challenge in the courts. Subject to these reservations we intend that within the field which may be marked off for provincial legislative control the sole legislative power shall rest with the provincial legislatures. The precise method by which this should be effected is a matter to be considered when the necessary statute is drafted and we reserve our final opinion upon it. There are advantages in a statutory demarcation of powers such as is found in some federal constitutions, but we feel that if this is to leave the validity of acts to be challenged in the courts on the ground of their being in excess of the powers of the particular legislature by which they are passed, we should be subjecting every government in the country to an almost intolerable harassment. Moreover, in India where the central Government must retain large responsibilities as for defence and law and order, a statutory limitation upon its legislative functions may be inexpedient. We have already referred to the fact that there has been growing up in India for some time a convention which by now has acquired no little strength to the effect that the central Government shall not without strong reason legislate in the internal affairs of provinces. We think therefore that it may

be better, instead of attempting to bar the legislative power of the Government of India in certain spheres of provincial business, to leave it to be settled as a matter of constitutional practice that the central Government will not interfere in provincial matters unless the interests for which it is itself responsible are directly affected.

Para 213 M. C. R.:—

The question of restraining the central Government from administrative interference in the provinces is more difficult. We recognise that, in so far as the provincial Government of the future will still remain partly bureaucratic in character there can be no logical reason for relaxing the control of superior official authority over them nor indeed would any general relaxation be approved by Indian opinion; and that in this respect the utmost that can be justified is such modification of present methods of control as aims at getting rid of interference in minor matters, which might very well be left to the decision of the authority which is most closely acquainted with the facts. It is however in relation to Provincial Governments in their popular aspect that serious difficulties present themselves. So long as the Government of India itself is predominantly official in character and, therefore, remains amenable to the Secretary of State, its interference in any matters normally falling within the range of popular bodies in the provinces involves a clash of principle which cannot fail to engender some heat, and the scope of which it is on all grounds desirable to keep within very closely defined bounds. At the same time we perceive that there are many matters which, taken in bulk, may reasonably be regarded as fitted for administration by popular bodies, but which have aspects that cannot fail to be of intimate concern to the Government which is responsible for the security or good administration of the whole country. We shall have occasion to return to this point when we have stated our proposals for the demarcation of responsibility for the administration.

ii. Division of Functions of Government into transferred and Reserved

Para 238 M. C. R.:—

It is time to show how we propose that the sphere of business to be made over to the control of the popular element in the Government should be demarcated. We assumed in paragraphs 212 and 213, SUPRA, that the entire field of provincial administration will be marked off from that of the Government of India. We assumed further that in each province certain definite subjects should be transferred for the purpose of administration by the ministers. All subjects not so transferred will be reserved in the hands of the Governor in Council. The list of transferred subjects will of course vary in each province: indeed it is by variation that our scheme will be adjusted to varying local conditions. It will also be susceptible of modification at subsequent stages. The determintation of the list for each province will be a matter for careful investigation, for which reason we have not attempted to undertake it now. We could only have done so if after settling the general principles on which the lists should be framed, we had made a prolonged tour in India and had discussed with the Government and people of each province the special conditions of its own case. This work should, we suggest, be entrusted to another special committee similar in composition to, but possibly smaller in size than, the one which we have already proposed to constitute for the purpose of dealing with franchises and constituencies. It should meet and confer with the other committee which is to deal with franchises, because the extent to which responsibility can be transferred is related to the nature and extent of the electorate which will be available in any particular province. The Committee's first business will be to consider what are the services to be appropriated to the provinces, all others remaining with the Government of India. We suggest that it will find that some matters are of wholly provincial concern, and that others are primarily provincial, but that in respect of them some statutory restrictions upon the discretion of provincial governments may be necessary. Other

matters may again be provincial in character so far as administration goes, while there may be good reasons for keeping the right of legislation in respect of them in the hands of the Government of India. The list so compiled will define the corpus of material to which our scheme is to be applied. In the second place the committee will consider which of the provincial subjects should be transferred and what limitations must be placed upon the ministers' complete control of them. Their guiding principle should be to include in the transferred list those departments which afford most opportunity for local knowledge and social service, those in which Indians have shown themselves to be keenly interested, those in which mistakes which may occur though serious would not be irremediable, and those which stand most in need of development. In pursuance of this principle we should not expect to find that departments primarily concerned with the maintenance of law and order were transferred. Nor should we expect the transfer of matters which vitally affect the well-being of the masses who may not be adequately represented in the new councils, such for example as questions of land revenue or tenant rights.

VI.—Changes effected by the Reforms.

SOURCES :—THE GOVERNMENT OF INDIA ACT; THE REPORTS OF THE FUNCTIONS COMMITTEE, JOINT SELECT COMMITTEE AND THE MESTON COMMITTEE; THE DEVOLUTION RULES; AND THE MADRAS ADMINISTRATION REPORT 1921-22.

i. Classification of Central and provincial subjects, and the distinction between provincial subjects and the agency functions of Provincial Governments.

The subjects of administration are now divided definitely into the categories of central and provincial by rules made under section 45A of the Government of India Act. Part I of schedule I of Devolution rules includes the following among central subjects :—

CENTRAL SUBJECTS :—Defence of India. External relations. Relations with Native States. Political charges. Communications including railways, aircraft, inland waterways.

Shipping and navigation. Light houses. Port quarantine and Marine Hospitals. Major Ports. Posts, telegraphs, wireless installation. Customs, cotton excise duties, income tax, salt and other All-India sources. Currency and coinage. Public debt of India. Savings Banks. Indian Audit Department. Civil Law. Commerce including banking and insurance. Trading companies. Control of production and distribution of articles essential in the public interests. Development of industries. Control of Opium and Mineral development. Botanical survey. Inventions and designs. Copyright. Emigration and immigration. Criminal law. Imperial Police. Control of arms and ammunitions. Central Research Institutions. Ecclesiastical administration. Survey of India. Archæology. Zoological Survey. Meteorology. Census and Statistics. All-India Services. Legislation in regard to any provincial subject, stated to be subject to legislation by the Indian Legislature in Part II of this schedule. Territorial Changes. Regulation of Ceremonials. Public Service Commission. All matters expressly excepted by Part II of this schedule from inclusion among provincial subjects. All matters not included in Part II of this schedule.

Part II of the schedule declares the following as provincial subjects:—

Education provided that (a) that the following subjects shall be excluded, namely:—(i) the Benares Hindu University, and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be central subjects, and (ii) Chiefs' colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants; and (b) the following subjects shall be subject to legislation by the Indian Legislature, namely:—(i) the control of the establishment and the regulations of the constitution and functions of Universities constituted after the commencement of these rules, and (ii) The definition of the jurisdiction of any University outside the

province in which it is situated, and (iii) For a period of five years from the date of the commencement of these rules, the Calcutta University, and the control and organisation of secondary education in the presidency of Bengal.

Local Self-Government, Medical Administration. Public Health, Sanitation, and Pilgrims. Public Works. Water Supplies. Irrigation, Canals, etc. Land Revenue administration. Famine Relief. Agriculture. Civil Veterinary Department. Fisheries. Co-operative Societies. Forests. Land acquisition. Excise. Administration of Justice. Provincial Law Reports. Non-judicial stamps. Registration of Deeds and Documents. Registration of Births, Deaths, etc. Religious and Charitable endowments. Development of industries and Industrial matters. Stores and Stationery. Weights, and Measures. Police. Miscellaneous Matters. Control of News-papers, books, printing presses. Coroners. Criminal tribes. European Vagrancy. Prisons and prisoners. Pounds. Treasure trove. Libraries. Provincial Government Presses. Provincial elections. Regulation of Professional qualifications. Local Fund Audit. Control of Provincial Services. Sources of Provincial Revenue. Borrowing.

The distinction drawn between Provincial subjects and the agency functions of Provincial Governments in the rules made under section 45 A is based on the reasons mentioned in the following passage of the report of the Functions Committee:—

Paras 11-12 F. C. R.:—

In considering the questions arising in connection with the preparation of these lists, we have had the assistance of a memorandum received from the Government of India on the general subject of Division of Functions. The following passages may be quoted from this memorandum:—

"There are certain subjects which are at present under the direct administration of the Government of India. The Government of India maintain separate staffs for their administration and the provincial Governments have no share in it. The category is easily recognisable, and for the most part there will

not be much room for doubt as to the subjects to be included in it. At the other end of the line are matters of predominantly local interest which, however much conditions may vary between provinces, will generally speaking be recognised as proper subjects for provincialisation.

Between these extreme categories, however, lies a large indeterminate field which requires further examination before the principles determining its classification can be settled. It comprises all the matters in which the Government of India at present retain ultimate control, legislative and administrative, but in practice share the actual administration in varying degrees with the provincial Governments. In many cases the extent of delegation practised is already very wide. The criterion which the Government of India apply to these is whether in any given case the provincial Governments are to be strictly the agents of the Government of India, or are to have (subject to what is said below as to the reservation of powers of intervention) acknowledged authority of their own. In applying this criterion the main determining factor will be, not the degree of delegation already practised, which may depend on mere convenience, but the consideration whether the interests of India as a whole (or at all events interests larger than those of one province) or on the other hand the interests of the province essentially preponderate.

"The point is that delegation to an agent may be already extensive, but that circumstance should not obscure the fact of agency or lead to the agent being regarded as having inherent powers of his own."

The Memorandum proceeds to state that applying the principle above laid down "the Government of India hold that where extra-provincial interests predominate the subject should be treated as central, while, on the other hand, all subjects in which the interests of the provinces essentially predominate should be provincial, and in respect of these the provincial Governments will have acknowledged authority of their own."

We recognise the distinction above drawn between the two classes of functions discharged by provincial Governments—(1) Agency functions in relation to All-India subjects, (2) Provincial functions properly so called. The distinguishing feature of the work done in discharge of agency functions is that it relates to subjects in which All-India interests so far predominate that full ultimate control must remain with the Government of India, and that, whatever the extent of the authority in such matters for the time being delegated by the Government of India to the provinces as their agent, it must always be open to the Government of India to vary the authority and, if need be, even to withdraw the authority altogether. Provincial functions relate to subjects in which, to use the words of the Government of India memorandum, "the interests of the provinces essentially predominate," and in which provincial Governments are therefore to have "acknowledged authority of their own." We recognise the difficulty of stating the matter in more precise terms. Circumstances and the experience gained in the working of the existing local Governments have largely decided in practice what subjects must fall in the provincial class; but the general subordination of local Governments to the Government of India under the terms of the Government of India Act, and centralisation in finance, have in the past tended to obscure the actual dividing line between All-India and provincial subjects, which also governs the separation in the provinces of agency from provincial functions.

(ii) Relaxation of control over Provincial subjects.

(A) Recommendations of the Functions Committee and the Joint Select Committee.

Paras 16-17 F. C. R.—

Under this head arises a question which is inseparable from those which have to be considered in framing the lists of All-India and provincial subjects, namely what is to be the effect as regards provincial powers of putting a subject in the provincial list? Or in other words, what is to be the extent of the "acknowledged authority" of the province

in relation to provincial subjects. In the memorandum already referred to, the Government of India have given an indication of their views on this question. The following passage may be quoted from paragraph 11 of the memorandum :—

Among provincial subjects some will be transferred. Taking the case of these first the Government of India think that the exercise of the central Government's power to intervene in provincial subjects should be specifically restricted to the following purposes :—

(i) to safeguard the administration of Government of India subjects;

(ii) to secure uniformity of legislation where such legislation is considered desirable in the interests of India or of more than one province;

(iii) to safeguard the public services to an extent which will be further determined subsequently;

(iv) to decide questions which affect more than one province.

So far as legislation is concerned the Government of India think that the exercise of the legislative powers of the central Government should be by convention restricted in the manner proposed in paragraph 212 to the above named grounds.

This proposal is qualified by the statement that it should be regarded as relating to control which is not based on financial considerations. To the question of financial control we refer later.

Our view as to the four purposes for which it is proposed to retain power to intervene in transferred subjects may be briefly stated. As to the first, it is clearly necessary for the Government of India to retain power to safeguard the administration of its own subjects which we have called " All-India subjects." It is also necessary for the Government of India to retain power to intervene to decide questions in dispute between provinces but we should prefer to see the fourth purpose

expressed in terms less wide than those proposed and it should, we think, be made clear that the provinces are to have an opportunity of settling for themselves any matter in dispute affecting a provincial subject before the Government of India exercise their power to intervene. We suggest, therefore, that the fourth purpose should be stated as follows :—

"To decide questions arising between two or more provinces, failing agreement between the provinces concerned".

With regard to the second purpose, we feel that acceptance of the purpose of securing uniformity of legislation stated in these wide terms would make it difficult, if not impossible, for any convention to come into existence limiting the interference of the Indian legislature in provincial subjects. We have therefore in our list of provincial subjects, and in our proposals with regard to the legislative powers of the provinces endeavoured to provide specifically for cases where the need for uniformity of legislation must be recognised and we have thus, we believe, made the reservation of this general power unnecessary. Where under our proposals power has been reserved to the Indian legislature to legislate we have as already stated treated the power so reserved as an All-India subject.

With regard to the third purpose, safeguarding the public services, our proposals on this subject are set out in the section which deals with the public services. To the extent to which control is to be reserved by the Government of India and the Indian legislature, the public services will be an All-India subject. These proposals as to legislation and the public services enable us therefore to reduce the number of the purposes for which the Government of India and the Indian Legislature should retain power to intervene in transferred subjects to two, which may be stated as follows:—

(1) To safeguard the administration of All-India subjects;

(2) To decide questions arising between two or more provinces, failing agreement between the provinces concerned.

Paras 22-23 F. C. R.—

A new principle has therefore in our opinion to be applied to all the subjects included in the sphere of provincial administration as provincial subjects, in view of the new conditions which the development of popular institutions in the provinces will create, and we think that this principle can best be laid down by reference to the terms of the announcement of August 20th, 1917, the essential portion of which will, it may be assumed, be incorporated in the preamble to the new Bill. The preamble will, in that case, contain a statement to the effect that "with a view to the progressive realisation of responsible government in British India as an integral part of the Empire, it is expedient gradually to develope self-governing institutions in that country." On the assumption that the preamble will be so framed, we propose that the new position as regards the relations of the Government of India with provincial governments, in so far as concerns the administration of provincial subjects, should be formally recognised by an authoritative declaration to the following effect:—

"The powers of superintendence, direction and control over local governments vested in the Governor-General in Council under the Government of India Act, 1915, shall, in relation to provincial subjects, be exercised with due regard to the purpose of the new Act, as stated in the preamble".

The position with regard to the whole class of provincial subjects having been thus dealt with, the special position of transferred subjects should be defined, in accordance with the suggestion of the Government of India, by a clause to the following effect, which will operate an amendment of the Government of India Act:—

"The powers of superintendence, direction and control over local Governments vested in the Governor-General in Council under the Government of India Act, 1915, shall in relation to transferred subjects, be exercised only for such purposes as may be specified in rules made under this Act, but the

Governor-General in Council shall be the sole judge as to whether the purpose of the exercise of such power in any particular case comes within the purposes so specified."

The last words are added in order to make it clear that we do not contemplate such a limitation of the powers of the Governor-General in Council as would render the exercise of these powers open to challenge in the Courts. Our acceptance of the proposal with regard to the specification in rules of the purposes to which the exercise of the powers of the Governor-General in Council will be restricted in relation to transferred subjects is based on the assumption that the making of rules under this provision will be subject to effective Parliamentary control.

The general effect of these arrangements will be to apply one principle to all subjects marked as provincial; but the division of provincial subjects into two classes, reserved and transferred, and the different authorities constituted for dealing with those two classes of subjects, will mark the fact that the principle is to have a far wider application in the one case than in the other, and this point will be further emphasised by the limitation of the purposes for which the Government of India may interfere in the one case and the absence of any such limitation in the other. While the proposed declaration will give a guiding principle in relation to the control by the Government of India over provincial subjects, whether reserved or transferred, it cannot be interpreted as laying down any hard and fast rule. The Government of India will not be bound to accept proposals of an official provincial Government merely because they are backed by a majority in the provincial Legislative Council. They will still be responsible to the Secretary of State and to the Imperial Parliament for exercising their full legal authority, where they think necessary, to reject such proposals, however strongly supported; but the effect of the declaration will be to involve definite recognition of the relation between the Governor in Council and his provincial Council as

one of the factors in the situation which must be taken into account. The proposed declaration will necessarily apply equally to the exercise of the powers of control vested in the Secretary of State (under section 2 of the Government of India Act), in so far as local Governments are concerned, and the Secretary of State will be responsible to the Imperial Parliament for effect being given to the policy laid down.

EXTRACTS FROM THE REMARKS OF THE JOINT SELECT COMMITTEE ON CLAUSE 33 OF THE GOVERNMENT OF INDIA BILL 1919:—The relations of the Secretary of State and of the Government of India with provincial governments should, in the Committee's judgment, be regulated by similar principles, so far as the reserved subjects are concerned. It follows, therefore, that in purely provincial matters, which are reserved, where the provincial government and legislature are in agreement, their view should ordinarily be allowed to prevail, though it is necessary to bear in mind the fact that some reserved subjects do cover matters in which the central government is closely concerned. Over transferred subjects, on the other hand, the control of the Governor-General in Council, and thus of the Secretary of State, should be restricted in future within the narowest possible limits, which will be defined by rules under sub-clause 3 of clause 1 of the Bill.

(B) RULE 49 OF THE DEVOLUTION RULES.

Rule 49 of the Devolution rules reproduced below, restricts the control of the Government of India over transferred subjects to the purposes specified therein:—

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

(1) to safeguard the administration of central subjects;

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

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

iii Financial Control relaxed.

(A) RECOMMENDATIONS OF THE GOVERNMENT OF INDIA, THE FUNCTIONS COMMITTEE, AND THE MESTON COMMITTEE.

(1) Paras 16 and 20 of Government of India's memorandum on Finance submitted to the Functions Committee:—

*It is now time to turn to the changes of system advised in the Report. These are based upon the intention of "giving the provinces the largest measure of financial independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities. The Report proposes to approach this independence by two methods (a) radical changes in the basis of the provincial settlements (paragraph 201), and (b) relaxation of the powers of control (paragraph 292) which vest in the Secretary of State. Under the first head it is proposed to abandon the system by which a province is given just enough for its needs, while the central authority becomes, so to speak, the residuary legatee of all the revenues. In place of this the central services will have adequate resources secured for them and all the other revenues will be handed over to provincial Governments. Under the second head it is proposed to delegate financial powers by detailed modifications of the Codes and Standing Orders. With these principles of action the Government of India are in full accord; but they would like to be perfectly

* Para 16.

clear that their own responsibility will now stand on the correspondingly narrow ground. They recognise that, with the invaluable help of the audit, they have a general responsibility for the observance of financial propriety and the avoidance of waste. They recognise also that they cannot avoid the liability of preventing a province from becoming insolvent or from being unpunctual in paying its debts. These duties rest upon the Government of India so long as they are responsible to Parliament for the good administration of the country. They conceive, however, that with the grant of this new financial liberty to the provinces, they are no longer required to watch the financial proceedings of local Governments in detail, or to enforce from day to day measures which they consider necessary to keep the finances of a province in a healthy condition. Their intervention in future will take the form first of advice and caution, and finally, if caution is neglected, of definite orders which a province has to obey if it wishes to retain its constitution.

*Provincial Governments will now, the Report advises, be given the right to impose taxes of their own within the limits of a schedule of permissible classes of taxation. If they wish to go outside this schedule, the prior sanction of the Governor-General must be obtained to the proposed legislation; and this restriction will presumably be added to those already catalogued in section 79 (3) of the Government of India Act. To this part of the scheme the Government of India readily agree, but they do not think it necessary that a Bill propounding a tax which is within the schedule be forwarded to them before introduction. The reason for this suggestion in the Report was presumably that a local tax may encroach on the sphere of central taxation without infringing the letter of the permitting schedule; a license-tax, for example, might virtually be an income-tax, or a dock duty in addition to the Customs tariff. The law, however, would

* Para 20 of the Government of India's Memorandum on Finance.

appear already to provide sufficiently against such encroachment (section 79 (3) (a) of the Act), and the veto could reasonably be employed in case of doubt; the less executive interference there is with provincial legislation, the better. The schedule of provincial taxes, which may be imposed without further sanction, might include the following:—

any supplement to revenues which are already provincial; e. g. cesses on the land, enhanced duties on articles that are now excisable, higher court-fees, increased charges for registration, etc.;

succession duties;

duties upon the unearned increment on land;

taxes on advertisements, amusements (including totalisators), and specified luxuries;

but it should not include any increment to the revenues of the central Government, any addition to the list of articles which are now excisable, or any duty (except as allowed above) on imports from without the province. The schedule should be established by rule and not by statute, so that it can be corrected or enlarged in the light of experience.

(2) Paras 75 and 80 of the Report of the Functions Committee:—

*In paragraph 20 of the memorandum a list is contained of the additional taxes which provincial Governments might be allowed to impose without the previous sanction of the Government of India. According to the proposals these taxes are to be included in a schedule, which would be established by rule and not by statute, and might therefore be corrected or enlarged in the light of experience. The schedule proposed by the Government of India is as follows:—

Any supplement to revenues which are already provincial, e. g, cesses on the land, enhanced duties on the articles that are now excisable, higher court-fees, increased charges for registration etc.

Succession duties.

* Para 75.

Duties upon the unearned increment on land.

Taxes on advertisements, amusements (inluding totalisators) and specified luxuries.

In one point only the schedule appears to us to require modification. It is not clear exactly what forms of land taxation would be covered by the entry "Duties upon the unearned increment on land," and it seems to us desirable that the entry should be so framed as to make the provincial powers of land taxation as wide as possible. We may point out, however, that some forms of land taxation, e. g., a tax on successions or transfers, might be most conveniently collected by means of a stamp duty, and in that case the tax would affect a source of revenue reserved to the Government of India. It ought, we think, to be made clear whether, in such cases the inclusion of a land tax in the schedule is to exempt provincial governments from obtaining the previous sanction of the Governor-General under section 79 (3) (a) of the Government of India Act.

*The effect of the proposals in the Memorandum appears to be as follows. The provincial Governments must ordinarily borrow through the Government of India; but, subject to the approval of the Government of India as to the method of borrowing, including the rate of interest and the time of borrowing, provincial governments would be at liberty to borrow in the Indian market in the following cases, viz.:—

(i) If the Government of India found themselves unable to raise in any one year the funds which the province required; or

(ii) if the province could satisfy the Government of India that there was reason to believe that a provincial project would attract money which would not be elicited by a Government of India loan.

The funds raised by provincial borrowing should be devoted only to—

(1) expenditure on famine relief and its consequences;

* Para 80 F. C. R.

(2) financing of the provincial loan account; and

(3) capital purposes, i. e., expenditure which produces permanent assets of a material character.

When a province borrowed for non-productive purposes it would be required to establish a sinking fund on a basis to be approved by the Government of India.

To these proposals, with which we agree, we have only one addition to make. We are of opinion that borrowing is a matter in which both sides of the Government must be considered to be interested, since the security of the loan will be the whole revenues and assets of the provincial Government. We consider, therefore, that if after joint deliberation there is a difference of opinion between the Executive Council and the Ministers, the final decision whether a loan should be raised and as to the amount of the loan must rest with the Governor.

(3) Paras 7-9, 12-14, 17, and 23-8 of the Report of the Meston Committee on Financial relations:—

THE GOVERNMENT OF INDIA'S DEFICIT.

*We doubt if it will be possible permanently to exclude local governments from some form of direct taxation upon the industrial and commercial earnings of their people; and we recognise the natural anxiety of provinces to retain a share in a rapidly improving head of revenue. But, so far as the income-tax is concerned, we see no reason to vary the scheme of the report. We accept as valid the arguments given by its authors (paragraph 203); indeed, the second of these arguments seems to us capable of further extension in the case of public companies with shareholders scattered over India and elsewhere. We advise, therefore, that the whole of the income-tax proceeds be credited to the central government. Their needs in the near future are likely to be quite as great, and to develop quite as rapidly, as those of the provinces; while we do not apprehend that the richer provinces, such as Bombay, will be seriously handicapped in the administration of their own finances. We append, and shall allude to them hereafter

* Para 7.

some figures which indicate that several of the provinces, and Bombay in particular, may look for reasonable elasticity in their revenues apart from the income-tax—an elasticity which will in most cases be encouraged by judicious capital outlay.

PERCENTAGE OF GROWTH IN THE LAST 8 YEARS (1912-13 TO BUDGET 1920-21) UNDER THE PROPOSED PROVINCIAL HEADS.

Province	Excise	General Stamps	Land Revenue and other provincial Heads	All provincial Heads
Madras	70·24	63·22	11·66	29·06
Bombay	102·57	119·13	32·00	52·43
Bengal	35·91	69·49	13·52	22·30
United Provinces	43·70	45·75	17·13	20·82
Punjab	106·78	73·73	26·86	34·88
Burma	36·15	26·62	33·52	33·65
Bihar & Orissa	24·20	55·29	4·53	11·20
Central Provinces	49·00	48·25	26·30	33·18
Assam	44·26	22·22	20·60	28·00
All the nine Provinces	62·2	69·24	20·98	30·48

*The case of General Stamps is somewhat different. We have approached it in the first instance, from the point of view of the poorer provinces. Some of these, it seems clear, would start with little or no surplus revenue under the allocation of resources proposed in the report; and this would be both a misfortune in itself and at variance with what we believe to be the intention, if not implied promise, of the report. No remedy suggests itself except some extension of the schedule of provincial heads; doles and temporary assistance would be inconsistent with the whole policy. In this view, and also because it will greatly facilitate our initial distribution of the central deficit, we advise that General Stamps be made a provincial head throughout. The arguments in the report

* Para 8.

for crediting it to the central government have not the same force as in the case of income-tax. We are not disposed to see grave disadvantage in different rates of stamp duty in different provinces, at least on some of the transactions for which duty has to be paid; and any uniformity which may be decided to be essential can always be secured by central legislation. Moreover, in this part of the arrangements there is still the taint of a divided head, for General and Judicial Stamps are controlled by the same agency, and there is a good deal of miscellaneous work and outlay common to both. To make the whole of the Stamp revenue provincial would secure a genuine and complete separation of resources; and we trust that the reasons for this course will outweigh the only consideration on the other side, to wit the extent to which the deficit in the All-India budget will thereby be increased.

*That deficit we accept, subject to certain arithmetical adjustments described below, as amounting in the year 1921-22 to 10 crores, composed of the 6 crores previously estimated by the Government of India PLUS 4 crores for the loss of General Stamps which we propose. We have carefully examined the basis of this calculation. Clearly, we have no authority to criticise the military and financial policy on which it so largely rests; and we have restricted ourselves to a scrutiny of the budget arrangements of the Government of India, past and present, and of the normal growth of their revenue and expenditure. Factors of great uncertainty,—the needs of India's defence, her tariff policy and the future of exchange among others,—complicate the estimate; but we are satisfied that the Government of India have made reasonable allowance for those considerations in their forecast of the immediate financial future. On our tour in the provinces, it has been pressed upon us that the Government of India ought to meet their own deficit by special taxation, and a high protective tariff has frequently been mentioned to us as an easy solution of the problem. On this latter question we naturally express no opinion; but we

* Para 9.

cannot see that the Government of India would have any justification in imposing special taxation to make good their initial shortage of revenue, at a time when the shortage in question will be more than counterbalanced by the additional resources enjoyed by local governments. As we have said therefore we accept the estimate of the normal deficit for the first year of the new constitution. We cannot conceal from ourselves the disadvantages in ordinary circumstances of a system of provincial contributions, and we anticipate that the Government of India will direct its financial policy towards reducing those contributions with reasonable rapidity, and their ultimate cessation. We recognise that it would be imprudent on the part of the central government to give any guarantee of the precise pace of reduction; but we think that a formal enunciation of the general policy would go some way to allay apprehensions which have been expressed to us. Such a policy would clearly be subject to the important reservation mentioned in the report, by which the central government must remain empowered to levy special contributions, by way of temporary loan or otherwise, from the provinces in the event of any crisis of first importance.

The Initial Contributions.

*We have now to explain our reasons for suggesting a departure from the basis of initial contribution proposed in the Montague-Chelmsford report. We are aware that that basis was not lightly adopted, and only after consideration of various alternative bases,—population, provincial revenue or expenditure, and the like—which for one reason or another were thought inapplicable to existing conditions. The basis of realised surplus was finally accepted partly because of the difficulty of finding a preferable alternative, partly because at all events it did not add to, though it continued, existing disparities of contribution. That it had been freely criticised in evidence before us as inequitable is certainly not fatal to it, for indeed every initial basis that can be suggested is open to some such

* Para 12.

criticism. But examination has revealed some objections to it which weigh with us.

*Obviously if any inequalities of contribution exist, the basis chosen tends to stereotype them, while by disclosing them it renders them more difficult to justify; for each province is now able to see more clearly than under the former system its relative contribution to the purse of the Government of India. While actual deficits appear, as has been said, in some provinces, others complain that their apparent surplus, if rightly understood, masks a real deficit. The prospect of arriving at any accepted figures as a basis appears remote. While the figures of the Simla conference as to normal provincial revenue are accepted with minor modifications of detail, the estimates of normal expenditure in each province are strongly contested. How much of the expenditure held over during the war, or clearly imminent if not already sanctioned, ought to be included in the calculation of normal expenditure? Where is the dividing line to be drawn between expenditure essential in the immediate future and expenditure foreseen as a future commitment? Ought a province to be penalised by an increase of its contribution for strict adhesion to economy during the war, while another province, which had increased its expenditure more freely, is rewarded by a reduced contribution? Is adequate allowance made for the special conditions of a largely undeveloped province like Burma, or for the circumstances of a recently established province like Bihar and Orissa, which claims that it has never received from its start resources adequate to its needs? No satisfactory result seemed likely to be reached by our attempting to act as a court of appeal in contentions of this kind. Moreover the artificial and temporary nature of the basis cannot be overlooked. It is too much determined by mere accidents of budgeting in spite of attempts to clear away abnormalities of expenditure. But even if a normal surplus can be agreed at the moment, it tends to be obscured or

* Para 13.

to disappear in the budgets of succeeding years. How could a contribution be levied in later years on the basis of a so-called normal surplus which did doubtless once exist and might be said to be implied in the economic life of the province, but which in fact had disapparred to be replaced by a totally different surplus or perhaps by a deficit? The best argument for the basis of realised surplus was that, when originally recommended, it did recognise existing facts, that it appeared to leave all the provinces collectively with improved finances and [illegible]vidual province with a surplus and that it proceed[illegible] upon the principle of creating the minimum of financial disturbance in introducing the Reforms scheme.

*But these advantages can be secured by another solution, which after careful consideration we think is less open to question. It must be noted that even if the original classification of sources of revenue in the Montague-Chelmsford report is strictly adhered to, each one of the provinces gains something in revenue, while some gain very substantially, in consequence of the introduction of the Reforms scheme. If our recommendation as to General Stamps is accepted, the net increase in the total income of all the provinces taken together works out at 18,50 lakhs. These additional resources represent what the central government loses and the provinces gain under the redistribution. Some part of them the former may reasonably retain and the latter forego so long as contributions to the central government remain necessary. Even those provinces which were found at the Simla conference to be in deficit secure some improvement in their revenues under the original classification, an improvement which will of course be increased by the addition of General Stamps. It has been urged upon us that this increased spending power will in fact be swallowed up by the higher cost of administration, by improvement of old services or by inauguration of new. At this stage, however, we are considering merely the revenue

* Para 14.

side of the account. These future liabilities would have had to be faced by each province, if no Reforms scheme had come. Each province is better able to face them by reason of the additional resources it has secured. There is the advantage that the figures of normal revenue laid down at the Simla Conference, have been submitted to local governments, and with minor amendments, which we have been able to accept, are agreed as arithmetically correct. We propose, subject to the limiting consideration referred to in paragraph 11, to assess the initial contributions on the increase of spending power in the provinces. The proposal has the merit of proceeding on the lines of minimum disturbance of the financial position in each province. It will enable us to comply with the requirements of leaving each province with a surplus and of inaugurating the new councils without the necessity of resort to fresh taxation.

*Having arrived in the manner indicated at the extra spending power which will accrue to each province, we first considered the possibility of securing the all-India deficit by an even rate on all the provincial figures. So far-reaching, however, is the disparity in the financial strength of the provinces that even this apparently equitable arrangement would in some cases have caused hardship. The extreme case would be that of a province which has been depending largely on doles from the central exchequer; and difficulty arises whenever the provincial revenues are so pinched that the new sources have had to be seriously discounted to provide for the normal expenditure. We have therefore had to consider each province on its merits, relying both on the abundant statistical information which was placed at our disposal and on the insight which we gained into the general situation by our local consultations with the best expert opinion. Our recommendations may be conveniently set out in the following statement which explains itself when read with the succeeding paragraphs:—

* Para 17.

Province.	Increased spending power under new distribution of revenues. In lakhs.	Contributions as recommended by the Committee. In lakhs.	Increased spending power left after contributions are paid. In lakhs
Madras	5,76	3,48	2,28
Bombay	93	56	37
Bengal	1,04	63	41
United Provinces	3,97	2,40	1,57
Punjab	2,89	1,75	1,14
Burma	2,46	64	1,82
Bihar and Orissa	51	Nil	51
Central Provinces	52	22	30
Assam	42	15	27
	18,50	9,83	8,67

THE STANDARD CONTRIBUTIONS.

*Our recommendation as to the ratio on which the province can properly be called upon to contribute to the deficit of the Government of India in the first year of the contribution (paragraph 17 above) is based, as already stated, upon consideration of their present financial positions and of the immediate improvement which will be effected therein by the re-distribution of revenues under the Reforms scheme. This ratio is not intended in any manner to represent the ideal scale on which the provinces should in equity be called upon to contribute; nor is it possible that it should do so. In making our recommendation as to the initial contributions we have had to consider established programmes of taxation and expenditure, and legislative and administrative expectations and habits, that cannot without serious mischief be suddenly adjusted to a new and more equitable ratio of contribution widely different (as an equitable ratio must admittedly be) from that of the past. It is accordingly inevitable, if such mischief is to be avoided, that the ratio for initial contributions should bear little relation to that which would be ideally equitable. But an initial ratio of

* Para 23.

this nature can only be defended as a measure of transition. It is necessary, but it is necessary only in order to give time to the provinces to adjust their budgets to a new state of affairs; and we are clearly of opinion that no scheme of contribution can be satisfactory that does not provide for a more equitable distribution of the burden of the deficit within a reasonable time.

*The ideal basis for such an equitable distribution can be stated with some certainty. To do equity between the provinces it is necessary that the total contribution of each to the purse of the Government of India should be proportionate to its capacity to contribute. Unfortunately the application of this principle in practice presents many difficulties.

**The total contribution of a province to the purse of the Government of India will consist in future of its direct contribution towards the deficit, together with its indirect contribution (as at present) through the channels of customs, income-tax, duties on salt, etc. Evaluation of the amount of this indirect contribution involves an exact arithmetical calculation of the proportion of the total sum collected under each of these heads of revenue which is properly attributable to each province. For such a calculation the statistical information available as to the distribution of the revenue between the locality in which dutiable articles are consumed cannot be traced with sufficient accuracy; under that of income-tax, questions of the utmost complexity arise as to the true local source of income assessed—questions which the information in the hands of the assessing officers does not enable them to answer.

***Turning to the other circumstance which must be considered on fixing the ideal basis for an equitable distribution—the capacities of the provinces to contribute—we find practical difficulties no less great in the exact arithmetical calculation of the quantities involved. The capacity of a province to contribute is its taxable capacity, which is the sum of the incomes of

* Para 24.
** Para 25.
*** Para 26.

its taxpayers, or the average income of its tax-payers multiplied by their number. In this connection also the statistical information available does not permit of any direct evaluation. Enquiries of much interest have been made at various times, with a view to calculating the wealth of the respective provinces, or the average income of their respective inhabitants, and the results provide much useful information; but in the absence of any general assessment of incomes, and of any census of production, they cannot be considered reliable as a direct estimate, of the quantities concerned. In the absence of any direct estimate, various circumstances have been suggested to us as capable of serving, taken separately or together, as an indirect measure of the relative taxable capacities of the provinces. Amongst these may be mentioned gross population, urban and rural, or industrial and agricultural population; cultivated area; provincial revenue, or provincial expenditure; amount of income-tax collected, and, more indirect, amount of salt or of foreign textile goods consumed in each province. As measures of comparison all these are open to obvious criticisms, both on theoretical and on practical grounds. We are of opinion, however, that some of them are not without their value as a substitute for the direct information which is not available and they have indeed assisted us in coming to a general conclusion as to the relative taxable capacities of the provinces. But we are also of opinion that none of them is capable of serving, either alone or in conjunction with others, as an accurate or even an approximate arithmetical measure of those capacities.

*For the reasons given we believe it to be useless to attempt to state a formula, to serve as a basis for a standard ratio of contributions, capable of automatic application from year by reference to ascertained statistics. Although the formula could be stated, the statistics which would be needed for its application are not available. But we are able, after surveying such figures as are available and after close inquiry into circumstances of each province, to recommend a fixed standard and

* Para 27.

equitable distribution of the burden of any deficit. In arriving at this ratio we have taken into consideration the indirect contributions of the provinces to the purse of the Government of India, and in particular the incidence of customs duties and of income-tax. We have inquired into the relative taxable capacities of the provinces in the light of their agricultural and industrial wealth and of all other relevant incidents of their economic positions including particularly their liability to famine. It should be observed that we have examined their taxable capacities not only as they are at the present time, or as they will be in the immediate future, but from the point of view also of the capacity of each province for expansion and development agriculturally and industrially, and in respect of imperfectly developed assets such as minerals and forests. We have also given consideration to the elasticity of the existing heads of revenue which will be secured to each province, and to the availability of its wealth for taxation. After estimating to the best of our ability, the weight which should be given to each of these circumstances, we recommend the following fixed ratio as representing an equitable basis for the relative contributions of the provinces to the deficit.

STANDARD CONTRIBUTIONS.

Province.	Per cent. contribution to deficit.
Madras	17
Bombay	13
Bengal	19
United Provinces	18
Punjab	9
Burma	6½
Bihar and Orissa	10
Central Provinces	5
Assam	2½
	100 per cent.

*This in our opinion is the ratio which the provinces should in equity be called upon to contribute after an interval

* Para 28.

of time sufficient to enable them to adjust their budgets to the new conditions. We further recommend that the interval allowed for adjustment should not be unduly prolonged. The initial ratio which we have proposed is a practical necessity, but the provinces which will be called upon to pay thereunder more than they should pay in equity, ought not to be required to bear that burden for a longer period or to a greater extent than is required to prevent dislocation of the provincial budgets. We propose, therefore, that contributions should be made on the standard ratio to any deficit that there may be in the seventh year of contribution, and that the process of transition from the initial to the standard ratio should be continuous, beginning in the second year of contribution, and proceeding in six equal annual steps. The following table shows the initial, intermediate, and ultimate ratios of contribution for the seven years, in accordance with our recommendations. The initial ratio is the rate per cent. of the actual initial contributions recommended in paragraph 17 above.

PER CENT. CONTRIBUTIONS TO DEFICIT IN SEVEN CONSECUTIVE YEARS, BEGINNING WITH THE FIRST YEAR OF CONTRIBUTION (ROUNDED OFF TO EVEN HALVES).

Province.	1st year.	2nd year.	3rd year	4th year.	5th year.	6th year.	7th year.
Madras	35½	32½	29½	26½	23	20	17
Bombay	5½	7	8	9½	10½	12	13
Bengal	6½	8½	10½	12½	15	17	19
United Provinces	24½	23½	22½	21	20	19	18
Punjab	18	16½	15	13⅓	12	10½	9
Burma	6½	6½	6½	6½	6½	6½	6½
Bihar & Orissa	nil	1½	3	5	7	8½	10
Central Provinces	2	2½	3	3½	4	4½	5
Assam	1½	1½	2	2	2	2	2½
	100%	100%	100%	100%	100%	100%	100%

(B) The Changes Effected in this Respect.

Readings:—(1) The Madras Administration Report 1921-22.
(2) The Devolution Rules.

(1) *The year 1921 witnessed the introduction of the Reforms, which brought about a complete change in the financial relations between the Central and Provincial Governments, involving important changes in the general form of accounts and in the prescribed major heads. Till then the provincial Government had no separate revenues of their own, their resources being obtained mainly from a share of divided heads of revenue and from lump assignments from Imperial revenues. The transactions of the Imperial and Provincial sections were accordingly combined, but shown under distinct divisions, against each major head of revenue and expenditure, in the general accounts and estimates. Now, however, definite sources of revenue have been allocated to the Provincial Government and there has been a complete separation between the revenues and the expenditure of the Central and Provincial Governments though all monies received from sources of provincial revenue are paid to the public account of which the Governor-General in Council continues to be the custodian. The estimates and accounts of the Government of India now embrace the transactions of the Central Government only under each head of account, the Provincial Government appearing in them merely as a net addition to or withdrawal from their banking account with the Central Government. The Provincial Government is concerned with central subjects only in so far as they act as agents of the Government of India in their administration and in such capacity are vested with certain financial powers.

(2) The Division of sources between the Imperial and Provincial Governments follows the recommendations of the Meston Committee except in the case of income-tax, and is now governed by devolution rules 14, 15, 17, and 18, reproduced below.

* Para 75 Madras Administration Report 1921-22.

RULE 14:—(1) The following sources of revenue shall, in the case of Governor's provinces and in the province of Burma, be allocated to the local Government as sources of provincial revenue, namely :—

Allocation of revenue.

(a) balances standing at the credit of province at the time when the Act comes into force;

(b) receipts accruing in respect of provincial subjects;

(c) a share (to be determined in the manner provided by rule 15) in the growth of revenue derived from income-tax collected in the province, so far as that growth is attributable to an increase in the amount of income assessed;

(d) recoveries of loans and advances given by the local Government and of interest paid on such loans;

(e) payments made to the local Government by the Governor-General in Council or by other local Governments, either for services rendered or otherwise;

(f) the proceeds of any taxes which may be lawfully imposed for provincial purposes;

(g) the proceeds of loans which may be lawfully raised for provincial purposes; and

(h) any other sources which the Governor-General in Council may by order declare to be sources of provincial revenue.

(2) The revenues of Berar shall be allocated to the local Government of the Central Provinces as a source of provincial revenue. This allocation shall be subject to the following conditions:—

(i) that the local Government of the Central Provinces shall be responsible for the due administration of Berar; and

(ii) that if in the opinion of the Governor-General in Council provision has not been made for expenditure necessary for the safety and tranquillity of Berar, the

allocation shall be terminated by order of the Governor-General in Council, or diminished by such amount as the Governor-General in Council may by order in writing direct.

15. (1) There shall be allocated to each local Government a share in the income-tax collected under the Indian Income-Tax Act, 1918, within its jurisdiction. The share so allocated shall be three pies on each rupee brought under assessment under the said Act in respect of which the income-tax assessed has been collected.

(2) In consideration of this allocation, each local Government shall make to the Governor-General in Council fixed annual assignment of a sum to be determined by the Governor-General in Council as the equivalent of the amount which would have accrued to the local Government in the year 1920-21 (after deducting the provincial share of the cost of special income-tax establishments in that year) had the pie rate fixed under sub-rule (1) been applied in that year, due allowance being made for any abnormal delays in collection of the tax.

(3) The cost of special income-tax establishments employed within a province shall be borne by the local Government and the Governor-General in Council in the proportions of 25 per cent. and 75 per cent. respectively.

Contributions by Local Governments in 1921-2.

17. In the financial year 1921-22 contributions shall be paid to the Governor-General in Council by the local Governments mentioned below according to the following scale :—

Name of Province.	Contributions (in lakhs of rupees)
Madras	348
Bombay	56
Bengal	63
United Provinces	240
Punjab	175
Burma	64
Central Provinces and Berar	22
Assam.	15

Contributions in subsequent years.

18. From the financial year 1922-23 onwards a total contribution of 983 lakhs, or such smaller sum as may be determined by the Governor-General in Council, shall be paid to the Governor-General in Council by the local Governments mentioned in the preceding rule. When for any year the Governor-General in Council determines as the total amount of the contribution a smaller sum than that payable for the preceding year, a reduction shall be made in the contributions of those local Governments only whose last previous annual contribution exceeds the proportion specified below of the smaller sum so determined as the total contribution, and any reduction so made shall be proportionate to such excess :—

Madras	17—90 ths
Bombay	13—90 ths
Bengal	19—90 ths
United Provinces	18—90 ths
Punjab	9—90 ths
Burma	6½—90 ths
Central Provinces and Berar	5—90 ths
Assam	2½—90 ths

Power to borrow.

*(3) The power of borrowing was never conceded to Provincial Governments prior to the Reforms. That power has now been conferred by section 30 (1) (a) of the Government of India Act under which a local Government may, on behalf and in the name of the Secretary of State in Council, raise money on the security of the revenues allocated to it under the Act, and make proper assurances for that purpose. The rules framed under this section lay down the following as the purposes for which loans may be raised:—

(a) to meet capital expenditure on the construction or acquisition (including the acquisition of land, maintenance during construction and equipment) of any work or permanent asset of a material character in connection with a project of lasting public utility, provided that—

* Paras 77-9 of the Madras Administration Report.

(i) the proposed expenditure is so large that it cannot reasonably be met from current revenues; and

(ii) if the project appears to the Governor-General in Council unlikely to yield a return of not less than such percentage as he may from time to time by order prescribe, arrangements are to be made for the amortisation of the debt;

(b) to meet any classes of expenditure on irrigation which, under rules in force before the passing of the Act, had been met from loan funds;

(c) for giving of relief and the establishment and maintenance of relief works in times of famine or scarcity;

(d) for the financing of the Provincial Loan Account; and

(e) for the repayment or consolidation of loans raised in accordance with these rules or the repayment of advances made by the Governor-General in Council.

The only restriction on the powers of local Governments to raise loans is that no loan shall be raised, in the case of loans to be raised in India, without the sanction of the Governor-General in Council or, in the case of loans to be raised outside India, of the Secretary of State in Council, and in sanctioning the raising of the loan the Governor-General in Council or the Secretary of State may specify the amount of the issue and any or all of the conditions under which the loan shall be raised. In practice it has been found more convenient for the local Government to borrow from the Government of India than to go into the market separately.

Prior to the Reforms the Provincial Loan Account, the capital transactions of which did not appear in the estimates, was financed from Imperial revenues, the local Government paying the interest charge thereon. Under Devolution Rule 23, the account has been provincialized. Any moneys which on the 1st day of April 1921 were owed to the Governor-General in Council on account of advances made from the Provincial Loan Account were converted into an advance to the

local Government from the revenues of India, carrying interest at a rate calculated on the average rate carried by the total amount owed to the Governor-General in Council on this account on the 31st March 1921. The principal amount of the advance has also to be repaid to the Government of India in instalments over a twelve-year period. The local Government is at liberty to repay the advance in a shorter period. The Madras Government are paying a sum of Rs. 9,50 lakhs per annum towards the redemption of the Provincial Loan Account, which stood at Rs. 109,86 lakhs at the beginning of 1921-22.

*(4) In the pre-reform period the Government of India completely controlled the imposition of any taxation in British India apart from local taxes which were raised by Local Bodies. The scheduled taxes rules framed under section 80-A (3) (a) of the Government of India Act have, for the first time, given local legislatures powers of taxation without the previous sanction of the Governor-General in respect of the following matters :—

1. A tax on land put to uses other than agricultural.
2. A tax on succession or on acquisition by survivorship in a joint family.
3. A tax on any form of betting or gambling permitted by law.
4. A tax on advertisements.
5. A tax on amusements.
6. A tax on any specified luxury.
7. A registration fee.
8. A stamp duty other than duties of which the amount is fixed by Indian legislation.

Capital outlay on Irrigation Works.

**(5) Prior to the introduction of the Reforms, capital expenditure on major irrigation works was provided entirely by the Imperial Government either from revenues or from loans. Under Rule 24 of the Devolution Rules the capital sum spent by the Governor-General

* Para 80 Madras Administration.

** Para 81 Madras Administration Report 1921-22.

in Council upon the construction of productive and protective irrigation works and all other works financed from loan funds is treated as an advance made to the local Government from the revenues of India. This advance carries interest, in the case of outlay up to the end of the financial year 1916-17, at the rate of 3.3252 per cent; and, in the case of outlay incurred after the financial year 1916-17 up to the end of the financial year 1920-21, at the rate of 5.1979 per cent. With effect from 1921-22 the financing of capital irrigation works has become the concern of the Provincial Government.

Famine Relief.

*(6) The financing of famine expenditure has also been placed on a new basis under the Reforms. Under Rule 29 of the Devolution Rules the Madras Government is required to maintain a famine insurance fund by contributing from its resources a fixed sum of Rs. 6·61 lakhs every year.† The annual contribution is to be devoted in the first instance to outlay on the construction of protective irrigation works, and, if necessary, on relief measures, the sum not required for these purposes being utilized in building up a famine insurance fund. The balance at the credit of the fund is regarded as invested with the Central Government, which pays interest on it, and it will be available for application when necessary to any of the objects mentioned above and also to the grant of advances to cultivators. The credit and debits to the fund are exhibited in a separate head under debt heads. It is also laid down that the annual contribution may be suspended when the accumulated total of the fund is not less than six times the amount of the annual assignment.

Financial restrictions on the Powers of Local Governments.

**(7) The control of the local Government over the funds at their disposal is limited by certain rules which prescribe that the sanction of the Secretary of State in Council is necessary before expenditure

† Bombay is required to provide 63,60,000 for expenditure upon Famine relief and insurance.

* Para 82 Madras Administration Report 1921-22.

** Para 87 Madras Administation Report 1921-22.

can be incurred on certain accounts. In this matter, a clear distinction has been drawn between powers to sanction and incur expenditure on transferred subjects and powers in relation to expenditure on reserved subjects. The Joint Parliamentary Committee appointed to revise the draft rules made under the Government of India Act of 1919 have stated that it is the intention of that Act that expenditure on transferred subjects should, with the narrowest possible reservations, be within the EXCLUSIVE control of the provincial legislature. The main reservations laid down are that the Secretary of State must retain control over expenditure on transferred subjects which is likely to affect the prospects or rights of the All-India services, which he recruits and will continue to control; and that he should also retain power to control the purchase of stores in the United Kingdom.

Thus, in respect of transferred subjects, the sanction of the Secretary of State in Council is necessary for the creation of any new, or the abolition of any existing, permanent post, or for the increase or reduction of the pay attached to any permanent post, if the post is one which would ordinarily be held by a member of an All-India service, or for the increase or reduction of the cadre of an All-India service; for the creation of a permanent post on a maximum rate of pay exceeding Rs. 1,200 a month; for the increase of the maximum pay of a sanctioned permanent post to an amount exceeding Rs. 1,200 a month; for the creation of a temporary post with pay exceeding Rs. 4,000 a month, or the extension beyond a period of two years of a temporary post with pay exceeding Rs. 1,200 a month; and for any expenditure on the purchase of imported stores or stationery otherwise than in accordance with such rules as may be made in this behalf by the Secretary of State in Council. Subject to limitations such as these, Ministers are as free as possible from external control, and the control to be exercised over expenditure on transferred subjects is exercised by the Provincial legislature, and by that body alone.

*In regard to expenditure on reserved subjects in addition to the above, further restrictions as given below have been imposed. Thus, the sanction of the Secretary of State in Council is necessary to capital expenditure upon irrigation and navigation works including docks and harbours, and upon projects for drainage, embankments and water-storage and the utilization of power in any of the following cases, viz., where the project concerned materially affects the interests of more than one local Government; where the original estimate exceeds Rs. 50 lakhs; where a revised estimate exceeds by 15 per cent. an original estimate sanctioned by the Secretary of State in Council; and where a further revised estimate is proposed, after one revised estimate has already been sanctioned by the Secretary of State in Council. Such sanction is also necessary for a revision of permanent establishment involving additional establishment charges exceeding Rs. 5 lakhs a year: provided that, if a resolution has been passed by the Legislative Council recommending an increase of establishment charges for this purpose, the sanction of the Secretary of State in Council is not required unless the expenditure so recommended exceeds Rs. 15 lakhs a year; for any increase of the contract, sumptuary or furniture grant of the Governor; and for expenditure on original works on the residences of the Governor exceeding Rs. 50,000 in a year.

**The local Government also exercise certain limited powers in their capacity as agents to the Governor-General in Council in the administration of central subjects. For instance, they can sanction the creation or abolition of a permanent post provided that the maximum pay of the post does not exceed Rs. 500; increase or reduce the pay of a permanent post or of a Government servant in permanent employment, provided that the maximum pay of the post or of the Government servant does not exceed Rs. 500 after the increase or before the reduction, as the case may be; sanction the creation of a temporary post on pay not exceeding Rs. 1,500 for not more than

* Para 89 Madras Administration Report 1921-22.

** Para 90 Madras Administration Report 1921-22

six months if the pay exceeds Rs. 500, and for any specified period, if the pay does not exceed Rs. 500; and sanction revision of the pay of an establishment, provided that the revision does not affect posts carrying pay exceeding Rs. 500, that the additional expenditure involved does not exceed Rs. 6,000 a year and that the revision does not affect a whole class or grade of Government servants.

VI. - Reforms in actual working

SOURCES:—(1) The Reforms Enquiry Committee's Report.

(2) Budget speech of the Finance Member, Bombay, February 1922.

(3) Representation of the Bombay Legislative Council, March 1925.

i Control over Ministers by the Government of India and the Secretary of State.

Para 36 Reforms Enquiry Committee's report:—(See page 58).

ii Restrictions on provincial legislation.

Para 83:—

We support the view that the existing law is unduly stringent in some respects and possibly places greater restrictions on the sphere of provincial legislation than foreseen or intended. We understand indeed that this view is accepted by the Secretary of State, by the Government of India and by the Provincial Governments. The very wide scope of the existing law of sanction is in fact clearly indicated in the evidence of Mr. Spence, who has informed us that,—" Experience has shown that all bills of any magnitude, whatever their subject-matter, will inevitably contain provisions in respect of which previous sanction is required under one or other of the clauses contained in sub-section (3) of section 80A,—clauses (e), (f) and (h), being those which have the widest operation." Under the existing provisions it is in fact clear that provisions in provincial laws which have really become stereotyped require previous sanction. Mr. Spence has told us that the Government of India have proposed that a proviso should be incorporated in sub-section (3) of section 80A in the following sense:—

"Provided that nothing hereinbefore contained shall be deemed to prohibit the local legislature of any province from making or taking into consideration, without the previous sanction of the Governor-General, any law satisfying conditions prescribed in this behalf by rules under this Act."

We understand that all local Governments have supported this proposal, and we trust that it will be accepted by Parliament. It will then be possible to provide, for example, that the sanction of the Governor-General shall not be required for any provision in a Bill which re-enacts a provision of any existing provincial law or of a law affecting the same subject matter in another province. The enactment of a rule-making power on these lines would secure elasticity in the provisions as to sanction and enable advance to be made where advance was expedient and so modify the stringency of the existing law.

iii Criticism on the Meston Settlement.

(1) Paras 53, 54 and 55 of the Report of the Reforms Enquiry Committee (Majority):—

We place the question of finance in the forefront of these difficulties. As is well known the allocation of revenues to the various provincial Governments was decided in the light of the recommendations contained in the report of the Financial Relations Committee. This separation of the provincial finances from the Central Government, which is usually referred to as the Meston settlement, has been affected by the Devolution Rules. There can be no doubt that the basis of the conclusions embodied in that settlement has been seriously affected in certain respects, and as a result the provinces have not been vested with the resources which were anticipated. The difficulty which has arisen has been referred to in the reports of several local Governments and also by several witnesses before us. The Madras Government refer to the deep sense of injustice felt at the working of the reforms scheme; and they say that unless the financial embarassments consequent thereon can be mitigated or removed, no changes

whether in the direction of extending the sphere of ministerial control or otherwise will result in material improvement. The Bombay Government say that they have never ceased to protest against this settlement; complaints are being perpetually made that the departments controlled by Ministers are being starved; and until the financial arrangements existing between the Governments of India and of Bombay are readjusted, no hopes can be held out of the satisfactory working of the Act of 1919. The Bengal Government say that in Bengal the Meston settlement is one of the main defects in the constitution; it stood condemned from the outset; and to this more than to any other cause, perhaps, may be attributted much of the discontent against the reforms, which prevails even among the more moderate element. Finally, the Assam Government say that of all the remediable defects which have hampered the working of the reforms finance is the most important; if even at this stage the Ministers could be given a surplus, however modest, an enormous improvement in the situation would result.

The objections of local Governments to the settlement are based upon very different grounds. The settlement provided for the allocation of the same sources of revenue to different provinces. An arrangement which gave land revenue to the provinces and income-tax, except a fraction of the excess over the receipts of the year 1920-21, to the Central Government might be satisfactory to Madras, but would be equally unsatisfactory to Bombay and Bengal. The settlement also assumed that a sum of 9 crores and 83 lakhs of rupees would be required to balance the first budget of the Central Government, and this sum was to be found by contributions from the provincial Governments. The contributions to be paid by the local Governments were fixed so as, it was thought, to leave each province with a balance, but in view of the very different receipts which were given to each province by the allocation of the same sources of revenue to each, the contributions, which it was considered they would be able to afford and which were, therefore fixed, varied from 15 lakhs from Assam to 348 lakhs from

Madras. It is, we understand, the amount of this annual contribution which forms the basis of the grievance of Madras. When, however, the position of central finances is improved, and it is found possible to forego the provincial contributions, there should, we assume, be little objection to the settlement on the part of that province. The Bombay Government will then, however, only have benefited to the extent of 56 lakhs a year, and presumably their finances will not be appreciably improved thereby, and the Bengal Government will only have secured the continued benefit to be derived from the non-payment annually of the contribution of 63 lakhs which they have already been granted for three years.

We observe that the Central Government also has been embarrassed by the state of its finances during the period since the introduction of the reforms in the same way as the provincial Governments. The first financial year under the reforms was the year 1921-22, and the first budget was, therefore, based upon the experience of the year 1920-21. The actual deficits of the revenue as compared with the expenditure of the Central Government for this and the two succeeding years were as follows:—

1920-21	....	26,00 lakhs of Rs.
1921-22	....	27,65 „ „
1922-23	....	15,01 „ „

There was thus a total deficit of more than 68½ crores of rupees during these three years. It was only with the budget for the year 1924-1925 that the Finance Member was able to announce an estimated surplus on the working of the previous year, 1923-1924. We find therefore that the reforms were started when there were not in fact sufficient funds to provide for the needs of both the central and the local Governments, and this was due mainly to financial world conditions and not particularly to Indian conditions. The Meston settlement was framed on the basis that the exchange value of the rupee would equal two shillings, and we are informed that on the basis of the actual charges to be incurred in England which are included in the budget figures for the current year, this means a deficiency

in central revenues of about 78 lakhs of rupees as compared with the Meston settlement. The deficiency in central revenues due to this cause is thus well in excess of the total provincial contributions. The provinces also had to meet increases in the cost of establishment rendered necessary by increases in prices which have been estimated as having cost about 10 crores of (including about 1½ crores for the Imperial and Provincial Services) per annum.

(2) The settlement has been adversely criticised by the Governments of most of the major provinces. The point of view of the Bombay Government has been well summarised in the following passages taken from the speech of the Honourable Mr. H. S. Lawrence in introducing the Budget of 1922-23 to the Bombay Legislative Council in February, 1922 and the representation of the Bombay Legislative Council to the Government of India in March 1925:—

EXTRACT FROM THE BUDGET SPEECH OF THE HONOURABLE MR. H. S. LAWRENCE 1922:—

"Before I come to a review of the new Budget, I think that the Council would be interested in a brief comparison of our present financial relations with the Government of India with those which existed before the Reforms. Radical changes were introduced as the result of the investigations and report of this Commitee presided over by Lord Meston in 1920; and if we may judge from debates in other Councils, it would appear that these radical changes have given satisfaction to no province. It is public news that this Government has protested strongly from the very first. Our protests have led to some modifications of the conditions, but we are by no means satisfied, and are making further representations to the Government of India.

"It is an intricate negotiation, and difficult to explain in a few words. The crux may be stated to be the exchange of Land Revenue for Income-Tax. We used to share these two sources with the Government of India. In 1919-20 each produced about 4 crores of revenue. On the face of it, it seemed a fair exchange to give the whole of the income-tax to the

Government of India and the whole of the land revenue to the Government of Bombay. We protested that the income-tax was a rapidly expanding source of revenue while land-revenue could only expand slowly; but we were overruled.

"Under other heads, too, important changes were made. Formerly while some few heads of revenue and expenditure such as Customs, Salt, Railways were assigned to the Imperial Government, all other important heads were shared half and half between the Imperial and Provincial Governments, e. g., Land Revenue, Stamps, Income-Tax and Irrigation.

"The interests of both Imperial and Provincial Governments were thus closely linked; and were broadly based on many resources. If revenue in one branch of the administration declined, the balance might be redressed by an advance in another. This system had been in existence for nearly half a century and although the usual bickerings between partners occurred from time to time, these were trifles compared to the great advantage of a solidarity of interest and sympathetic co-operation.

"The Committee presided over by Lord Meston came to the conclusion that this system conflicted with the theory of reformed Governments about to be created, and recommended that a clean cut should be made between Central and Provincial sources of revenue. It may no doubt be held that it is illogical or improper for the Imperial Legislative Assembly to derive any portion of its revenues from Provincial Excise or Stamps, or for the Provincial Legislative Council to be dependent on decisions in the Indian Legislative Assembly regarding Income-Tax, and there is some convenience in an arrangement by which each Legislative Body has complete control over its own resources, and is not dependent on decisions arrived at by extraneous authorities.

"These arguments won the day in the discussions of 1920, and the clean cut was introduced. The main revenues allotted to the Central Government were Customs, Income-Tax, Salt,

Railways, Posts and Telegraphs and Opium; to the Provincial Government were Land Revenue, Excise, Stamps, Forest, Irrigation and Registration.

It was calculated that this settlement would still leave the Central Government a deficit of nearly 10 crores and it was decided to meet this deficit by levying the following contributions :—

	Lakhs.
Madras	348
United Provinces	240
Punjab	175
Burma	64
Bengal	53
Bombay	56
Central Provinces	22
Assam	15
	983

" At first sight these contributions appear somewhat severe on Madras, the United Provinces and the Punjab; but this view is modified when the Income-Tax is taken into account.

" The Income-Tax is a source of revenue directly levied in each province; and is the only tax of this character assigned to the Central Government. The accounts of 1920-21 show the following revenues from the Income-Tax and Super-Tax in each province :—

Province.	Income-Tax.	Super-tax.	Total.
Madras	112	30	142
Bombay	433	187	620
Bengal	400	182	682
United Provinces ..	61	8	69
Punjab	55	7	62
Burma	90	36	126
Bihar and Orissa ..	25	9	34
Central Provinces ..	34	5	39
Assam	9	1	10

" Thus Bombay's contribution was more than one-third of the whole. At the same time, full responsibility for Famine Expenditure was put on our shoulders : a responsibility which

was estimated at 63 lakhs a year, and which in the great Famine of 20 years ago actually cost 7½ crores in two years. And on the top of all, we have to pay 56 lakhs to the Central Deficit. We feel we are expressing the voice of this House in very restrained language when we say we are not satisfied.

"This Government protested, as I have said before, against the loss of their income-tax revenue, on the ground that Bombay was an industrial rather than an agricultural province, that an industrial province necessarily had a more expensive form of administration, and was entitled to revenue derived from industrial and commercial activity.

"We protested also against the view expressed by the Meston Committee that the revenues that remained to us were capable of more rapid expansion than the revenues of any other province. This latter protest is supported by the experience of this year. An examination of the Budgets of each province shows that while the increase of Bombay revenues is one-half of the rate forecasted by the Meston Committee, the rate of progress of other provinces is from 2 to 6 times that rate. The protest against the loss of Income-Tax led to a modification of the system, and it has been arranged that for every rupee of income assessed to the Tax over and above the income assessed in 1920-21, this Government should receive three pies. Under this system this Government receives no advantage from any increase in the rate of Income-Tax, nor does it receive any share in the Super-Tax.

"An illustration may be useful to elucidate the system. In 1920-21, in round figures, the income assessed to Income-Tax and Super-Tax was 50 crores; and the revenue derived was 6 crores. If in 1922-23 the income assessed remains the same, but the rate of tax is increased say 50 per cent., the Central Government would receive 9 crores, but this Government would get nothing. If in 1922-23 the income assessed were to rise say from 50 to 60 crores, and the rate were unchanged, the Central Government would receive 7·2 crores, and this Government would receive 3 pies on 10 crores or say 15 lakhs.

"But since 1920-21 was a year of phenomenal prosperity, it is improbable that the income assessed will exceed the datum line of 50 crores for some time to come; and the response therefore to the protest of this Government has conferred a benefit of no substantial value; in the works of Ajax, gifts that are "no gifts and that profit not."

EXTRACT FROM THE REPRESENTATION OF THE BOMBAY LEGISLATIVE COUNCIL TO THE GOVERNMENT OF INDIA, MARCH 1925:—

"Our case against Meston Settlement is based on two distinct grounds firstly, that the distribution of surplus revenues assigned to the provinces of India over and above the provincial revenue existing at the time of the reforms was determined in a haphazard manner and bore no relation to the needs of the provinces or to the total taxation derived from those provinces: and secondly that this haphazard distribution was founded upon the application of federal principles of finance which have not been adopted in any other federal Government in the world.

We now turn to the theoretical basis. Immediately after the memorable declaration of August 1917, enquiries began as to the best method of financial provision for the autonomous governments then foreshadowed. The principle of entirely separate financial sources of revenue was laid down by Sir James Meston (as he then was) and accepted on behalf of the Government of India.

The local Governments accepted the principle in theory; but even at this early stage the Bombay Government claimed a share in the income-tax. In June 1911 appeared the Montague-Chelmsford Report, and in Chapter VIII we find this principle again enunciated.

"Our first aim has therefore been to find out some means of entirely separating the resources of the Central and Provincial Governments" and again,

"If provincial autonomy is to mean anything real, clearly the provinces must not be dependent on the Indian Government for the means of provincial development."

We desire to draw special attention to these extracts, since the origin of all subsequent trouble is the academic insistence, by the framers of the Montague-Chelmsford Report, on the theory of complete separation.

In no country in the world in the history of federal and provincial finance has it been found possible to achieve a clean cut between provincial and central revenues. There is a larger measure of provincial autonomy in the Commonwealth of Australia than in any other British federation. Yet there is no such complete separation of Commonwealth and State finance as is aimed at in India. In Canada and the United States also there are common sources of State Revenue. The war tax on profits and income in Switzerland was levied on the Cantons who retained a share of the proceeds and paid the balance into the Federal treasury. Wherever complete separation has been aimed at as in India, it is found that subsidies or contributions are required.

iv Borrowing Powers

Para 115 Reforms Enquiry Committee's report:—

The existing restrictions upon the borrowing powers of local Governments are embodied in the local Government (Borrowing) Rules which depend upon the provisions of section 30, sub-section (1a), of the Act. The loans are raised on behalf and in the name of the Secretary of State in Council and on the security of the revenues allocated to the province. It is clear that they may be raised only for the purposes specified in the rules. We consider that the expenditure of the money raised is also further restricted by the provisions of section 20, sub-section (1), of the Act to the purposes of the Government of India. This phrase has been held to mean the superintendence, direction and control of the country but in certain judicial decisions doubts have been expressed as to whether certain classes of expenditure fall within its scope. As an example of the restrictions which might possibly be held to follow from this provision, we cite the question of whether a local Government would be able to utilise funds

raised by borrowing to finance industries being carried on by private persons. We consider that the Governments in India should have this power, but we do not attempt to answer the legal question. As doubts have been expressed as to the scope of the expression in section 20 we recommend that steps should be taken to obtain a clear definition of its meaning. The Madras Government refer to the restriction placed upon loans falling within clause (a) of rule 2 of the rules by the provision that the proposed expenditure must be so large that it cannot reasonably be met from current revenues. We understand however that the Secretary of State has recently sanctioned proposals which will in effect meet the point raised by the Madras Government.

VII.—Changes suggested by the Reforms Enquiry Committee.

(A) Recommendations of the Majority Report.

*(1) Power should be taken to modify by rules the existing stringency of the control over provincial legislation which is due to the previous sanction provisions by the inclusion of a proviso in sub-section (3) of section 80 A of the Act.

(2) The Meston Settlement should be revised as soon as a favourable opportunity occurs.

(3) Steps should be taken to obtain a definition of the phrase "Government of India" in section 20 sub-section (1) of the Act. The scope of the phrase should extend, for example, to expenditure on the financing of industries by private persons.

(B) Recommendations of the Minority Report.

**With the exception of Messrs. Fazlul Huq and Ghuznavi ex-Ministers of Bengal nearly every non-official witness whom we have examined has pressed on us the need for provincial autonomy and of introduction of responsiblity in the Central Government. Although as we have stated above our terms

* Points 26, 36, 42 R. E. C. R. (Majority).

** Paras 1 to 5 chapter VII R. E. C. R. (Minority).

of reference do not permit us to enter into any detailed examination of any scheme of provincial autonomy or responsibility in the Central Government yet bearing in mind the importance of the subject and the vagueness of ideas regarding these questions we think it desirable to briefly describe the ideal which we think should be kept in view. We recognise that it is impossible to dispense with the Central Government. The Central Government will perhaps be the most potent unifying factor between province and province and we think that it will be charged with the vital responsibility of securing national safety. In the present state of things the Central Government exercises control over provincial Governments of a three-fold character namely financial, legislative, and administrative. In any scheme of provincial autonomy it seems to be vitally necessary that the finances of the provinces must be separated from those of the Central Government. This will necessarily entail a determination of the sources of revenues to be assigned to each, of the limitation of the field for taxation for each so as to avoid conflict between the two and of the prescription of the limits within which and the conditions subject to which provincial Governments may go into the market for the purposes of borrowing. This will also involve the overhauling of the entire machinery including the system of audit and account. In recent years there has been a movement in the Central Government for establishing its special agency for the collection of central revenues such as income-tax. Such agencies may have to be multiplied though we do not think that it is necessarily incompatible with the system of provincial autonomy that the Central Government should requisition and pay for the services of the provincial Governments for agency work. Nor do we think that the establishment of provincial autonomy necessarily involves the establishment of federal courts. We should not be supposed to favour the creation of such courts as we think there is no constitutional bar to the provincial courts dealing with cases arising out of matters within the domain of the Central Government.

As regards the legislative control, it is exercised at present in two ways. There is first the ulitmate power of veto exercised by the Governor-General. That power is from a constitutional point of view indispensable. But it is well-known that not only in fully responsible constitutions but also in a constitution like ours it is very sparingly exercised. There is next the power of previous sanction which is embodied in section 80A (3) of the Government of India Act. In our opinion, the list of subjects to which it applies at present will have to be carefully revised and the area of its application substantially circumscribed. We can conceive cases arising where a provincial legislature may undertake legislation affecting laws passed by the Central Legislature or affecting interests of an extra-provincial character. To cases of this description, we think, the doctrine of previous sanction, subject to the limitation indicated above, is necessarily inconsistent with the ideal of provincial autonomy.

As stated already, we think that the spheres of action with regard to legislation should be carefully defined. This has been done in Canada and the Commonwealth of Australia, though the points of view adopted in the two Dominions are not the same. In the former the residuary power rests with the Federal Parliament; in the latter it rests with States. We think that in the circumstances of India it is necessary that the residuary power should be vested in the Central Government.

As regards the administrative control of local Governments exercised by the Central Government, it arises at present mainly (1) in respect of reserved subjects, (2) the Imperial Services, and (3) Inter-provincial matters. We do not wish to say much about the control in respect of the Imperial services as in our opinion the contemplated appointment of the Public Service Commission will materially affect the power of both the Central and local Governments, and it is difficult for us to be more precise until we have some experience of the working of that body. Nor is it necessary for us to dwell at length on the control of the Central Government in regard to inter-provincial matters, for with a proper definition of such matters,

it is obvious that the final arbitrator of disputes arising between one province and another must be the Central Government. Again, it is conceivable that at times disputes may arise between the Central Government itself and a local Government. In such cases we should be content to leave the decision with the Central Government of the future as we conceive it to be, unless on an actual examination of a detailed scheme it is found necessary to call in aid the officers of a judicial tribunal, which method of settlement, we apprehend, has in Canada involved Governments in much litigation. The matter is, however, one on which we should not be understood to be necessarily committed to the Canadian model.

Coming to the control of the Central Government over provincial matters which are at present reserved, the most important of them is law and order. The maintenance of law and order, we recognise, sometimes makes it necessary for the civil power to invoke the aid of the military and it may be urged, as indeed it has been, that it may put too much strain on the Governor-General to place the services of the military at the disposal of Ministers whose policy may lead to such necessity. Such an argument, if pressed to its logical conclusion would imply a failure of primary duty on the part of the Governor-General and a negation of co-operation between the Central and local Governments involving the sacrifice of public safety and the security of State—all the more to be regretted, when it is borne in mind that India has always paid for its defence. We think that should the Minister be found ultimately responsible for such a situation, there would be many constitutional ways of dealing with him. In the event, therefore, of provincial autonomy being established, we think that, while the power of legislating general penal laws such as the Indian Penal Code should remain with the Central Government, the actual administration of these laws would be in the hands of the local Governments who would ordinarily be responsible for the maintenance of law and Order.

CHAPTER III

The Central Executive

I—The Governor-General in Council

SOURCE:— THE GOVERNMENT OF INDIA ACT 1919.

The supreme executive authority in India is vested by a series of Acts of Parliament in the Governor-General in Council subject to the control of the Secretary of State.

(I) Under the Government of India Act 1919 the Governor-General in Council has among others the following statuory powers:—

1 Suprintendence, direction and control of the Civil and Military Government.

SECTION 33:—

Subject to the Provisions of this Act and rules made thereunder, the superintendence, direction and control of the civil and military Government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State.

SECTION 45 (1):—

Relation of local Governments to Governor-General in Council.

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

SECTION 45A (3):—

The powers of superintendence, direction and control over local Governments vested in the Governor-General in Council under this Act shall, in relation to transferred subjects, be exercised only for such purposes as may be specified in rules made under this Act but the Governor-General in Council shall be the sole judge as to whether the purpose of the exercise of such powers in any particular case comes within the purposes so specified.

ii Power to sell, purchase, borrow, and execute assurance on behalf of His Majesty's Government.

SECTION 30:—

power to execute assurances &c. in India.

(1) The Governor-General in Council and any local Government may, on behalf and in the name of the Secretary of State in Council, and subject to such provisions or restrictions as the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India prescribe, sell and dispose of any real or personal estate whatsoever in British India, within the limits of their respective governments for the time being vested in His Majesty for the purposes of the Government of India or raise money on any such real (or personal) estate by way of mortgage (or otherwise) and make proper assurances for any of those purposes, and purchase or acquire any property in British India within the said respective limits, and make any contract for the purposes of this Act.

(2) Every assurance and contract made for the purposes of [sub-section I of this section] shall be executed by such person and in such manner as the Governor-General in Council by resolution directs or authorises, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the Government of India.

SECTION 31:—

Power to dispose of escheated property &c.

The Governor-General in Council, and any other person authorised by any Act passed in that behalf by the (Indian Legislature) may make any grant or disposition of any property in British India accruing to His Majesty by forfeiture, escheat or lapse, or by devolution as BONA-VACANTIA, to or in favour of any relative or connection of the person from whom the property has accrued, or to or in favour of any other person.

iii Power to consitute a new province under a Governor, Deputy Governor, or Lieutenant-Governor, alter boundaries, create a council, constitute new local legislatures, and alter the local limits of jurisdiction of High Court.

SECTION 52A:—

Constitution of new provinces etc., and provision as to backward tracts.

The Governor-General in Council may, after obtaining an expression of opinion from the local Government and the local legislature affected, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new Governor's province, or place part of a Governor's province under the administration of a deputy-governor to be appointed by the Governor-General, and may in such case apply, with such modifications as appear necessary or desirable, all or any of the provisions of this Act relating to governors' provinces, or provinces, under a lieutenant-governor or chief commissioner, to any such new province or part of a province.

(2) The Governor-General in Council may declare any territory in British India to be a "backward tract" and may, by notification, with such sanction as aforesaid, direct that this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification. Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian legislature shall not apply to the territory or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit, or may authorise the Governor in Council to give similar directions as respects any act of the local legislature.

SECTION 53 (2):—

Power to create executive councils for lieutenant-governors.

(1) The Governor-General in Council may, by notification, with sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new province under a lieutenant-governor.

SECTION 55:—

The Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, create a council, in any province under a lieutenant-governor, for the purpose of assisting the lieutenant-governor in the executive government of the province, and by such notification:—

(a) make provision for determining what shall be the number (not exeeding four) and qualifications of the members of the council; and

(b) 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 supplying a vacancy until it is permanently filled) 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 lieutenant-governor being obliged to absent himself from his council by indisposition or any other cause;

Provided that, before any such notification is published, 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.

SECTION 59:—

Power to place territory under authority of Governor-General in Council.

The Governor-General in Council may, with the approval of the Secretary of State, and by notification, take any part of British India under the immediate authority and management of the Governor-General in Council, and thereupon give all necessary orders and directions respecting the administration of that part, by placing it under a chief commissioner or by otherwise providing for its administration.

SECTION 60:—

Power to declare and alter boundaries of provinces.

The Governor-Geneneral in Council, by notification, declare appoint or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India among the several provinces thereof in such manner as may seem expedient, subject to these qualifications, namely:—

(1) an entire district may not be transferred from one province to another without the previous sanction of the Crown, signified by the Secretary of State in Council; and

(2) any notification under this section may be disallowed by the Secretary of State in Council.

SECTION 77 :—

Power to constitute local legislatures in lieutenant-governors' and chief commissioners' provinces.

When a new lieutenant-governorship is constituted under this Act, the Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council constitute the lieutenant-governor in legislative council of the province as from a date specified in the notification, a local legislature for that province, and define the limit of the province for which the lieutenant-governor in legislative council is to exercise legislative powers.

(2) The Governor-General in Council may, by notification, extend the provisions of this Act relating to legislative councils of lieutenant-governors, subject to such modifications and adaptations as he may consider necessary, to any province for the time being under a chief commissioner.

SECTION 109 :- -

Power of Governor-General in Council to alter local limits of jurisdiction of High Courts.

The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorise any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established, and also to

exercise any such jurisdiction in respect of (any British subject for the time being within) any part of India outside British India.

iv Power to appoint High Court Judges in certain emergencies.

SECTION 101 (2):—

Each high court shall consist of a chief justice and as many other judges as His Majesty may think fit to appoint: Provided as follows:

(i) the Governor-General in Council may appoint persons to act as additional judges of any high court, for such period, not exceeding two years, as may be required; and the judges so appointed shall, whilst so acting, have all the powers of a judge of the high court appointed by His Majesty under this Act;

SECTION 105:

Provision for vacancy in the office of chief justice or other judge.

(1) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, shall appoint one of the other judges of the same high court to perform the duties of chief justice of the court, until some person has been appointed by His Majesty to the office of chief justice of the court and has entered on the discharge of the duties of that office or until the chief justice has returned from his absence, as the case requires.

(2) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases may appoint a person with such qualifications as are required in persons to be appointed to the high court, to act as a judge of the court;

and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by His Majesty to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the Governor-General in Council or the local Government, as the case may be, sees cause to cancel the appointment of the acting judge.

v Power to declare war or make treaties in certain emergencies.

SECTION 44:—

The Governor-General in Council may not, without the express order of the Secretary of State in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government in India or against any prince or state dependent thereon, or against any prince or state whose territories His Majesty is bound by any subsisting treaty to defend or guarantee) either declare war or commence hostilities or enter into any treaty for making war against any prince or state in India, or enter into any treaty for guaranteeing the possessions of any such prince or state.

(2) In any such excepted case the Governor-General in Council may not declare war, or commence hostilities, or enter into any treaty for making war, against any other prince or state than such as is actually committing hostilities or making preparations as aforesaid, and may not make any treaty for guaranteeing the possessions of any prince or state except on the consideration of that prince or state actually engaging to assist His Majesty against such hostilities commenced or preparations made as aforesaid.

(3) When the Governor-General in Council commences any hostilities or makes any treaty, he shall forthwith communicate the same, with the reasons therefor, to the Secretary of State.

(II) In addition to the above statutory powers, the Governor-General in Council, as representing the Crown in India,

"enjoys such of the powers, pre-rogatives, privileges, and immunities appertaining to the Crown as are appropriate to the case and consistent with the system of law in force in India. The Governor-General in Council has also, by delegation, powers of making treaties and arrangements with Asiatic states, of exercising jurisdiction and other powers in foreign territory, and of acquiring and ceding territory. Moreover, the Government of India has powers, rights and privileges derived, not from the English Crown, but from the native princes of India, whose rule it has superseded. For instance, the rights of the Government in respect of land and minerals in India are different from the rights of the Crown in respect of land and minerals in England" (Ilbert).

II. The Executive Council.

i Its main features:—

SOURCE:—MONTAGUE-CHELMSFORD REPORT.

Para 38 M. C. R.:—

Originally the Council of the Governor-General worked together as a board and decided all questions by a majority of vote. The difficulties which Warren Hastings encountered from this arrangement are notorious. Lord Cornwallis insisted on being given enlarged powers, and to meet his views the provision which now enables the Governor-General to override his Council and to act on his own responsibility in matters of grave importance was inserted. The power has been rarely exercised, though Lord Lytton used it in 1879 to abolish partially the import duty on English cotton goods. The appointment of special members of Council for law and finance initiated the portfolio system, and the great increase of work which resulted from Lord Dalhousie's energetic policy demonstrated its necessity. Lord Canning finally abandoned the attempt to administer a great empire by a method of collective business and introduced the present system by which the ordinary work of the departments is distributed among the members and only the more important cases are referred to the

Governor-General or dealt with collectively. The Council has been from time to time enlarged.....

ii Its Composition:—

The following extracts from the various constitutional enactments show how the composition of the Executive Council has changed from time to time:—

SECTION 7 OF THE REGULATING ACT:—

And for the better management of the said United Company's affairs in India, be it further enacted by the authority aforesaid, that for the Government of the Presidency of Fort William in Bengal, there shall be appointed a Governor-General and FOUR Counsellors.

SECTION 18 OF THE PITT'S INDIA ACT 1784:—

And be it further enacted, that as soon as the office of any one of the Counsellors of the Presidency of Fort William in Bengal (other than the Commander-in-Chief) shall become vacant by death, removal, or resignation, the vacancy so happening shall not be supplied by the said Court of Directors, but the said supreme Government shall from thenceforward consist of a Governor-General and THREE supreme Counsellors only; and that the Commander-in-Chief of the Company's forces in India for the time being shall have voice and precedence in Council next after the said Governor-General.

SECTION XXIV AND XXXII OF THE CHARTER ACT OF 1793:—

And be it further enacted, that the whole Civil and Military Government of the Presidency of Fort William in Bengal, and also the ordering, management, and Government of all the territorial acquisitions and revenues in the kingdoms or Provinces of Bengal, Bihar, and Orissa, shall be and are hereby vested in a Governor-General and THREE Counsellors of and for the said Presidency, subject to such rules, regulations and restrictions, as are made, provided, or establised in that behalf in this Act, or in any other Act or Acts now in force, and not by this Act repealed or altered.

And be it further enacted, that when the office of Governor-General and the office of Commander-in-Chief of all the forces in India shall not be vested in the same person, such Commander-in-Chief shall and may, if SPECIALLY AUTHORISED for that purpose by the said Court of Directors, AND NOT OTHERWISE, be a member of the Council of Fort William.....

SECTION 40 OF THE CHARTER ACT 1833:—

And be it enacted, that there shall be FOUR ORDINARY members of the said Council, three of whom shall from time to time be appointed by the said Court of Directors from among such persons as shall be or shall have been SERVANTS of the said Company; and each of the said ordinary members of the Council shall at the time of his appointment have been in the service of the said Company for at least ten years; and if he shall be in the military service of the said Company, 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 that the FOURTH ordinary member of Council shall from time to time be appointed from amongst persons who shall not be servants of the said Company by the said Court of Directors, subject to the approbation of His Majesty, to be signified in writing by Royal Sign Manual, countersigned by the President of the said Board; provided that such last-mentioned member of Council shall NOT BE ENTITLED TO SIT OR VOTE in the said Council except at meetings thereof for making laws and regulations; and it shall be lawful for the said Court of Directors to appoint the Commander-in-Chief of the Company's forces in India, and if there be no such Commander-in-Chief or the offices of such Commander-in-Chief and of Governor-General of India shall be vested in the same person, then the Commander-in-Chief of the forces on the Bengal Establishment 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.

SECTION 21 OF THE CHARTER ACT OF 1853 :—

So much of the said Act of the third and fourth year of King William the Fourth as provides that the Fourth ordinary member of the Council of India shall not be entitled to sit or vote in the said Council, except at meetings thereof for making laws and regulations, shall be repealed.

SECTION 3 OF THE INDIAN COUNCILS ACT, 1861 :—

There shall be FIVE ordinary members of the said Council of the Governor-General, THREE of whom shall from time to time be appointed by THE SECRETARY OF STATE for India in Council with the concurrence of a majority of members present at a meeting, 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 Mannual: 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 Council, and such extraordinary member of Council shall have rank and precedence at the Council Board next after the Governor-General.

SECTION (1) OF THE INDIAN COUNCILS ACT 1874 :—

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 to SIX by appointing any person, from time to time, by Warrant under Her Royal Sign Mannual, to be an ordinay 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.

SECTION (1) OF THE INDIAN COUNCILS ACT 1904 :—

In section one of the Indian Councils Act, 1874, the words "who shall be called the Member of Council for Public Works purposes" and in section two of the same Act the words "for Public Works purposes" are hereby repealed.

SECTIONS 35, 36 AND 37 GOVERNMENT OF INDIA (CONSOLIDATING) ACT 1915 :—

SECTION 35 :—

The Governor-General's Executive Council consists of the ordinary members and extraordinary members (if any) thereof.

SECTION 36 :—

(1) The ordinary members of the Governor-General's Executive Council shall be appointed by His Majesty by Warrant under the Royal Sign Mannual.

(2) The number of the ordinary members of the Council shall be FIVE, or if His Majesty thinks fit to appoint a sixth member, SIX.

(3) Three at least of them must be persons who at the time of their appointment have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, of not less than five years' standing.

(4) If any person appointed as an ordinary member of the Council is at the time of his appointment in the military service of the Crown he shall not, during his continuance in

office as such member, hold any military command or be employed in actual military duties.

SECTION 37:—

(1) The Secretary of State in Council may, if he thinks fit, appoint the Commander-in-Chief for the time being of His Majesty's forces in India to be an extraordinary member of the Governor-General's Executive Council, and in that case the Commander-in-Chief shall, subject to the provisions of this Act, have rank and precedence in the Council next after the Governor-General.

(2) When and so long as the Council assembles in any province having a Governor, he shall be an extraordinary member of the Council.

THE GOVERNMENT OF INDIA ACT 1919:—

(i) Schedule II part II repeals section 35 of the consolidating Act of 1915.

(ii) Section 28 amends sections 36 and 37 of the consolidating Act as follows:—

(1) The provision in section thirty-six of the principal Act, imposing a limit on the number of members of the Governor-General's Executive Council, shall cease to have effect.

(2) The provision in section thirty-six of the principal Act as to the qualification of members of the Council shall have effect as though the words "at the time of their appointment" were omitted, and as though after the word "Scotland" there were inserted the words "or a pleader of the High Court" and as though "ten years" were substituted for "five years"

(3) Provision may be made by rules under the principal Act as to the qualifications to be required in respect of members of the Governor-General's Executive Council, in any case where such provision is not made by section thirty-six of the principal Act as amended by this section.

(4) Sub-section (2) of section thirty-seven of the principal Act (which provides that when and so long as the Governor-General's Executive Council assembles in a province having a Governor, the Governor shall be an extraordinary member of the Council) shall cease to have effect.

SECTION 36 OF THE GOVERNMENT OF INDIA ACT 1915 AS AMENDED BY SECTION 28 of the ACT OF 1919 therefore reads as follows:—

The members of the Governor-General's Executive Council shall be appointed by His Majesty by Warrant under the Royal Sign Mannual.

(2) The number of the members of the Council shall be such as His Majesty thinks fit to appoint.

(3) Three at least of them must be persons who have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, "or a pleader of a High Court" of not less than "ten" years' standing.

(4) If any member of the Council (other than the Commander-in-Chief for the time being of His Majesty's forces in India)" is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

(5) "Provision may be made by rules under this Act as to the qualifications to be required in respect of the members of the Governor-General's Executive Council in any case where such provision is not made by the foregoing provisions of this section."

(iii) Section 29 reproduced below provides for the appointment of Council Secretaries to assist the Executive Councillors.

SECTION 29:—

(1) The Governor-General may at his discretion appoint, from among the members of the Legislative Assembly, Council

Secretaries who shall hold office during his pleasure and discharge such duties in assisting the members of his Executive Council as he may assign to them.

(2) There shall be paid to Council Secretaries so appointed such salary as may be provided by the Indian legislature.

(3) A Council Secretary shall cease to hold office if he ceases for more than six months to be a member of the Legislative Assembly.

(Note by the authors :—At present the Executive Council consists of 8 members, including the Viceroy and the Commander-in-Chief, the latter being an extraordinary member. Three of these are Indians. To each member is allotted, as his special province, the charge of one or more of the departments among which the business of the Government of India is distributed. The Governor-General has taken charge of the Foreign and Political Department and the Commander-in-Chief of the Army Department. The Home Department which supervises the general administration of British India in matters affecting the Indian Civil Service, Internal Politics, Jails, Police, Law and Justice, the Finance Department, and the Department of Railway, Commerce and Ecclesiastical, are in the hands of three Europeans. The Legislative Department, the Departments of Education, Health and Lands and the newly organised Department of Industries and Labour which includes in its scope Industries and Industrial Intelligence, central institution for Industrial training, Geology and Minerals, the administration of the Indian Mines Act, the Indian Factories Act, Labour legislation, Posts and Telegraphs, Irrigation and Public Works, have been entrusted to Indians.)

iii Its business procedure :—

SOURCE :—REPORT OF THE DECENTRALISATION COMMISSION.

The Report of the Royal Commission on Decentralisation in India gives the following description of the manner in which the business of the Government of India is transacted :—

"In regard to his own department, each Member of Council is largely in the position of a Minister of State, and has the final voice in ordinary departmental matters. But any question of special importance and any matter in which it is proposed to overrule the views of a local Government, must ordinarily be referred to the Viceroy. This latter proviso acts as a safeguard against undue interference with the local Governments; but it necessarily throws a large amount of work on the Viceroy. In the year 1907-08, no less than 21·7 per cent of the cases which arose in, or came up to, the Home Department required submission to the Viceroy. The Home Department is, however, concerned with questions which are in a special degree, subject to review by the Head of the Government, and we believe that in other departments the percentage of cases referred to the Viceroy is considerably less. Any matter originating in one department which also affects another must be referred to the latter and in the event of the departments not being able to agree, the case would have to be referred to the Viceroy.

"The Members of Council meet periodically as a Cabinet—ordinarily once a week—to discuss questions which the Viceroy desires to put before them, or which a Member who has been overruled by the Viceroy has asked to be referred to Council. The Secretary in the department primarily concerned with a Council case attends the Council for the purpose of furnishing any information which may be required of him. If there is difference of opinion in the Council, the decision of the majority ordinarily prevails, but the Viceroy can overrule a majority if he considers that the matter is of such grave importance as to justify such a step.

"Each departmental office is in the subordinate charge of a Secretary whose position corresponds very much to that of a permanent Under-Secretary of State in the United Kingdom, but with these differences, that the Secretary as above stated, is present at Council meetings, that he attends on the Viceroy usually once a week, and discusses with him all matters of

importance arising in his department: that he has the right of bringing to the Viceroy's special notice any case in which he considers that His Excellency's concurrence should be obtained to action proposed by the departmental Member of Council; and that his tenure of office is usually limited to three years.

III—The Governor-General

SOURCE:—THE GOVERNMENT OF INDIA ACT.

Under the Government of India Act, the statutory powers of the Governor-General as distinguished from those of the Governor-General in Council include the following:—

i. Powers in relation to his Executive Council.

SECTION 38:—

The Governor-General shall appoint a member of his Executive Council to be vice-president thereof.

SECTION 40 (2):—

The Governor-General may make rules and orders for the more convenient transaction of business in his Executive Council, and every order made or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

SECTION 41:—

Procedure in case of difference of opinion.

If any difference of opinion arises on any question brought before a meeting of the Governor-General's Executive Council, the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the Governor-General or other person presiding shall have a second or casting vote.

(2) Provided that whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquility or interests of British India, or of any part thereof, are or may be, in the judgment of the Governor-General, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or

that it ought to be suspended or rejected, and the majority present at a meeting of the Council dissent from the opinion, the Governor-General may, on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension or rejection of the measure, and the fact of their dissent, be reported to the Secretary of State, and the report shall be accompanied by copies of any minutes which the members of the council have recorded on the subject.

ii Power to make certain appointments.

SECTION 38:—The Governor-General shall appoint a member of his executive council to be VICE-PRESIDENT thereof.

SECTION 43 A (1):—The Governor-General may, at his discretion appoint from among the members of the Legislative Assembly Council Secretaries who shall hold office during his pleasure and discharge such duties in assisting the members of his executive council as he may assign to them.

Appoint council secretaries.

SECTION 52 A (1):—The Governor-General in Council may, after obtaining an expression of opinion from the local Government and the local legislature affected, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council constitute a new Governor's province, or place part of a Governor's province under the administration of a Deputy-Governor TO BE APPOINTED BY THE GOVERNOR-GENERAL, and may in such case apply, with such modifications as appear necessary or desirable, all or any of the provisions of this Act relating to Governor's provinces, or provinces under a lieutenant-Governor or Chief Commissionor, to any such new province or part of a province

Appoint deputy-governor.

Appointment of Lieutenant Governor and his Councillors.

SECTIONS 54 and 55 (3):—A LIEUTENANT-GOVERNOR is appointed by the Governor-General with the approval of His Majesty. Every member of a lieutenant-Governor's Executive Council shall be appointed by the Governor-General, with the approval of His Majesty.

Appoint President of the Council of State.

SECTION 63 A (2):—The Governor-General shall have power to appoint, from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct.

iii Powers in relation to the two chambers.

(1) Right to address:—

SECTION 63A (3):—The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

SECTION 63B (3):—The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

(2) Right to dissolve prorogue etc., etc.

SECTION 63D (1) and (2):—(1) Every Council of State shall continue for five years, and every Legislative Assembly for three years from its first meeting:

Provided that:—

(a) either chamber of the legislature may be sooner DISSOLVED BY THE GOVERNOR-GENERAL; and

(b) ANY SUCH PERIOD MAY BE EXTENDED BY THE GOVERNOR-GENERAL if in special circumstances he so thinks fit; and

(c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months, or with the sanction of the Secretary of State not more than nine months, after the date of dissolution for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

iv Powers in respect of Central Legislation and central budget. (See Chapter IV.)

v Powers in respect of local legislation.

Assent to Bills

SECTION 81:—When a Bill has been passed by a local legislative council, the governor, lieutenant-governor or chief commissioner, may declare that he assents to or withholds his assent from the Bill.

(2) If the governor, lieutenant-governor or chief commissioner withholds his assent from any such Bill the Bill shall not become an Act.

(3) If the governor, lieutenant-governor or chief commissioner assents to any such Bill, he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity UNTIL THE GOVERNOR-GENERAL HAS ASSENTED THERETO and that assent has been signified by the Governor-General, to, and published by, the governor, lieutenant-governor or chief commissioner.

(4) Where the Governor-General withholds his assent from any such Act, he shall signify to the governor, lieutenant-governor or chief commissioner in writing his reason for so withholding his assent.

Return and Reservation of Bills.

SECTION 81A:—Where a Bill has been passed by a local legislative council, the governor, lieutenant-governor or chief commissioner may, instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under this Act, may, and if the rules so require, shall, reserve the Bill for the consideration of the Governor-General.

(2) Where a Bill is reserved for the consideration of the Governor-General, the following provisions shall apply:—

(a) The governor, lieutenant-governor or chief commissioner may, at any time within six months from the date of the reservation of the Bill, with the consent of the Governor-General, return the Bill for the further consideration by the council with a recommendation that the council shall consider amendments thereto:

(b) After any Bill so returned has been further considered by the council, together with any recommendations made by the governor, lieutenant-governor or chief commissioner relating thereto, the Bill, if re-affirmed with or without amendment, may be again presented to the governor, lieutenant-governor or chief commissioner.

(c) Any Bill reserved for the consideration of the Governor-General within a period of six months from the date of such reservation, become law on due publication of such assent, in the same way as bill assented to by the governor, lieutenant-governor or chief commissioner but if not assented to by the Governor-General within such period of six months, shall lapse and be of no effect unless before the expiration of that period either (i) the Bill has been returned

by the governor, lieutenant governor or chief commissioner for further consideration by the council or (ii) in the case of the council not being in session, a notification has been published of an intention so to return the Bill at the commencement of the next session.

(3) The Governor-General may, (except where the Bill has been reserved for his consideration) instead of assenting to or withholding his assent from any Act passed by a local legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor General.

CHAPTER IV.

The Central Legislature

Section I—History of the Legislature till 1918

(i) Beginnings of the Legislative Power and the Confusion till 1833.

SOURCE:- MONTAGUE-CHELMSFORD REPORT.

Paras 52-56 M. C. R.:—

The germ of legislative power lies embedded in Elizabeth's Charter, which authorized the East India Company to make reasonable "laws, constitutions, orders, and ordinances," not repugnant to English law, for the good government of the Company and its affairs. Similar privileges were affirmed by the Charters of her Stuart successors. The Charter of William III made no mention of, and may be held to have withdrawn, the power of legislation; but George I's Charter of 1726 invested Governors in Council of the three presidencies, with power "to make, constitute, and ordain bye-laws, rules and ordinances for the good government and regulation of the several corporations thereby created, and of the inhabitants of the several towns, places and factories aforesaid respectively."

Accordingly from 1726 onwards the three presidency councils proceeded to make laws independently of each other within their several jurisdictions. But at this stage we come on a new source of legislative power. After the grant of the DIWANI in 1765 by which the Company assumed the revenue administration of Bengal, Bihar, and Orissa, Warren Hastings, then Governor of Bengal, set up courts and offices for the disposal of judicial and revenue business, in virtue not of any powers derived from Parliament, but of the authority which had been delegated to the Company by the Mogul Government. Indeed it was not till 1861, that the last traces of the dual system of courts was swept away.

The Regulating Act of 1773 subordinated the presidencies and Councils of Madras and Bombay to the Governor-General and Council of Bengal, who were thereby constituted the Supreme Government, and required the Madras and Bombay Governments to send to Bengal copies of all their Acts and orders; but we cannot find that the Bengal Government had any power of modifying them. At the same time the Act of 1773 took the unusual course of subjecting the legislative authority of the Governor-General and Council to the veto of the Supreme Court. The hostile relations which existed between the Court and Council probably explain the comparative absence of legislation during the period from 1773 to 1780; but by 1780 the Council had triumphed, and Warren Hastings passed his regulations for the administration of justice in provincial courts without regard to the court. The Amending Act of 1781 justified his action; it gave the Government the important power of making regulations for provincial courts without reference to the Supreme Court. A few years later the powers of the other two Governments were similarly enlarged. Copies of all regulations passed in Madras and Bombay were sent to Calcutta, but it does not appear that they were submitted for approval for being passed. The Legislative power of the Governor-General's Council was confined both by its constitution and in practice to the presidency of Bengal.

We may note that the advent of English lawyers as judges of the Supreme Court in 1773 led to an ill-advised attempt to apply the English law to Europeans and Indians alike; but this error was corrected by the Declaratory Act of 1780, which directed that their own law and usage should be applied to the people of the country. The door was thereby not closed, however, to such legislative modifications of the rules of the Shastras or the Qoran as the public mind became ripe for, under the influences of Western Jurisprudence, case decisions,

and the growth of education and enlightenment; in which direction indeed the Indian legislatures have from time to time rendered services of incalculable benefit to the country.

In 1813, the powers of all three Councils were enlarged and at the same time subjected to greater control by the Home authorities. Their regulations were applied to all persons who should proceed to the East Indies within the limits of their Governments. They were given power to make articles of war and to impose customs duties and other taxes. For another twenty years the three Councils continued to make regulations, and in so doing constantly added to the complexity of the law system which the courts were expected to interpret. The confusion which by this time characterised the legal and judicial system of the country may be readily conceived. It rested on no less than five different bodies of statute law, besides having to pay heed also to the English common law, Hindu and Muhammadan law and usage, charters, and letters patent, regulations authorised by statute or deriving their validity either from the Company's general powers of government or from their acquired rights as successors to native Governments, circular orders of courts, and treaties made by the Crown or the Indian Government. It is not surprising that the Calcutta Judges declared roundly that "no one can pronounce an opinion or form a judgment, however sound, upon any disputed right of persons, respecting which doubt and confusion may not be raised by those who may choose to call it in question.

II Special Legislative Councils 1833-1908.

SOURCE :—PAGES 56-58 OF THE DECENNIAL REPORT ON MORAL AND MATERIAL PROGRESS 1913.

Upto 1833 such legislative powers as were exereisable in India were vested in the executive Governments. This was the period of Bengal, Madras, and Bombay "Regulations." The germ from which all the special legislative councils may be

said to trace their descent is to be found in the Charter Act of 1833, under which Thomas Babington Macaulay was appointed in the following year, to be the first legislative councillor on the Governor-General's Council. Under this Act all legislative power in India was vested in the Governor-General in Council, the Council was increased by the addition of a fourth ordinary member, who was not to be one of the Company's servants, and had no power to sit or vote except at meetings for the purpose of making laws and regulations; and it was laid down that laws made by this body were, subject to their not being disallowed by the Court of Directors, to have effect as Acts of Parliament. Henceforward the laws passed by the Indian legislature were known as "Acts." Further changes were made by the Charter Act of 1853. The council was doubled in size, for legislative purposes, by the addition of six members—the Chief Justice of Bengal, another judge, and four Company's servants of 20 years' standing appointed by the Governments of Bengal, Madras, Bombay, and the North-Western Provinces. At the same time the legislative councillor appointed under the Act of 1833 was made a member of the Executive Council for all purposes. The legislative council thus constituted was intended for purely legislative work, but it evinced what was considered an inconvenient tendency to interfere with the executive. The position was reconsidered, and the councils were remodelled by the Indian Councils Act, 1861. This Act provided that "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 nor 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, . . . provided that no less than one-half of the persons nominated shall be non-official persons . . . .". The functions of the new legislative council were limited strictly to the consideration and enactment of legislative measures. At the same time the power of legislation, which had been taken away

from the Governments of Madras and Bombay by the Act of 1833, was restored to them, the councils being similarly enlarged for legislative purposes, and the Governor-General in Council was empowered to set up legislative councils in other provinces. Not less than one-third of the members of any council, so set up were to be non-officials. Legislative Councils were established accordingly in Bengal in 1862, in the United Provinces in 1886, in the Punjab and Burma in 1898, and in Eastern Bengal and Assam in 1905.

The Indian Councils Act, 1892, authorised an increase in the size of the legislative councils and changes in the method of nominations, and relaxed to some extent the restrictions imposed on their proceedings by the Act of 1861. The numbers of members to be nominated for legislative purposes were now fixed at 10 to 16 for the Governor-General's Council, 8 to 20 for Madras and Bombay, not more than 20 for Bengal, and not more than 15 for the United Provinces, the minimum proportion of non-officials being left as before. At the same time powers by the exercise of which important advances were conferred by a subsection authorising the Governor-General in Council, with the approval of the Secretary of State in Council, to 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." By regulations subsequently made the principle of election was tentatively introduced, and the proportion of non-officials was increased beyond the minimum laid down by the Act of 1861. The Governor-General's legislative council, for example, had to include 10 non-officials, of whom five were nominated on the recommendation of the Calcutta Chamber of Commerce and the non-official members of the legislative councils of Madras, Bombay, Bengal and the United Provinces. In Bombay 8 out of 11 non-officials were nominated on the recommendation of various bodies and associations, including the Corporation, the University, groups of municipal corporations, groups of local district boards, classes of large

landholders, and associations of merchants, manufacturers, tradesmen. Similar provisions were made in regard to the legislative councils in Madras, Bengal, Eastern Bengal and Assam and the United Provinces. In the case of the smaller councils of the Punjab and Burma no provision was made for recommendation; nor were the privileges, referred to immediately below, on discussing the provincial budget of putting questions on matters outside the business in hand extended to them. The Act of 1892 further provided as follows:—"Notwithstanding any provisions 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-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 subject or otherwise as shall be in the said rules prescribed or declared." "But no member at any such meeting of any council shall 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 . . ." Similar provision was made for the provincial legislative councils. Action was taken under this section in all the more advanced provinces, and in the annual discussion on the financial statement members were allowed to draw attention to any financial matter they pleased, whether it arose directly out of the budget proposals or not. To sum up the position before the passing of the Act of 1909: The Legislative Councils varied in size between a a total strength of 9 (excluding the Lieutenant-Governor) in the Punjab and Burma and a maximum of 24 (excluding the Governor-General) in the case of the Governor-General's Council. A minimum proportion of non-officials was required by Statute, but though by Regulations under the Statute provision was made for the appointment of non-officials in excess

of this proportion, an official majority of votes was as a rule available in a full council. (An exception to this general rule was to be found in Bombay, where in 1908 the Council consisted of 10 officials, including the Governor, and 14 non-officials). Of the non-officials, some, except in the Punjab and Burma, were nominated on recommendation, and might be regarded as "elected", in a somewhat qualified sense of the word. Finally, the activities of the councils were strictly limited, except on the occasion of the annual budget debate, which was apt to be of a desultory and unsatisfactory nature, to legislative business and the asking of questions.

iii. Morley-Minto Reforms or the India Council Act of 1909.

SOURCE :—MONTAGUE-CHELMSFORD REPORT.

(A) ITS MAIN FEATURES.

1. *In the immense diversity of interests and opinions in India representation by classes and interests was the only practicable means of embodying the elective principle in the constitution of the councils. For certain limited interests, such as the presidency corporation, universities, chambers of commerce, or the planting community, it was an easy task to frame limited electorates. Difficulties began when it was a question of providing for widespread interests or communities, such as the landholding or professional classes, or for important minorities such as the Muhammadans in many provinces, or the Sikhs in the Punjab. The Muhammadans indeed pressed for and obtained from Lord Minto a promise that they should elect their own members in separate Muhammadan constituencies. It is probable that the far- reaching consequences of this decision and the difficulties which it would create at a later stage were not fully foreseen, we shall have occasion to discuss them later. Similarly to the large landowing interests a special electorate was conceded based on a high franchise. The residuary constituencies for the provincial councils which constitute the only means of

* Para 75 M. C. R.

representation of the people at large were constructed out of municipalities and district boards voting in groups.

2. *Lord Minto's Government were at first disposed to maintain a bare official majority in the provincial councils, but to summon ordinarily only such a number of official members as would be necessary for the transaction of business. But in Bombay it had already been found possible to do without an official majority and in the year 1906 the local council consisted of 10 officials and 14 non-officials, though to three of the latter seats officials might at any time be appointed. It was decided therefore to face the risks of abandoning the official majority in provincial councils; to rely partly on the use of the veto, partly on the statutory restriction attaching to provincial legislation, to prevent the carrying of undesirable laws; and to trust to the concurrent powers of legislation possessed by the Governor-General's legislative council for the enactment of necessary laws which the provincial council refused. The provincial legislatures were enlarged up to a maximum limit of 50 additional members on the larger provinces and 30 in the smaller; and the composition was generally so arranged as to give a combination of officials and nominated non-officials small majority over the elected members except in Bengal where there was a clear elected majority.

3. The Indian Legislative Council was also enlarged. The number of additional members was ordinarily 60, not more than 23 being officials. The Governor-General also nominated three non-officials to represent certain specified communities and had at his disposal two other seats to be filled by nomination. It was found necessary to rely largely on the representation of interests rather than territories. The 27 elected seats were partly shared by certain special constituencies, such as the landowners in seven provinces, the Mohammadans in five provinces, Mohammadan landowners in one province (at alternate election only) and two chambers of commerce while the

* Para 76 M. C. R.

residue of open seats is filled by election by the non-official members of the nine provincial legislative councils. Lord Morley laid it down that the Governor-General'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.

4. *The regulations in which these provisions were embodied made an important new departure in expressly recognising the principle of election which the regulations of 1893 had practically but not legally admitted. Up to 1909, as we have seen, there was no obligation to accept the nomination made by the recommending bodies, but in practice the nomination was never disregarded. The legal recognition of the elective principle in 1909 necessarily involved the imposition of legal disqualifications for election: and an oath or affirmation of allegiance to the Crown was at the same time imposed.

5. **No less important than these changes in the composition of the councils were the changes in their functions. It is quite true that so far as legislative duties are concerned the somewhat old-fashioned provisions of the Act of 1861 continued mainly to regulate their powers: but the deliberate sphere of the councils was enlarged in a striking manner. For thirty years between 1861 and 1892 the councils had no other function than that of legislation. The Act of 1892 gave members power to discuss budget but not move resolutions about it or to divide the council. It became the practice accordingly to allot annually one or two days a year to the discussion of a budget already settled by the executive government; Lord Morely's Act empowered the councils to discuss the budget at length before it was finally settled, to propose resolutions on it,

* Para 77 M. C. R.

** Para 78 M. C. R.

and to divide upon them. Not only on the budget, however, but on all matters of general public importance resolutions might henceforth be proposed and divisions taken. The resolutions were to be expressed and to operate as recommendations to the executive government. On certain questions, among which may be mentioned matters affecting Native States, no resolutions could be moved. Any resolution might be disallowed by the head of the government acting as President of the Council without his giving any reason other than that in his opinion the resolution could not be moved consistently with the public interest. At the same time the right to ask questions of the Government was enlarged by allowing the members who asked the original question to put a supplementary one.

(B) NATURE OF THE ADVANCE MADE.

*We may pause for a moment to point out how the Morley-Minto changes carried constitutional development a step further. They admitted the need for increased representation, while reiterating the impossibility of basing it generally securing non-official approval to the government legislation, though they trusted in an emergency to the support of nominated members, to the division of interests between different classes of elected members, and in the last resort to over-riding legislation in the Indian Legislative Council where an official majority was retained. Frankly abandoning the old conception of the councils a mere legislative committee of the Government, they did much to make them serve the purpose of an inquest into the doings of Government, by conceding the very important rights of discussing administrative matters and of cross-examining Government on its replies to questions. Lord Morley's disclaimer:—"If it could be said that this chapter of reforms led directly or indirectly to the establishment of a parliamentary system in India, I, for one, would have nothing at all to do with it"—is no doubt explicable when we remember his stout insistence on the sovereignty of the British Parliament, and

*Para 79 M. C. R.

his acceptance of the decided advice of Lord Minto's Government, backed by the experience of every Indian administrator of eminence, that anything beyond very limited constituencies and indirect franchises was unthinkable in India. He took the constitutional view that no relaxation of the control exercised by the British electorate was possible until an Indian electorate, which was not then in sight, had arisen to take the burden of its shoulders. None the less we are constrained to say that the features of his reforms which we have described do constitute a decided step forward on a road leading at no distant period to a stage at which the question of responsible government was bound to present itself.

(C) Failure of the Morley-Minto Reforms.

(i) Some of the antecedent conditions of success lacking.

*The new institutions began with good auspicies and on both sides there was a desire to work them in a conciliatory fashion. But some of the antecedent conditions of success were lacking. There was no general advance in local bodies; no real setting free of provincial finance; and in spite of some progress no widespread admission of Indians in greater numbers into the public service. Because the relaxation of parliamentary control had not been contemplated the Government of India could not relax their control over local governments. The sphere in which the councils could affect the Government's action, both in respect of finance and administration, was therefore closely circumscribed. Again and again a local Government could only meet a resolution by saying that the matter was really out of its hands. It could not find the money because of the provincial settlement; it was not administratively free to act because the Government of India were seized of the question; it could therefore only lay the views of the council before the Government of India. As regards legislation also the continuance of the idea of official subordination led to much of the real work being done behind the scenes. The councils were really more

* Para 100 M. C. R.

effective than they knew; but their triumphs were not won in broad daylight in the dramatic manner which political ardour desired. This was one reason why more interest was often shown in resolutions than in legislation. The carrying of a resolution against Government apart from the opportunity of recording an opinion which might some day bear fruit, came to be regarded as a great moral victory; and it is evident that topics that are likely to combine all the Indian elements in the council offered the best opportunity. Because the centralisation of control limited the effectiveness of the councils the non-official members were driven to think more of display than they might have otherwise done; and the sense of unreality on both sides deepened. All this time, the national consciousness and the desire for political power were growing rapidly in the minds of educated Indians; and the councils with their limited opportunities proved to be an insufficient safety-valve. While therefore inside the councils there are signs of hardening opposition and the weariness which comes of sterile efforts, outside the councils the tide of feeling was rising more quickly. For a short time after their inception the Morley-Minto Reforms threatened to diminish the importance of the Indian National Congress and the Muslim League. It seemed as if the councils where elected members took a share in the business of government must be a more effective instrument for political purposes than mere self-constituted gatherings.

(ii) Defects of the Electoral System.

*In the Indian Legislative Council there are eighteen elected members who are elected to speak for sectional interests, and nine who may be said to represent, however remotely, the views of the people as a whole. So far as can be stated the largest constituency which returns a member directly to the Indian Legislative Council does not exceed 650 persons; and most of the constituencies are decidedly smaller. The constituencies which return the nine representatives of the people at large are composed of the non-official members of the various provincial legislative councils, and the

** Para 83 M. C. R.

average number of voters in these electoral bodies is only twenty-two, while in one case the actual number is nine. In the case of the provincial councils themselves there is the same division of members between those who are directly elected to represent special interests and those who are elected indirectly as the representatives of the general population. For the latter the members of municipal and local boards either act as electors or else choose electoral delegates to make the election; but in neither case do the constituencies exceed a few hundred persons. If we ignore the small class constituencies, then local bodies, which in a limited sense may be taken as standing for the people at large, enjoy the best representation and return 7·4 members for every 1,000 electors. Then come the landholders with 3·6 representatives for every 1,000 electors, and then the Muhammadans with 1·3 members per 1,000 electors. But whereas election is direct in the two last cases, it is indirect and, in cases where delegates are chosen, doubly indirect in the case of local bodies: because the members of the Municipal and local boards are themselves elected by constituencies which cast their votes purely with reference to personal or local considerations and without any thought of contributing to determine the composition of the legislative councils. In such circumstances we are bound to hold that in the one case the non-official members of the provincial councils, and in the other case the members of the municipal and local boards are for practical purposes primary voters so far as their representatives in the Indian and the provincial legislative councils are concerned. There is absolutely no connexion between the supposed primary voter and the man who sits as his representative on the legislative council, and the vote of the supposed primary voter has no effect upon the proceedings of the legislative council. In such circumstances there can be no responsibility upon, and no political education for, the people who nominally exercise a vote. The work of calling into existence an electorate capable of bearing the weight of responsible government is still to be done; and as we

shall see, the difficulties are great and it is likely to be a work of time.

*If we look at the constitution of the Indian Legislative Council after the election of 1909, 1912, and 1916 we see that the percentage of lawyers among all the non-official elected members was 37, 26, and 33, respectively; and if we exclude members returned by constituencies of the landholding and commmercial classes, and also the special Muhammadan representatives, regarding whom no figures have been compiled, and look only to the members returned by the non-official members of provincial legislative councils, we find that the legal profession gained between 40 per cent. and 45 per cent. of the seats in 1909 and 1912, and in the present council hold 54 per cent. .....Turning to the provincial councils we find much the same state of affairs. In most of these councils also there are seats specially reserved for landholders and commercial men which are naturally filled by members of these classes. This reduces the legal element in the councils as a whole. Even so the proportion of lawyers among the elected members of all the councils together (excluding Burma) was 38 in 1909, 46 in 1912, and 48 in 1916.....

(iii) The Official Bloc.

**.....The Official Bloc has been maintained with peculiar rigidity in the councils. Non-official members have long since enjoyed the right of introducing legislation; but the view that law-making was still primarily the prerogative of the executive government which is amenable to Parliament has so far endured that it has been the exception, and not the rule, for Government to leave its official members free to speak and vote as they choose even on private member's business. On Government business their mandate has been stricter. The proceedings in council have been controlled by Government; generally speaking, Government officials are not

*Para 84 M. C. R.

**Para 85 M. C. R.

expected to ask questions or move resolutions, or in some councils to intervene in debate or even to rise to points of order without Government's approval, and, though there is of late a tendency to treat more matters as open questions, when a division is taken the official members nearly always vote by order in support of Government.

*The Government mandate has been compared to the rigidity of party discipline in the House of Commons, but, as we think, to little purposes. The reason which induces a member to acquiesce in the whip's bidding is the perception that, as the defeat of the Government ordinarily means a change of ministry, it is his duty to sacrifice his personal opinions on a particular point for the greater principles for which his party stands. Moreover, there comes a time when individual judgment asserts itself and Governments fall because some of their supporters vote against them. The essence of the system is political responsibility. But the official obligation to vote with Government in an Indian legislative council is continuing, and is not made palatable by any necessity of securing an irremovable Government from demise; and as Mr. Gladstone saw many years ago the conflict between conscience and discipline may become acute.

**Upon the Indian members of the legislative councils the effect is frankly irritating. It prejudices in their view the position of the official members who form the BLOC. Indian members, may share in a debate in which the majority of speakers, and in their eyes the weight of argument, are arrayed against the Government. The Government having only one view to present often contents itself with doing so through a single mouthpiece. But when a decision is taken the silent official phalanx effectively carries the Government measure or votes down the private members' resolution. The Indian member's views, are therefore, rarely put on record as the opinion of the

* Para 86 M. C. R.

** Para 87 M. C. R.

council, because the council's decision is in a majority of cases the decision of the Government. We may add that most Governments dislike the use of the official BLOC and that most of the men who compose it dislike the position in which they find themselves. The fact that Indian officials in the councils are rare, and the few English non-official members as a rule vote with the Government, helps not merely to exacerbate the cleavage, but to give it an unamiable character. It tends to stimulate the discussion of racial questions and to give an edge to the debate. But above all the official solidarity naturally stifles any differences that exist between Indian elected members and drives them to a league against Government, into which the nominated Indian members also tend to enter.

(iv) Inherent defect: No answer to political aspiration.

*But the reforms of 1909 afforded no answer, and could afford no answer to Indian political problems. Narrow franchises and indirect elections failed to encourage in members a sense of responsibility to the people generally and made it impossible, except in special constituencies, for those who had votes to use them with perception and effect. Moreover, the responsibity for the administration remained undivided: with the result that while Governments found themselves far more exposed to questions and criticism than hitherto, questions and criticism were uninformed by a real sense of responsibility, such as comes from the prospect of having to assume office in turn. The conception of a responsible executive, wholly or partially amenable to the elected councils, was not admitted. Power remained with the Government and the councils were left no functions but criticism. It followed that there was no reason to loose the bonds of official authority, which subjected local Governments to the Government of India and the latter to the Secretary of State and Parliament. Such a situation, even if it had not been aggravated by external causes, might easily give rise to difficulties: the plan afforded no room for further advance along the same

* Para 81 M. C. R.

lines. Only one more thing remained to do, and that was to make legislative and administrative acts of an irremovable executive entirely amenable to the elected councils, to which we refer elsewhere. Morley-Minto reforms in our view are the final outcome of the old conception which made the Government of India a benevolent despotism (tempered by a remote and only occasionally vigilant democracy) which might as it saw fit for purposes of enlightenment consult the wishes of its subjects. To recur to Sir Bartle Frere's figure, the Government is still a monarch in durbar, but his councillors are uneasy, and not wholly content with his personal rule; and the administration in consequence has become slow and timid in operation. Parliamentary usages have been initiated and adopted in the councils upto the point where they cause the maximum of friction, but short of that at which by having real sanction behind them they begin to do good. We have at present in India neither the best of the old system, nor the best of the new. Responsibility is the savour of popular government, and that savour the present councils wholly lack. We are agreed that our first object must be to invest them with it. They must have real work to do; and they must have real people to call them to account for their doing of it.

Section II.—The General Characteristics of the Central Legislature.

i What it consists of.

Section 63*:—Subject to the provisions of this Act, the Indian legislature shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian

*Amended Government of India Act.

legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers.

ii Its non-sovereign characteristics.

The central Legislature has all the characteristics of a non-sovereign law-making body. "The signs by which you may recognise the subordination of a law-making body are, first, the existence of laws affecting its constitution which such body must obey and cannot change; hence secondly, the formation of a marked distinction between ordinary laws and fundamental laws; and lastly, the existence of some person or persons, judicial or otherwise, having authority to pronounce upon the validity or constitutionality of laws passed by such law-making body. Wherever any of these marks of subordination exists with regard to a given law-making body, they prove that it is not a sovereign legislature." (A. V. Dicey: Law of Constitution pp. 88).

(A) ITS CONSTITUTION DERIVED FROM BRITISH PARLIAMENT.

See Extracts in sections I and II, Chapter I.

(B) LIMITATIONS IMPOSED ON IT BY ITS CONSTITUTION.

Clauses (2) & (3), Section 65*:—

. . . . The "Indian Legislature" has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting (i) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act, "the Air Force Act" and any Act amending the same); or (ii) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India; and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may

* Amended Government of India Act.

depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India.

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

(C) COURTS IN BRITISH INDIA VESTED WITH THE POWER OF PRONOUNCING UPON THE VALIDITY OF LAWS PASSED BY THE INDIAN LEGISLATURE.

"The Courts in India treat the legislation of the Governor-General in Council in a way utterly different from that in which any English court can treat the Acts of the Imperial Parliament. An Indian tribunal may be called upon to say that an Act passed by the Governor-General need not be obeyed because it is unconstitutional or void. No British court can give judgment, that an Act of Parliament need not be obeyed because it is uncostitutional. Here, in short, we have the essential difference between subordinate and sovereign legislative power." (Anson).

Sectjon III.—Powers of the Governor-General in Legislation.

SOURCE:—THE GOVERNMENT OF INDIA ACT.

1 Previous sanction of the Governor-General is necessary in certain cases.

Clause 2 Sec. 67:—

It shall not be lawful, without the previous sanction of the Governor-General, to introduce at any meeting of "either Chamber of the Indian legislature" any measure affecting—

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

religious rites and usages of any class of British subjects in India; or (c) the discipline or maintenance of any part of His Majesty's military, naval or air forces or (d) the relations of the Government with foreign princes or states:

"or" any measure—

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

(ii) repealing or amending any Act of a local legislature; or

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

ii Power to stay proceedings.

Clause 2A Sec. 67*:—

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

iii Power to return Bills for reconsideration.

Clause 4 Sec. 67*:—

Without prejudice to the powers of the Governor-General under section sixty-eight of this Act, the Governor-General may, where a Bill has been passed by both chambers of the Indian legislature, return the Bill for reconsideration by either chamber.

iv Power to certify and legislate in emergencies.

Sec. 67B.*:—

(1) Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended

*Amended Government of India Act.

by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon—

(a) if the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General; and

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

Sec. 72 *:—

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

Section III —The Council of State.

i **Intended to be a true Second Chamber.**

READINGS:—(1) Para 277 Montague-Chelmsford Report.,

(2) Remarks of the Joint Select committee on clause 18 of the Bill.

*Amended Government of India Act.

(3) Sections 63 and 67A of the Government of India Act.

(a) *"We do not propose to institute a complete bicameral system, but to create a second chamber, known as the Council of State which shall take its part in ordinary legislative business and shall be the final legislative authority in matters which the Government regards as essential".

Original object of the proposal.

(b) This view was not accepted by the Joint Select Committee. *"The Committee do not accept the device in the Bill as drafted, of carrying government measures through the Council of State, without reference to the Legislative Assembly, in cases where the latter body cannot be got to assent to a law which the Governor-General considers essential. Under the scheme which the Committee propose to substitute for this procedure, there is no necessity to retain the Council of State as an organ of government legislation. It should therefore be reconstituted from the commencement as a true second chamber."

View of the J. S. C.

(c) The Act of 1919 confers on the Council of State practically the same powers as are vested in the Legislative Assembly.

Section 63 (2):—

†"Except as otherwise provided by or under this Act, A Bill shall not be deemed to have been passed by the Indian Legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers."

Section 67A (1):—

‡"The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both chambers of the Indian legislature in each year."

*Para 277 M. C. R.

†Clause 18 J. S. C.

‡Amended Government of India Act.

(d) The only material difference between the two chambers is that the power to vote on demand is vested in the Legislative Assembly only.

Section 67A (5) :—

*"The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the legislative assembly in the form of demand for grants."

ii Its composition as laid down in section 18 of the Act of 1919 and the Rules made under it.

(A)*"The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under the Principal Act, of whom not more than twenty shall be official members."

(B) Statement showing the constitution of the Council of State, excluding the President :—

	Nominated members.			Elected Members					Grand Total.
	Officials.	Non-officials	Total.	General.	Muslim.	Sikh.	European Commerce.	Total.	
Government of India	12	..	12	..	..	..	..	..	12
Madras	1	1	2	4	1	..	..	5	7
Bombay	1	1	2	3	2	..	1	6	8
Bengal	1	1	2	3	2	..	1	6	8
United Provinces	1	1	2	3	2	..	..	5	7
Punjab	1	2	3	1	1½	1	..	3½	6½
Bihar & Orissia	1	..	1	2½	1	..	..	3½	4½
Burma	..	..	..	1	..	..	1	2	2
Central Provinces	..	..	..	2	..	..	..	2	2
Assam	..	..	..	½	½	..	..	1	1
Delhi	1	..	1	..	..	..	..	..	1
Total ..	19	6	25	20	10	1	3	34	59

*Amended Government of India Act.

(C) General principles underlying its composition.

SOURCES:—(1) Montague-Chelmsford Report.
(2) Report of the Joint Select Committee on the Government of India Bill, 1919.
(3) Report of the Franchise Committee.
(4) Government of India Act.

(1) *"We desire that the Council of State should develop something of the experience and dignity of a body of Elder Statesmen; and we suggest therefore that the Governor-General in Council should make regulations as to the qualifications of candidates for election to that body which will ensure that their status and position and record of services will give to the council a senatorial character, and the qualities usually regarded as appropriate to a revising chamber. We consider that the designation "Honourable" should be enjoyed by the members of the Council of State during their tenure of office."

(2) **"They recommend that it should consist of 60 members of whom not more than 20 shall be official members. The Franchise Committee advise that the non-official members should be elected by the same group of persons as elect the members of the Legislative Assembly and in the same constituencies. This is a plan which the Committee could in no circumstances accept. They hope and believe that a different system of election for the Council of State can be devised by the time the constitution embodied in this Bill comes into operation, and they recommend that the Government of India be enjoined forthwith to make suggestions accordingly, to which effect can be given without delaying the inauguration of the new constitution.

(3) Communal Representation.

(a) OBJECTIONS AGAINST.

Paras 227-232 M. C. R.:—

At this point we are brought face to face with the most difficult question which arises in connection with the elected

* Para 278 M. C. R.
Remarks of the J. S. C. on clause 81 of the Bill.

Assemblies—Whether communal electorates are to be maintained. We may be told that this is a closed question because the Muhammadans will never agree to any revision of the arrangement promised them by Lord Minto in 1906 and secured to them by the reforms of 1909. But we have felt bound to re-examine the question fully in the light of the new policy and also because we have been pressed to extend the system of communal electorates in a variety of directions. This is no new problem. It has been discussed periodically from the time when the first steps were taken to liberalise the councils. There has hitherto been a weighty consensus of opinion that in a country like India no principle of representation other than by interests is practically possible. Lord Dufferin held this view in 1888 and in 1892 Lord Landsdowne's Government wrote that "the representation of such a community upon such a scale as the Act permits can only be secured by providing that each important class shall have the opportunity of making its views known in council by the mouth of some member specially acquainted with them." We note that in 1892 the small size of the councils was reckoned as a factor in the decision and that the contrary view was not without its exponents; but we feel no doubt that Lord Minto's Government followed the predominant opinion when in 1908 they pressed for an important extension of the communal principle. Thus we have had to reckon not only with the settled existence of the system but with a large volume of weighty opinion that no other method is feasible.

They are opposed to the teaching of History.

The crucial test to which, as we conceive, all proposals should be brought is whether they will or will not help to carry India towards responsible government. Some persons hold that for a people such as they deem those of India to be, so divided by race, religion and caste as to be unable to consider the interests of any but their own section, a system of communal and class representation is not merely inevitable, but is actually best. They maintain that it evokes and applies the principle of democracy over the widest range over which it

is actually alive at all by appealing to the instincts which are strongest; and that we must hope to develop the finer which are also at present the weaker, instincts by using the forces that really count. According to this theory communal representation is an inevitable and even a healthy stage in the development of a non-political people. We find indeed that those who take this view are prepared to apply their principles on a scale previously unknown, and to devise elaborate systems of class or religious electorates into which all possible interests will be deftly fitted. But when we consider what responsible government implies, and how it was developed in the world, we cannot take this view. We find it in its earliest beginnings resting on an effective sense of the common interests, a bond compounded of community of race, religion and language. In the earlier form which it assumed in Europe it appeared only when the territorial principle had vanquished the tribal principle and blood and religion had ceased to assert a rival claim with the State to a citizen's allegiance; and throughout its development in Western Countries, even in cases where special reasons to the contrary were present, it has rested consistently on the same root principle. The solitary examples that we can discover of the opposing principle are those of Austria, a few of the smaller German states, and Cyprus. It is hardly necessary to explain why we dimiss these as irrelevant or unconvincing. We conclude unhesitatingly that the history of self-government among the nations who developed it, and spread it through the world, is decisively against the admisson by the State of any divided allegiance; against the States arranging its members in any way which encourages them to think of themselves primarily as citizens of any smaller unit than itself.

They perpetuate class division.

*Indian lovers of their country would be the first to admit that India generally has not yet acquired the citizen spirit, and if are really to lead to self-government we must do all

*Para 229 M. C. R.

that we possibly can to call it forth in her people. Division by creeds and classes means the creation of political camps organised against each other, and teaches men to think as partisans and not as citizens; and it is difficult to see how the change from this system to national representation is ever to occur. The British government is often accused of dividing men in order to govern them. But if it unnecessarily divided them at the very moment when it professes to start them on the road to governing themselves it will find it difficult to meet the charge of being hypocritical or short-sighted.

They stereotype existing relations

*There is another important point. A minority which is given special representation owing to its weak and backward state is positively encouraged to settle down into a feeling of satisfied security; it is under no inducement to educate and qualify itself to make good the ground which it has lost compared with the stronger majority. On the other hand, the latter will be tempted to feel that they have done all they need do for their weaker fellow countrymen, and that they are free to use their power for their own purposes. The give-and-take which is the essence of political life is lacking. There is no inducement to the one side to forbear, or to the other to exert itself. The communal system stereotypes existing relations.

The cause of the Muhammadans

**We regard any system of communal electorates therefore as a very serious hindrance to the development of the self-governing principle. The evils of any extension of the system are plain. Already cummunal representation has been actually proposed for the benefit of a majority community in Madras.

*Para 230 M. C. R.

**Para 231 M. C. R.

At the same time we must face the hard facts. The Muhammadans were given special representation with separate electorates in 1909. The Hindus' acquiescence is embodied in the present agreement between the political leaders of the two communities. The Muhammadans regard these as settled facts, and any attempt to go back on them would rouse a storm of bitter protest and put a severe strain on the loyalty of a community which has behaved with conspicuous loyalty during a period of very great difficulty, and which we know to be feeling no small anxiety for its own welfare under a system of popular government. The Muhammadans regard separate representation and communal electorates as their only adequate safeguards. But apart from a pledge which we must honour until we are released from it we are bound to see that the community secures proper representation in the new councils. How can we say to them that we regard the decision of 1909 as mistaken, that its retention is incompatible with progress towards responsible government, and that its reversal will eventually be to their benefit; and that for these reasons we have decided to go back on it? Much as we regret the necessity, we are convinced that so far as the Muhammadans at all events are concerned the present system must be maintained until conditions alter even at the price of slower progress towards the realisation of a common citizenship. But we can see no reason to set up communal representation for Muhammadans in any Province where they form a majority of the voters.

Other Minority Representation.

*We have been pressed to extend the concession to other communities. Some have based their claim on their backward, others on their advanced condition. Thus, the Sikhs in the Punjab, the non-Brahmans in Madras (altough in that Presidency they actually constitute the majority), the Indian Christians, the Anglo-Indians, the Europeans, and the Lingayat community

*Para 232 M. C. R.

in Bombay have all asked for communal representation. The large landowning classes also generally desire representation in an electorate of their own. Now our decision to maintain separate electorates for Muhmmadans makes it difficult for us to resist these other claims; but as we have said in the case of the Muhmmadans we have felt ourselves bound by promises given and renewed by Secretaries of State and Viceroys and in their respect at all events our recommendation involves no new departure. Any general extension of the communal system however, would only encourage still further demands and would in our deliberate opinion be fatal to that development of representation upon the national basis on which alone a system of responsible government can possibly be rooted. At the same time we feel that there is one community from whom it is inexpedient to withhold the concession. The Sikhs in the Punjab are a distinct and important people; they supply a gallant and valuable element to the Indian Army; but they are everywhere in a minority and experience has shown that they go virtually unrepresented. To the Sikhs, therefore, and to them alone, we propose to extend the system already adopted in the case of Muhammadans.

For the representation of other minorities we should prefer nomination. Even in the case of general European community whose material interests in the country are out of all proportion to their numerical strength and on whose behalf it may be argued that no departure from principle is involved in as much as unlike all other communities named they are not an integral part of the population of India, we prefer to rely upon nomination. Special electorates will no doubt be required for the representation of the planting and mining interests, for the Chambers of Commerce, and possibly also for tne Universities; but we desire that the number of such electorates should be as restricted as possible and that minority interests should, where necessary, be represented not by class or interest electorates but by nomination. Where the great landowners form a distinct class in any Province we think that there will be a case

for giving them an electorate of their own. The anomaly involved in the presence of nominated members in a council to which we are giving some responsible powers must, we think, be accepted as one of the necessary illogicalities attendant on a transitional period. Such nominations are made for a representative purpose and can be made in such a way as to secure representation. Nomination has in our view the great advantage over the alternative of extending the class or communal system that it can be more easily abolished, when the necessity for it ceases. We look to the desire of the communities represented by nomination to see their representatives in council placed upon the same footing as those of other communities to help us in securing the extension of the territorial principle of representation wherever possible. But it should be a clear instruction to the committee that the nominated element in the legislative council is to be no larger than the exigencies of fair and adequate representation entail.

There may be cases in which nomination proves an unsuitable method of securing the representation of minorities. In such cases the committee should consider whether the needs of the case would be met by reserving to a particular community a certain number of seats in plural constituencies but with a general electoral roll. We are inclined to look on such an arrangement as preferable to communal elctorates.

(b) Reasons for its adoption.

Para 18, Fifth Despatch of the Government of India on the Franchise Committee's Report:—

"We come now to the very difficult question of communal electorate, which was discussed generally in paras 227 to 231 of the reforms Report. The authors of that Report came to the conclusion that while communal electorates were bad in principle and must tend to delay the development of democratic institutions in India, it was for practical reasons necessary to maintain the special Muslim electorates and advisable to establish similar Sikh electorates in the Punjab. For the purpose of representing all other minorities they preferred

to rely upon nomination, for the reasons which they gave in para 232. These passages in the Report aroused great interest and attracted some criticism in India; and before the committee began their operations it was agreed that these expressions of opinion should not be regarded as too closely limiting their discretion. We attach an extract from His Excellency's speech upon this point at the opening of the sessions of the Indian Legislative Council in September last. In the event, communal electorates are now proposed not only for Muslims everywhere and for Sikhs in the Punjab, but also for Indian Christians in Madras, Anglo-Indians in Madras and Bengal, and Europeans in the three presidencies, the United Provinces and Bihar and Orissa. We feel the objections of principle to the communal system as strong as the authors of the reforms Report but see no advantage at this stage in reiterating them. India is not prepared to take the first steps forward towards responsible government upon any other road. The road does not lead directly to that goal, and we can only echo the hope expressed by the committee that "it will be possible at no very distant date to merge all communities in one general electorate." Under existing conditions we see no ground on which the committee's proposal can be questioned. As regards the minor communities we accept the details also, except in so far as the distribution of the elective seats for Europeans requires further examination in communication with local Governments, in as much as the committee do not appear to have considered the complication introduced by the presence of a large military population.

(4) Officials disqualified for election.

Section 22 (1) of the Government of India Act 1919:—

An official shall not be qualified for election as a member of either chamber of the Indian legislature, and, if any non-official member of either chamber accepts office in the service of the crown in India, his seat in that chamber shall become vacant.

iii The right to elect and the qualifications of electors.

SOURCE :—RULES UNDER THE GOVERNMENT OF INDIA ACT.

(i) GENERAL RULES.

1. Every person should be entitled to have his name registered on the electoral roll of a constituency who has the qualifications prescribed for an elector of that constituency and who is not subject to any of the disqualifications hereinafter set out :—namely,

(a) is not a British subject

(b) is a female

(c) has been adjudged by a competent court to be of unsound mind or

(d) is under 21 years of age.

2. If any person is convicted of an offence under Chapter 9-A of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is reported by commissioners holding an election Inquiry as guilty of a corrupt practice.....his name, if on the electoral roll shall be removed therefrom.

The qualifications of an elector for a general constituency shall be such qualifications based on (1) residence or residence and community and

2. (a) holding of land; or

(b) assessment to or payment of income-tax; or

(c) past or present membership of a legislative body; or

(d) past or present tenure of office on a local authority; or

(e) past or present University distinction; or

(f) the tenure of office in a co-operative society; or

(g) the holding of a title conferred for literary merit;

as are specified in Schedule 2 to those rules in the case of that constituency.

3. The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule 2 to these rules in the case of that constituency.

(ii) Details for Bombay Presidency.

(Schedule 2, Part 2, Bombay Page 958 Gazette of India, May 15, 1920)

(a) A person shall be qualified as an elector for a general constituency who has a place of residence in the constituency and who—

(a) is in Sindh either a Jagirdar of the first or the second class or a Zemindar holding land assessed to land revenue of not less than Rs. 2000; or,

(b) is a Deccan Sirdar or Gujarat Sirdar, that is to say a person whose name is entered in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No 2363 dated July 23, 1867, or in the list for the time being in force under the resolution of the Government of Bombay in the Political Department No. 6265 dated September 21, 1909; or,

(c) is an Inamdar or Saranjandar holding an entire village assessed to land revenue of not less then Rs. 2000 or a Taluqdar holding on Taluqdari tenure land assessed at not less then Rs. 2000 land revenue or a co-sharer holding on Talukdari tenure a share in any land which share if held separately would be assessed at not less than Rs. 2000 land revenue; or,

(d) is a Khot or other land-holder holding land assessed or assessable to revenue of not less than Rs. 2000; or

(e) was in the financial year preceding that in which the electoral roll for the time being under preparation is first published under these rules assessed to income-tax on an increase of not less than Rs. 30,000; or,

(f) is or has been a non-official member of either chamber of the Indian Legislature or has been a non-official member of

the Indian Legislative council as constituted under the Government of India Act 1915 or any Act repealed thereby or is or has been at any time a non-official member of the Bombay Legislative council; or,

(g) is or has been the non-official President or is the non-official Vice-President of a city municipality within the meaning of sec. 3 (I) of the Bombay District Municipal Act 1901 or of a District Local Board established under the Bombay Local Boards Act 1884, or

(h) is or has been a member of the Senate or a Fellow or Honorary Fellow of any University constituted by Law established in British India; or

(i) is recognised by the Government as a holder of the title of Shams-ul-ulma or of the title of Mahamahopadhyaya

Provided that

(i) no other person than a Muhammadan shall be qualified as an elector for a Muhammadan constituency; and

(ii) no Muhammadan shall be qualified as an elector for the non-Muhammadan constituency.

SPECIAL CONSTITUENCY

A person shall be qualified an elector of the Bombay Chamber of Commerce constituency who is a member of that Chamber.

iv Duration.

READINGS:—(1) Section 21 of the Government of India Act 1919.
(2) Para 118 Government of India's First Reform Dispatch.

Clause 1 Section 21 of the Act of 1919:—

(a) Every Council of State shall continue for five years, and every Legislative Assembly for three years, from its first meeting.

PROVIDED THAT—

(a) either chamber of legislature may be sooner dissolved by the Governor-General; and

(b) any such period may be extended by the Governor-General if in special circumstances he so thinks fit; and

(c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months, or with the sanction of the Secretay of State not more than nine months after the date of dissolution for the next session of that chamber.

Para 118 First Reforms Despatch:—

The proposal that the Governor-General should have power to dissolve either the Assembly or the Council of State has been less universally approved. The weight of feeling is in favour of the proposal, but there is considerable feeling that the power is one that should be sparingly used, and several influential bodies have urged that it should be accompanied by some provision for the summoning of a new legislature within a specified period. We have no fear that the power will be abused, but as in the case of the provincial councils if the object in view cannot be secured by making the election writs returnable by a specied date, we recommend that the power of dissolution should be accompanied by a provision requiring that a new chamber or chambers shall be summoned, within a specified period.

v Its President.

Clause 2 Section 18 of the Act of 1919:—

The Governor-General shall have power to appoint, from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct.

Section V—Legislative Assembly under the Reforms.

I Its constitution.

SOURCES:—(1) GOVERNMENT OF INDIA ACT.
(2) THE RULES MADE UNDER IT.

(i) Increase in size and elected Majority.

(A) Clauses (1) and (2) of section 19 of the Government of India Act 1919 :—

(1) The Legislative Assembly shall consist of members nominated or elected in accordance with rules made under the principal Act.

(2) The total number of members of the Legislative Assembly shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred :

Provided that rules made under the principal Act may provide for increasing the number of members of the Legislative Assembly as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however that at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the members shall be non-official members.

(B) The Statement printed on the next page shows the present constitution of the Legislative Assembly.

The present constitution of the Legislative Assembly (excluding the President):—

	Nominated Members			Elected Members							
	Officials	Non-Officals	Total	General	Muslim	Sikh	Land-owners	European	Indian commerce	Total	Grand Total
Government of India	12	..	12	..	..	..	..	..	..	..	12
Madras	2	2	4	10	3	..	1	1	1	16	20
Bombay	2	4	6	7	4	..	1	2	2	16	22
Bengal	2	3	5	6	6	..	1	3	1	17	22
United Provinces	2	1	3	8	6	..	1	1	..	16	19
Punjab	1	1	2	3	6	2	1	..	..	12	14
Bihar & Orissa	1	1	2	8	3	..	1	..	..	12	14
Central Provinces	1	..	1	4*	1	..	1	..	..	6	7
Assam	1	..	1	2	1	..	..	1	..	4	5
Berar (C. P.)	..	2	2	..	..	..	..	..	..	..	2
Burma	1	..	1	3	..	..	..	1	..	4	5
Delhi	..	..	..	1	..	..	..	..	..	1	1
Ajmere	..	1	1	..	..	..	..	..	..	..	1
Total	25	15	40	52	30	2	7	9	4	104	144

ii Communal representation of Muslims and Europeans.

(See pages 189-93).

iii Method of election—Direct.

Remarks of Joint Select Committee on this*:—

"For the Legislative Assembly the Committee are equally unwilling to accept, as a permanent arrangement, the method of indirect election proposed in the report of the Franchise Committee. If by no other course it were possible to avoid delay in bringing the constitution enacted by the Bill into operation the Committee would acquiesce in that method for a preliminary period of three years. But they are not convinced that delay would be involved in preparing a better scheme of election, and they endorse the views expressed by the Government of India in paragraph 39 of its despatch dealing with the subject. They accordingly advise that the Government of India be instructed at once to make recommendations to this effect at the earliest possible moment. These recommendations as embodied in draft rules would also be subject to examination by this Committee if re-appointed."

iv Officials disqualified for Election.

Clause 1, Section 22 of the Act of 1919:—

An official shall not be qualified for election, as a member of either chamber of the Indian legislature, and, if any non-official member of either chamber accepts office in the service of the Crown in India, his seat in that chamber shall become vacant.

v The right to elect and the qualifications of electors.

Source:—Rules III, IV & V (Gazette of India May 15, 1920)

iii. General disqualifications for being elected.

(1) a person shall not be eligible for election as a member of the Legislative Assembly if such person—

*Remarks on clause 19 of the Government of India Bill 1919.

(a) is not a British subject; or

(b) is a female; or

(c) is already a member of any legislative body constituted under the Act; or

(d) having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court; or

(e) has been adjudged by a competent court to be of unsound mind; or

(f) is under 25 years of age; or

(g) is an undischarged insolvent; or

(h) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(2) A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for election for five years from the date of the expiration of the sentence.

(3) A person who has been convicted of an offence under chapter IX-A of the Indian Penal Code punishable with imprisonment for a term exceeding six months or has been reported by Commissioners holding an election enquiry as guilty of a corrupt practice as specified in Part 1 or Paragraph 1, 2 or 3 of Part II of schedule IV to these rules shall not be eligible for election for 5 years from the date of such conviction or of the finding of the commissioners, as the case may be; and a person reported by such commissioners to be guilty of any other corrupt practice shall be similarly disqualified for three years from such date.

(4) A person who having been a candidate or an election agent at an election has failed to lodge the return of election

expenses or has lodged a return which is found either by commissioners holding an election enquiry or by a Magistrate in a Judicial proceeding to be false in any material particular shall be disqualified for five years from the date of the election from being nominated as a candidate at any election:

Provided that any of the disqualifications mentioned in sub-rules (3) and (4) of this rule may be removed by an order of the Governor-General in Council in that behalf.

iv. Special qualifications for election in case of certain constituencies.

(1) A person shall not be eligible for election as a Member of the Legislative Assembly to represent:--

(a) a general constituency in the presidency of Madras or in the Presidency of Bengal, unless his name is registered on the electoral roll of the constituency of the same communal description situate in the same presidency; or

(b) a general contstituency in the presidency of Bombay, unless his name is registered on the electoral roll of the constituency and he has resided in the constituency for a period of six months prior to the first day of January in the year in which the constituency is called upon to elect a member or members:

provided that a candidate eligible for election in any such constituency shall be eligible for election in a constituency of the same communal description if the whole or part of either constituency is included in the same district; or

(c) a general constituency in the province of Bihar and Orissa or in the Province of Assam, unless his name is registered on the electoral roll of the constituency or of any other general constituency in the same province; or

(d) Muhammadan or non-Muhammadan constituency in the United Provinces of Agra and Oudh, unless his name is registered on the electoral roll of a Muhammadan or non-Muhammadan constituency in that province; or

(e) a general constituency in the Punjab or in the Central provinces or a European constituency in the United Provinces of Agra and Oudh, or a constituency in the Province of Burma or any special constiuency, unless his name is registered on the electoral roll of the constituency.

(2) for the purpose of these rules:—

(a) a general constituency means a non-Muhammadan, Muhammadan, European, non-European or Sikh constituency; and

(b) "Special constituency" means a Landholders' or Indian commerce constituency,

THE RIGHT TO ELECT.

v. General conditions of Registration and disqualification.

(1) Every person shall be entitled to have his name registered on the electoral roll of a constituency who has the qualifications prescribed for an elector of that constituency and who is not subject to any of the disqualifications hereinafter set out, namely,

(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 21 years of age.

Provided that, if the ruler of a state in India or any subject of such a state is not disqualified for registration on the electoral roll of a constituency of the Legislative Council of a province, such ruler or subject shall not by reason of not being a British subject be disqualified for registration on the electoral roll of any constituency of the Legislative Assembly in that province:

Provided further that, if a resolution is passed by the Legislative Assembly recommending that the sex disqualification for registration shall be removed either in respect of women

generally or any class of women, the Governor-General in Council shall make regulations providing that women or a class of women, as the case may be, shall not be disqualified for registration by reason of only her sex ;

Provided further that no person shall be entitled to have his name registered on the electoral roll of more than one general constituency.

(2) If any person is convicted of an offence under chapter IXA of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is reported by the Commissioners holding an election enquiry as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2, or 3 of Part II of schedule IV to these rules, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of five years from the date of the conviction, or the report, as the case may be, or if not on the electoral roll, shall not be registered for a like period ; and if any person is reported by such commissioners as guilty of any other corrupt practice as specified in the said schedule, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of three years from the date of the report or, if not on the electoral roll, shall not be registered for a like period :

Provided that the Governor-General in Council may direct that the name of any person to whom this sub-rule applies shall be registered on the electoral roll.

II Provisions to safeguard its independence

SOURCE :—GOVERNMENT OF INDIA Act.

i Elected President and Deputy President

Section 20 of the Government of India Act 1919 :—

(1) There shall be a president of the Legislative Assembly, who shall, until the expiration of four years from the first meeting thereof, be a person appointed by the Governor-General and shall thereafter be a member of the Assembly elected by

the Assembly and approved by the Governor-General: Provided that if at the expiration of such period of four years the Assembly is in session, the president then in office shall continue in office until the end of the current session, and the first election of a president shall take place at the commencement of the ensuing session.

(2) There shall be a deputy-president of the Legislative Assembly, who shall preside at meetings of the Assembly in the absence of the president, and who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(3) The appointed president shall hold office until the date of the election of a president under this section, but he may resign his office by writing under his hand addressed to the Governor-General, and any vacancy occuring before the expiration of his term of office shall be filled by a similar appointment for the remainder of such term.

(4) An elected president and a deputy-president shall cease to hold office if they cease to be members of the Assembly. They may resign office by writing under their hands addressed to the Governor-General and may be removed from office by a vote of the Assembly with the concurrence of the Governor-General.

(5) A president and deputy president shall receive such salaries as may be determined, in the case of an appointed president by the Governor-General, and in the case of an elected president, and a deputy president by Act of the Indian legislature.

ii **Freedom of Speech.**

Section 24 (7) of the Government of India Act 1919:—

Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers of the Indian legislature. No person shall be liable to any

proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber.

III Its Powers.

SOURCE :—THE GOVERNMENT OF INDIA ACT AND THE INDIAN LEGISLATIVE RULES

i In Legislation.

(Attention is invited to extracts on page 187.)

ii In Finance

(A) VOTING OF SUPPLIES.

Section 64 A of the amended Government of India Act:—

(1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both chambers of the Indian Legislature in each year.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs—

i interest and sinking fund charges on loans; and

ii expenditure of which the amount is prescribed by or under any law; and

iii salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; and

iv salaries of chief commissioners and judicial commissioners; and

v expenditure classified by the order of the Governor-General in Council as (a) ecclesiastical; (b) political, (c) defence.

(4) If any question arises whether any proposed appropriation of moneys does or does not relate to the above heads the decision of the Governor-General on the question shall be final.

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the legislative Assembly in the form of demands for grants;

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant;

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to notwithstanding the withholding of such assent or the reduction of the amount therein referred to by the Legislative Assembly.

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

Remarks of the Joint Select Committee on this:

"This is a new provision for the submission of the Indian Budget to the vote of the Legislative Assembly on the understanding that this body is constituted as a chamber reasonably representative in character and elected directly by suitable constituencies. The Committee consider it necessary (as suggested to them by the consolidated fund

charges in the Imperial Parliament) to exempt certain charges of a special or recurring nature, which have been set out in the Bill, e.g., the cost of defence, the debt charges and certain fixed salaries, from the process of being voted. But otherwise they would leave the Assembly free to criticise and vote the estimates of expenditure of the Government of India. It is not, however, within the scheme of the Bill to introduce at the present stage any measure of responsible government into the Central administration, and a power must be reserved to the Governor-General in Council of treating as sanctioned any expenditure which the Assembly may have refused to vote if he considers the expenditure to be necessary for the fulfilment of his responsibilities for the good government of the country. It should be understood from the beginning that this power of the Governor-General in Council is real and that it is meant to be used if and when necessary."

(B) No Power to increase taxation.

Ruling of the President of the Assembly on the 19th March 1923:—

"There being nothing in the Rules and Standing Orders relating to the Finance Bill proposing increase of taxation, we are, I think, thrown back upon the procedure of the House of Commons upon which this procedure is based. I think it is obvious that the Imperial Parliament intended to confer the same powers and the same restrictions regarding the levy and appropriation of public revenues which it itself enjoys. Neither the House of Commons nor the Legislative Assembly is empowered to increase a demand for a grant. The House of Commons is equally forbidden to increase a tax. That general principle has been laid down many times, and I think that it is one which we ought to apply here. Therefore, those amendments which propose increases of taxation will not be in order."

(C) Stages of the Budget.

Source:—45-7 of The Indian Legislative Rules.

45. The Budget shall be dealt with by the Assembly in two stages, namely :—

(i) a general discussion; and (ii) the voting of demands for grants.

46. (1) On a day to be appointed by the Governor-General subsequently to the day on which the Budget is presented and for such time as the Governor-General may allot for this purpose, the Assembly shall be at liberty to discuss the Budget as a whole or any question of principle involved therein, but no motion shall be moved at this stage, nor shall the Budget be submitted to the vote of the Assembly.

(2) The Finance Member shall have a general right of reply at the end of the discussion.

(3) The President may, if he thinks it, prescribe a time-limit for speeches.

47. (1) Not more than fifteen days shall be allotted by the Governor-General for the discussion of the demands of the Governor-General in Council for grants.

(2) Of the days so allotted, not more than two days shall be allotted by the Governor-General to the discussion of any one demand. As soon as the maximum limit of time for discussion is reached, the President shall forthwith put every question necessary to dispose of the demand under discussion.

(3) On the last day of the allotted days at five o'clock the President shall forthwith put every question necessary to dispose of all the outstanding matters in connection with the demands for grants.

(D) Standing Finance Committee.

The Legislative Assembly has the power to appoint a Standing Finance Committee "(a) To scrutinise proposals for new votable expenditure; (b) To sanction allotments out of lump sum grants; (c) to suggest retrenchment and economy

in expenditure; (d) generally to assist the Finance Department of the Government of India by advising on such cases as may be referred to it by that department."

(E) Enforcing accountability.

(1) Independent Audit.

Sec 39 (1) of the Government of India Act 1919:—

An auditor-general in India shall be appointed by the Secretary of State in Council, and shall hold office during His Majesty's pleasure. The Secretary of State in Council shall, by rules, make provision for his pay, powers, duties, and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty.

(2) Committee of Public Accounts.

Source:—51-52 of the Indian Legislative Rules.

51. (1) As soon as may be after the commencement of each financial year, a Committee on Public Accounts shall be constituted for the purpose of dealing with the audit and appropriation accounts of the Governor-General in Council and such other matters as the Finance Department may refer to the Committee.

(2) The Committee on Public Accounts shall consist of not more than twelve members including the Chairman, of whom not less than two-thirds shall be elected by the non-official members of the Assemby according to the principle of proportionate representation by means of the single transferable vote. The remaining members shall be nominated by the Governor-General.

(3) The Finance Member shall be the Chairman of the Committee, and, in the case of an equality of votes on any matter, shall have a second or casting vote.

52. (1) In scrutinizing the audit and appropriation accounts of the Governor-General in Council, it shall be the duty of the Committee to satisfy itself that the money voted by the Assembly has been spent within the scope of the demand granted by Assembly.

(2) It shall be the duty of the Committee to bring to the notice of Assembly—(i) every re-appropriation from one grant to another grant; (ii) every re-appropriation within a grant which is not made in accordance with such rules as may be prescribed by the Finance Department; and (iii) all expenditure which the Finance Department has requested should be brought to the notice of the Assembly.

iii On Administration.

(A) INTERPELLATION.

SOURCE:—INDIAN LEGISATIVE RULES Nos. 7 and 10.

7. The President may within the period of notice disallow any question or any part of a question on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council, and, if he does so, the question or part of the question shall not be placed on the list of questions.

10. Any member may put a supplementary question for the purpose of further elucidating any matter of fact regarding which an answer has been given:—

Provided that the President shall disallow any supplementary question, if, in his opinion, it infringes the rules as to the subject-matter of questions.

(B) MOTION FOR ADJOURNMENT.

SOURCE:—INDIAN LEGISLATIVE RULES Nos. 11 AND 12.

A motion for the adjournment of the business of either chamber for the purpose of discussing a definite matter of urgent public importance may be made with the consent of the President.

The right to move the adjournment of either Chamber for the purpose of discussing a definite matter of urgent public importance shall be subject to the following restrictions, namely:—

(i) not more than one such motion shall be made by the same sitting (ii) not more than one matter can be discussed on the same motion, and the motion must be restricted to a specifice

matter of recent occurrence; (iii) the motion must not revive discussion on a matter which has been discussed in the same session; (iv) the motion must not anticipate a matter which has been previously appointed for consideration, or with reference to which a notice of motion has been previously given; and (v) the motion must not deal with a matter on which a resolution could not be moved.

(C) Power to move resolutions:—No advance on the reforms of 1909.

Source:—Indian Legislative Rules Nos. 22 and 23.

22. (1) The Governor-General may within the period of notice disallow any resolution, or any part of a resolution, on the ground that it cannot be moved withot detriment to the public interest, or on the ground that it relates to matter which is not primarily the concern of the Governor-General in Council, and, if he does so, the resolution or part of the resolution shall not be placed on the list of business.

(2) The Governor-General may disallow on grounds as aforesaid any motion for adjournment under rule 11, notwithstanding the consent of the President, and if he does so the adjournment shall not be permitted by the President and no further discussion of the motion shall take place.

23. (1) Every resolution shall be in form of a specific recommendation addressed to the Governor-General in Council, and no resolution shall be moved in regard to any of the following subjects, namely:— (i) Any matter affecting the relations of His Majesty's Government, or of the Governor-General or the Governor-General in Council, with any foreign State; (ii) any matter affecting the relations of any of the foregoing authorities with any Prince or Chief under the suzerainty of His Majesty, or relating to the affairs of any such Prince or Chief or to the administration of the territory of any such Prince or Chief; and (iii) any matter which is under adjudication by a court of Law having jurisdiction in any part of His Majesty's dominions.

(2) This decision of the Governor-General on the point whether any resolution is or is not within the restrictions imposed by sub-rule (1) shall be final.

(D) PROVISION FOR ASSOCIATING MEMBERS WITH THE ADMINISTRATION.

Section 29 of the Government of India Act 1919:—

Council Secretaries.

(1) The Governor-General may at his discretion appoint, from among the members of the Legislative Assembly, council secretaries who shall hold office during his pleasure and discharge such duties in assisting the members of his executive council as he may assign to them.

(2) There shall be paid to council secretaries so appointed such salary as may be provided by the Indian legislature.

(3) A council secretary shall cease to hold office if he ceases for more than six months to be a member of the Legislative Assembly.

Section V—Differences between the two Chambers.

SOURCE :—THE INDIAN LEGISLATIVE RULES.

(i) Rule No. 42 of the Indian Legislative rules provides for the appointment of joint committees of the two chambers in order to expedite the passage of a bill and to avoid differences of opinion between the two chambers.

Rule 42 :—(1) If a resolution is passed in the originating chamber recommending that a bill should be committed to a joint committee of both chambers a message shall be sent to the other chamber to inform it of the resolution and to desire its concurrence in the resolution.

(2) if the other chamber agrees, a motion shall be made in each chamber nominating the members of that chamber who are to serve on the committee. On a joint committee equal numbers of members of each chamber must be nominated.

(3) The Chairman of the Committee shall be elected by the Committee. He shall have only a single vote and if the votes are equal the question shall be decided in the negative.

(4) The time and place of the meeting of the Committee shall be fixed by the President of the Council.

(ii) If, however, a difference of opinion does arise, the two chambers may agree to a joint Conference under rule 40 reproduced below:—

Rule 40. (1) If both chambers agree to a meeting of members for the purpose of discussing a difference of opinion which has arisen between the two chambers a conference shall be held.

(2) At a conference each chamber shall be represented by an equal number of members.

(3) The Conference shall determine its own procedure.

(4) The time and place of the conference shall be fixed by the President of the Council.

(iii) In the last resort, the matter may be referred to by the Governor-General to a Joint Sitting of the two chambers in accordance with rules 36-39, reproduced below:—

36. (1) If the chamber agrees to the amendments made by the other chamber, a message intimating its agreement shall be sent to that chamber.

(2) If the chamber disagrees with the amendments made by the other chamber or any of them, the Bill with a message intimating its disagreement shall be sent to that chamber.

(3) If the chamber disagrees to the amendments or any of them with further amendments or proposes further amendments in place of amendments made by the other chamber, the Bill as further amended with a message to that effect shall be sent to the other chamber.

(4) The other chamber may either agree to the Bill as originally passed in the originating chamber or as further amended by that chamber, as the case may be, or may return

the Bill with a message that it insists on an amendment or amendments to which the originating chamber has disagreed.

(5) If a Bill is returned with a message intimating that the other chamber insists on amendments to which the originating chamber is unable to agree, that chamber may either—

(i) report the fact of the disagreement to the Governor-General, or

(ii) allow the Bill to lapse.

37. A Joint Sitting of both chambers shall be convened by the Governor-General by notification in the Gazette.

38. The President of the Council shall preside at a joint sitting and the procedure of the Council shall, so far as practicable, apply.

39. The members present at a joint sitting may deliberate and shall vote together upon the Bill as last proposed by the originating Chamber and upon amendments, if any, which have been made therein by one chamber and not agreed to by the other, and any such amendments which are affirmed by a majority of the total members of the Council and the Assembly present at such sitting shall be taken to have been carried; and if the Bill with the amendments, if any, is affirmed by a majority of the members of the Council and the Assembly present at such sitting, it shall be deemed to have been duly passed by both chambers.

CHAPTER V.

The Provincial Executive and the Legislature under the Reforms.

I.—Ideas underlying the Reforms.

i Provincial Autonomy.

(See extracts under sections V and VI of chapter II).

ii Extension of Council Government.

SOURCE:—Para 214 M. C. R.

Let us now explain how we contemplate in future that the Executive governments of the provinces shall be constituted. As we have seen three provinces are now governed by a Governor and an Executive Council of three members of whom one is in practice an Indian and two are usually appointed from the Indian Civil Service although the law says only that they must be qualified by twelve years service under the Crown in India. One province, Bihar and Orissa, is administered by a Lieutenant-governor with a council of three constituted in the same way. The remaining five provinces, that is to say, the three lieutenant-governorships of the United Provinces, the Punjab and Burma and the two chief commissionerships of the Central Provinces and Assam are under the administration of a single official head. We find throughout India a very general desire for the extension of council government. There is a belief that when the administration is centered in a single man the pressure of work inevitably results in some matters of importance being disposed of in his name, but without personal reference to him, by Secretaries to Government. There is also a feeling that collective decisions which are the result of bringing together different points of view are more likely to be judicious and well-weighed than those of a single mind. But, above all, council government is valued by Indians because of the opportunity it affords for taking an Indian element into the administration itself. To our minds, however, there is an over-riding reason of

greater importance than any of these. The retention of the administration of a province in the hands of a single man precludes the possibility of giving it a responsible character. Our first proposition therefore is that in all these provinces single-headed administration must cease and be replaced by collective administration.

***iii Progressive realisation of responsible Government.**

(A) DYARCHY.

SOURCES:—(1) Announcement of 20th August 1917.

(2) Montague-Chelmsford Report.

(1) *The policy of His Majesty's Government with which the Government of India is in complete accord is that of the increasing association of Indians in every branch of the administion and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in that direction would be taken as soon as possible and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy the views of local Governments, and to recieve with him the suggestions of representative bodies and others.

I would add that progress in that policy can only be achieved by successive stages. The British Government and the Government of India on whom the responsibility lies for the welfare and the advancement of the Indian peoples must be judges of the time and measure of each advance and they must be guided by the co-operation recieved from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

*Annoucement of 20 August 1917.

2. *In determining the structure of the Executive we have to bear in mind the duties with which it will be charged. We start with the two postulates that complete responsibility for the government cannot be given immediately without inviting a breakdown and that some responsibility must be given at once if our scheme is to have any value. We have defined responsibility as consisting primarily in amenability to constituents and in the second place amenability to an assembly. We do not believe that there is any way of satisfying these governing conditions other than by making a division of the functions of the provincial government between those which may be made over to popular control and those which for the present must remain in official hands. The principles and methods of such division and also the difficulties which it presents we shall discuss hereafter. For the moment let us assume that such division has been made and that certain heads of business are retained under official, and certatin others made over to popular control. We may call these the 'reserved' and 'transferred' subjects respectively. It then follows that for the management of each of these two categories there must be some form of executive body with a legislative organ in harmony with it, and if friction and disunion are to be avoided it is also highly desirable that the two parts of the Executive should be harmonised. We have considered the various means open to us of satisfying these exacting requirements.

Our own proposal.

218. †We propose therefore that in each province the Executive government should consist of two parts. One part would comprise the head of the province and an executive council of two members. In all provinces the head of the government would be known as Governor though this common designation would not imply any equality of emoluments or status both of which would continue to be regulated by the existing distinctions which seems to to be generally suitable. The Governor in Council would have

*Para 215 M. C. R.

†M. C. R.

charge of reserved subjects. The other part of the Government would consist of one member or more than one member according to the number and importance of transferred subjects chosen by the Governor from the elected members of the legislative council. They would be known as Ministers. They would be members of the executive government but not members of the Executive council.

Relation of the Governor to Ministers.

219 *The portfolios dealing with transferred subjects would be committed to the Ministers and on these subjects the Ministers together with the Governor would form the administration. On such subjects their decisions would be final subject only to the Governor's advice and control. We do not contemplate that from the outset the Governor should occupy the position of a purely constitutional Governor who is bound to accept the decisions of his ministers. Our hope and intention is that the Ministers will gladly avail themselves of the Governor's trained advice upon administrative questions, while on his part he will be willing to meet their wishes to the furthest possible extent in cases where he realises that they have the support of popular opinion. We reserve to him power of control because we regard him as generally responsible for his administration but we should expect him to refuse assent to the proposals of his ministers only when the consequences of acquiescence would clearly be serious. Also we do not think that he should accept without hesitation and discussion proposals which are clearly seen to be the result of inexperience. But we do not intend that he should be in a position to refuse assent at discretion to all his Minister's proposals. We recommend that for the guidance of Governors in relation to their ministers and indeed on other matters also an Instrument of Instructions be issued to them on appointment by the Secretary of State in Council.

Working of the Executive.

221. *It is our intention that the Government thus composed and with this distribution of functions shall discharge them as one Government. It is highly desirable that

the Executive should cultivate the habit of associated deliberation and essential that it should present a united front to the outside. We would therefore suggest that as a general rule, it should deliberate as a whole but there must certainly be occasions upon which the Governor will prefer to discuss a particular question with that part of his Government directly responsible. It would therefore rest with him to decide whether to call a meeting of his whole Government or of either part of it though he would doubtless pay special attention to the advice of the particular member or minister in charge of the subjects under discussion. The actual decision on a transferred subject would be taken after a general discussion by the Governor and his ministers; the action to be taken on a reserved subject would be taken after similar discussion by the Governor and the other members of the Executive council who would arrive at their decision in the manner provided in the existing statute. The additional members if present would take their share in the discussion but would in no case take a part in the decision. At a meeting of the whole Government there would never be in fact any question of voting, for the decision would be left as we have stated to that part of the Government responsible for the particular subject involved. But there are questions upon which the functions of the two portions of the Government will touch or overlap such, for instance, as decisions on the budget or on many matters of administration. On these questions in case of a difference of opinion between the ministers and the executive council it will be the Governor who decides.

Advantages and disadvantages of this plan.

222. *Let us now see the advantages of this transitional arrangment and anticipate criticisms. It has been urged with great force that at the outset it would be unfair to entrust the responsibility for the administration of any subject to men holding office at the will of the Legislative council. The legislative council has had no experience of the power of dismissing ministers or the results attending the exercise of such power. Nobody in India is yet familiar with

the obligations imposed by tenure of office at the will of a representative assembly. It is only by actual experience that these lessons can be learnt.

By dividing the Government into what will in effect be two committees with different responsibilities we have ensured that members of the Government accountable to different authorities do not exercise the same responsibility for all subjects. By entrusting the transferred portfolios to the ministers we have limited responsibility to the Indian electorate to those subjects in which we desire to give responsibility first. We have done this without now, or at any time, depriving the the Indian element in the Government of responsibility for the reserved subjects. The fact that we are entrusting some functions of Government to ministers make it impossible for us to contemplate the retention in any province of an Executive council of more than two members; but the reduction of the European element in the council may be regarded as equivalent to an increase in the Indian element. At the same time by the appoinment of the additional members of the Government we have secured that the Governor shall have at his disposal ample official advice. The arrangement admits of adjustmeut to the different provinces; because we contemplate that the number of transferred subjects and therefore the number of ministers may vary in each province. It is quite true that our plan involves some weakening of the unity of the Executive and some departure from constitutional orthodoxy; but whenever and wherever we approach this problem of realising responsibility at different time in different functions we find it impossible to adhere tightly to theoretical principles.

It would be impossible to attain our object by a composite Government so composed that all its members should be equally responsible for all subjects. At the same time, it is necessary to secure that the whole Executive should be capable of acting together. What we can do is to aim at minimizing causes of friction; and we have proposed arrangements that can be worked by mutual forbearance and a strong common purpose. It is

our intention that the decisions of the government should be loyally defended by the entire Government, but that the ministers should feel responsibility for conforming to the wishes of their constituents. It is true that these two forces may pull different ways; but, though the analogy is not clearly complete there are occasions when members of a government, and indeed members of Parliament at home, have to choose between loyalty to the Government and to their own constituencies. All the members of the composite Executive will be chosen by the Governor, and his position in the administration will enable him to act as a strong unifying force. The habit of deliberating as a whole will also tend to preserve the unity of the Government while the special responsibility of either part for the subjects committed to it will be recognised by the Legislative Council and the Electorate. It seems to us, therefore, that both from the point of view of capacity for the development and from that of ensuring co-operation while developing resopnsibility our arangement is the best that can be devised for the transitional period.

223. *Our proposals may strike some critics as complicated. But few constitutions except those of a purely despotic character can be described without some appearance of complication; and the course which we have deliberately chosen and which is in its nature experimental and transitional is relatively elaborate because it involves the temporary co-ordination of two different principles of government. If we had proposed to delay the concession of any responsibility at all until such time as we could give complete responsibility our scheme would certainly have had the minor merit of simplicity. But apart from our obligation to comply with the announcement of August 20, we feel that such a course would have subjected the mechanism of Government when the change from irresponsibility to complete responsibility came to so violent a shock that it might well have broken down. We were driven therefore first to devising some dualism in the

Its justification.

Executive, and secondly to providing for such a balance of power between portions as would permit the one portion to grow without at the same time disabling the other from discharging its very necessary functions of preserving continuity and safeguarding essentials. Given such difficult conditions we do not think that a less elaborate solution can readily be devised.

(B) Popular Legislature.

Source:—Montagu-Chelmsford Report.

Paras 225-7 M. C. R:—

We will now explain how we intend that the provincial legislatures of the future shall be constituted. We propose there shall be in each province an enlarged legislative council differing in size and composition from province to province with a substantial elected majority elected by direct election on a broad franchise with such communal and special representation as may be necessary.

The system of election and the franchise.

While, however, we refrain from any discussion of details for which the material is not immediately available there are certain broad questions upon which we ought certainly to indicate our conclusions both because the issues are themselves important and because the committee will need general instructions on points of principle. We consider in the first place that the system of indirect elections should be swept away. It is one main cause of the unreality that characterises the existing councils because it effectively prevents the representative from feeling that he stands in any genuinue relation to the original voter. Secondly, we consider that the limitations of the franchise which it is obviously desirable to make as broad as possible should be determined rather with reference to practical difficulties than to any apriori considerations as to the degree of education or the amount of income which may be held to constitute a qualification. It is possible that owing to unequal distribution of population and wealth it may be necessary to differentiate the qualifications

for a vote not merely between provinces but between different parts of the same province. It is essential to take due account of the problems involved in the maintenance of the electoral roll, the attendance of voters at a polling center, the danger of impersonation and the subsequent adjudication of electoral petitions. On these considerations the strength of the official and the non-official agency which could be made available for electoral purposes throughout the country has an important bearing and warns us against any such inordinate and sudden extension of the franchise as might lead to a breakdown of the machinery through a sheer weight of numbers.

Paras 227-232 M. C. R. (see pages 189-196):—

II. Progress towards Provincial Autonomy.

(See pages 96-7, 104-5, 121-30.)

III. Provincial Executive under the reforms.

i Extension of Council government to U. P, the Punjab, Bihar and Orissa, C. P. and Assam.

Sec. 46 (1) of the Government of India Act 1919:—

The Presidencies of Fort William in Bengal, Fort St. George, and Bombay and the provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces and Assam, shall each be governed, in relation to Reserved subjects, by a Governor in Council, and in relation to Transfered supjects (save as otherwise provided by this Act.] by the Governor acting with ministers appointed under this Act.

The said Presidencies and Provinces are in this Act referred to as 'Governor's Provinces' and the two first-named presidencies are in this Act referred to as the presidencies of Bengal and Madras."

ii Constitution of local governments under the Reforms.

SECTION :—EXTRACT FROM CHAP. IV R. E. C. R.* [MINORITY].

The three presidencies of Madras, Bombay and Bengal have since the initiation of the reforms been presided over as

*Reforms Enquiry Committee's Report

they generally were before by Governors recruited from the public life of England. The other provinces have been presided over by Governors recruited from the Indian Civil Service excepting for a period of less than a year when Lord Sinha held charge of the province of Bihar and Orissa. In Madras, Bombay and Bengal Executive Councils have consisted of four members, two of whom have been members of the Indian Civil Service and the remaining two non-official Indians. In the United Provinces, the Punjab and Bihar and Orissa, the Central Provinces and Assam the Executive Councils have consisted of two members, one taken from the Civil Service, and the other from among the non-official Indians, excepting in Bihar where for a period of nearly two years there were three members two of whom belonged to the Indian Civil Service. So far as we know in three provinces, namely the United Provinces, the Central Provinces and Madras the portfolios of law and order have been placed in charge of Indian members of the Executive Councils, and only in one province, namely Bihar and Orissa, since the reduction of the size of the Executive Council the Indian member of the Executive Council has held the portfolio of finance. This represents generally the constitution of the reserved half of the Executive government in the provinces. So far as the transferred half of the executive government is concerned, in Madras and Bombay three ministers have administered the transferred subjects. In Bengal too there were three Ministers during the first three years but after the resignation of Mr. S. N. Mullick in the early part of this year the third vacancy was not filled. In every other province there have been two ministers in charge of the transferred subjects except in Bengal and the Central Provinces, where owing to the opposition of the Swaraj Party in the legislative councils the transferred departments are now administered by the Governor.

iii Relations between the two halves according to the intentions of the Act.

REMARKS OF THE JOINT SELECT COMMITTEE ON THIS*:—

The committee desire at this point to give a picture of the manner in which they think that under this Bill the Government of a province should be worked. There will be many matters of administrative business as in all countries which can be disposed of departmentally; but there will remain a large category of business of the character which would naturally be the subject of cabinet consultation. In regard to this category the committee concieve that the habit should be carefully fostered of joint deliberation between the members of the Executive Council and the ministers sitting under the chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subjects; but the committee attach the highest importance to the principle that when once opinions have been freely exchanged and the last word has been said there ought then to be no doubt whatever as to where the responsibility for the decision lies. Therefore, in the opinion of the committee after such consultation and when it is clear that the decision lies within the jurisdiction of one or other half of the Government, that decision in respect of a reserved subject should be recorded separately by the Executive Council, and in respect of a transferred subject by the ministers and all acts and proceedings of the Government should state in definite terms on whom the responsibility for the decision rests. It will not always, however, be clear otherwise than in a purely departmental and technical fashion with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the governor to occupy the position of an informal arbitrator between the two parts of his administration; and it will equally be his duty to see that a decision arrived at on one side of his government is followed by such consequential action on the other side as may be necessary to make the policy effective and homogeneous.

*Remarks on Section 6 of the Government of India Bill 1919.

The position of the governor will thus be one of great responsibility and difficulty, and also of great opportunity and honour. He may have to hold the balance between divergent policies and different ideals and to prevent discord and friction. It will also be for him to help with sympathy and courage the popular side of his government in their new responsibilities. He should never hesitate to point out to ministers what he thinks is the right course or to warn them if he thinks they are taking a wrong course. But if after hearing all the arguments ministers should decide not to adopt his advice then in the opinion of the committee, the Governor should ordinarily allow ministers to have their way fixing the responsibilty upon them even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India as in all other countries mistakes will be made by ministers acting with the approval of a majority of the legislative council but there is no way of learning except through experience and by the realization of responsibility.

In the debates of the legislative council members of the Executive council should act together and ministers should act together, but members of the Executive council and ministers should not oppose each other by speech or vote; members of the executive council should not be required to support either by speech or vote proposals of ministers of which they do not approve, nor should ministers be required to support by speech or vote proposals of the Executive Council of which they do not approve; they should be free to speak and vote for each others' proposals when they are in agreement with them. All other official members of the legislative council should be free to speak and vote as they choose.

iv Governor's Constitutional position.

SOURCES :—(1) Extract from the Minority Report, Reforms Enquiry committee.
(2) Extract from the Joint Select committee's Report.

Pages 139-141 R. E. C. R. :—

The constitutional position of the governor in relation to his Executive council is laid down by section 50 of the Government

of India Act. The members of the Executive Council are appointed by His Majesty. The governor has power under section 49 of making rules of business. In the event of difference of opinion between him and his Executive council the Governor in Council is bound by the opinion of the majority of those present and if they are equally divided the Governor or other person presiding has a second or casting vote. In cases relating to the safety and tranquillity or interests of his province the governor has under section 50 (2) the power of overruling his Executive Council.

The governor in council is subject to the superintendence, direction and control by the Government of India and ultimately of the Secretary of State, subject of course to the provisions of the Act and the rules made thereunder.

Ministers.

Ministers are appointed by the governor and hold office during pleasure. Ordinarily they are appointed from among the elected members of the local legislature but it is open to the governor to appoint as a minister a person who is not a member at the time of his appointment but such person cannot hold office for a period longer than six months unless he is or becomes one.

Governor and his ministers.

As regards the constitutional relation of the governor to his ministers some comment has been made on it in the course of the evidence recorded by us. That relation is laid down by section 52 (3) as follows:—"In relation to transferred subjects the governor shall be guided by the advice of his ministers unless he sees sufficient cause to dissent from their opinion in which case he may require action to be taken otherwise than in accordance with that advice." It has been stated before us (we have particularly in view the evidence of Rao Bahadur N. K. Kelkar, late Minister in the Central Provinces) that this section reduces the position of the minister to that of a mere adviser to the governor. We do not agree with this view. In our opinion the governor is bound to accept the advice of his ministers except when he sees sufficient cause to

dissent from their opinion, in which case he can overrule them. It would be wrong to hold that in view of this section Ministers cannot be said to administer the subjects in their charge. At the same time we are bound to point out that the power given to the governor of overruling his ministers and directing a course of action contrary to their advice is wholly opposed to constitutional ideals or usage. No similar provision entitling the governor to override the Ministers and to dictate a course of action contrary to their advice is to be found in the constitution of any responsible government.

Joint Select committee's view.

"The Governor," said the Joint Select Committee, "should never hesitate to point out to the ministers what he thinks is the right course or to warn them if he thinks they are taking the wrong course. But if after hearing all the arguments ministers should decide not to adopt his advice, then, in the opinion of the committee, the governor should ordinarily allow ministers to have their way fixing the responsibility upon them even if it be subsequently necessary to veto any particular piece of legislation. It is not possible but that in India as in all other countries mistakes will be made by ministers acting with the approval of the majority of the legislature but there is no way of learning excepting through experience and by the realisation of responsibility." If we may say so, a generous interpretation like this of the provisions of the law would seem to be far more in harmony with the spirit of the constitution than the view taken by some governors. We hold the opinion that this power of overriding the ministers vested in the governor apart from its being incompatible with a correct view of the relation of a constitutional governor to his ministers has in some instances given rise to friction between some governors and their ministers and weakened the position of the latter.

The committee are of opinion that the ministers selected by the Governor to advise him on the transferred subjects should be elected members of the legislative council enjoying

its confidence and capable of leading it. A minister will have the option of resigning if his advice is not accepted by the Governor; and the Governor will have the ordinary constitutional right of dismissing a minister whose policy he believes to be either seriously at fault or out of accord with the views of the legislative council. In the last resort the Governor can always dissolve his legislative council and choose new ministers after a fresh election; but if this course is adopted the committee hope that the Governor will find himself able to accept such views as his new ministers may press upon him regarding the issue which forced the dissolution.

v Governor's Special Powers and responsibilities.

(A) Instructions to Governors.

Whereas by the Government of India Act, provision has been made for the gradual development of self-governing institutions in British India with a view to the progressive realization of responsible government in that country as an integral part of our Empire;

And whereas it is Our will and pleasure that, in the execution of the office of Governor in and over the Presidency (or Province)..... you shall further the purposes of the said Act, to the end that institutions and methods of government therein provided shall be laid upon the best and surest foundations, that the people of the said presidency shall acquire such habits of political action and respect such conventions as will best and soonest fit them for self-government, and that our authority and the authority of Our Governor-General in Council shall be duly maintained;

Now, therefore, we do hereby direct and enjoin you and declare Our will and pleasure to be as follows:—

1. You shall do all that lies in your power to maintain standards of good administration; to encourage religious toleration, co-operation and good will among all classes and creeds; to ensure the probity of public finance and the solvency of the

presidency; and to promote all measures making for the moral social, and industrial welfare of the people, and tending to fit all classes of the population without distinction to take their due share in the public life and government of the country.

2. You shall bear in mind that it is necessary and expedient that those now and hereafter to be enfranchised shall appreciate the duties, responsibilities and advantages which spring from the privilege of enfranchisement; that is to say, that those who exercise the power henceforward entrusted to them of returning representatives to the legislative council, being enabled to perceive the effects of their choice of a representative, and that those who are returned to the council, being enabled to perceive the effects of their votes given therein, shall come to look for the redress of their grievances and the improvement of their condition to the working of representative institutions.

3. Inasmuch as certain matters have been reserved for the administration according to law of the Governor in Council, in respect of which the authority of Our Governor-General in Council shall remain unimpaired, while certain other matters have been transferred to the administration of the Governor acting with a minister, it will be for you so to regulate the business of the Government of the Presidency that, so far as may be possible, the responsibility for each of these respective classes of matters may be kept clear and distinct.

4. Nevertheless, you shall encourage the habit of joint deliberation between yourself, your Councillors and your Ministers, in order that the experience of your official advisers may be at the disposal of your Ministers, and that the knowledge of your Ministers as to the wishes of the people may be at the disposal of your Councillors.

5. You shall assist Ministers by all the means in your power in the administration of the transferred subjects, and advise them in regard to their relations with the legislative council.

6. In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the legislative council and to the wishes of the people of the presidency as expressed by their representatives therein.

7. But in addition to the general responsibilities with which you are, whether by statute or under this Instrument, charged, we do further hereby specially require and charge you—

(1) to see that whatsoever measures are, in your opinion, necessary for maintaining safety and tranquillity in all parts of your presidency and for preventing occasions of religious or racial conflict, are duly taken, and that all orders issued by Our Secretary of State or Our Governor-General in Council on Our behalf to whatever matters relating are duly complied with;

(2) to take care that due provision shall be made for the advancement and social welfare of those classes amongst the people committed to your charge, who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, specially rely upon Our protection, and cannot as yet fully rely for their welfare upon joint political action, and that such classes shall not suffer, or have cause to fear, neglect or oppression;

(3) to see that no order of your Government and no Act of your legislative council shall be so framed that any of the diverse interests of or arising from race, religion, education, social condition, wealth or any other circumstances may receive unfair advantage, or may unfairly be deprived of privileges or advantages which they have heretofore enjoyed, or be excluded from the enjoyment of benefits which may hereafter be conferred on the people at large;

(4) to safeguard all members of Our services employed in the said presidency in the legitimate exercise of their functions, and in the enjoyment of all recognised rights and privileges and

to see that your Government order all things justly and reasonably in their regard, and that due obedience is paid to all just and reasonable orders and diligence shown in their execution.

(5) to take care that, while the people inhabiting the said presidency shall enjoy all facilities for the development of commercial and industrial undertakings, no monopoly or special privilege which is against the common interest shall be established, and no unfair discrimination shall be made in matters affecting commercial or industrial interests.

(8) And We do hereby charge you to communicate these Our Instructions to the Members of your Executive Council and your Ministers and to publish the same in your presidency in such manner as you may think fit.

(B) Powers in relation to the Legislative Council.

(1) Right to address.

Sec 72 A (1).—The Governor shall not be a member of the legislative Council, but shall have the right of addressing the council, and may for that purpose require the attendance of its members.

(2) Right to dissolve, prorogue etc.

Sec 72 B—(1) Every governor's legislative council shall continue for three years from its first meeting:

Provided that—

(a) the council may be sooner dissolved by the governor: and

(b) the said period may be extended by the governor for a period not exceeding one year by notification in the official gazette of the province if in special circumstances (to be specified in the notification) he so think fit: and

(c) after the dissolution of the council the governor shall appoint a date not more than six months or, with the sanction of the Secretary of State, not more than nine months from the date of dissolution for the next session of the council.

(2) A governor may appoint such times and places for holding the sessions of his legislative council as he thinks fit, and may also, by notification or otherwise, prorogue the council.

(3) Approve appointment of the President and Deputy President.

Sec 72 C—(1) There shall be a president of a governor's legislative council, who shall, until the expiration of a period of four years from the first meeting of the council as constituted under this Act, be a person appointed by the governor, and shall thereafter be a member of the council elected by the council and APPROVED BY THE GOVERNOR.....

(2) There shall he a deputy-president of a governor's legislative council who shall preside at meetings of the council in the absence of the president, and who shall be a member of the council elected by the council and approved by the governor.

(C) HIS SPECIAL POWERS IN LEGISLATION.

SOURCE:—PARA 336, MADRAS ADMINISTRATION REPORT 1921-22.

"In pre-Reforms days it was generally possible for the Government to pass any measure which it regarded as injurious or unsound. With a large non-official majority these powers no longer remain and other safeguards for use in emergencies have had to be provided by the Government of India Act, and the rules made thereunder. Where any bill has been introduced or is proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved the Governor may Certify that the Bill or any clause of it or the amendment affects the safety or tranquillity of the Province or any part of it, or of another province and may direct that no further proceedings shall be taken in connection with it. Similarly, where the Council has refused leave to introduce, or has failed to pass in a form recommended by the Governor any Bill relating to a reserved subject, the Governor may certify that the passage of the bill is essential for the

Section* 72—D(1)

Section* 72—E (I)

*Government of India Act

discharge of his responsibility for the subject, and thereupon the Bill is deemed to have passed. A measure so passed must ordinarily be reserved for the signification of His Majesty's
72*—E(2) pleasure though where in the opinion of the Governor-General, a state of emergency justified such action, he may immediately signify his assent and the Act will come into force subject to subsequent disallowance by His Majesty in Council; and Acts
72*—E(3) passed under these provisions must be laid before both Houses of Parliament. It is further open to the Governor or the Governor-General where a Bill has been passed by the Legislative Council, to withhold his assent; or the Governor
80*—A(1) may instead of declaring that he assents to, or withholds his assent from the Bill, return the Bill to the Council for reconsideration in whole or in part, together with any amendments which he may recommend; or in certain cases for which provision is made in the rules, he may, or must, reserve the Bill for the consideration of Governor-General. A Bill so reserved, if it does not receive the assent of the Governor-General within six months, lapses unless within that period the Governor has returned or notified his intention to return it to the Council for further consideration.

(D) Special Powers in Finance.

Section 72 (D) (2)* :—

The estimated annual expenditure and revenue of the province shall be laid in the form of a statement before the Council in each year, and the proposals of the local Government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the Council in the form of demands for grants. The Council may assent, or refuse its assent, to a demand, or may reduce the amount therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed:

*Government of India Act.

Provided that—

(a) The Local Government shall have power, in relation to any such demand to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to a RESERVED subject, and the GOVERNOR CERTIFIES that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject; and

(b) the governor shall have power in cases of EMERGENCY TO AUTHORISE such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of any department; and

(c) no proposal FOR THE APPROPRIATION of any such revenues or other moneys, for any purpose shall be made except on the recommendation of the governor communicated to the council.

vi Position and status of Governors not identical in all Provinces.

(1) APPOINTMENT.

SECTION 46 (2) OF THE AMENDED CONSOLIDATING GOVERNMENT OF INDIA ACT:—

(1) The Governors of the said presidences are appointed by His Majesty by warrant under the Royal Sign Manual, and the Governors of the said provinces shall be so appointed after consultation with the Governor-General.

(2) SALARY.

UNDER SCHEDULE II TO THE GOVERNMENT OF INDIA ACT 1919, the salaries payable to Governors and Executive Councillors vary in different provinces.

Schedule II.

OFFICIAL SALARIES ETC.

Officer.	Maximum Annual Salary.
Governor of Bengal, Madras, Bombay and the United Provinces.	One hundred and twenty-eight thousand rupees.
Governor of the Central Provinces.	Seventy-two thousand rupees.
Governor of the Punjab and Bihar and Orissa.	One hundred thousand rupees
Governor of Assam.	Sixty-six thousand rupees
Lieutenant-Governor.	One hundred thousand rupees.
Member of the Executive Council of the Governor of Bengal, Madras, Bombay and the United Provinces.	Sixty-four thousand rupees.
Member of the Executive Council of the Governor of the Punjab and Bihar and Orissa.	Sixty thousand rupees.
Member of the Executive Council of the Governor of the Central Provinces.	Forty-eight thousand rupees.
Member of the Executive Council of the Governor of Assam.	Forty-two thousand rupees.

(Further, the Governors of Bengal, Madras and Bombay enjoy the traditional privilege of corresponding direct with the Secretary of State on certain matters; the other Governors have not got this privilege.)

IV The Provincial Legislature

(A) Its Composition

(1) SECTION 7 (2) OF THE GOVERNMENT OF INDIA ACT, 1919:—

The number of members of Governor's Legislative councils shall be in accordance with the table set out in the first schedule to this Act; and of the members of each council not more than twenty per cent shall be official members and at least seventy per cent. shall be elected members:—

Provided that—

(a) subject to the maintenance of the above proportions, rules under the principal Act may provide for increasing the

number of members of any council as specified in that schedule; and,

(b) the governor may for the purposes of any Bill introduced or proposed to be introduced in his legislative council nominate, in the case of Assam one person, and in the case of other provinces not more than two persons having special knowledge or experience of the subject matter of the Bill, and those persons shall in relation to the Bill have for the period for which they are nominated all the rights of members of that council and shall be in addition to the numbers above referred to; and,

(c) members nominated to the legislative council of the Central Provinces by the Governor as the result of elections held in Assigned Districts of Berar shall be deemed to be elected members of the legislative council of the Central Provinces.

(2) The following table compiled from the Rules published in the Gazette of India Extraordinary dated July 29,1920 shows the present composition of the various Councils:—

Total Strength of Governor's Legislative Councils.

Provinces.	Statutory number of members according to schedule I*	number of ex-officio & nominated Officials	Number of elected members.	Total number of members
Bengal ..	125	18	113	139
Madras. ..	118	19	98	127
Bombay. ..	111	16	86	111
United Provinces. ..	118	16	100	123
Punjab. ..	83	14	71	93
Bihar & Orissa. ..	98	18	76	103
Central Provinces. ..	70	8	54	70
Assam. ..	53	7	39	53
Total for all Provinces.	776	116	627	776

*Government of India Act 1919.

(3) Composition of the Bombay Legislative Council.

SOURCE:—*EXTRACT FROM BOMBAY 1923-24.

It consists of 111 members. The four Members of the Executive Council are ex-officio members, and of the remaining 107, 86 are elected and 21 nominated. Of the nominated members not more than 18 may be officials, but the present number of officials is 13 only. The elected members are elected as follows:—

	Members.
General constituencies.	22
Mahomedan Rural	22
Mahomedan Urban	5
Non-Mahomedan Rural	35
Non-Mahomedan Urban	11
European	2
Special constituencies:—	
Land-Holders	3
Commerce and Industry	7
Bombay University	1
TOTAL	86

Of the members of the non-Mahomedan constituencies 7 must be Marathas.

(B) Powers of the Legislative Councils.

i In Legislation.

SOURCE:—PARA 335 OF THE MADRAS ADMINISTRATION REPORT 1921-2.

"Generally speaking the Legislative councils have power subject to the provisions of the Act to make laws for the peace and good government of the province, but no legislation which affects any Act of Parliament is permissible. Considerable latitude is now allowed in respect of legislation for the imposition of taxation. Previous to the passing of the Act the consent of the Governor-General had to be obtained for all such

*Page 27

legislation. This restriction has been removed in the case of certain scheduled taxes such as those on non-agricultural land and luxuries. Under the concurrent powers of legislation now granted to the central and provincial legislatures it is open to the provincial council to amend in its application to their own province certain forms of legislation passed by the central legislature. But it is obvious that to ensure uniformity in India and to safeguard the observance of the general policy of the country a large measure of control over matters affecting broader issues must be retained in the hands of the central legislature. This precaution is ensured by the scheduled limitation of the powers of the local council; thus the following forms of legislation are not within the province of the provincial council:—

(a) Laws imposing new taxation, except such as are permitted by schedule; Section* 80 A—(3)

(b) Laws affecting the public debt of India or customs or taxes imposed by the authority of the Central Government;

(c) Laws affecting the Imperial forces or relations with the foreign Princes or States;

(d) Laws regulating central subjects;

(e) Laws affecting provincial subjects which are declared to be subject to the legislation of the Central Government, or affecting the powers of the Governor-General or such laws as aim at repealing or altering legislation which according to the rules provided under the Act can only be altered or repealed with previous sanction.

ii Influence exercised by the Legislature over the Executive by (i) Resolutions, (ii) Standing committees, (iii) financial control.

SOURCE:—Para 151 of the Land of Five Rivers 1921-2.

Apart from its main function of legislation the legislature plays a very important part in influencing the Executive. This influence makes itself felt by three main channels. "First,

*Government of India Act.

the council may carry a resolution on any subject, reserved or transferred. Though such resolutions are not binding on Government they must in all cases carry weight as the expression of the will of the elected representatives of the people. The exercise by the council members of their right to obtain information by means of questions and supplementary questions also serves a subsidiary purpose both in enlarging the councils' knowledge of the functions of the Executive and in bringing to the notice of the Executive those aspects of the administration which are arousing popular interest or criticism. The second channel for the inter-communication of ideas between the Executive and the Legislature consists in the Standing committees. . . . . Each contains a majority of elected members and the rules regarding these committees constitute a part of the Standing orders of the Legislative Council. These committees not only familiarise other non-official members of the council, besides ministers, with the process of administration but also make the relations between the Executive and the Legislature more intimate. The third and perhaps the most effective channel consists in the new control over finance which has been granted to provincial legislatures."

iii **Power over the Budget.**

(1) Voting of demands.

SOURCE:—PARAS 337-8 OF THE MADRAS ADMINISTRATION REPORT 1921-2.

The annual budget of the province is presented to the council yearly on a day appointed by the Governor. There are two stages in the passage of the financial programme. . . . a general discussion and the voting of demands for grants. But the following heads of expenditure are not subject to submission to the vote of the council:—

Section* 72—D(3)

(a) contributions payable by the Local Government to the Governor-General in Council.

(b) interest and sinking fund charges on loans;

(c) expenditure the amount of which is prescribed by law;

*Government of India Act.

(d) salaries or pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; and

(e) salaries of the High Court Judges and of the Advocate-General.

*Normally a separate demand is made in respect of the grant required for each department but the Finance member may unite the grants of two or more departments in one demand. On the appointed day a motion for the granting of each demand is made by the responsible member of Council or minister. The members of the legislative council are then free to bring forward motions for the omission or reduction of a grant; but it is not open to them to move for the increase of any grant or for the alteration of its destination. There is statutory provision for excess grants and for supplementary grants. As in the case of ordinary legislation the Governor has power to carry through demands in respect of reserved subjects when he is of opinion that such expenditure is essential for the proper discharge of his responsibilities, and, in the case of all subjects, to enforce such expenditure as he considers essential for the safety of his province."

(2) Committee of Public Accounts.

SOURCE:—Rules 33 and 34 of Legislative Council Rules.

33. (1) As soon as may be after the commencement of each financial year, a Committee on Public Accounts shall be constituted for the purpose of dealing with the audit and the appropriation accounts of the Province and such other matters as the Finance Department may refer to the Committee.

(2) The Committee on Public Accounts shall consist of such number of members as the Governor may direct, of whom not less than two-thirds shall be elected by the non-official members of the Council according to the principle of proportionate representation by means of the single transferable

*Para 338

vote. The Finance Member shall be the Chairman of the Committee, and, in the case of an equality of votes on any matter, shall have a second or casting vote.

34. (1) In scrutinising the audit and appropriation accounts of the province, it shall be the duty of the Committee to satisfy itself that the money voted by the Council has been spent within the scope of the demand granted by the Council.

(2) It shall be the duty of the Committee to bring to the notice of the Council—(i) every reappropriation from one grant to another grant; (ii) every reappropriation within a grant which is not made in accordance with the rules regulating the functions of the Finance Department, or which has the effect of increasing expenditure on an item the provision for which has been specifically reduced by a vote of the Council; and (iii) all expenditure, which the Finance Department has requested should be brought to the notice of the Council.

(C) Provisions to safeguard the Independence of the Council.

i Sessions and Duration fixed by the Act.

Section 8*:—(1) Every Governor's legislative council shall continue for three years from its first sitting:

Provided that—

(a) the council may be sooner dissolved by the Governor; and

(b) the said period may be extended by the governor for a period not exceeding one year by notification in the official gazette of the province if in special circumstances (to be specified in the notification) he so think fit; and

(c) after the dissolution of the council the governor shall appoint a date not more than six months or with the sanction of the Secretary of State not more than nine months from the date of dissolution for the next session of the council.

(2) A Governor may appoint such times and places for holding the sessions of his legislative council as he thinks fit and may also by notification or otherwise prorogue the council.

* Government of India Act 1919.

(3) Any meeting of a governor's legislative council may be adjourned by the person presiding.

(4) All questions in a Governor's legislative council shall be determined by a majority of votes of the members present other than the person presiding who shall, however, have and excercise a casting vote in the case of an equality of votes.

ii Elected Presidents and Deputy-Presidents dependent on the Councils for their salaries.

(1) There shall be a President of a Governor's legislative council who shall until the expiration of a period of four years from the first meeting of the council as constituted under this act be a person appointed by the Governor and shall thereafter be a member of the council ELECTED by the council and approved by the Governor:

Provided that if at the expiration of such period of four years the council is in sessi § the President then in office shall continue in office until the end of the current session and the first election of a President shall take place at the commencement of the next ensuing session.

(2) There shall be a deputy-president of a governor's legislative council who shall preside at meetings of the council in the absence of the president and who shall be a member of the council elected by the council and approved by the Governor.

(3) The appointed President of a council shall hold office until the date of the first election of a president by the council under this section, but he may resign office by writing under his hand addressed to the Governor or may be removed from the office by order of the governor and any vacancy occuring before the expiration of the term of office of an appointed President shall be filled by a similar appointment for the remainder of such term.

(4) An elected President and a Deputy-President shall cease to hold office on ceasing to be members of the council. They may resign office by writing under their hands addressed

to the Governor and may be removed from office by a vote of the council with the concurrence of the governor.

(5) The President and the Deputy-President shall receive such salaries as may be determined in the case of an appointed President by the Governor and in the case of an elected President or Deputy-President BY AN ACT OF THE LOCAL LEGISLATURE.

iii Freedom of Speech.

Section 11 (7) of the Government of India Act, 1919:—

Subject to the rules and standing orders affecting the council there shall be freedom of speech in the Governor's legislative councils. No person shall be liable to any proceedings in any court by reason of his speech or vote in any such council, or by reason of anything contained in any official report of the proceedings of any such council.

iv Recommendations of the Majority Report on the powers, privileges and immunities.

EXTRACT FROM THE REPORT OF THE REFORMS ENQUIRY COMMITTEE:—

Powers, privileges and immunities.

It has not been suggested to us from any source that the legislature in India should be provided with a complete code of powers, privileges and immunities as is the case with the most of the legislatures in other parts of the Empire. The matter has been generally dealt with by the enactment of a provision in their acts of constitution enabling the legislature to define their own powers, privileges and immunities, with the restriction that they should not exceed those for the time being enjoyed by the British House of Commons. Eventually no doubt similar provision will be made in the constitution of British India. But we are of opinion that at present such action would be premature. At the same time, we feel that the legislatures and the members thereof have not been given by the Government of India Act all the protection that they need. Under the statute there is freedom of speech in all the legislatures and immunity from the jurisdiction of the Courts in respect of speeches or votes. Under the rules the Presidents have been given considerable powers for the maintenance of order, but there the matter ends.

We think that members of the legislatures in India should be exempted from sitting as jurors or assessors in criminal trials. This can be secured by the ordinary law under which local governments already possess power to exempt classes of persons. The position may be made even more secure by an amendment of section 320 of the Code of Criminal Procedure, 1898, so as to include members among the permanent exemptions.

Similarly we think that the Code of Civil Procedure, 1908, might well be amended for the purpose of granting to members immunity from arrest and imprisonment for civil causes during the sessions of the legislatures and for periods of a week immediately preceding and following actual meetings.

Derogatory comments on the proceedings and conduct of the Chambers in India would probably be regarded from the point of view of the British Houses of Parliament as the most common form of breach of privilege at the present time. No party, whether government or non-official, is exempted from strictures of this character. As the government and the legislatures become more truly responsible, it may be necessary to provide some check on the liberty of the press in this respect. But we are not at present prepared to advocate any step in this direction.

We are given to understand that there are at present no means of dealing with the corrupt influencing of votes within the legislature. We are unanimously of opinion that the influencing of votes of members by bribery, intimidation and the like should be legislated against. Here again we do not recommend that the matter should be dealt with as a breach of privilege. We advocate that these offences should be made penal under the ordinary law.

It is common knowledge that recently one of the High Courts was moved to intervene and did in fact intervene for the purpose of preventing a President from putting a certain motion to the council. An appeal for the purpose of deciding whether the Court had jurisdiction to issue an injunction on

the President was disposed of on other grounds, and unfortunately the question is still unsettled, except in so far as it has been answered in the affirmative by a single judge. We have no hesitation in recommending that the matter should be placed beyond doubt, and that legislation should be undertaken either in England or in India barring the Courts from premature interference with the Presidents of the councils. We do not of course suggest that the courts should be debarred from deciding on the validity of any action already taken in the legislatures.

Our attention has been invited to the fact that under section 110 of the Government of India Act the immunity granted to the Governor-General, the Governors and the other high officials mentioned therein is incomplete and unsatisfactory. They are exempted merely from the original jurisdiction of the High Courts and though this may have been a sufficient provision in times when the Government of India was permanently located at Calcutta, it is of little value in the present day. We think that, if the immunity is to be maintained, it should be made complete, and that the jurisdiction of all Courts should be barred in respect of the matters referred to in clauses (a), (b) and (c) of subsection (1)

V—The Electorate, qualifications of candidates, and safeguards against corrupt practices.

i The electorates

(A) General disqualifications.

SOURCE:—RULE 7 PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY, JULY 29, 1920.

7. Every person shall be entitled to have his name registered on the electoral roll of any constituency who has the qualifications prescribed for an elector of that constituency and who is not subject to any of the disqualifications hereinafter set out, namely:—

(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 21 years of age.

Provided that the local Government may direct that subject to such conditions as it may prescribe, a Ruler of any State in India or the Rulers of any such States or a subject of any such State or any class of such subjects shall not be disqualified for registration by reason only of not being a British subject or British subjects:

Provided further that, if a resolution is passed by the council after not less than one month's notice has been given of an intention to move such a resolution recommending that the sex disqualification for registration should be removed either in respect of women generally or in respect of any class of women the local government shall make regulations providing that women or class of women as the case may be shall not be disqualified for registration by reason only of their sex:

Provided further that no person shall be entitled to have his name registered on the electoral roll of more than one general constituency.

(B) General qualifications for electors.

SOURCE:—GAZETTE OF INDIA EXTRAORDINARY, JULY 29, 1920.

The qualifications of an elector for a general constituency are those based on:—

(1) Community (in all provinces except the Shillong constituency in Assam).

(2) residence (in all provinces) and

(3) (a) occupation of a building or a house (in all provinces except Bihar and Orissa and Assam); or

(b) payment of municipal taxes, cantonment taxes or fees (in all provinces except Bombay and Madras); or

(c) payment of cesses under the Cess Act 1880 (in Bengal alone); or

(d) payment of Chowkidari tax or Union rate under the Village Chowkidari Act 1870 (in Bengal and Assam only) or the Bengal Village Self-government Act 1919 (in Bengal alone); or

(e) Payment of income tax (in all provinces): or

(f) military service (in all provinces); or

(g) the holding of land (in all provinces); or

(h) enjoyment of an assignment of land revenue (in the Punjab alone); or

(i) the holding of a village office (in the Central Provinces alone)

(C) Scheme of the electorates.

SOURCE :—Paras 10 and 12 of the Franchise Committee's Report.

(1) Extension of Franchise.

10. In prescribing the amount of the property qualification we have been guided by the principle enunciated in paragraph 226 of the Joint Report that the franchise should be as broad as possible consistently with the avoidance of any such inordinate extension as might lead to a breakdown of the electoral machinery through sheer weight of numbers. In the case of each province we have satisfied ourselves that our proposals do not overstep this limit. We have not thought fit to impose any literary test although this course was urged by some witnesses since this would exclude many electors who are competent to manage their own affairs. Nor have we sought to attain uniformity in the standard of property qualification for the various provinces. We have relied largely upon the local experience of the Government witnesses who appeared before us and have not hesitated to recommend differing qualifications even within the same province where we were satisfied that social and economic differences justified the discrimination. We have, however, proposed the same qualification for all communities within the same area

although this will enfranchise a smaller proportion of Muhammadans than of non-Muhammadans. We consider that this is more desirable than to lower the qualification for a particular community. The qualifications adopted by us will result in enfranchising a substantially higher proportion of the urban than of the rural population, a result which we believe to be justified by the higher standard of wealth and intelligence in the towns.

(2) Direct election in territorial constituencies.

12. In paragraph 83 of the Joint Report reference is made to the restricted nature of the existing franchise and this is further illustrated by the statistics of the present number of electors given in the statistical summary of each province. Except in the case of Muhammadans in some Provinces the general population is represented only by a system of indirect election through members of municipal and district boards. If our proposals are accepted a large number of electors will for the first time have an opportunity of choosing their representatives by direct election. We have endeavoured to adopt the district as the territorial area for constituencies; it is a well recognised administrative unit with generally homogeneous interests and affords the most convenient basis for the preparation of the electoral roll and the organisation of electoral machinery. We have departed from this principle in the case of cities with a large population which have been recognised as separate constituencies. The smaller towns have usually been merged into the rural constituencies and only where local circumstances rendered such a course unsuitable we have grouped towns into separate urban constituencies. It will be observed that the amount of representation given to urban constituencies is on a liberal basis as compared with their population, but here also we consider this to be justified by their superior standard of wealth and intelligence and by the larger interest evinced in political questions. The towns have moreover a more extended experience of the use of the franchise since it has been more widely exercised in municipal than in rual local

self-government. So far as practicable we have endeavoured to provide at least one seat in each district; but it has been necessary to group districts together in order to form constituencies for the representation of communal minorities where their numbers are small. As regards the allocation of seats we have followed no single principle but have endeavoured to allot seats proportionately to the importance of the constituency measured by a combination of factors such as population, estimated number of voters and other local conditions. In this matter we have, where practicable, followed closely the proposals made to us by local governments.

(3) Communal representation extended to the Sikhs in the Punjab and Indian CHRISTIANS in SOUTH INDIA and EUROPEANS in MADRAS, BOMBAY AND BENGAL.

SOURCE:—Paras 15-18 of the Franchise Committee's Report.

15. MUHAMMADANS.—The joint report recognises the necessity for communal representation of Muhammadans in Provinces where they do not form a majority of electors. The evidence received by us and the opinions of local governments concerned were almost unanimous in favour of this course..... .....We have consequently provided for the preparation of separate Muhammadan and non-Muhammadan electoral rolls and for separate Muhammadan constituencies. In allocating the proportion of Muhammadan and non-Muhammadan seats we have been generally urged to follow the agreement reached by the political representatives of two parties at the joint session of the Indian National Congress and All-India Moslem League held at Lucknow in December 1916, referred to in paragraph 163 of the joint report, under which certain proportions were fixed for the amount of Muhammadan representation in the provincial and Imperial legislative councils. The great majority of Indian witnesses and the representatives of associations, political and non-political alike, not excluding those in which Hindu interests preponderate, adhered to this compact and it seems to us that any departure from its terms would revive in

an aggravated form a controversy which it has done much to compose. In the provinces of Bombay, Bengal, the United Provinces, the Punjab and Bihar and Orissa, the local governments recommended us to adhere to the compact, whilst the Madras government provided in the first of its alternative schemes approximately the proportion of Muhammadan representation which the compact fixed. In the interests of India as a whole we have, therefore, felt ourselves amply justified in accepting the compact as a guide in allocating the proportion of Muhammadan representation in the councils.

16. SIKHS—In the Punjab we have recommended a separate electorate roll and separate constituencies for the Sikhs following in this respect the recommendation contained in paragraph 232 of the Joint Report.....(1)

17. INDIAN CHRISTIANS, EUROPEANS AND ANGLO-INDIANS.—The other communities for which we recommend separate communal electorates are Indian Christians, Europeans and Anglo-Indians. In existing conditions candidates belonging to these communities will have no chance of being elected by general constituencies.....We have restricted such communal electorates to Indian Christians in Madras, to Europeans in Madras, Bombay, Bengal, the United Provinces and Bihar and Orissa, and to Anglo-Indians in Madras and Bengal, these being the only provinces in which in our opinion the strength and importance of these several communities justify this special treatment.....In recommending communal representation for these and other communities we have done so in the hope that it will be possible at no distant date to merge all communities into one general electorate.

18. OTHER CLAIMS TO COMMUNAL REPRESENTATION.—Claims for separate electorates were placed before us by numerous other communities such as the Mahishyas of Bengal and Assam, the Marwaris of Calcutta, the Bengali domiciled community of Bihar and Orissa, the Ahoms of Assam, the Mahars of the Central Provinces, the Uriyas of Madras and the

Parsis of Bombay. In these cases we did not feel justified in admitting the claim. In southern parts of the Bombay presidency and in Madras (but fortunately in no other parts of India) claims were put forward by non-Brahmin Hindus for separate communal representation as a means of protection against the alleged ascendancy of the Brahmin. The Lingayets of the Bombay Presidency asked on this ground for the protection of their interests by the reservation of seats in plural member constituencies. We believe that this organised community will find no difficulty in securing representation through a general electorate in the districts where they are numerous, and the result of elections to local bodies tends to confirm us in this belief.

(4) Reservation of Seats in Favour of Mahrattas in the Deccan.

SOURCE:—PARAS (c) & (d) OF THE JOINT SELECT COMMITTEE'S REPORT ON CLAUSE (7)*

(c) In the Madras Presidency, the Committee consider that the non-Brahmins must be provided with separate representation by means of the reservation of seats. The Brahmins and non-Brahmins should be invited to settle the matter by negotiation among themselves; and it would only be, if agreement can not be reached in that way, that the decision should be referred to an arbitrator appointed for the purpose by the Government of India.

(d) The Committee would recommend that similar treatment be accorded to the Mahrattas in the Bombay Presidency.

(5) Nomination for other minorities.

SOURCE:—Para 24 of the Franchise Committee's Report.

REPRESENTATION BY NOMINATION.—In assigning the number of seats in each council to which non-official representatives may be appointed by nomination, we have been guided by the existence of important classes or interests

*Government of India Bill 1919.

which could not be expected to obtain representation by any practicable system of election. Thus we have been driven to the expedient of nomination for the representation of depressed classes because in no case did we find it possible to provide an electorate on any satisfactory system of franchise. We have indicated in each province the special interests which we consider should receive such representation (including Labour, where the industrial conditions seem likely to give rise to labour problem); it will be understood, however, that our lists are intended as a guide to the Governor rather than as a direction to be followed in framing the regulations. Our proposals contemplate a very sparing use of nomination and we have provided only a narrow margin to enable the Governor to correct any glaring inequalities in election, or to secure the presence in the council of any person of position or political experience who may have failed to secure election.

(6) Representation of special interests.

SOURCE:—Para 21 of the Franchise Committee's Report.

21. ZEMINDARS AND LANDHODERS.—We turn to an important but less contentious problem, the representation of special interests. In considering the claim of the landholding class to special treatment we recognise the considerations put forward in paragraphs 147 and 148 of the joint report regarding the position of the landed aristocracy and of the smaller landed gentry. Where we have found a genuine landed aristocracy forming a distinct class of which the Taluqdars of Oudh form perhaps the most conspicuous example, we have had no hesitation in maintaining the privilege now held by them of special representation in the legislative councils through electorates composed of their own class. Thus, in addition to the Taluqdars of Oudh, we have recommended special representation to the Zemindars of Madras, Bengal and Bihar and Orissa, the Sirdars of Gujrat and the Deccan and Jagirdars of Sindh in the Bombay presidency. It may justifiably be claimed that in each case these constitute a special

class with clearly defined interests distinguishable from those of the smaller landholders. We have at the same time continued the special representation enjoyed by a class of somewhat different but still clearly defined status, namely, the large landholders of Madras, Agra, the Central Provinces, and Assam, and have further, pursuant to the policy of guaranteeing adequate representation to landholding interests, acceded to the strong recommendation of the Punjab Government for the grant of special seats to the larger landholders in the Punjab, a privilege which they do not at present enjoy. The qualifications of electors will in each case be residence in the constituency and a high payment of land revenue or local rates; though we have, in addition, maintained as a qualification the possession by landholders of certain high titles conferred or recognised by Government.

(7) Non-territorial Special Electorates.

SOURCE:—Paras 22-23 of the Franchise Committee's Report.

22. UNIVERSITY.—We recommend the maintenance of existing arrangement by which the interests of University education are represented in the provincial legislative councils by a member elected by the Senate and Fellows of the University of the province. We have in addition made provision for the newly constituted University of Patna and for the Universities of Nagpur and Dacca when they are duly constituted.

23. COMMERCE AND INDUSTRY.—The joint report (paragraph 232) recognises that commercial and industrial interests should receive separate representation and this view was supported almost without exception by the evidence received by us. These special interests are now represented in the provincial legislative councils by members returned by chambers of commerce, and by trades, planting, mining, and millowners' associations. These are in the main, though not exclusively, representative of European commercial interests. The special interests of Indian commerce are at present represented

by election only in the legislative council of Bombay where one member is elected by the millowners' associations and one by associations composed of merchants and traders.

We are satisfied that the method of representation through associations has worked well in the past and should be continued in the future. Where therefore, we have found associations which have been proved to our satisfaction to be fully representative of the various interests concerned we recommend that election to the special seat provided by us for commerce and industry should be made by their members. In the three provinces of the Punjab, Central Provinces and Assam where there is no organized association of sufficient importance for the representation of Indian commerce, we recommend a special electorate consisting of factory owners and the representatives of registered companies. It will be noted that the amount of the representation given to European commerce in Bengal is larger than in other provinces; this step we hold to be justified by the importance of European commerce in that province, and this view is supported by a unanimous resolution of the non-official members of the present legislative council in favour of maintaining the existing proportion of elected European seats in the council. It will be further noted that we have given increased representation to Indian commerce with the result that special representation of this interest is provided in seven out of the eight provinces. We have recommended safeguards against the abuse of the method of election through associations by proposing that the regulations for elections should in each case be approved by the Governor in Council who will further have authority to modify the system of representation in order to meet any alteration in the position or constitution of the different associations. The regulations should contain provisions for ensuring that all electors have a place of business within the province.

ii Who can be elected.

(i) Recommendations of the Franchise Committee (paras 26-29).

QUALIFICATIONS OF CANDIDATES.

26. BRITISH SUBJECT—In dealing with the qualifications of candidates for election as members of the provincial councils, we have taken the existing regulations as our guide, but have relaxed them in several material points. Thus while maintaining the disqualification of persons who are not British subjects, we have recommended that this bar should not apply to the subjects of Native States in India. There are many persons, who, though technically subjects of Native States, reside in British territory, with which their interests are identified.

27. DISMISSAL FROM GOVERNMENT SERVICE.—We gave much consideration to the question whether dismissal from Government service should in itself constitute a disqualification. The majority of us are of opinion that such dismissal should constitute a disqualification if it has taken place in circumstances which, in the opinion of the Governor in Council, involve moral turpitude, and that it should be further provided that this bar may be removed by the same authority. They hold that a regulation of this nature is essential in the interest of the good reputation of the new councils. We have, however, to record that this recommendation does not command the assent of Lord Southborough, Mr. Surendranath Banerjea and Mr. Srinivasa Sastri, who consider it improper to limit the choice of the electorate by imposing a disqualification based on the decision of an executive authority.

28. IMPRISONMENT.—The existing regulations debar from candidature all persons sentenced by a criminal court to imprisonment for an offence punishable with imprisonment for a term exceeding six months, or who have been ordered to find security for good behaviour. We have considered it sufficient to restrict the disqualification to persons who have been sentenced by a criminal court to imprisonment in circumstances which, in the opinion of the Governor in Council, involve

moral turpitude, and have, as in the previous case, provided that the same authority may remove the disqualification.

29. Residence.—A problem of greater difficulty is presented by the question whether a candidate should be permitted to contest a constituency in which he has no place of residence. The present regulations provide that in all Muhammadan, local board, municipal and landholders' contituencies, the candidate must have a place of residence within the constituency. The evidence presented to us on this point was by no means unanimous. Associations and individuals representing what may be termed the more progressive elements in Indian politics were definite in their view that there is no justification for restricting the choice of electors in this respect, and that insistence on such a regulation might, by depriving the new councils of the services of men of experience and capacity, impair the success of the reforms now being inaugurated. The point was also emphasised that a residential qualification is easy of evasion in the absence of an undesirably restrictive definition. Some of the local governments, namely, those of the United Provinces, Bihar and Orissa and Assam did not press for the insertion of this qualification. On the other hand, the local governments of Bengal, Madras, Bombay, and the Punjab held that it would be detrimental to the interests of a large population of the new electorate to admit as candidates persons who were not resident in the areas they sought to represent. This view received support from some non-official witnesses particularly in the Central Provinces, and very wide support in the Punjab from individual witnesses and associations representing rural interests. It was pointed out to us that one object of constituting territorial electorates is to encourage the candidature of persons with knowledge of local interests and actually representative of such interests, and that the chance of securing such candidates from among the rural population, hitherto unversed in politics, would be impaired by the competition of candidates from outside. Much of the educative effect of the franchise would thus

be lost and the representative character of the councils would be impaired. Our attention was further directed to the remarks on this subject in paragraph 84 of the joint report which contemplate the possible necessity of prescribing definite qualifications for candidates for rural seats.

We have found no difficulty in maintaining the existing regulation as regards special constituencies, such as those provided for landlords. With regard to the general and communal constituencies, however, the majority of us, although on principle opposed to such a restriction anywhere resolved, on a consideration of the evidence, to abandon uniformity and to impose the restriction in the provinces of Bombay, the Punjab and the Central Provinces but not in the remaining provinces. The minority (Sir Frank Sly, Mr. Hailey and Mr. Hogg) desire that the restriction should be imposed in all provinces and would be prepared if necessary to face a definition of the qualification which would secure that the candidate should be actually a resident of the constituency.

(ii) Qualifications of candidates under the existing rules.

SOURCE:—Gazette of India Extraordinary July 29, 1920.

1. A person is not eligible for election or nomination as a member of a Governor's legislative council if such person—

(a) is not a British subject; or

(b) is a female; or

(c) is already a member of the council or of any other legislative body constituted under the Act; or

(d) having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court; or

(e) has been adjudged by a competent court to be of unsound mind; or

(f) is under twenty-five years of age; or

(g) is an undischarged insolvent; or

(h) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part.

Provided that the local government may direct that, subject to such conditions as it may prescribe, a Ruler of any State in India or the Rulers of any such States or a subject of any such State or any class of such subjects shall not be $\frac{\text{ineligible for election}}{\text{disqualified for nomination}}$ by reason only of not being a British subject or British subjects;

Provided further that the disqualification mentioned in clause (d) may be removed by the order of the local government in this behalf.

2. A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for $\frac{\text{election}}{\text{nomination}}$ for five years from the date of the expiration of the sentence.

3. If any person is convicted of an offence under Chapter 9-A of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part 1, or in paragraph 1, 2 or 3 of Part II of Schedule IV, such person shall not be eligible for $\frac{\text{election}}{\text{nomination}}$ for five years from the date of such conviction or of the finding of the Commissioners as the case may be; and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for three years from such date.

4. If any person has been a candidate or an election agent at an election to any legislative body constituted under the Act and has failed to lodge any prescribed return of election expenses or has lodged a return, which is found either by Commissioners holding an inquiry into the election or by a

Magistrate in a judicial proceeding to be false in any material particular, such person shall not be eligible for election nominations for five years from the date of such election.

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this rule may be removed by an order of the local government in that behalf.

5. "A General Constituency" means a non-Mahomedan, Mahomedan, Indian Christian, European or Anglo-Indian or a Sikh (in the case of the Punjab) Constituency.

"A Special Constituency" means Land-holders, University, Planters, Commerce and Industries, Planting or Mining (in case of Bihar and Orissa, and the Central Provinces) Constituency.

No person is eligible for election as a member of the council to represent a general constituency unless his name is registered on the electoral roll of the constituency or of any other constituency in the province; unless he resides in the constituency for which he desires to be elected (except in Bombay and Madras) and unless in the case of a non-Mahomedan, Mahomedan, European or Anglo-Indian constituency he is himself a non-Mahomedan, Mahomedan, European or Anglo-Indian, as the case may be.

No person is eligible for election as a member of the Council to represent a special constituency unless his name is registered on the electoral roll of the constituency.

iii. Safeguards against corrupt practices

(A) Recommendation of the Joint Select Committee:—It has been strongly represented to the committee, and the committee are themselves firmly convinced, that a complete and stringent corrupt practices Act should be passed and brought into operation before the first elections for the legislative councils. There is no such Act at present in existence in India, and the committee are convinced that it will not be less required in India than it is in other countries.

(B) In accordance with this recommendation an Act called the Indian Election Offences and Inquiries Act was passed in

1920, declaring bribery, undue influence, false personation at elections, false statement and unauthorised payments in connection with an election, or failure to keep accounts of expenses incurred at or in connection with an election as criminal offences. The following are some of its main provisions:—

171—E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Provided that the bribery by treating shall be punished with fine only.

EXPLANATION:—'Treating' means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

171—F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

171—G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

171—H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees;

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171—I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at, or in connection with, an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

VI.—Reforms in Actual working.

I. The General views of local governments.

SOURCE:—Paras 7—10, and 13 of the Reforms Enquiry Committee's Report.

7. We proceed now to summarize the general views of each local government upon the working of the reforms.

Views of the Madras Government.

8. The Madras Government report that the transitional constitution has worked with a considerable measure of success in Madras. Some progress has been made towards the understanding of the system of parliamentary government both by the representatives returned to the council and by those who exercised the vote; political education has begun, and the population, both urban and rural, has become more articulate and to some extent more conscious of the meaning and value of the vote. It cannot be said that there are yet apparent signs of the division of parties according to political principles apart from the communal question and perhaps the theory of indiscriminate opposition to all proposals of the government. Even among the politician class the formation of independent groups is not so much due to differences of political principle as to communal considerations or the personal influence of individuals. Among the general body of the electorate personalities count more than principles. There is no lack of general political 'planks' in election manifestoes, but it is difficult to discern differences such as indicate in more politically advanced countries the real existence of political parties. The Ministers at a time of grave unrest have been able to steady public opinion and feeling, and their moderation has enabled them to refrain from rash and doctrinaire experiments. It is probably too soon to

speak of the result of the changes as affecting the various branches of the administration, though probably the standard of efficiency in some departments has been lowered. The Governor in Council concludes that, if an earnest endeavour to work on constitutional lines is a qualification for political advance, the Madras Presidency has shown itself fitter for an advance than any other province.....

PARA 9:—Views of the Bombay Government.

The Bombay Government say that there were NO ORGANISED PARTIES in the first council, and that therefore there could be no organised support of the Ministers. In the present Council the Swarajist party is the only non-official party united by bonds other than communal. It is the strongest in numbers but does not command a majority, and it is pledged to a policy of refusal of political responsibility. The Ministers were therefore necessarily selected from the smaller groups, and this is the first and most important cause of the weakness of their present position. Having no adequate support from their followers they are obliged to rely largely for support upon the official vote, and accordingly the distinction between the two halves of the government is obscured. Further, a large section of the House is parochial in its outlook, and, as decisions depend upon the votes of this section, they are apt to be fortuitous in matters which are beyond the parochial outlook. Progress in parliamentary government has thus been retarded, but some progress has been made. The first stage in the path to responsible government should have been the development of self-governing institutions in the departments already transferred to the Ministry, and this stage has not yet been fully reached. The electorate has yet to learn the importance of returning representatives with a real sense of political responsibility for the welfare of the various peoples of the Presidency. It will be practically impossible to proceed to further stages until this lesson has been learnt. The Bombay Government are of opinion that the main object at present should be to strengthen the position of the Ministers and to encourage the organisation

of parties. There is no other road to genuine parliamentary government.

Views of the Bengal Government.

10. The Bengal Government say that the obstacle which is the root of all the difficulty in working the transitional constitution is the Indian conception of the government as something in which the people have no share or responsibility, and which it is therefore the duty of every progressive politician to criticise and oppose. It is of the first necessity that the elected members should realise their powers and use them. As matters stand, there is no party with a real constructive programme. The Ministers are left to evolve a policy in the time at their disposal and this the members proceed to criticise. These members have, however, no policy to put in its place, and, if the Ministers were replaced by others, the position would be just the same. The council has thus failed to grasp its power to make the government and by supporting it to carry through the schemes which it considers would be beneficial to the country. In the first council progress was made and some solid achievements were recorded. The Ministers also were able to influence a sufficient number of the members to make it possible, with the aid of officials, to carry through a considerable amount of useful legislation. The second council contains a large and influential body belonging to the non-co-operation party which is pledged to prove that the present constitution is unworkable. This body was joined by the independents, and the combined party commands more than 60 votes in a House of a total strength of 140.

Conclusion of Views of the United Provinces Government.

13. Though he fears that this may expose him to misrepresentation and misunderstanding, the Governor in Council of the United Provinces considers it essential to get down to root conditions. Ministers and legislators have acquired some acquaintance with the practical difficulties of administration, but political development is still in the most elementary stage. The electors do not recognise that the legislature is

their representative, and practically no attempt has been made by any party to educate them in their duties and responsibilities. The electors are mainly members of an illiterate peasantry with many virtues, but not many of the qualities out of which the controlling power of parliamentary governments is made. From force of circumstances they are pre-occupied with the difficulties of physical existence, responsive to the claims of their caste or community, passionately attached to their holdings, resentful of interference and oppression, but indifferent to any larger issue save religion, and religion in India is a disruptive force. The relations between the Hindu and Muslim communities are, it is to be feared, decidedly worse than they were 25 or 50 years ago. As self-government has drawn nearer, the Hindu has become filled with alarm by the more rapid increase of Muhammadans, their greater virility and the tendency of some of them to look for support to powers outside India. The Muhammadans know they are outdistanced both in wealth and education and fear Swaraj will mean a Hindu rule. The more farseeing politicians see that without a genuine union Swaraj is impossible, but there are few signs of a common patriotism capable of dominating sectarian animosities. In the legislature well-organised parties (except for the Swarajist) are non-existent; the interplay of personal factors is incessant; and the formation of stable combinations is impeded by the cross divisions of race, religion and interest. There is no large body of impartial opinion upon which the Minister can rely, and he can rarely take a strong line in opposition to any substantial or clamant section. In short, though this is certainly not surprising, neither the principle of responsibility to the electorate nor the principle of party cohesion has been established in any strength.

Continuation of views of the Punjab Government.

15. The immediate aim of the reforms was to arouse political consciousness by constituting and training an electorate and its representatives. There is not as yet evidence of the existence of a thinking and selective electorate in the Punjab, capable of exercising its vote on

considerations of policy. The figures do not argue any undue apathy on the part of the electors: in the election of 1920 the percentage of electors voting was low owing to the prevalence of non-co-operation doctrines, but in the second general election 49 per cent. of the electors recorded their votes. There is, however, little evidence of that close touch between representatives and electors which constitutes the vitality of a representative system. The election address is practically unknown; the constituency judges of the personality rather than the programme of the candidate. The representative seldom, if ever, addresses his electors or canvasses their view on any project of legislation before the council. In regard to the evidence as to the development of responsibility in the council whilst certain charges mentioned in their report can be levelled against the first council the balance of the whole of its account is not to its discredit.

In regard to administration the grave increase in crime should be attributed to economic and other causes and not to the reforms. The failure in many districts to maintain previous administrative standards is only indirectly due to the reforms...

On the transferred side the experience gained has not been sufficient to afford confirmation of any feeling that deterioration has taken place. The executive remains the same as before the reforms. The main criticism which is made against the departments administering the transferred subjects is that the Ministry of Education has subordinated the interests of its departments to the support of the communal interests of Muhammadans.....

Conclusion of views of Punjab Government.

16. Turning to other points the local government say that whatever feelings may be entertained in political circles in favour of the development of "provincial autonomy"—the implications of which have been so little explored or understood—few acquainted with the administrative needs of the country will contest the need for central control in all essential matters. The difficulties in this respect have been due rather to the application of the

control than to the principle. So far as internal affairs are concerned it has been impossible in practice to treat the formal division of subjects between reserved and transferred as constituting clear cut spheres of work. In the Punjab, for example, the transferred subjects of "Religious and Charitable Endowments" and "Excise" have been found to be intimately connected with the reserved subjects which are usually referred to under the comprehensive title of "Law and Order." The dyarchical scheme necessarily contains anomalies, and it cannot be contended that the Punjab offered a really suitable field for the introduction of a divided responsibility. So far Ministers willing to co-operate with the executive have been found who have been supported by a party which has not attempted to force them into an extreme position. In other circumstances the complication arising from the reaction of transferred on reserved subjects might constitute a serious danger to the administration. The main object of the present discussion is not the establishment of provincial autonomy. An impartial observer might reasonably object to the transfer of any further subject until the limitations which must be set on the absolute autonomy of the provinces have been adequately explored. In fact the advocates of complete independence of parliamentary control have not foreseen the inevitable results in the creation in India of virtually independent and antagonistic units controlled neither by a central executive nor by a central legislature which must be shorn of its powers by the natural process under which legislative follows administrative independence. In the Punjab, indeed, judging by the attitude of the press, which is subject to Hindu control, there is so little effective demand for further transfers as to create a suspicion that there would be some gratification if the transfer of certain subjects were revoked. At least constant efforts are made to persuade the Governor to control the Ministry in order to safeguard the communal interests of the minority in the council.

17. The reforms were introduced in Burma two years later than in the other provinces in India. The Government of Burma have therefore reported with much less experience of the working of the constitution even than that of the Governments of the remaining provinces. They say that less than seven per cent. of the electorate voted at the only general election held, which was boycotted by the extremists. So far as the Governor in Council is aware, no member of the legislature has addressed his electors on the problems of the day, and but few have attempted to establish between themselves and their constituents that relation which exists in countries where parliamentary institutions flourish. There has been valuable training of the members of the legislature, but the electorate as a whole stands much where it did before the introduction of the reforms. The Governor in Council concludes that during the 18 months in which the reforms have been in operation hardly any difficulties have been experienced and hardly any defects discovered in the working of the constitution.

Views of the Burma Government.

18. The Government of Bihar and Orissa have forwarded a summary of certain general aspects of the second general election made by the officer who supervised the arrangements for it. He says that public meetings were almost unknown; political canvas was almost entirely the canvas of leading residents, zemindars and lawyers; election addresses were issued in some places but not broadcast; and handbills containing no argument and no explanation of the political position were the commonest form of appeal. He says one may search in vain for signs that three years of the reforms has educated the electorate to the meaning of an election and the business of a legislature. From every district the reports of the presiding officers declare that a large proportion of the voters did not know the name of the candidate for whom they voted, but had only been told the colour of his box. In the standing of the Swarajist candidates for election we have the first signs of the formation of a party system. The

Views of the Bihar and Orissa Government.

candidates were personally of little standing, but they had some notion of organising an ignorant electorate on party lines to vote against the government. They have, however, revealed the amazing credulity and ignorance in the electorate which has to be overcome. The candidates have attributed to their opponents responsibility for raising the price of post-cards, salt, oil, cloth and all the other necessaries of life; they have promised to effect a millennium of no rent and no taxes; and they have exploited the superstition of the masses in regard to the colour of the voting boxes.

Turning to more general questions, the Bihar and Orissa Government include amongst the causes which have contributed to the non-success of the reforms the failure to create a Ministerial party prepared to support the Ministers in carrying out a definite programme. The constitutional structure has been borrowed from England, but the foundation essential to carry it is lacking in India. This has made the position of the reserved side particularly difficult. The council still remains divided into two parties, officials and non-officials. Where the issue is not an anti-government one, Ministers have their following in council, but they cannot bring this to bear on political issues and cannot therefore assist government in times of difficulty. Another cause is the general political inexperience of the country and the reluctance of the average Indian members to face personal opposition or unpopularity.....

Views of the Central Provinces Government.

19. The Central Provinces Government say that the value of the experiment in responsible government during the first council was weakened, firstly, by the lack of connection between the members and their constituents, secondly, by the absence of any party organization which would have made the responsibility of Ministers to the council effective; and thirdly, by lack of funds. The fair measure of success in the working of dyarchy which was achieved was due partly to the moderation of the council and partly to the efforts made to work the scheme by the Members of Government and the permanent services.

The basis of the reforms was the gradual training of the electorate by the exercise of responsibilities proportionate to their capacity for the time being. The political education of the electorate must be a slow and difficult process, and in the Central Provinces the education given to it during the first council was very small indeed. At the second general election Swaraj was put before the electorate as a vague millennium. The Swarajists made no attempt to explain their policy of obstruction to the bulk of the voters; and in very few of their speeches or broadsheets was the pledge to abolish dyarchy made.....

Views of the Assam Government.

20. Finally, the Assam Government say that the new council contains an organised Nationalist party comprising approximately one half the elected members with a Swarajist nucleus and leader. Outside this party there was neither at the elections nor is there in the council any party organization. Many of these other members, however, are in many respects more inclined to oppose government than to support it. It is regrettable that the acceptance of office by the Ministers and the indication of a genuine attempt on their part to work the existing constitution are sufficient to alienate from them the good will of the council as a whole and to deprive them of the influence which they exercised as private members. The difficulty of the position is aggravated by the fact that the Swarajist party in Assam draws its inspiration from the all-India leaders who have made it clear that their object is the early establishment of Dominion Home Rule, and in face of this larger issue provincial autonomy is a minor and subsidiary proposition. One of the main causes of the present trouble is the failure to realise the anticipation of the authors of the reforms that reasonable men would conduct themselves in a reasonable manner in a spirit of compromise and co-operation. A considerable section of the council is openly hostile to the present constitution and is indisposed to consider the proposals of government on their merits. No regard is paid to the dictum of the Joint Committee that the Governor's power of restoring demands on the reserved side was intended to be real,

and that its exercise should not be regarded as unusual or arbitrary. On the contrary the use of the power leads to declarations that the reforms are a sham and the powers of the council illusory. The dangers of such an agitation among an uninstructed electorate and an ignorant population are obvious.

The Governor in Council sums up the difficulty of working the constitution as due, firstly, to the existence of a section of public men, considerable enough in numbers and ability to influence the council, which is actively hostile to the present constitution and declines to work it; and secondly, to the financial difficulties which have precluded the local government from undertaking any activities other than carrying on the essential administrative functions on pre-existing lines. The Ministers have thus no convincing answer to the cry of their opponents that the reforms have bestowed no benefits on the electors. With such an improvement in the financial position as would place the Ministers in a position to carry out schemes of public utility and thus enable them to consolidate their position with the electorate, there is a reasonable prospect, at least in Assam, that reasonable men prepared to work the constitution in reasonable spirit would command a majority in the council and would in due course be able to justify a further substantial advance towards responsible government. Without this, palliatives like the transfer of further subjects will have little effect in improving the situation.

ii The electorate.

READINGS :—(1) Paras 57, and 62-3 of the Majority Report (Reforms Enquiry Committee).

(2) Pages 174-6 of the Minority Report (Reforms Enquiry Committee.)

(1) *It is upon the electorate that the whole framework of responsible government must be based, and it is necessary for us to emphasise that there has not been sufficient opportunity yet to train it in the exercise of its responsibilites. The evidence on this point is definite. The existing electorate has been

*Para 57 R. E. C. R.

characterised as illiterate and untrained, though we have received evidence to the effect that the electors are able at present to understand broad issues which is their main function and to choose the candidates who in their opinion will serve them best. There are doubtless parts of India where the electorate is more advanced and better educated, but the statement of the United Provinces Government that the electors in the United Provinces are mainly members of an illiterate peasantry with many virtues but not many of the qualities out of which the controlling power of parliamentary government is made is probably accurate not only in that case but in the case of many other parts of India. The education of an electorate so constituted is a matter of great importance and difficulty. That efforts have been made to educate in certain instances is clear, as we have been informed that certain members of the legislatures have addressed many meetings of their constituents. We observe, however, that the two witnesses who appeared before us on behalf of the United Provinces Liberal Association and gave evidence in this respect, are in fact the two representatives cited by Mr. Chintamani in his written evidence as the most notable examples of members who have taken care to retain contact with the electorate. The reports of the local governments suggest that this is somewhat exceptional and there have been few attempts to establish those relations between the electorate and the members of the legislature which exist in countries where parliamentary institutions flourish. There is obviously much to be done in this direction, but it is not a matter that can be provided for by any change in the constitution though it is intimately bound up with its working. We certainly do not suggest that all constitutional advance in India must wait until the electorate has been educated up to the standard of the electorate in Western countries. We cannot deny, however, that the present state of political training of of the electorate is an obvious difficulty in the working of the constitution.

*We begin with the electorate for the provincial councils and for the central legislature. We have summarised in Appendix No. 3 the most important statistics in regard to the electorate for the provincial councils and the Legislative Assembly for each province at the date of the general elections of 1923. In this statement we have excluded the numbers of electors for special constituencies, because the latter are usually electors for general constituencies as well. The minimum age for elector for the provincial councils and for both chambers of the Indian legislature is 21 years. The Indian Census tables do not, however, give the male population of 21 years and over, and we have accordingly included for purposes of comparison the total male population and also the total male literate population of 20 years of age and over. It will be observed that for the provincial councils the male electorate is normally about 10 per cent. of the male population of 20 years of age and over. In Burma the percentage is, however, nearly 50, which is due to the lower franchise adopted in that province, whereas in Bihar and Orissa and the Central Provinces the percentage is only about 4, which is probably mainly due to the smaller proportion of the people in those provinces who reach the standard adopted for the franchise; the standard also appears, on the whole, to be slightly higher in those provinces than in others. Although the census figures.....show that the male literate population of 20 years of age and over is greater than the male electorate except in the United Provinces, and the Punjab, we must emphasise the fact that the knowledge necessary to qualify for classification in the census tables as literate is very small. The total male electorate for the general constituencies for provincial councils was 7,414,000 and for the Legislative Assembly 984,000. The percentage of electors (generally more than 40 per cent.) who voted in the contested general constituencies at the last general election was, we consider, having regard to all the circumstances,

*Para 62 R. E. C. R.

satisfactory, and in that respect a great advance on the first general election.

We have received conflicting evidence as to whether the time is yet ripe for a general broadening of the franchise. For example, Mr. Chintamani and Mr. Chitnavis have suggested that such action should be taken now, whereas Mr. Kelker is averse to such action at present, and Mr. Ghuznavi suggests that the franchise qualification should either be raised or a system of electoral colleges for the election of representatives should be instituted. The Bihar and Orissa Ministers state that the franchise was so low as to lead to corruption and demoralization. The local governments also hold conflicting opinions. The Madras Government say that the extension of the franchise is fundamentally connected with any steps that may be taken to determine the future of the provincial governments; whereas the Central Provinces Government say that the question was examined exhaustively only 5 years ago and nothing has occurred to justify any drastic change in the decisions then reached, while the Bihar and Orissa Government say that the existing electorate is entirely ignorant and the extension of the franchise to a still lower level of intelligence will simply be to intensify confusion and to play into the hands of the unscrupulous demagogue. We have carefully considered these conflicting views and we have decided that we are unable to recommend any general modification of the franchise in either direction.....

(2) *Our attention was frequently drawn to the extent of interest displayed by the public, and particularly by the electorates, in the election to, and subsequently in the activities of, the legislatures. The number of voters who went to the polls in 1920 was a small percentage of the total, mainly owing to the political atmosphere which prevailed at the time, and ranged from 16·5 per cent. in Assam to 41 per cent. in the rural constituencies of Bihar and Orissa. Those who then preached a boycott of the Councils continued their hostility to the Reforms,

*Pages 174-6 of the Minority Report.

and belittled, while the movement lasted, the efforts and achievements of the representatives of the people. In consequence, the task of political training, which is one of the chief obligations of members of the Legislatures, was a somewhat onerous one, and it must be confessed that in this respect the record of the members has on the whole been inadequate, though not so meagre as several local governments seem to think. Some of them have referred in their reports to the indifference and apathy of the outside public towards the proceedings of the Legislatures. The Madras Government say that considerable interest and appreciation has been displayed by the public from the commencement of the Reforms, and that the contituencies have been keenly alive. In the Punjab public interest in the proceedings of the Council rose and fell, it is said, with debates with a pronounced political flavour; in the Central Provinces, Government record a steadily rising tide of popular appreciation of the efforts of their representatives in the local Legislature. The discussion of agrarian questions in the United Provinces and the Bihar and Orissa Legislative Councils has brought home to large numbers of voters the value of the franchise. We may here refer to some pertinent remarks of H. E. Sir Malcolm Hailey in opening the Punjab Legislative Conncil in November 1924. "The extension of the electoral system has brought into the orbit of politics classes whose interests were previously unvoiced and the free discussion here of their needs and requirements has given a new aspect to the whole of the public life in the Punjab. The value of this development must not be judged merely by the force of the impact on Government policy of the views of these classes. The awakening of political consciousness among our rural classes has given them a new outlook as there is an insistent demand among them for better education, and for vocational training, great activity in availing themselves of character-building institutions such as co-operation, a new and more intelligent interest in all that concerns their economic welfare." During the election of 1923, the participation of the Swaraj

party rendered the contests in many of the constituencies very keen and the polling was consequently much heavier than in the first elections. Even so, we are aware that the number of those who actually utilised their vote is a small proportion to the total population. Nor do we wish to overlook the fact that only six millions representing between two and three per cent. of the total population have been enfranchised. But it may not be amis to point out here that in England, at the time of the first Reform Bill in 1832, only 3 per cent. were enfranchised; and these belonged to the rich and privileged classes; between 1832 and 1867, the number increased to 4·5 per cent. and in 1867 to 9 per cent., in 1884 to a little over 18 per cent.; and it is only in 1918 the number rose to over 50 per cent.* We would in this connection also draw attention to some impressive facts relating to the position in the United Kingdom as regards the state of the electorates and cognate matters, which Mr. Chintamani has cited in an addendum to his memorandum:

"Previous to 1832 there were less than 5,00,000 persons who had the right to vote in the election of members of Parliament. The Reform Act of that year increased the number to nearly 10,00,000; the Act of 1897 increased it to 25,00,000; the Act of 1884 increased it again to 55,00,000; and last of all the Act of 1918 increased the number of the electors to over 200,00,000. There are several millions of women to whom the vote is still denied." ("Principles of Liberalism," 1924, Liberal Publication Department Booklets, No. 2.)

"Most of the English boroughs may be roughly divided into those which were sold by their patrons, the great territorial magnates and those which sold themselves to the highest bidder." The county constituencies of forty shilling freeholders, although limited and unequal, were less corrupt and more independent than the voters in boroughs, but they were practically at the disposal of the great nobles and local landowners. In 1793, when the members of the House of Commons numbered 558,

*(See Dr. W. A. Chaple's "Function of Liberalism," Contemporary Review, September 1920.)

no fewer than 354 were nominally returned by less than 15,000 electors, but, in reality, on the nomination of the Government and 197 private patrons. The Union with Ireland in 1801 added 100 members to the House, of whom 71 were nominated by 56 individuals. In 1816, of 658 members of the House, 487 were returned by the nomination of the Government and 267 private patrons. Of these patrons, 144 were peers. "The glaring defects of the representative system—the decayed and rotten boroughs, the private property of noblemen, the close corporations openly selling the seats at their disposal to members who, in turn sold their own parliamentary votes, and the existence of great manufacturing cities distinguished by their wealth, industry and intelligence, and, yet possessing no right of sending representatives to Parliament". (Taswell-Langmead's Constitutional History of England).

Small as is the proportion of the population of which the Legislatures are directly representative, some of the local Governments have admitted their representative character. Thus, the Madras Government say that "the Council represents public opinion and to a certain extent also creates it"; the Bombay Government makes the same admission "in the sense that all the chief communities are represented in it and the members understand the interests of their communities and are ready to defend and support them"; the Punjab Government remark that the Council was representative of various shades of opinion but moderate public opinion was predominant. "As a body", they add, "the Council was shrewd, cautious and strongly imbued with the conservative ideas traditionally associated with the farmer class".

We have not been able to find the exact number of illiterates among the present electorates. But notwithstanding the fact that education in the three R's among the masses has been neglected in the past, we think that the average Indian voter, both rural and urban, is possessed of sufficient intelligence to understand issues directly affecting his local interests and

capable of exercising a proper choice of his representatives. We think that the repeated use of the franchise will in itself be an education of potent value and the process of education must go hand in hand with the exercise of political power. We are, therefore, of the opinion that the franchise in every province should be carefully examined, and wherever it admits of lowering, it should be lowered, so as to secure the enfranchisement of a substantially large number of people.

iii Working of the Dyarchy.

(1) Failure not due to Dyarchy itself according to the Majority report.

Source:—Paras 38 and 39 of the Reforms Enquiry Committee's Report.

38. Some of the reasons which have been advanced to show that dyarchy has failed cannot be ascribed, either wholly or in part, to dyarchy itself. It is clear that the electorate should be educated to realise the responsibilities vested in them, and further that the members whom they elect should also understand and be prepared to use their powers to control the administration of the Transferred Departments by Ministers. The education of the electorate must naturally be a slow process, and the fact that they are not yet sufficiently educated can scarcely be attributed to dyarchy. It is possible, however, that the failure by the members of the legislative councils to grasp the situation may be partly attributed to the system of dyarchy. Amongst the reasons for this failure may be mentioned the lack of experience of the members of the councils themselves, the fact that no party system had been developed and the appointment of Ministers individually instead of collectively. Another reason is the connection of the Ministers with the reserved side of the administration. They have been treated in some provinces, on acceptance of office, as though they had become a part of the executive government, and, as such, people to be attacked and thwarted. This aspect of the case has already been referred to in our summary of the views of

local governments, and we would refer in particular, to the views of the Bengal and Assam Governments summarised, respectively, in paragraphs 10 and 20 above. It is also alluded to by Sir Chimanlal Setalvad, by Sir P. C. Mitter and by Mr. Kelkar, to mention only some of the witnesses who have given evidence to us.....It is obvious that before any responsible system of government can work satisfactorily, it is necessary that the Ministers should not only be members of their party but the leaders of it. The members of the legislative council also must grasp their powers. It is not only unnecessary, but it is clearly inadvisable for them to attempt to interfere in the details of a Minister's administration. They have not the detailed information which alone could justify such an interference but they should make it clear that they will hold the Minister responsible for the main policy which he adopts. The absence of a properly developed party system in practically all the councils and also the communal differences have further contributed to the difficulties which the new constitution had to face. All of these, however, are difficulties for the solution of which time is required, and they would arise in an almost equal degree under any system of responsible government which might have been introduced in India.

39. We have now completed our examination of the evidence produced before us to the effect that dyarchy has failed. It is clear that witnesses have frequently made this allegation with reference not to dyarchy itself, and have been thinking not of division of functions, which is the essential principle of dyarchy, but of other features of the constitution. Complete dyarchy was not in fact established. For complete dyarchy it would have been necessary to have established a complete vertical division of functions between the two halves of a provincial government, and to have endowed each half with a separate purse, with a separate permanent staff and with a separate legislature; in the same way as in a federal constitution, there is a corresponding horizontal division in these respects. We have of course no evidence to show how such a system might

have worked in India. The partial dyarchy which was introduced is clearly, as stated by the Government of the United Provinces, a complex, confused system having no logical basis rooted in compromise and defensible only as a transitional expedient. A complex constitution, like dyarchy, requires more particularly to be worked by reasonable men in a reasonable spirit, if deadlocks are not to ensue. In this, however, it is by no means unusual, for many democratic constitutions contain in the words of Lord Bryce "a body of complicated devices, full of opportunities for conflict and for deadlock." The existing constitution is working in most provinces, and it is giving a training in parliamentary government to the electorate and also to the members of the legislatures and to the Indian Ministers. While the period during which the present constitution has been in force has been too short to enable a well-founded opinion as to its success to be formed, the evidence before us is far from convincing us that it has failed. If, recently, in some of the provinces, it has not achieved the expected measure of success, it is because it was not worked on the lines and in the spirit which was intended. We hold in fact that, except by some form of dualism, it was not possible to afford an equally valuable training towards responsible government in India and still to safeguard those conditions upon which government depends.

(2) CONTROL OF THE GOVERNOR OVER MINISTERS IN ACTUAL FACT.

SOURCE :—Paras 33 and 101 R. E. C. R.* (Majority).

33. The constitutional view that the executive power in India is vested in His Majesty is recognised in Section I of the Government of India Act. So far as the Transferred subjects in the Provinces are concerned it is, however, provided by subsection 3 of Section 52* of the Act that the Governor in relation to these

*Reforms Enquiry Committee Report.

* Same as Section 4 of the Government of India Act 1919.

subjects shall be guided by the advice of his Ministers, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with his Ministers' advice. In the same section provisions are made to secure that ministers shall be members of the local legislature. These provisions were intended to introduce a measure of responsible government on the transferred side of the administration in India. Some witnesses have assumed that the word 'advice' implies that the minister was intended to be merely an adviser of the Governor. No such deduction can, however, be made from the use of this word as it is used in corresponding provisions in the constitutions of Canada, Australia, South Africa, Northern Ireland and the Irish Free State with the object of conferring responsible government. The degree of responsible government is of course subject to the provision which we have cited to the effect that the governor should be able, if he saw sufficient cause, to dissent from his ministers' opinions, and this clearly involves a definite limitation upon responsible government. But in deciding not to accept any opinion of his ministers the governor was of course intended to be guided, and to have regard to the special responsibilities imposed upon him, by the Instrument of Instructions issued to him by His Majesty. The governors had also the guidance of the dictum of the Joint Committee to the effect that they should not hesitate to advise the Ministers as to what they thought was the right course, but if the ministers decide not to adopt their advice to fix the responsibility upon the ministers and ordinarily allow them to have their own way.

101. We have indicated the nature of the evidence tendered to us in regard to the control of the Governor over his Ministers and have included our findings in this respect in Part I. The Governor is empowered by sub-section (3) of section 52 of the Act to direct in regard to the administration of the transferred subjects that action shall be taken otherwise than in accordance with the advice of his Ministers. We agree that this control by the Governor over the Ministers is an essential

part of the existing constitution and that we are, therefore, unable even if we desired to do so, to recommend that the limitation upon the powers of the Ministers imposed by it should be eliminated, and the governor be reduced to the position of a constitutional Governor. The Joint Committee stated that the governor should never "hesitate to point out to the ministers what he thinks is the right course or to warn them if he thinks they are taking the wrong course. But if after hearing all the arguments Ministers should decide not to accept his advice, then, in the opinion of the committee, the governor should ordinarily allow Ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India, as in all other countries, mistakes will be made by Ministers, acting with the approval of a majority of the legislative council, but there is no way of learning except through experience and by the realisation of responsibility."

In deciding whether he should not accept the advice of his ministers it was intended that the Governor should be guided by the Instrument of Instructions. We consider that the Instrument of Instructions does not entirely give effect to the view of the Joint Committee as embodied in the passage we have cited. Clause 6 of the Instrument of Instructions, for example, merely provides that the governor shall have due regard to the relations of the minister with the legislative council and to the wishes of the people of the province as expressed by their representatives in the council, and this does not indicate that the Governor should normally accept the advice of his ministers which was, we think, the view the Joint Committee. We accordingly recommend that clause 6 of the Instrument of Instructions should be redrawn so as to provide that, subject to a power of interference to prevent unfair discrimination between classes and interests, to protect minorities and to safeguard his own responsibilities for reserved subjects and in regard to the interests of the members of the permanent

services, the Governor should not dissent from the opinion of his Ministers. In this connection we would also refer to the existence of the power of resignation, and in regard to it we recommend that provisions, as far as possible following the English practice, should be made in the legislative rules giving a Minister who has resigned the right to make in the council a personal explanation of the causes of his resignation.

SOURCE :—Pages 153-160, and 163-168 Reforms Enquiry Committee's Report. (Minority).

(3) DEFECTS OF DYARCHY.

The complaints brought forward against the present system of government in the provinces may be enumerated as follows :—

(1) the impinging of the administration of reserved upon that of the transferred subjects and vice versa ; (2) the absence of joint responsibility of the Ministers; (3) the absence of joint deliberation between the two halves of the Government; (4) the attitude of the permanent officials towards the Reforms, their relations with the Ministers and their general position in the new constitution; (5) the difficulties in the way of Ministers arising out of the overriding powers of the Governors under the Act; (6) the control of the Government of India and the Secretary of State; (7) (a) the measure of control exercised by the Finance Department; (b) the fact that under the rules the Finance Department is in charge of a member of the Executive Council who is also in charge of the spending departments: (c) the disqualification of the Ministers to hold the portfolio of finance by reason of the Devolution Rules.

We propose to deal with them SERIATIM. (1) Government being a single unit experience shows that it is impossible to divide its functions into water-tight compartments. Indeed from a constitutional point of view a division of the function of government is scarcely practicable. But the real difficulties of the division effected by dyarchy which, in the words of the

Governor in Council of the United Provinces, is "a cumbrous, complex and confused system, having no logical basis" appear most clearly when the system is examined from an administrative point of view. In their despatch of 11th November 1911, the Government of Bombay observed as follows:—

"A reference to the records of Government will show that there is scarcely a question of importance which comes up for discussion and settlement in any one of the Departments of Government which does not require to be weighed carefully in the light of considerations which form the province of another Department of Government. The primary duty of the Government as a whole is to preserve peace and order, to protect the weak against the strong, and to see that in the disposal of all questions coming before them the conflicting interests of the many different classes affected receive due attention. And it follows from this that practically all proposals of importance put forward by the Minister in charge of any of the departments suggested for transfer will involve a reference to the authorities in charge of the reserved departments. There are few, if any, subjects on which they (the functions of the portions of the Government) do not overlap. Consequently the theory that, in the case of a transferred subject in charge of a Minister, it will be possible to dispense with references to departments of Government concerned with the control of reserved subjects is largely without foundation."

We do not think that the anticipations of the Bombay Government were by any means extravagant and from the evidence before us we are satisfied that those anticipations have proved remarkably true in actual administration. In this connection we would refer to what Mr. Chintamani has said in his memorandum: "in the light of my experience I must endorse every word of the above passage." The observations of the Government of Bombay on the question of financial control leading up to the conclusion that ministers alone cannot be responsible to the legislature because of the very real control

that the Finance Department must exercise over all the expenditure up to the time when it is made have been demonstrated to be not a whit less true. It is by no means difficult to conceive that the points of view of popular Ministers and the members of the Executive Council who owe no responsibility to the legislature and at least half of whom are brought up in official traditions from the start of their career should not infrequently vary and lead to unsatisfactory results. We regard this feature as one of the inherent defects of dyarchy.

Joint Responsibility.

(ii) The next defect which we desire to notice is one that was very much pressed on our attention during our investigation. It was pointed out to us by a majority of the ex-ministers whom we examined that the ministers were dealt with by their governors individually and not collectively. In other words, the point raised was that there were Ministers but not Ministries. The evidence of Mr. Chitnavis and Rao Bahadur Kelkar of the Central Provinces, of Lala Harkishan Lal of the Punjab and of Sir P. C. Mitter of Bengal, shows that not only did the governors act with their ministers separately but the latter, in some provinces at any rate, themselves did not observe the convention of joint responsibility. On the other hand, the evidence of Mr. Chintamani shows that the late Ministers in the United Provinces prescribed for themselves a different course of conduct consistent with the true constitutional position. Dealing with the question of the relations of the Governor and the Ministers, Mr. Chintamani describes in detail the practice followed in the United Provinces at the commencement of the new era and the variations of that practice later on. The Governor in Council of the United Provinces, in his letter dated 3rd July 1924, however, takes the view that "even in England the joint responsibility of the cabinet does not extend to all the acts of all the Ministers composing it; and in India, where the Ministers are not always drawn from a single well organised party the ties between them cannot be as close as they are in England. But it rests in the main with Ministers

themselves to determine how far joint responsibility is to be carried. Pandit Jagat Narain, the late Minister for local self-government carried it to the point of resigning over a question with which he had no concern, but to insist that the resignation of one minister must always entail that of his colleague or colleagues might often, in the conditions at present obtaining, make it impossible to form a ministry." We recognise that sometimes a Governor may find it difficult to form a homogeneous ministry, but in our opinion there should be no insuperable difficulty for a Governor to appoint from different groups, Ministers who would agree to work upon a footing of joint responsibility. On this question the Joint Select Committee in their second report observed as follows:—"The Committee think it important that when the decision is left to the Ministerial portion of government the corporate responsibility of Ministers should not be obscured. They do not intend to imply that, in their opinion, in every case in which an order is passed in a transferred department the order should receive the approval of all the Ministers; such a procedure would obviously militate against the expeditious disposal of business and against the accepted canons of departmental responsibility. But in cases which are of sufficient importance to have called for discussion by the whole government, they are clearly of opinion that the final decision should be that of one or the other portion of the government as a whole."

C P. Government's views.

We shall now briefly review the opinions of some local governments. The Governor in Council of the Central Provinces in his letter, dated 7th July, 1924, takes the view that at the present stage of development of those provinces the joint responsibility of the ministers would mean the absolute rule of the majority party in the council in the transferred departments. The Governor would prefer to let the convention come into being by a natural process of growth as the result of the development of party organisation. We shall deal with the question of party organisation later on.

We may call attention to paragraph 22 of the letter of the Government of Madras, dated 28th July, 1924. The Madras ministers have also in their minute adverted to this question. The Hon'ble the Rajah of Panagal, in his minute, dated 12th June, 1924, observes:—"Each minister has to deal with a governor individually. There is no joint ministerial responsibility." The Hon'ble Sir A. P. Patro, in his minute, dated 12th June, 1924, observes: "The difficulty created by section 52 is to place the ministers completely under the power of the Governor. There is no room for development of joint and corporate responsibility under the circumstances. The Act ought to provide for the independence of the Ministers and the Governor acting with the Ministers should decide any question by a majority."

Madras Ministers' views.

Dealing with these criticisms of Ministers the Governor in Council observes: "The provisions of sub-section 3 of section 52 contain nothing inconsistent with the development desired; the Governor, it is there said, is to be guided by the advice of his Ministers unless he sees sufficient cause to dissent from their opinion. It is rather the wording of the Instrument of Instructions and of various passages in the Devolution Rules which seem to contemplate that the Governor is to act with a Minister and not with his Ministers. In so far as these documents contain provisions practically inconsistent with or detracting from the conception of joint responsibility of Ministers, there may be a case for their modification. So far as this Presidency is concerned the difficulty is more theoretical than practical. The Cabinet system to which reference has been made has tended to foster joint responsibility among Ministers involving, as it has done, the attempt to administer affairs as a joint government. In other provinces, it is believed ministers were not usually chosen as representing a particular party, and it is doubtful if they could be chosen now. Instead of altering the Act as the Ministers appear to contemplate, it would probably be sufficient to modify the Instrument of Instructions

Madras Government's views.

and the Devolution Rules, and to trust to the growth of a convention such as tends to be established in Madras.

Thus the difficulty has mainly arisen by reason of the wording of the Instrument of Instructions, but we desire to point out that party system is already beginning to grow and we anticipate that with the march of events it will become stronger and more defined at no distant date. But we think that it is undesirable that the growth of joint responsibility should be allowed to depend upon the personal equation of the Governor or the Ministers. In our opinion the statute itself should be so amended as to secure the joint responsibility of the Ministers.

Joint deliberation.

(iii) We now pass to the third complaint which seems to us to be one of vital importance, having regard to the mixed character of the Executive Government. The Act itself makes no provision for joint deliberation between the two sections of the government. The Joint Select Committee, however, laid considerable stress on the desirability of fostering a habit of joint deliberation in regard to a large category of business of the character which would be naturally the subject of Cabinet consultation. The committee were distinctly of the opinion that joint deliberation between members of the Executive Council and the Ministers sitting under the chairmanship of the governor should be carefully fostered. The Committee attached the highest importance to the principle that when once opinion has been freely exchanged and the last word had been said, there should be then no doubt whatever as to where the responsibility for the decision lay. Therefore, in the opinion of the Committee, after such consultation, when it was clear that the decision should lie within the jurisdiction of the one or the other half of the government, that decision in respect of a reserved subject should be recorded separately by the Executive Council and in respect of a transferred subject by the Ministers, and all acts and proceedings of the Government should state in definite terms on whom the responsibility for the decision rested. The Committee visualised to themselves the Governor acting as an informal arbitrator between the two

halves of the government. They considered that it would be the duty of the Governor to see that a decision arrived at on one side of his government was followed by such consequential action on the other side as might be necessary to make the policy effective and homogeneous. Lastly, they laid down that in the debates of the Legislative Councils members of the Executive Councils should act together and Ministers should act together but should not oppose each other by speech or vote. Members of the Executive Council should not be required to support either by speech or vote proposals of Ministers of which they did not approve; they should be free to speak and vote for each others' proposals when they were in agreement with them. Mr. Montagu in his speech of 5th June, 1919, on the motion for the second reading of the Government of India Bill in Parliament, put the position more briefly as follows:—"If reserved subjects are to become transferred subjects one day, it is absolutely essential that during the transitional period although there is no direct responsibility for them, there should be opportunities of influence and consultation. Therefore, although it seems necessary to separate the responsibility there ought to be every room that you can possibly have for consultation and joint deliberation on the same policy, and for acting together for the purposes of consultation and deliberation, as the Bill provides, in one government." We have taken the liberty of quoting these passages at length because the question of joint deliberations has attracted much public notice and some of the Governors in Council have also referred to it in their letters to the Government of India. Our attention has also been drawn by some witnesses to the varying practice in the provinces. In Bengal, we gather from the letter of the Governor in Council, dated the 21st July, 1924, that the two halves of the government worked in unison and that the system of dyarchy was not literally adhered to.

Varying practice of the local Governments.

The Governor in Council in the Central Provinces, in his letter dated the 7th July, 1924, stated that in his province every effort had been made to carry on the government in the spirit of the recommendations of the Joint Select Committee. But to secure uniformity the Governor in Council considered it desirable to include in the rules of business made under section 49 (2) of the Act a rule requiring joint deliberation between both halves of the government on all questions of important policy. From the letter of the United Provinces Government, we gather that since His Excellency the present Governor assumed office, there has in fact been joint deliberation on all matters in which both sides of the Government were concerned. Mr. Chintamani has in his memorandum given his impression of the joint working of the two halves of the Government. According to him, the practice was followed for the major part of the first year, but in the second year of his office joint meetings of the whole government became less, and in the third, still less frequent. The system had worked well, it would appear just in the measure in which dyarchy was departed from, while misunderstandings, differences and friction became only too frequent after dyarchy came to be a fixed idea in the governor's mind. In the beginning, according to him, "there were weekly meetings of the whole government; such meetings gradually became less frequent until at times we had not more than one in a month, or even one in a couple of months or more." We also find from the evidence that at least on one occasion one member of the executive council spoke openly at a meeting of the Legislative Council against the policy of the Ministers. We understand that in Bombay joint meetings were held from June 1921 onwards, but files of papers relating to business on the reserved side do not appear to have been, as a rule, circulated to the Ministers who were consequently unable to give any considered opinion on it. They therefore abstained, as we are informed, by one of our colleagues, Dr. Paranjpye, from taking any prominent part in the discussion. In Madras,

we gather from the letter of the Governor in Council that "joint consultation between the two parts of the Government has from the first been laid down as essential and has not been without the advantage of increasing the influence of the Ministers in the councils of the Government and in extending that influence over the whole range of Government activities. It has also resulted as the Ministers themselves would probably admit, in giving them the advantage of the steadying influence of the wider administrative experience enjoyed by their colleagues of the reserved half, and His Excellency the Governor in Council regards it as one of the most encouraging symptoms that Ministers have been ready to weigh well the advice thus given them, as well as that of the secretaries and heads of departments under them." Dealing with this matter Sir K. V. Reddi, an ex-minister in Madras, says:—"It must not, however, be forgotten that it was not the dyarchic system as conceived in the Act but an attempt to ignore it and get over its inherent difficulties that made it possible to achieve the little success which Madras is said to have achieved."

Conclusions.

To sum up; the conclusions which we have arrived at on this point are (1) that the system of joint deliberation between the two halves of the Government in the spirit of the recommendations of the Joint Select Committee has been followed only in Madras and Bengal; (2) that in other provinces it has either not been followed at all or, if followed, it has not been followed consistently or to the extent and in the manner contemplated by the Joint Select Committee or laid down in the Instrument of Instructions; (3) that in some provinces at any rate Ministers have not been satisfied with the manner in which it has been followed. Much as we appreciate the wisdom of the recommendations of the Joint Select Committee and of the observations of Mr. Montagu, which we have quoted above, we feel that in the best of circumstances the habit of joint deliberation between the two halves of Government, good as it may be so far as it goes, cannot, without the element of common responsibility, lead to efficiency in the administration nor always

to harmonious relationship between members of the Executive Council and the Ministers. Indeed it seems to us that at times it is apt to weaken the position of the Ministers vis a vis the legislative councils and the electorates in relation to reserved subjects, more particularly when there is occasion for difference of opinion in regard to questions of policy between the Legislature and the Executive. We are anxious to safeguard ourselves against conveying the impression that given dyarchy to work, we do not appreciate the value of joint deliberation between the two halves of the Government, but we maintain that it is an inherent defect of the present constitution that the government should be divided into two halves.

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The Finance Department.

(iv) As regards the general position of the Finance Department in the Provinces, we observe that it occupies a peculiar position in the dyarchical system of Government, and according to the written or oral evidence of several ex-Ministers, it has demonstrated the difficulties and defects of the system more than almost any other of its many anomalies and imperfections. In the first place, it has not in fact been a department common to the whole and independent of either half of the government, but has been made a reserved department by the Devolution Rules (Rule 36). Ministers are ineligible for the office of Finance Member, who is the head of the Department. The Finance Member must be a member of the Executive Council. There is no force in the argument put forward in defence of this rule, that trained men are required to fill the office, for not all of the officers who have held or now hold it in the provinces had previous experience of the working of the Finance Department, while the Indian member of the Executive Council of Bihar and Orissa, who is in charge of Finance, has not proved to be less competent than the service members in the other provinces. But had he been an elected member of the Legislative Council and a Minister responsible to it, he

would have been ineligible for the position. We think this bar should be removed even under the present system.

The provision of the appointment of a Joint Secretary to look after the transferred departments does not solve the difficulty of the earlier part of the rule from the point of view of the Ministers. If advantage had been taken of it by Ministers, it would only have produced, very likely, administrative difficulties and friction; and we are not surprised, therefore, that in no single province has it been utilised.

It has been stated that the Finance Department can only give advice on the financial aspect of administrative proposals and can do no more, and that Ministers are at liberty not to accept the advice. This, we fear, must be regarded as an incomplete and a theoretical description of the position and in the light of what nearly all the Ministers and ex-Ministers whose opinions have been furnished to us have said, we cannot accept that description as being wholly in accordance with actual facts. The evidence of the Ministers and officers of the Finance Department has made it clear that the Finance Department in examining proposals of the other departments not only considers the financial point of view but also considers the policy of the proposals and this procedure has been sought to be justified on the analogy of the Finance Departments in other countries whose control is said to be even more stringent than that exercised by Finance Department in India. But the two cases are not on all fours, for in those countries the government is unitary and the policy to be criticised is that accepted by the whole Government of which the Finance Department forms a part. But in the provinces under Dyarchy the policy of the Transferred Department is the policy of the members who are responsible to the legislatures, and the examination of the policy of the Transferred Departments by the Finance Departments is therefore open to grave objection.

As regards the liberty enjoyed by ministers to reject the advice of the Finance Department, it must be pointed out that

their only remedy then is to appeal to the Governor against the department. We fear that it is not correct to say that it the department which has to lay such appeal. Where there is a divergence of opinion, all that remains for the Finance Department to do is not to release the needed funds, unless and until the minister concerned has produced before it the sanction of superior authority, namely, the Governor.

One general complaint against the provision of a very serious character has been made that the Finance Member is also in charge of some spending departments and that naturally enough there is an unconscious desire on his part to promote the interests of those departments at the expense of other, and particularly of the nation-building departments under the control of the Ministers, with the result that in many provinces Ministers have felt that their departments have been starved. To this proneness of the Finance Department several of the ex-Ministers have referred in the course of their examination; but this suggestion has been repudiated by some of the Governors in Council. Our examination of the reports of some of the local Governments which give the figures shows that the division of expenditure between the reserved and transferred halves has been as follows:

	Reserved		Transferred	
Madras				
1921	68	per cent	32	per cent
1922	67	„	33	„
1923	66	„	34	„
Bengal				
1921	70	„	30	„
1922	66	„	34	„
1923	66	„	34	„
Assam				
1921	78	„	22	„
1922	74	„	26	„
1923	75	„	25	„
Bihar & Orissa				
1921	30	„ recurring	70	„
1922	30	„ non-recurring	70	„
1923	26	„	74	„

It has been admitted by Sir Fredric Gauntlet that it is unsatisfactory that the Finance Member should have charge of any administrative departments. Assuming that what has been called "the costly remedy" of appointing a member of Government to be exclusively in charge of finance is adopted, we are still doubtful that it will be a real and full remedy. It was, however, pointed out to us that it would not be, because the Finance Member would still continue to be part of the "Governor in Council," charged with the responsibility for the administration of the reserved and with no direct responsibility for the transferred subjects. We are impressed by the validity of this objection.

Yet another suggestion was made in the course of the examination of one of the ex-Ministers who came before us. It was that the Finance Member should be neither a member of the Executive Council nor a Minister. What will he be then? Will he be a member of the Government? Will he be only an adviser? To whom will he be responsible? We mean no discourtesy if we are unable to treat this particular suggestion as being at all feasible.

There still remains one last objection. Even if satisfactory arrangements can be made to meet the criticisms which have been rightly made of the present system, we have still to consider the position of the Governor. He is the supreme appellate authority in all matters of disagreement between his two sets of colleagues. In regard to differences between two halves of the Government arising over financial matters, his position must be extremely delicate and embarassing. He is ultimately responsible to Parliament through the Government of India and the Secretary of State for the administration of the reserved subjects, of which the finance forms a part under the rules. Therefore the tribunal to which alone the ministers can appeal is far from being satisfactory. This is a prominent feature of the present Constitution and its defective nature has been stressed by more than one Minister and ex-Ministers.

It has been suggested that the evils of the present system can be remedied by the adoption of the system of a separate purse. We do not favour this, for it is calculated to aggravate the difficulties instead of mitigating them. The question was thoroughly examined by the Joint Select Committee and, in our opinion, rightly objected. The most careful and anxious deliberations that we have been able to bestow upon this part of the subject leads us to but one conclusion. The only cure to be had is in the replacement of the dyarchical by a unitary and responsible provincial Government.

Conclusions.

Having expressed our views in detail on the working of the present system, its inherent constitutional defects and the practical difficulties experienced in its working, we shall now briefly submit our conclusions. While we agree with the majority that the constitution as a whole requires to be worked by reasonable men in a reasonable spirit if deadlocks are not to ensue, we venture to think that this will hold good in the case of any other constitution. In our opinion, the system of Dyarchy was during the first three years everywhere worked in the Legislatures by men most of whom were professedly its friends and who generally speaking tried to work it in that spirit of reasonableness which is referred to by the majority of our colleagues, and it is no exaggeration to say—and indeed this is also the testimony of several local Governments which we have quoted above—that generally a spirit of harmony and co-operation prevailed between the Legislature and the Executive notwithstanding the fact that the atmosphere outside was for some time markedly unfavourable. The Indian Ministers and Members of Executive councils also, upon whom new opportunities of service were conferred, appear to us to have been within the sphere of their Executive duties equally eager to work the constitution in the same spirit of reasonableness, and yet differing from the majority of our colleagues we have been forced to the conclusion that the present system has failed and in our opinion it is incapable of yielding better results in

the future. The system has been severely tested during the course of this year and its practical break-down in two provinces, Bengal and the Central Provinces as a result of the opinions of majority of the members of the councils of those two provinces who refuse to believe in the efficacy of Dyarchy and the tension prevailing in the other Legislatures for similar reasons point to the conclusion that the constitution requires being overhauled. It has failed in our opinion for several reasons: (1) There are the inherent defects of the constitution which though theoretically obvious at its inception have now been clearly shown by actual experience to exist. (2) The Ministers' position has not been one of real responsibility. (3) While in a few provinces the practice of effective joint deliberation between the two halves of the Government has been followed, in several of them it has not been. (4) Excepting to a partial extent in Madras, almost everywhere else the Ministers have been dealt with individually by Governors and not on the footing of collective responsibility. (5) The close inter-connection between the subjects of administration which have been divided into 'reserved' and 'transferred' has made it extremely difficult for Legislatures at times to make in practice a distinction between the two sections of the Government with the result that the policy and administration of the Reserved half of the government have not infrequently been potent factors in determining the attitude of the Legislatures towards the Ministers and have also in our opinion prejudiced the growth and strength of parties in the councils. (6) The Meston Award has crippled the resources of the provinces. It has been the corner stone of the entire financial system and it has prevented ministers from developing nation-building departments to the extent which would have enabled them to produce any substantial results. (7) The defects of the Rules which we have noticed before and the constitution and the working of the Finance departments have put a severe strain on the system.

CHAPTER VI

The Judicature.

I.—Law and Legislation.

SOURCE:—(a) pages 69-70 of Moral and Material Progress Report 1913.

The indigenous law of India is personal, and divisible with reference to the two main classes of the population, Hindu and Muhammadan. Both systems claim divine origin through revelation, and are inextricably interwoven with religion, and each exists in combination with a law based on custom.

Except in the case of the island of Bombay, which was obtained through cession in full sovereignty from Portugal wherever the English first settled in India they did so with the license of a Native government. But for various reasons their submission to native law did not follow: the earliest charters assumed that the English had brought their own legal system with them, and that of 1726 introduced the common law and the older Acts of Parliament into the three Presidency towns as regards Europeans. At first the tendency of the English was to make their law public and territorial and to apply it to Europeans and Indian alike; but Acts passed towards the end of the eighteenth century directed that as against a Hindu the Hindu law and usage, and as against a Muhammadan the laws and customs of Islam, should be applied. Owing, however, to the influence of Western jurisprudence, to the case-law emanating from courts established and moulded on English models, to the advance of enlightened ideas, and to the progress of education, the rules of the Shastras and the Koran have gradually been altered and relaxed. Substantial modifications have, moreover, inevitably been made by direct legislation, such as that contained in the Bengal Sati Regulation, 1829, the Caste Disabilities Removal Act, 1850, the Hindu Widows' Remarriage Act, 1856, the Criminal and

Civil Codes, and the tenancy and rent laws passed for the different provinces. The position at the present day has been summarised as follows:—"Native law has been wholly superseded, as to criminal law and procedure and as to civil procedure, by the Indian Penal Code, the Indian Codes of Criminal and Civil Procedure, the Evidence Act, and other enactments, and has been largely superseded as to other matters by Anglo-Indian legislation, but still regulates, as personal law, most matters relating to family law and to the law of succession and inheritance among Hindus, Muhammadans, and other natives of the country."*

A certain number of the older English statutes and the English common law are, therefore, to a limited extent, still in force in the Presidency towns as applicable to Europeans, while much of the old Hindu and Muhammadan law is everywhere personal to their Indian fellow subjects; but, apart from these and from the customary-law, which is as far as possible recognised by the courts, the law of British India is the creation of statutory enactment, made for it either at Westminister or by the authorities in India to whom the necessary law-giving functions have from time to time been delegated.

THE BRITISH INDIAN STATUTE BOOK:—The LEX SCRIPTA of British India may, then, be said to consist of first, Acts of Parliament; secondly, direct legislation in India; and thirdly, derivative legislation, consisting of statutory rules, orders and bye-laws, supplementing particular enactments. Orders by the King-in-council in pursuance of Acts of Parliament are another species of derivative legislation; but the number of these that relate to India is small.

As regards parliamentary legislation, the application of an unrepealed statute passed before the grant of the charter of 1716 may be a matter of doubt and complexity; but an Act of Parliament passed subsequently has no application to any part of British India unless it purports to extend to it in express terms or by necessary implication.

* The Government of India by Sir Courtney Ilbert.

The history of legislation in India and the procedure by which laws are now made have been dealt with in the preceding chapter. It will be gathered from what was there said that the results of direct legislation in India may be resolved under five different heads: (i) so much as is still unrepealed of the early Regulations of Bengal, Madras, and Bombay, made prior to 1834 under the quasi-legislative authority then entrusted to the executive; (ii) the Acts of the Governor-General in Council, which may be divided into general Acts and local Acts; (iii) Regulations issued by the executive under the statute of 1870, which take the form, and have all the effect of, legislative enactments; (iv) temporary Ordinances promulgated by the Governor-General under the Indian Councils Act of 1861; and (v) Acts of the provincial legislative councils.

A notable feature of the statute law of India is the number of examples of successful codification. The most important of the codes is the Indian Penal Code, enacted in 1860, which has remained in force upto the present time and has required little amendment or amplification. The rules of procedure have been codified in the Codes of Civil and Criminal Procedure (the Codes now in force being those of 1908 and 1898 respectively), the law of evidence in the Indian Evidence Act, 1872, and the principles of contract in the Indian Contract Act, 1872, to mention only a few examples.

II. – History of the Judicature.

SOURCES:—MORAL AND MATERIAL PROGRESS REPORT 1882.
" " " " " 1913.

MAYOR'S COURTS:—The early charters of the Company, from the reign of James I. onward, conferred judicial as well as legislative authority upon the Governor and Council of the several factories. This judicial authority extended to "all persons belonging to the Company or that should live under them, in all causes whether civil or criminal, according to the kingdom." But the establishment of a regular jurisdiction dates from 1726, when Mayor's Courts were established by

Royal Letters Patent at each of three Presidencies of Calcutta, Madras, and Bombay. The effect of these Letters Patent was to introduce into the Presidency towns the entire body of statute and common law then in force in England. The Mayor's Court was composed of a mayor and nine aldermen. It was made a court of record, with both civil and ecclesiastical jurisdiction. Appeals lay to the Governor and Council, with an ultimate appeal in cases exceeding the value of 1,000 pagodas (say £400) to the King in Council. By the same Letters Patent the Governor and Council were constituted courts of oyer and terminer, for the trial of all offences except high treason. Courts of Requests, for the determination of suits not exceeding five pagodas in value (say £2) were established by another charter 1753.

The Supreme Court of Judicature at Bengal.

The Regulating Act of 1772-73 (13 Geo. III c. 3), which conferred express legislative authority upon the Governor-General and Council, also constituted the Supreme Court of Judicature in Bengal, which remained substantially unchanged until 1862. The Supreme Court was composed of a chief justice and four puisne justices, all nominated by the Crown. It was declared a court of record, and a court of oyer and terminer and gaol delivery for Calcutta, thus superseding the Mayor's Court. It was authorised to exercise all civil, criminal, admiralty, ecclesiastical and equity jurisdiction. Its civil jurisdiction extended to subjects of the Crown resident in Bengal, persons in the service of the Company, and any other persons who should have agreed in writing to submit themselves to the Court. Its criminal jurisdiction extended to all offences committed in Bengal by subjects of the Crown or servants of the Company. It was no doubt intended that the Supreme Court, representing the English Crown, should ultimately become the general supervisor of justice throughout Bengal; but the course of events took a different direction. The vague nature of its powers led almost immediately to difficulties with the executive authority of the Governor-General and Council, and with the

native revenue officials. The dispute grew so heated that it could only be settled by Parliament. By the amending Act of 1781 (21 Geo. III. c. 70), it was declared that the Supreme Court had no jurisdiction over the Governor-General in his public capacity, nor over any native as farmer of land revenue. It was further enacted that the Supreme Court should apply their own laws to Hindus and Muhammadans in certain cases; and the provincial courts, both civil and criminal, were specially recognised as established by the Governor-General. Before tracing the history of these provincial courts, it may be convenient to state at once that the Mayor's Courts at Madras and Bombay remained unaltered until 1797, when they were superseded by Recorder's Courts, which were again replaced by Supreme Courts on the Bengal model—at Madras in 1800 and at Bombay in 1823.

THE NATIVE COURTS.—The Supreme Courts always remained Crown courts, outside the general system of justice administered in the country. That system had its origin in native law and native courts. For the present purpose, it will be sufficent to sketch the growth of judicial institutions in Bengal, for the system gradually developed in Bengal by Warren Hastings and Lord Cornwallis during the last quarter of the 18th century served as the model for the territory acquired at a later date. The native system of government was based upon the union of all authority, judicial, fiscal and military, in the same hands. At the head was the Nawab, nominally a subahdar or deputy of the Delhi emperor, whose authority was derived from two commissions, one of which constituted him DIWAN, the other NAZIM; as DIWAN, he collected the revenue, and superintended the administration of civil justice: as NAZIM, he exercised criminal jurisdiction. and controlled the police. Subordinate to the Nawab, both civil and criminal jurisdiction was largely entrusted to the Zemindars, or official collectors of the revenue; but there were also special criminal courts, the higest presided over by the Naib Nazim or deputy of the Nawab, the others by judges called FAUJDARS. The criminal law administered was

the Muhammadan law exclusively. The civil law was Hindu or Muhammadan, as the case might require. In 1765, Emperor Shah Alam granted to Lord Clive a FIRMAN conferring upon the Company the DIWANI of Bengal, comprising the collection of revenue and the administration of civil justice. The NIZAMAT, which included criminal jurisdiction, was by another FIRMAN continued to the Nawab. Accordingly, in the following year, when the Puniya or state ceremony for the collection of the revenue was held at Murshidabad, the Muhammadan capital of Bengal, Clive sat as DIWAN, and the Nawab NAZIM. Both branches of administration still remained in native hands, the Naib Diwan being appointed directly by the English, the Naib Nazim only through their general control over the Nawab. In 1771, the Court of Directors declared their resolution "to stand forth as DIWAN, and by the agency of the Company's servants to take upon themselves the entire care and management of the revenues." Warren Hastings, who was appointed Governor of Bengal to carry out this resolution, devised a scheme which placed the entire administration of justice both civil and criminal, as well as the collection of revenue, under the supervision of English officers. Each Province or District was placed in the charge of a Collector, assisted by a native DIWAN. The Collector and DIWAN were constituted a court of civil justice, called the DIWANI ADALAT, from which an appeal lay to the SADR DIWANI ADALAT at Calcutta, composed of the Governor and Council, also assisted by native officers. A criminal court, or FAUJDARI ADALAT, was likewise appointed for each Province, consisting of a KAZI, a MUFTI, and two MAULVIS, with whom the Collector sat merely to watch the proceedings. From this court an appeal lay to the SADR NIZAMAT ADALAT, which was composed of a DAROGAH, a KAZI, a MUFTI, and three MAULVIS, all appointed in the name of the NAZIM. It was intended that this court also should be under the supervision of the Governor and Council, for which purpose it was at first placed at Calcutta; but it was soon moved back to Murshidabad. The regulations framed by Warren Hastings for the procedure

of these two sets of Provincial courts form the first attempt at English legislation in India.

THE PROVINCIAL COURTS OF THE COMPANY.—This scheme of Warren Hastings was based, as the native system had been, upon the union of fiscal and judicial authority so far as possible in the same hands. The next step was to effect a separation, which has been steadily growing wider and more distinct down to the present time. In 1774, the Collectors were withdrawn, and native AMILS appointed in their stead for the administration of civil justice, the superintendence of the revenue being entrusted first to Provincial Councils and afterwards to a Committee of Revenue. In 1780, 16 courts of DIWANI ADALAT were created, each under the charge of a covenanted civilian styled Superintendent; and an elaborate code for their guidance was framed by Sir Elijah Impey, and translated into Persian and Bengali. In 1781 the Provincial Courts of the Company received express recognition from Parliament in the same statute that settled the conflict between the Supreme Court and the executive (21 Geo. III., c. 70). The "Governor-General and Council, or some committee thereof, or appointed thereby" when sitting to hear civil appeal—in other words, the sadr diwani adalat—were constituted a court of record, with an ultimate appeal to the King in Council, in cases exceeding £5,000 in value. At the same time, the Governor-General and Council were empowered to frame regulations for the Provincial Courts.

REFORMS OF LORD CORNWALLIS.—Considerable changes in the administration of justice were effected by Lord Cornwallis. The SADR NIZAMAT ADALAT, or appellate court of criminal jurisdiction, was removed from Murshidabad to Calcutta in 1790, and was reconstituted so as to consist of the Governor-General and Council, together with the KAZI and two MUFTIS; ordinary criminal jurisdiction was entrusted in 1793 to four courts of Circuit, each composed of two (or three) covenanted civilians, with native assessors. As regards civil justice, the

duties of Collector were finally separated from those of Judge in 1793. Twenty-six Civil Judges in all were appointed, each with Hindu and Muhammadan assessors. From them appeals lay to four Provincial Courts of Appeal, which were identical with the four Courts of Circuit already mentioned, and finally to the SADR DIWANI ADALAT, consisting of the Governor-General and Council. These Civil Judges were also constituted Magistrates, which empowered them to hold preliminary enquiries in important criminal cases, and to determine finally unimportant cases.

Subsequent changes under Wellesley and Bentinck.

Subsequent changes must be noticed very briefly. In 1801, during the administration of the Marquis of Wellesley, the two appellate courts of SADR NIZAMAT ADALAT AND SADR DIWANI ADALAT were remodelled: Instead of consisting of the Governor-General and Council, they were composed of three or more judges selected from the covenanted service; thus they remained until merged in the High Court in 1862. The ordinary courts of justice were constituted much in their present form by Lord William Bentinck (1828-1835). The Provincial Courts of Appeal in civil cases were abolished; full criminal jurisdiction was conferred upon the Civil District Judges, under the style of Sessions Judges; and the magisterial authority formerly exercised by the Civil Judges; was transferred to the Collectors.

The Inferior Courts.

The Inferior courts of civil jurisdiction outside the Presidency towns trace their origin to Lord Cornwallis, who established Courts of Native Commissioners to decide cases not exceeding 50 rupees (£5) in value. These Native Commissioners were of three denominations—AMINS, or referees; SALISANS, or arbitrators; and munsifs, or judges. In 1803, the office of sadr amin was created, with jurisdiction extending to 100 rupees (£10), subsequently enlarged to 1,000 rupees (£100), while the jurisdiction of munsifs was similarly raised to 150 rupees (£15) In 1831, Lord William Bentinck instituted a new class

known as Principal SADR AMINS, whose jurisdiction was afterwards made unlimited in respect of value. In 1868, the office of SADR AMIN was abolished, and the title of Principal sadr amin was changed to that of Subordinate Judge. An appeal lies from the Subordinate Judge to the District Judge in suits not exceeding 5,000 rupees (£500) in value; in suits above that value, to the High Court. Small Cause Courts, on the model of those already existing in the Presidency towns, were established in Bengal by the Indian Legislature in 1860, and have been since extended to other Provinces. In 1871, Local Governments received power to invest any Subordinate Judge with the jurisdiction of a Small Cause Court.

Inferior Courts in the Presidency Towns.

The Inferior Courts of civil jurisdiction in the Presidency towns were originally Crown Courts; like the Supreme Courts. Courts of Request were first established at Calcutta, Madras, and Bombay by Royal Charter in 1753, with a jurisdiction limited to five pagodas (£2). The jurisdiction of the Court of Requests at Calcutta was extended by statute, and by successive proclamation to 400 rupees (£40) in 1819. The judges were styled Commissioners, and were ultimately three in number. They were subject to the control of the Supreme Court. In 1850, by an Act of the Indian Legislature, Small Cause Courts were substituted for the Courts of Requests at the three Presidency towns; of three judges, one must be a barrister; and the control of the Supreme Courts was maintained. By Act XV of 1882 the Small Cause Courts at the Presidency towns were again remodelled.

HIGH COURTS.—The assumption of the Government of India by the Crown in 1858 did not lead at once to a simplification of the several jurisdictions. It was considered that a simplification of the law was first necessary; and this was accomplished by the passing of the Civil Procedure Code in 1859, the Criminal Procedure Code in 1860, and the Penal Code in 1861, all of which had been long previously in preparation. In 1862, a statute was passed (24 and 25 Vict. c.

104), empowering the Crown to establish by letters-patent, High Courts at Calcutta, Madras, and Bombay, in which the Supreme Courts, as well as Sadr Diwani Adalat and the Sadr Nizamat Adalat, were merged. The same Act of Parliament permitted the erection of a High Court for the North-West Provinces, which was done in 1866. In the same year a Chief Court, somewhat on the same model, was established for the Punjab by Act of the Indian Legislature.

THE CIVIL COURTS ACTS.—The constitution and jurisdiction of the ordinary Civil Courts is now regulated for the most part by the Indian Legislature. Between 1875 and 1873 a Civil Courts Act was passed for each one of the ten Provinces, establishing a system generally uniform, but capable of being modified by the executive authority.

CRIMINAL COURTS.—The constitution of the Criminal Courts is uniform throughout as regulated by the Criminal Procedure Code of 1872 (amended in 1882).

THE INDIAN HIGH COURTS ACT, 1911*:—Some important changes in the law were effected by the Indian High Courts Act, 1911. Under the Act of 1861, each High Court consisted of a Chief Justice and as many Judges, not exceeding 15, as the Crown might from time to time think fit to appoint. The Act of 1911, which was passed with the object of meeting the needs of the increasing volume of judicial business in India, raised the maximum number of Judges, including the Chief Justice, to 20. It also made provision for the establishment, if necessary, of additional High Courts in any part of India, and for the appointment of temporary additional judges (within the prescribed maximum limit of number) by the Governor-General in Council.

(NOTE BY THE AUTHORS:—In pursuance of this Act, new High Courts have been established at Patna, Lahore and Rangoon.)

*Moral and Material Progress Report 1913.

II.—The Present Organisation of Courts of Justice.

i. The Indian High Courts.

A Composition.

SOURCE:—Sections 101-102 of the Government of India Act.

Clauses 2, 3 and 4 of section 101:—

(2) Each High Court shall consist of a chief justice and as many other judges as His Majesty may think fit to appoint:

Provided as follows:—(i) the Governor in Council may appoint persons to act as additional judges of any high court, for such period, not exceeding two years, as may be required; and the judges so appointed shall, whilst so acting, have all the powers of a judge of the high court appointed by His Majesty under this Act; (ii) the maximum number of judges of a high court, including the chief justice and additional judges, shall be twenty.

(3) A judge of a high court must be—(a) a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland of not less than five years' standing; or (b) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a district judge; or (c) a person having held judicial office, not inferior to that of a Subordinate Judge, or a judge of a Small Cause Court, for a period of not less than five years; or (d) a person having been a pleader of a high court for a period of not less than ten years.

(4) Provided that not less than one-third of the judges of a high court, including the chief justice but excluding additional judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the INDIAN CIVIL SERVICE.

SECTION 102:—

Tenure of office of Judges of high courts.

Every judge of a high court shall hold his office during His Majesty's pleasure. Any such judge may resign his office, in the case of the high court at Calcutta, to the Governor-General in Council, and in other cases to the local Government.

B Jurisdiction.

SOURCE:—Sections 106 and 107 of the Government of India Act (Consolidated.)

Jurisdiction of High Courts.

106 (1) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court as are vested in them by Letters Patent, and, subject to the provisions of any such Letters Patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.

(1A). The Letters Patent establishing or vesting jurisdiction, powers or authority in a high court may be amended from time to time by His Majesty by further Letters Patent.

(2) The high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

Powers of High Court with respect to subordinate Courts.

107 Each of the courts has superintendence over all courts for the time being subject to its appellate jurisdiction and may do any of the following things, that is to say:—

(a) call for returns,

(b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases of the local Government.

C Bombay High Court.

SOURCE:—Page 38, Bombay in 1922-23.

The High Court, consisting of a Chief Justice and seven Puisne Judges, has both ordinary and extraordinary civil and criminal jurisdiction and exercises original and appellate functions. The appellate Judges of the High Court also supervise the administration of justice by Subordinate Civil and Criminal Courts. Ordinary original jurisdiction is exercised in matters both civil and criminal, which arise within the limits of the Town and Island of Bombay, but the High Court may in civil cases remove and itself try any suit brought in any court under its superintendence and, in criminal cases, exercise jurisdiction over all persons residing in any place whose courts are subject to the superintendence of the High Court.

D Judicial Commissioner's Court in Sind.

EXTRACT FROM THE REPORT OF THE CIVIL JUSTICE COMMITTEE:—

"The court of the Judicial Commissioner is the highest court of appeal....in the province....It is also the district (and Sessions) Court of Karachi. It consists at present of three permanent and two temporary Judges, one of whom is the

Judicial Commissioner and others additional Judicial Commissioners....

The High Court of Bombay has no jurisdiction over the province of Sind, but this does not affect the Administrator General's Act (III of 1913) or invalidate the grant of Probate or Letters of Administration by that High Court. Criminal Jurisdiction over European British subjects residing in Sind has been taken away from the Bombay High Court and vested in the Judicial Commissioner's court since 1st September 1923 by the amended Code of Criminal Procedure and a Full Bench of the Judicial Commissioner's Court has recently held that since that date it is the Judicial Commissioner's Court and not the Bombay High Court that has jurisdiction as regards decrees in matrimonial suits....

The history of the Karachi Court is interesting and is briefly as follows:—Before the Conquest of Sind in 1843 no civil court existed in the province. After the conquest Sir Charles Napier as Governor, established military courts. In 1849 these were abolished and civil and criminal courts substituted. In 1860 the Commissioner was still the head of the criminal and civil jurisdiction, but he had been provided with a judicial assistant. In 1866 this latter officer gave place to a single Judicial Commissioner presiding over a Sadr Court with appellate and revisional powers over the district courts which by then had been created throughout the province. Eventually the powers of the Sadr court were in 1906 and 1909 transferred to the court of the Judicial Commissioner. By this change the District Judgeship of Karachi was abolished and a court formed of a Judicial Commissioner and two additional Judicial Commissioners, one of whom had to be a barrister. An appeal lies within the Court from the decision of one Judge sitting at first instance to a bench of two Judges. As litigation rapidly increased, especially during the boom which followed the Armistice, a temporary appointment of a fourth Judge and recently of a fifth Judge has been created.

ii. Inferior Criminal Courts.

SOURCE:—Pages 75.-76 OF THE DECENNIAL REPORT ON MORAL AND MATERIAL PROGRESS OF INDIA 1913.

INFERIOR CRIMINAL COURTS:—The Code of Criminal Procedure (Act V of 1898) provides for the constitution of inferior courts, styled Courts of Sessions and courts of magistrates.

SESSIONS COURTS—Every province is divided into sessions divisons, each consisting of one or more districts. For every sessions division the Local Government must, under the Act, establish a Court of Session and appoint a Sessions Judge, and provision is also made for the appointment, if necessary, of Additional and Assistant Sessions Judges. Subject to the territorial limits, of their respective jurisdictions, these stationary sessions courts, which take the place of the assizes held by a judge of the High Court on circuit in England, are competent to try all accused persons duly committed and to inflict any punishment authorised by law; but every sentence of death is subject to confirmation by the highest court of criminal appeal in the province.

MAGISTRATE'S COURTS:—Below the Sessions Courts come courts of magistrates, who are partly members of the Indian Civil Service and partly drawn from the locally recruited, and mainly Indian Provincial Services. The courts of magistrates are of three classes, those of the first having power to pass sentence of two years' imprisonment and to fine up to Rs. 1,000, and those of the second and third to pass sentences of six months' and one month's imprisonment respectively, and to fine up to Rs. 200 and Rs. 50. Only those of the first class are empowered, since the passing of Whipping Act, 1909, to pass sentences of whipping. The powers of magistrates are defined also by territorial limits, and with reference to the various classes of crime, a schedule to the Code setting forth, in regard to each offence, the grade of magistrate competent to try it. Magistrates of the first class, or of a lower class if specially authorised, are enabled to commit for trial by the Court of

Session such offences as are not within their cognizance, or for which they are not competent to inflict adequate punishment. In the non-regulation areas, Local Governments may invest any magistrate of the first class with power to try any offence not punishable with death.

In each district one magistrate of the first class (in practice the Collector or Deputy Commissioner) is appointed District Magistrate, and, as such, supervises work of the other magistrates of the district. Provision is also made, and largely resorted to in the towns, for the appointment of honorary magistrates, for the formation of benches of magistrates, honorary or stipendiary, and for the appointment, in the Presidency towns, of Presidency magistrate to try minor offences and commit to the High Court persons charged with more heinous crime. In Madras a considerable number of petty cases are tried by the village headmen in their capacity of village magistrates, and similar powers are exercised in varying degrees by village officers in some other provinces, as for instance, by village police patels in Bombay and village headmen in Burma.

Juries and Assessors:—Trial by jury is the rule in orginal criminal cases before the High Courts, in the mofussil it is not always possible to empanel an efficient jury, and trials before Courts of Session are conducted with the aid of jurors or of assessors who assist, but do not bind, the judge by their opinions according as the Local Government by general orders may direct. Where trial is by jury, the law directs the Sessions Judge, if he considers that a jury has returned a manifestly wrong verdict, to submit the case to the High Court, which is empowered to set aside or modify the finding. An Indian jury consists of nine persons in trials before a High Court, and in other trials of such uneven number up to nine as may be prescribed by the Local Government. Judgement may be given on the verdict of a majority, provided the Judge agrees with it (and, in the case of the High Courts, provided the majority includes at least six jurors). In the North-West Frontier

Province and parts of the Punjab a certain number of criminal cases are under the provisions of the Frontier Crimes Regulation, referred to Councils of Elders (Jirgahs).

iii Inferior Civil Courts.

A. The General System.

SOURCE:—Page 76 of the Decennial Report on Moral and Material Progress in India 1913.

The constitution and jurisdiction of the inferior civil courts in each province are determined by special Acts or Regulations. The arrangements made under these differ in nomenclature and otherwise; but they are all similar in essential respects, and it will suffice to describe the system that prevails over the widest area.

Throughout Bengal, the Province of Agra, and Assam, there are three classes of courts, those of District Judges, Subordinate Judges, and Munsifs. Ordinarily one District and Sessions Judge is appointed to each District, and presides, in the former capacity, in its principal civil court of original jurisdiction. His jurisdiction extends—subject to the provisions of the Code of Civil Procedure, which require every suit to be instituted in the court of the lowest grade competent to try it—to all original suits, and he is vested with administrative control over, and the distribution of business among, all the other civil courts in the district. The District and Sessions Judges are selected from the Indian Civil Service or the Provincial Civil Service.

SUBORDINATE JUDGES AND MUNSIFS:—Next to the District Judge come Subordinate Judges with co-extensive original jurisdiction; while the lowest are presided over by Munsifs, whose jurisdiction is ordinarily limited to suits not exceeding Rs. 1,000 in value. Subordinate Judges and Munsifs are, as a rule, natives of India, and are frequently members of the Indian bar.

SMALL CAUSE COURTS:—Besides the civil courts described above, there are in the Mofussil a number of special Courts of

Small Causes with jurisdiction to try, in a summary manner and subject to a limited right of appeal, simple money suits, with a limit of value which is ordinarily Rs. 500; and, where such special courts have not been constituted, jurisdiction to try as "small causes" similar suits may be conferred on selected Subordinate Judges or Munsifs. There are also Presidency Small Cause Courts with jurisdiction to dispose of money suits up to a value of Rs. 2,000, at Calcutta, Madras, and Bombay. At Madras the experiment has been tried of still further relieving the High Court by the constitution of a city Civil Court with jurisdiction to try, EXCEPTIS EXCIPIENDIS, all suits not exceeding Rs. 2,500 in value. In Madras, and also in the United Provinces, the leading residents of villages may be appointed to sit, singly as Munsifs or together on benches and under a similar procedure to dispose of petty claims valued at not more than Rs. 20, or with the consent of parties Rs. 200. Somewhat similar provisions are made in some other provinces for disposing of petty cases, as for example, by appointing village Munsifs under the Dekkhan Agriculturists' Relief Act, or by conferring a limited civil jurisdiction on village headmen in Burma. The Punjab Panchayat Act of 1912, passed after the end of the period under review, provides for the constitution in that province of panchayets with power to dispose of certain classes of cases with a maximun limit of value of Rs. 200. Civil suits are, in India, never tried by jury.

B The organisation of Inferior Civil Courts in Bombay.

SOURCE:—Pages 38, 39 and 40, Bombay in 1922-23.

In the Mofussil, the administration of civil justice is, in addition to the High Cort, and the Court of the Judicial Commissioner in Sind, entrusted to four grades of Courts, those of District and Assistant Judges and of two classes of officers styled, respectively, First and Second Class Subordinate Judges. There are at present eighteen District Judges, four Joint Judges and ten Assistant Judges, though the number of Assistant Judges is frequently less than ten as the number required to act for

District Judges on leave varies considerably. All these officers are members of the Indian Civil Service except three District Judges and seven Assistant Judges who belong to the Bombay Civil Service.

There are twenty two First Class and one hundred and seven Second Class Subordinate Judges in the presidency proper. In the province of Sind there are three First Class and thirteen Second Class Subordinate Judges.

The jurisdiction of a Subordinate Judge of the Second Class extends to all original suits and civil proceedings wherein the subject matter does not exceed five thousand rupees in value. He has no appellate powers.

The jurisdiction of a Subordinate Judge of the First Class extends to all original civil suits, except suits in which Government or any officer of Government in his official capacity is a party. An officer of this class may be (and some of them are) invested with appellate jurisdiction. A Subordinate Judge of the First Class may be invested with summary powers of a Small Causes Court Judge for the trial of suits not exceeding Rs. 1000 in value, and a Subordinate Judge of the Second Class with similar powers in suits up to Rs. 200. The High Court may invest any Subordinate Judge with the powers of a District Judge or District Court, to try certain cases.

An Assistant Judge may try such original suits of less than Rs. 10,000 in amount or value as the District Judge refers to him for decision.

The officer who presides over the principal Court of Original Civil Jurisdiction in each district is called the District Judge. He exercises a general control over all courts within his charge and refers for decision to the Assistant Judge such suits as he deems proper. He has also to arrange for the guardianship of the minors and lunatics, and the management of their property. The Judges of Surat and Poona are Judges of the Parsee Matrimonial Courts in those towns, and the Judge of Poona, as Agent for the Sardars in the Deccan, decides

under a Regulation of 1827, cases in which certain gentlemen of high rank are interested.

THE SMALL CAUSES COURT :—For the more easy recovery of small debts and demands, Courts invested with summary powers have been established in the City of Bombay and in Ahmedabad, Nadiad, Poona and Karachi. The Judges of the mofussil Small Causes Courts have jurisdiction in money suits within the towns where the Courts are situated up to Rs. 500 in value and their decisions are final, save in so far as they are subject to reference on points of law to the High Court or to the supervision of the High Court in its extraordinary jurisdiction. The jurisdiction of these courts may be extended to Rs. 1,000 and they can also be invested with appellate jurisdiction. The Presidency Small Causes Court has cognisance in suits not exceeding Rs. 2,000 in value arising within the Island of Bombay.

C. Some Peculiarities of the Bombay System.

SOURCE:—Chapter 53, Report of the Civil Justice Committee 1924-5.

*"The constitution and jurisdiction of the civil courts in the mofussil in the Presidency are governed by the Bombay Civil Courts Act XIV of 1869 as amended by the Bombay Act I of 1900. Besides the Courts governed by that Act there are the following courts exercising civil jurisdiction in the Presidency:—

1. The court of the Agent for the trial of suits against Deccan Sirdars.
2. Courts of Jagirdars and of Saranjamidars.
3. Courts of Mamlatdars.
4. Village Munsifs.
5. Small cause courts.

The outstanding feature of the Bombay Civil Courts Act is that it does not recognise the court of Munsifs and the lowest grade of Judicial officers whom it recognises is the court of second class subordinate judges, who on first appointment are

* Para 3.

invested with and immdiately exercise powers to try suits up to a pecuniary limit of Rs. 5,000. First class subordinate judges exercise an "ordinary" and a "special" jurisdiction, trying in the former capacity suits under Rs. 5,000 and in the latter capacity suits of an unlimited value over Rs. 5,000. The result is that there is here no distinction as there is in the rest of India between suits triable exclusively by munsifs or officers of corresponding rank and suits triable by subordinate judges. It follows that there is also no distinction between appeals from munsifs which can be heard by subordinate judges and appeals from subordinate judges which must be exclusively heard by District Judges.....

The large powers conferred on Judicial officers of the lowest grade have the result that justice is brought nearer the homes of parties even for the trial of large claims. There is no great centralisation at the headquarters station of a large number of courts as is noticeable in other parts of India.....

*The powers of the courts of Assistant and Joint Judges which are another peculiar feature of the Bombay Civil Courts Act have been discussed elsewhere. We have also mentioned that the limit of small cause court powers of first class subordinate judges invested with small cause court powers under section 28 of the Bombay Civil Courts Act has been recently raised to Rs. 1000 which is higher than the limit in any other province in India. So has the jurisdiction of small cause court judges under the Provincial Small Causes Courts Act.

†There is one provision of the Bombay Civil Courts Act which in our opinion is open to criticism. It is section 32 which provides that no subordinate judge or court shall receive or register a suit in which the Government or any officer of Government in his official capacity is a party, but in every case such Judge or court shall refer the plaintiff to the District Judge in whose court alone such suits shall be instituted. The result of this provision is that in several district courts in the Presidency there is a congestion of suits against the Secretary

* Para 4.
† Para 5.

of State or against officers of Government in their official capacity, which the District Judge has not time to take up. The great majority of these suits are of a very simple character and the subject matter is of trifling value.....

*A peculiar feature of the judicial administration in this province is the fact that the District Judge has to administer a large number of estates of minors who are wards of the Court. These are all estates which the Court of Wards does not administer either because they are too small or they do not pay land revenue to Government. The routine management is done by the deputy nazir, but on all important matters he has to submit detailed reports to the District Judge, who, after making such further enquiry as he thinks fit, passes orders in each case.....The District Judge in consultation with the deputy nazir has to fix the proper maintenance amounts for minors and their dependents, sanction additional expenditure to meet contingencies like serious illness of the minors or their dependents, fix suitable amounts for carrying out necessary repairs to their properties and so on. On occasions the District Judge has to decide whether a proposed bride is suitable for the minor and to determine what amount should be sanctioned for celebrating the marriage, or for the purpose of other ceremonies.....occasionally the District Judge has to enquire and satisfy himself whether the personal guardian of the minor attends properly to his health, education, etc. In no other province in India is the District Judge burdened with duties of this character.....

iv. Revenue Courts.

SOURCE:—Page 77 of the Decennial Report on the Moral and Material Progress of India 1913.

Side by side with the civil courts there exist revenue courts, presided over by officers charged with the duty of setting and collecting the land revenues. The relations of the two classes of courts have in the past given rise to difficult questions. On the whole it may be said that, so far as the

* Para II.

assessment and collection of land revenue are concerned, and in purely fiscal matters, the civil courts are now generally excluded from interfering. On the other hand, all questions of title to land have been brought within their cognizance; rent suits which were long triable by revenue officers alone, are in some parts of India, notably in Bengal, now regulated for disposal to the ordinary courts; and, when such suits are still dealt with by revenue officers, the procedure is assimilated to that of the civil court; and recourse may be had to the latter on questions of title.

IV—Appeal and Revision

A. Appeals in India.

SOURCE:—Moral and Material Progress Report 1913.

The system of Indian law allows considerable latitude in the matter of appeal. From a conviction by a second or third class magistrate an appeal lies to the District Magistrate or to any specially-empowered first-class magistrate; and, subject to certain limitations, original convictions by Magistrates of the first class are appealable to the Sessions Judges, whose own original convictions are in turn appealable to the highest court in the province. The latter court is empowered to call for and examine the record of any proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality, propriety, or regularity of any finding, sentence, or order. A finding of acquittal is ordinarily final, but may be appealed against under the special orders of the Local Government or revised by the chief court of the Province. This procedure is adopted only in a small number of cases, where there appear to be some manifest failure of justice. As regards appeals in civil cases, there is much the same latitude. Outside Small Cause Court jurisdiction, an appeal lies from every decision of a Munsif to the District Judge, but the latter is enabled to transfer such appeals to Subordinate Judges for disposal. Similarly every decree or order made by a Subordinate Judge is appealable to the District Judge or to the High Court. The

decisions of a District Judge are liable to be taken on appeal to the High Court, and second or special appeals to the High Court are allowed in some circumstances.

In certain cases, a further appeal lies to the Judicial Committee of the Privy Council.

B. Appeals to the Privy Council in England.

SOURCE:—Sections 109 and 110 Civil Procedure Code.

109. Subject to such rules, as may from time to time be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to His Majesty in Council—

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

(b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction; and

(c) from any decree or order, under the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

110. *In each of the cases mentioned in clauses (a) and (b) of Section 109, the amount or value of the subject matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject matter in dispute on appeal to His Majesty in Council must be the same sum or upwards, or the decree or final order must involve, directly or indirectly, some claim or question respecting property of like amount or value, and where the decree or final order appealed from affirms the decision of the Court immediately below the court passing such decree or final order, the appeal must involve some substantial question of Law.

* Section 110 Civil Procedure Code.

V.—Privileged Position of Europeans in matters of procedure.

i History of the Question.

SOURCE:—PARAS 4-9 OF THE REPORT OF THE RACIAL DISTINCTIONS COMMITTEE.

4. The origin of the privileges in question can probably be traced to the jealousy with which in the eighteenth century and later the jurisdiction of the Courts of the Hon'ble East India Company over Europeans was regarded. For a long time the courts of the Company exercised no such jurisdiction at all, the administration of civil and criminal justice in India being confined in such cases to the courts of the presidency towns. The system was undoubtedly based on the idea that the Crown from the earliest introduction of its subjects into India provided for the administration of justice among them a system analogous to that which existed in England. Moreover previous to 1833 British subjects, not in the service of the Crown or Company, were not allowed to reside at a distance of more than ten miles from a presidency town without special permission. On the repeal of this provision, the Court of Directors in 1834 gave instructions that British-born subjects should be subjected to the same tribunals as Indians. They observed that:—

"The 85th clause of the Charter Act of 1833, after reciting that the removal of restriction on the intercourse of Europeans with the country will render it necessary to provide against any mischiefs or dangers that may thence arise, proceeds to direct that you shall make laws for the protection of the Natives from insult and outrage—an obligation which in our view you cannot possibly fulfil unless you render both Natives and Europeans subject to the same judicial control. There can be no equality of protection where justice is not equally and on equal terms accessible to all."

Accordingly Europeans were made amenable to the civil courts outside the presidency towns in 1836 by an Act associated

with the name of Lord Macaulay. The question of the trial of Europeans by all the criminal courts outside the presidency towns was raised in 1849 by the Government of Lord Dalhousie; and again in 1857. It was decided, however, to await the introduction of the revised criminal law in such areas. The previous procedure therefore continued until 1861, that is to say, European British subjects resident outside the presidency towns were tried by the Supreme Courts which were stationed in the presidency towns, except in respect of certain minor offences for which they were triable by European Justices of the Peace. In 1861, the Supreme and Sudder Courts were combined into the High Courts of Judicature. English Judges were then enabled to go up country and try cases against Europeans. Even up to 1872, however, the general principle was that criminal jurisdiction over European British subjects was exercised only by courts established by the Crown and not by the courts of the country.

5. In 1872, when Sir James Stephen was Law Member, the jurisdiction of the ordinary criminal courts was definitely extended to Europeans, but at the same time special forms of procedure based on English law and limitations of the powers of the courts were framed for their trial.

6. In 1883, the well-known Ilbert Bill was introduced with the object of giving jurisdiction to Indian Sessions Judges and certain Indian Magistrates to try European British subjects. Owing to the feeling aroused by the Bill, its scope was reduced, and a compromise was effected, a fresh Bill being introduced and passed as Act III of 1884. The main effect of the compromise was that, while Indian Sessions Judges and District Magistrates were enabled to try European British subjects, the right to claim a mixed jury, that is, a jury consisting of not less than half Europeans, was allowed in all Sessions cases (not merely in those triable by jury in the case of Indians) and also before District Magistrates.....

7. In the presidency towns European British subjects have had and have no privileges before the Presidency Magistrates, but they can claim a mixed jury before the High Court.

8. It is interesting to note that, whereas, at the time of the Ilbert Bill controversy, the question was whether Indian Judges and Magistrates should try Europeans or not, the subject which excites most interest at the present moment is the right of a European British subject to claim a mixed jury.

9. Prior to 1882 the law provided that in the case of Europeans (not being European British subjects) and Americans in any trial before the Court of Session the accused had the right to be tried by a jury of which not less than half should consist of Europeans or Americans, if such a jury could be procured. By the Code of 1882 this right was retained only in respect of Sessions cases normally triable by jury; while in cases triable with the aid of assessors it was provided that half the number of assessors, if practicable and if claimed, should be Europeans or Americans. . . .

ii Privileges enjoyed by Europeans before 1923.

SOURCE:—Paras 11-12 of the Report of the Racial Distinctions Committee.

11. The most important provisions requiring examination are those contained in the Criminal Procedure Code, especially Chapter XXXIII and sections 4, 22, 111, 188, 275, 408, 416, 418, and 491 of that Code, together with section 65 (3) of the Government of India Act, section 56 of the Indian Penal Code, the Penal Servitude Act, XXIV of 1855, and the European Vagrancy Act, IX of 1874.

12.-A. The principal distinctions between the provisions relating to Indians and those relating to European British subjects are as follows:—

(i) By virtue of the provisions of section 443 of the Criminal Procedure Code, European British subjects are not triable by a second or a third class Magistrate and are only triable by a Magistrate of the first class if he is a Justice of the Peace

and, save in the case of District and Presidency Magistrates, a European British subject.

(ii) The jurisdiction of Additional and Assistant Sessions Judges over European British subjects is restricted by section 444 of the code to cases where they are themselves European British subjects and in the case of Assistant Sessions Judges to those who have been Assistant Sessions Judges for at least three years and have been specially empowered in this behalf by the local Government.

(iii) The sentences that may be awarded by first class Magistrates, District Magistrates and Courts of Session in the case of European British subjects are limited by sections 446 and 449 of the Code to three months' imprisonment and a fine of Rs. 1,000; six months' imprisonment and a fine of Rs. 2,000; and one year's imprisonment and unlimited fine, respectively.

(iv) In the case of trials before a High Court, Court of Session or District Magistrate, European British subjects are entitled by sections 450 and 451 of the Code to be tried by jury, of which not less than half shall be Europeans or Americans.

(v) Section 456 of the Code gives to European British subjects remedies in the nature of HABEAS CORPUS which are more extensive than those provided for Indians by Chapter XXXVII.

(vi) Under the provisions of sections 408 and 416 of the Code, European British subjects have more extensive rights of appeal in criminal cases than Indians, in that they may appeal against sentences in which an appeal would not ordinarily lie; and they also have the option of appealing in the alternative to the High Court or the Court of Session.

(vii) Under section 111 the provisions of the Code regarding the taking of security for good behaviour in sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act of 1874; and

(viii) The definition of High Court is not so wide in the case of European British subjects as it is in the case of Indians.

12-B. The only distinction between the provisions relating to Indians and those relating to Europeans (not being European British subjects) and Americans is that under the provisions of section 460 of the Code in every case triable by jury or with the aid of assessors in which a European (not being a European British subject) or an American is an accused person, not less than half the number of jurors or assessors must, if practicable and if claimed, be Europeans or Americans.

iii. Recommendations of the Racial Distinctions Committee.

34. To put our main proposals in respect of the modifications of the Criminal Procedure Code into tabular form, their effect will be:—

For European British subjects.	For Indians.
1. An appeal will lie against any sentence of imprisonment passed by a Magistrate. There will also be a right of appeal against any sentence of fine exceeding Rs. 50.	The same.
2. In every case before the High Court and Sessions Court, in which he is tried by a jury, the accused will be entitled to claim a mixed jury, that is, a jury consisting of not less than half of the nationality of the accused, subject to—	The same.
(a) An appeal on facts as well on law in the case both of conviction and acquittal, when the jury are not unanimous, or when the jury are unanimous but the judge does not agree with them.	
(b) A probable increase in the number of Indians in the Special Jury List.	

(c) A provision that the Jury shall be not less than five and in all murder cases, if practicable, nine.

3. The accused in the Sessions Court will be entitled to claim to be tried by jury in any class of case which is normally triable with assessors if racial considerations are involved. The same.

This provision is in addition to the right of trial by jury in all cases in the High Court and also in Sessions Courts where such a method of trial is prescribed under section 269 of the Criminal Procedure Code.

4. In any class of case in the Sessions Court which is normally triable with assessors and where no racial considerations are involved, he will be tried with assessors, who will not be less than three in number, and who, if the accused so claims, will all be of his own nationality. The same

5. In a warrant case in which racial considerations are involved and where a sentence of imprisonment can be passed, the accused and the complainant will each be entitled to claim the committal of the case to the Sessions Court for trial by a Jury. The same.

6. In a summons case where racial considerations are involved and where a sentence of imprisonment can be passed the accused and the complainant will each be entitled to claim that the case shall be tried by a Bench of two first class Magistrates, one Indian, one European, reference in The same.

case of disagreement being to the Sessions Judge.

7. In any other case triable by a Magistrate if the accused so desires, the trial will be by a first class Magistrate, except in cases punishable with fine of not more than Rs. 50 only.	It is not practical to extend this to Indians.
8. Judges and Magistrates, outside Presidency towns, will have power to pass all sentences which they are authorised by law to pass, except whipping and sentences under section 34 of the Criminal Procedure Code on which subjects inquiry is proposed.	The existing arrangements continue pending the result of the proposed inquiry.

NOTE.—Clauses 1, 4, 5, 6, 7, and 8 apply only outside presidency towns. We also propose the repeal of section 460 which provides for a special procedure in the case of Europeans (not being British subjects) and Americans.

V —Separation of the Judicial and Executive Functions.

A. Present Position.

SOURCES:—(1) Page 77 of the Moral and Material Progress of India 1913.

(2) Report of the Public Services Commission 1916.

(1) EXTRACT FROM THE MORAL AND MATERIAL PROGRESS REPORT 1913:—

Something may conveniently be said here on the much-discussed question of the separation of executive and judicial functions. It is to be pointed out in the first place, that the question is not now, to any extent, one of separating executive from civil judicial functions. The scheme of separation which was brought into effect in the Central Provinces in 1901 was carried further during the earlier years of the decade, and similar measures were taken in Lower Burma, where separate judicial services were constituted in 1905. The practice of

entrusting executive officers with regular civil jurisdiction, which was formerly found convenient in non-regulation districts, now survives only in Upper Burma and in a few backward tracts. Elsewhere all civil suits are tried by special judicial officers, who have no direct concern with the executive administration or the police work of the country. The same may be said of important criminal trials; the superior criminal courts—the High Courts, Chief Courts, and Courts of Session—are presided over by judicial officers who have no executive authority. But minor criminal cases are still tried in all provinces by officers who exercise executive and revenue functions. As has already been explained, the Collector or Deputy Commissioner, who is responsible for the police, revenue and executive business of his district, is also District Magistrate and, as such, is vested with extensive judicial authority and controls all subordinate magistrates within his jurisdiction. Other magistrates of the first class, also, are almost invariably Assistant or Deputy Collectors. The Collector himself, it may, however, be added, has but little time to devote to criminal cases, and seldom, if ever, interferes with them. The question of carrying further the separation of executive and judicial functions has received much consideration in recent years.

(2) Extract from the Report of the Public Services Commission 1916:—

Present Position:—At present the district magistrate and collector, apart from his duties as collector of revenue, chairman of the district board and district registrar, is recognised under the Criminal Procedure Code and the Police Act as the officer responsible for the peace of the district, and is the superior, in all but departmental matters, of the district police force from the superintendent downwards. Under the Criminal Procedure Code he also exercises the full powers of a magistrate of the first class, including those of taking cognisance of offences whether on a complaint before himself or another magistrate, or on information to the police or otherwise.

He is also authorised to hear appeals from magistrates of the second and third classes. He can also call for the record of any case disposed of by a subordinate magistrate, and either refer it to the high court, or in certain cases order a committal to the court of sessions. Lastly he can, on due cause being assigned, transfer a case from the file of any subordinate magistrate to his own file or to that of another subordinate.

B. Criticism directed against the Present System.

SOURCES:—(1) Extract from a memorial addressed to the Secretary of State in July 1899 by Lord Hobhouse, Sir Richard Garth, Sir Richard Couch, Sir Charles Sargent and other retired Judges and high Officials.

(2) Sir Harvey Adamson's Budget Speech 1908.

(1) EXTRACT FROM THE MEMORIAL:—

12. The grounds upon which the request for full separation is made are sufficiently obvious; they have been anticipated in the official opinions already cited. It may, however, be convenient to summarise the arguments which have been advanced of late years by independent public opinion in India. These are to the effect:—

(i) that the combination of judicial with executive duties in the same officer violates the first principle of equity;

(ii) that while a judicial officer ought to be thoroughly impartial and approach the consideration of any case without previous knowledge of the facts, an executive officer does not adequately discharge his duties unless his ears are open to all reports and information which he can in any degree employ for the benefit of his district;

(iii) that executive officers in India, being responsible for a large amount of miscellaneous business, have not time satisfactorily to dispose of judicial work in addition;

(iv) that, being keenly interested in carrying out particular measures, they are apt to be brought more or less

into conflict with individuals, and, therefore, that it is inexpedient that they should also be invested with judicial powers;

(v) that under the existing system collector-magistrates do in fact neglect judicial for executive work;

(vi) that appeals from revenue assessments are apt to be futile when they are heard by revenue officers;

(vii) that great inconvenience, expense, and suffering are imposed upon suitors required to follow the camp of a judicial officer who in the discharge of executive duties, is making a tour of his district; and

(viii) that the existing system not only involves all whom it concerns in hardship and inconvenience, but also, by associating the judicial tribunal with the work of the police and by diminishing the safeguards afforded by the rules of evidence, produces actual miscarriage of justice, and creates, although justice be done, opportunities of suspicion, distrust, and discontent which are greatly to be deplored.

There is, too, a further argument that the separation, which arises out of the very nature of the work incidental to the judicial office, and which of itself might well be regarded as conclusive in the matter. It is no longer open to us to content ourselves with the pleasant belief that to an Englishman of good sense and education, with his unyielding integrity and quick apprehension of the just and the equitable, nothing is easier than the patriarchal administration of justice among oriental populations. The trial in Indian courts of justice of every grade must be carried out in the English method, and the judge or magistrate must proceed to his decision upon the basis of facts to be ascertained only through the examination and cross-examination before him of eyewitnesses testifying each to the relevant facts observed by him and nothing more. It is not necessary for us to dwell on the importance of this procedure; nor is it too much to say that with this system of trial no judicial officer can efficiently perform his work otherwise than by close adherence to the

methods and rules which the long experience of English lawyers has dictated, and of which he cannot hope to acquire a practical mastery, unless he makes the study and practice of them his serious business. In other words, it is essential to the proper and efficient, and we might add impartial, administration of justice that the judicial officer should be an expert specially educated and trained for the work of the court.

13. In appendix B* to this memorial summaries are given of various cases which, it is thought, illustrate in a striking way some of the dangers that arise from the present system. These cases of themselves might well remove, to adopt Sir J. P. Grant's words, "the necessity of argument a priori against the combination theory." But the present system is not merely objectionable on the ground that from time to time, it is, and is clearly proved to be, responsible for a particular case of actual injustice; it is also objectionable on the ground that so long as it exists the general administration of justice is subjected to suspicion, and the strength and authority of the Government are seriously impaired. For this reason it is submitted that nothing short of complete separation of judicial from executive functions by legislation will remove the danger. Something, perhaps, might be accomplished by purely executive measures. Much, no doubt, might be accomplished by granting to accused persons in important cases the option of standing their trial before a sessions court. But these palliatives fall short of the only complete and satisfactory remedy, which is, by means of legislation, to make a clear line of division between the judicial and the executive duties now often combined in one and the same officer. So long as collector-magistrates have the power themselves to try or to delegate to subordinates within their control cases as to which they have taken action or received information in an executive capacity, the administration of justice in India is not likely to command complete confidence and respect.

* Not reprinted.

15. The objections which, during the course of a century, have been urged against the separation of judicial and executive functions are reducible, on analysis, to three only: (i) that the system of combination works well, and is not responsible for miscarriage of justice; (ii) that the system of combination, however indefensible it may seem to western ideas, is necessary to the position, the authority, and, in a word, to the "prestige" of an oriental officer; and (iii) that separation of the two functions, though excellent in principle, would involve an additional expenditure which is, in fact, prohibitive in the present condition of Indian finances.

Answers to possible objections.

It is obvious that the first objection is incompatible with the other two objections. It is one thing to defend the existing system on its merits; it is another thing to say that, although it is bad it would be too dangerous or too costly to reform it. The first objection is an allegation of fact. The answer—and, it is submitted, the irresistable answer—is to be found in the cases which are set forth in appendix B. to this memorial. These cases are but typical examples taken from a large number. It may be added that, among the leading advocates of separation in India, are Indian barristers of long and varied experience in the courts who are able to testify, from personal knowledge, to the mischievous results of the present system. Their evidence is confirmed, also from personal knowledge, by many Anglo-Indian judges of long experience.

16. The second objection—that the combination of judicial and executive functions is necessary to the "prestige" of an oriental officer—is perhaps more difficult to handle. For reasons which are easy to understand, it is not often put forward in public and authoritative statements. But it is common in the Anglo-Indian press, it finds its way into magazine articles written by returned officers, and in India it is believed, rightly or wrongly, to lie at the root of all the apologies for the present system. It has been said that oriental ideas require

that an officer entrusted with large executive duties should have the further power of inflicting punishment on individuals. If the proposition were true, it would be natural to expect that the existing system would be supported and defended by independent public opinion in India, instead of being—as it is—deplored and condemned. It is not reasonable to assume that the Indian of today demands in the responsible officers of a civilised Government a combination of functions which at an earlier time an arbitrary despot may have enforced. The further contention that a district magistrate ought to have the power of inflicting punishment because he is the local representative of the sovereign appears to be based upon a fallacy and a misapprehension. The power of inflicting punishment is, indeed, part of the attributes of sovereignty. But it is not, on that ground, any more necessary that the power should be exercised by a collector-magistrate who is head of the police and the revenue system, than that it should be exercised by the sovereign in person. The same reasoning, if it were accepted, would require that the viceroy should be invested with the powers of a criminal judge. But it is not suggested that the viceroy's "prestige" is lower than the "prestige" of a district judge because the judge passes sentences upon guilty persons and the viceroy does not. It is equally a misapprehension to assume that those who urge the separation of judicial from executive duties desire suppression or extinction of legitimate authority. They ask merely for a division of labour. The truth seems to be that somewhat vague considerations which are put forward in defence of the existing system on the ground that it is necessary to the due authority of a district magistrate, had their origin in the prejudices and the customs of earlier times, revived to some extent in the unsettled period which followed the Indian Mutiny. We venture to submit that these considerations are not only groundless and misplaced, but that the authority of Government, far from being weakened by the equitable division of judicial and executive duties, would be incalculably strengthened by

the reform of a system which is at present responsible for many judicial scandals.

The financial objection alone remains, and it is upon this objection that responsible authorities appear to rely. When Lord Dufferin described the proposals for separation as a "counsel of perfection," he added that the condition of Indian finance prevented it at that time from being adopted. Similarly, in the debate in the House of Lords on May 8, 1893, Lord Kimberley, then Secretary of State, said: "The difficulty is simply this, that if "you were to alter the present system in India, you would have to double the staff throughout the "country," and his predecessor, Lord Cross, said: "It (the main principle raised in the discussion) is a matter of the gravest possible importance, but I can only agree with what my noble friend has stated, that in the present state of the finances of India it is absolutely impossible to carry out that plan, which to my mind would be an excellent one, resulting in vast good to the Government of India."

The best answer to this objection is to be found in the scheme for separation drawn up in 1893 by Mr. Romesh Chandra Dutt, C. I. E., late Commissioner of the Orissa division (at that time district magistrate of Midnapur) and printed in appendix A* to this memorial. In these circumstances it is not necessary to argue either (i) that any expense which the separation of judicial from executive duties might involve would be borne, cheerfully, by the people of India or (ii) that it might well be met by economies in certain other directions. Mr. Dutt shows that the separation might be effected by a simple rearrangement of the existing staff, without any additional expense whatsoever. Mr. Dutt's scheme refers specially to Bengal, the presidency, for which the reform had been described as impracticable on the ground of cost. Similar schemes for other presidencies and provinces have been framed but it was understood that the most serious financial difficulty was apprehended in Bengal.

* Not reprinted.

(2) EXTRACT FROM SIR HARVEY ADAMSON'S SPEECH IN THE IMPERIAL LEGISLATIVE COUNCIL 1908:—

"I propose to say a few words on a subject on which volumes have been written during the past few years—the separation of judicial and executive functions in India. In 1899 the Secretary of State forwarded to the Government of India a memorial signed by ten gentlemen, seven of whom had held high judicial offices in India, in which the memorialists asked that a scheme might be prepared for the complete separation of judicial and executive functions. They based the condemnation of the existing system largely upon notes illustrating its alleged evils, which were compiled by Mr. Manomohan Ghose, a barrister in large criminal practice. The memorial was referred to Local Governments and to high judicial officers in India for report, with the result that an enormous mass of correspondence has accumulated. This correspondence disclosed a decided preponderance of opinion in favour of the existing system, but whether it was the weight of the papers or the weight of their contents that has so long deferred a decision of the question is more than I can say. The study of the correspondence has been a tedious and laborious process, but, having completed it, I am inclined to think that the consensus of opinion against a change may have been due in great measure to the faulty presentation by the memorialists of the case for separation, as well as to the obvious defects of the constructive proposals put forward by them, which were shown by the Government of Bengal to be likely to cost many lakhs of rupees in that province alone. The authors of the memorial, in my view, put their case very feebly when they rested it on a few grave judicial scandals which were alleged to have occurred from time to time. It was easy to show that many of these scandals could have occurred even if the functions had been separated. Many who have reported their satisfaction with the existing system have followed the memorialists and been impressed by the comparative infrequency of grave judicial scandals in India having their cause in the joinder of functions,

and by the certainty of their being exposed to light and remedied. Scandals may to some extent exemplify the defects of a system, but there can be no doubt that, whatever system be adopted, scandals must occur. Occasionally, very rarely I hope, we find the unscrupulous officer, less infrequently we find the incompetent officer, but not so seldom do we find the too zealous officer, perfectly conscientious, brimming over with good intentions, determined to remedy evils, but altogether unable to put into proper focus his own powers and duties and the rights of others. With officers of these types—and they cannot be altogether eliminated—occasional public scandals must occur, not only in India, but elsewhere, as a perusal of any issue of Truth will show. I see no reason for believing that they occur more frequently in India than in England or any other country; but this at least may be said for the Indian system of criminal administration, that in no country in the world is so perfect an opportunity given for redressing such scandals when they occur.

"But though the preponderance of opinion in the correspondence is as I have stated, a deeper search reveals considerable dissatisfaction with the existing system. This is expressed chiefly in the reports of judicial officers. The faults of the system are not to be gauged by instances of gross judicial scandals. They are manifested in the ordinary appellate and revisional work of the high judicial tribunals. In one case a sentence will be more vindictive than might have been expected if the prosecution had been a private one. In another a conviction has been obtained on evidence that does not seem to be quite conclusive. In short, there is the unconscious bias in favour of a conviction entertained by the magistrate who is responsible for the peace of the district, or by the magistrate who is subordinate to that magistrate and sees with his eyes. The exercise of control over the subordinate magistrates by whom the great bulk of criminal cases are tried is the point where the present system is defective. This control indirectly affects the judicial action of the subordinate magistrates. It is right

and essential that the work of the subordinate magistrates should be the subject of regular and systematic control, for they cannot be relied on more than any other class of subordinate officials to do their work diligently and intelligently without it. But if the control is exercised by the officer who is responsible for the peace of the district there is the constant danger that the subordinate magistracy may be unconsciously guided by other than purely judicial considerations. I fully believe that subordinate magistrates very rarely do an injustice wittingly. But the inevitable result of the present system is that criminal trials, affecting the general peace of the district, are not always conducted in the atmosphere of cool impartiality which should pervade a court of justice. Nor does this completely define the evil, which lies not so much in what is done, as in what may be suspected to be done; for it is not enough that the administration of justice should be pure; it can never be the bedrock of our rule unless it is also above suspicion.

"Those who are opposed to a separation of functions are greatly influenced by the belief that the change would materially weaken the power and position of the District Magistrate and would thus impair the authority of the Government of which he is the chief local representative. The objection that stands out in strongest relief is that prestige will be lowered and authority weakened if the officer who has control of the police and who is responsible for the peace of the district is deprived of control over the magistracy who try police cases. Let me examine this objection with reference to the varying stages of the progress of a community. Under certain circumstances it is undoubtedly necessary that the executive authorities should themselves be judicial authorities. The most extreme case is the imposition of the martial law in a country that is in open rebellion. Proceeding up the scale we come to conditions which I may illustrate by the experience of Upper Burma for some years after the annexation. Order had not yet been completely restored and violent crime was prevalent. Military law had gone and its place had been taken by civil law

of an elementary kind. District Magistrates had large powers extending to life and death. The High Court was presided over by the Commissioner, an executive officer. The criminal law was relaxed, and evidence was admitted which under the strict rules of interpretation of a more advanced system would be excluded. All this was rendered absolutely necessary by the conditions of the country.....Proceeding further up the scale we come to the stage of a simple people, generally peaceful, but having in their character elements capable of reproducing disorder, who have been accustomed to see all the functions of Government united in one head, and who neither know nor desire any other form of administration. The law has become more intricate and advanced, and it is applied by the courts with all the strictness that is necessary in order to guard the liberties of the people. Examples would be easy to find in India of the present day. So far I have covered the stages in which a combination of magisterial and police duties is either necessary or is at least not inexpedient. In these stages the prestige and authority of the Executive are strengthened by a combination of functions. I now come to the case of a people among whom very different ideas prevail. The educated have become imbued with Western ideals. Legal knowledge has vastly increased. The lawyers are of the people, and they have derived their inspirations from Western law. Anything short of the most impartial judicial administration is contrary to the principles which they have learned. I must say that I have much sympathy with Indian lawyers who devote their energies to making the administration of Indian law as good theoretically and practically as the administration of English law. Well, what happens when a province has reached this stage and still retains a combination of magisterial and police functions? The inevitable result is that the people are inspired with a distrust of the impartiality of the judiciary. You need not tell me that the feeling is confined to a few educated men and lawyers and is not shared by the common people. I grant that if the people of such a province

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

"On these grounds the Government of India decided to advance cautiously and tentatively towards the separation of Judicial and Executive functions in those parts of India where the local conditions render that change possible and appropriate. The experiment may be a costly one, but we think that the object is worthy; it has been consistently pressed on us by public opinion in India. I have had the pleasure of discussing the question with Indian gentlemen, among others with my colleagues the Hon'ble the Maharaja of Darbhanga and the Hon. Mr. Gokhale. Their advice coincides with my own view, that the advance should be tentative and that a commencement should be made in Bengal including Eastern Bengal. It is from Bengal that the cry for separation has come, and if there is any force in the general principles which I have expounded, it would appear that the need for a separation of police and magisterial functions is more pressing in the two

Bengals than elsewhere. One cause may be found in the intellectual character of the Bengali, another in the absence of a revenue system which in other provinces brings executive officers into closer touch with the people, another in the fact that there is no machinery except the police to perform duties that are done elsewhere by the better class of revenue-officer, another in the fact that there are more lawyers in Bengal than elsewhere, and another, I suspect, in the greater interference by the District Magistrate with police functions in Bengal than in other Provinces. These may or may not be the real causes, but most certainly the general belief is that the defects of a joinder of functions are most prominent in Bengal, and it is on these grounds that we have come to the conclusion that a start should be made in these two provinces.

C. Arguments in favour of the present system.

SOURCE:—Public Services Commission Report 1916, Annexure X.

"On the other side it is argued that in the present circumstances of India the concentration of authority in the person of the district officer is a prime necessity of government.

In India, it is claimed, there is no active public opinion in favour of the punishment of wrong doing. The sense that society suffers from the impunity of hardened criminals is still imperfectly developed, and to the inhabitants of an Indian village there seems to be something harsh and inhuman in the inflexibility with which the European fits the punishment to the crime. It is therefore necessary that the official agency for the punishment of offenders should be endowed with an authority proportionate to the weakness of the support which it receives from the community at large. This is all the more necessary on account of the fact that the subordinate magistracy is too apt to take an indulgent view of crime and misdemeanour. It is further urged that a concentration of

functions is especially needed for the enforcement of sanitary rules, to which the subordinate magistracy is apt to ascribe less importance than they deserve. The duty of speeding up the machinery of criminal justice cannot, it is asserted, safely be delegated to the Sessions Judge, who is already overburdened with judicial work, and would also be less likely to know the district well than the executive head. In practice, it is also said, the district magistrate tries comparatively few cases himself; whilst he exercises very little direct control over the police. The real advantage of the present system lies in the powers which the district magistrate holds in reserve; and he knows too much about the police and too much about the district to be misled by police evidence of a corrupt and flimsy character. It is contended also that in the circumstances of an Indian village there should be some authority capable of advising the high court in regard to administrative questions touching the working of the judicial machine. The district officer with his intimate and varied knowledge of the district is more likely to be able to do this adequately than any other official who could be substituted for him. Finally, it is urged that to deprive the collector of all magisterial power would weaken his power and influence in the district. Life is still very primitive in India and the main function of government is to put down crime. If the agency responsible for bringing criminals to justice found that its action was impeded by a weak or dilatory judiciary a fatal blow would be struck, not only at the influence of the district officer himself, but at the cause of peace and order in the country.

D. Conclusions of the Public Services Commission 1916.

From this conflict of opinion the following general considerations appear to emerge. In the first place, the union of executive and judicial powers in the persons of the Collector and his subordinate magistracy, is an anomaly to which strong objection may be taken on theoretical grounds. The system, moreover, arouses keen

dissatisfaction amongst an influential section of the educated Indian community, and particularly the lawyers, who regard it as a violation of an elementary principle of the common law that the prosecutor should not also be the judge. This feeling of dissatisfaction is more widespread in some provinces than in others, and in certain areas may be the result of shortcomings in the working of the judicial system, which are not connected with the union of powers. As to the extent of the mischief, if mischief there be, arising from the system, there is a clear divergence of opinion. Some witnesses affirm, and others deny that substantial hardship has been caused. In the next place, it is clear that behind a theoretical union of powers there is already a great deal of practical division, and it may be that separation will be a necessary consequence of the natural increase in the volume of legal business in the country. In the presidency towns separation is already an established fact. In Madras it already exisits in the lower grades. In Burma we were told that the expansion of work was gradually solving the problem for itself. In Bengal, where there is already complete separation so far as the provincial civil service is concerned, the experiment has been made of appointing special deputy collectors to try estate lands act suits etc, whilst additional district magistrates have also been established in certain areas. Administrative exigencies will doubtless carry the process of separation further, stage by stage; and even among the upholders of the merits of the present system there is a certain body of opinion which would be prepared to admit the principle of separation in selected districts where the work of administration is especially heavy, and where the results of the experiment might carefully be watched. Finally, the evidence on both sides suggests that it would be inexpedient to sanction any scheme of separation which does not provide for the retention by the collector of the preventive powers entrusted to him by the Criminal Procedure Code, and for some adequate supervision over the inferior magistracy. Such supervision might be secured either

by adding to the number of session judges or by appointing special officers to discharge the magisterial functions now vested in the collector. But upon these points of administrative detail, as upon the large question of principle, we do not feel that we are entitled either by the terms of the reference or by the character of our inquiry to make positive recommendations

CHAPTER VII

The Administrative Divisions, Administrative Machine and the Services.

I—General Features of the Administrative Organisation

A. Growth of the Provincial system.

SOURCE:—Para 39 Montagu-Chelmsford Report.

"Madras and Bombay grew into governorships out of the original trading settlements. Sind was added to the latter soon after its conquest in 1843. The original presidency of Bengal was elevated from a governorship to a governor-generalship by the Act of 1773. We have explained how India then consisted of the three presidencies only, and how military and political exigencies led to a great extension of the Bengal presidency to the North-West. Later legislation relieved the Governor-General by empowering him to create the lieutenant-governorship of the North-Western Provinces in 1836, and further to rid himself of the direct administration of Bengal, including Bihar and Orissa, by creating the lieutenant-governorship of Bengal. The Punjab was the next province formed. Annexed in 1849, it was governed first by a board of administration and then by a chief commissioner. After the Mutiny, Delhi was transferred to it and it became a lieutenant-governorship. Oudh was annexed in 1856 and placed under a chief commissioner, whose office was merged in that of the lieutenant-governor of the North-Western Provinces in 1877. The North-Western Provinces and Oudh were renamed the United Provinces of Agra and Oudh in Lord Curzon's time. Lower Burma was formed into a chief commissionership in 1862. Upper Burma was added in 1886 and the province became a lieutenant-governorship in 1897. The Central Provinces, formed out of

portions of the North-Western Provinces and certain lapsed territories, were placed under a chief commissioner in 1861. In 1903, Berar which had long been under British Administration, was taken over on a perpetual lease from the Nizam and linked to the Central Provinces. Assam, annexed in 1826, was added to Bengal, from which it was again severed and made a chief commissionership in 1874. In 1905 the partition of Bengal converted the eastern half of the province together with Assam into one lieutenant-governorship under the name of Eastern Bengal and Assam, and the western half into a second lieutenant-governorship under the name of Bengal. This arrangement was modified in 1912: Assam became once more a chief commissionership, Bengal a presidency, and Bihar and Orissa a lieutenant-governorship. The North-West Frontier Province was created for purposes of political security in 1901 by detaching certain Punjab districts. British Baluchistan was formed into a chief commissionership in 1887. Coorg was annexed in 1834 and is administered by the Resident in Mysore. Ajmer, ceded in 1818, is similarly administered by the Agent to the Governor-General in Rajputana. The Superintendent of the Penal Settlement of Port Blair administers the Andamans and Nicobar Islands as chief commissioner. Delhi comprises a small area enclosing the new capital city, which was created a separate province under a chief commissioner on the occasion of the King Emperor's durbar. In this way the present map of British India was shaped by the military, political, or administrative exigencies or conveniences of the moment, and (except in the case of the reconstitution of Bengal) with small regard to the natural affinities or wishes of the people. The point is of supreme importance when we have to consider the future development of India.

B. The Administrative Machine.

(1) General features.

SOURCE:—Paras 122-123 Montagu-Chelmsford Report.

In every province but Bombay there exists at Headquarters, for the purpose of supervising the revenue administration, a

Board of Revenue, or its equivalent, a Financial Commissioner. In their administrative capacity these constitute the chief revenue authority of the province, and relieve the provincial government of much detailed work which would otherwise come to it; while in their judicial capacity they form an appellate court for the increasing volume of revenue, and often of rent suits. But for other purposes than revenue the provincial government deals chiefly with its commissioners and collectors. The easiest way of understanding the organisation of a province is to think of it as composed of districts, which in all provinces except Madras, are combined, in groups of usually from four to six, into divisions, under a commissioner. The average size of a district is 4,430 square miles, or three-fourth of the size of Yorkshire. Many are much bigger. Mymensingh district holds more human souls than Switzerland. Vizagapatam district, both in area and population, exceeds Denmark. In the United Provinces, where districts are small and the population dense, each collector is on the averge in charge of an area as large as Norfolk and of a population as large as that of New Zealand. The commissioner of the Tirhut division looks after far more people than the Government of Canada.

The district, which is a collector's charge, is the unit of administration, but it is cut up into sub-divisions under assistant or deputy collectors, and these again into revenue collecting areas of smaller size. The provincial government's general authority thus descends through the divisional commissioner in a direct chain to the district officer.....

(2) The system in the Regulation and the Non-Regulation Provinces.

SOURCE:—Pages 63-64 of the Decennial Report on Moral and Material Progress 1913.

In former times a sharp distinction was to be drawn between those provinces that were, and those that were not, governed under the old Bengal, Madras and Bombay "Regulations". The "Regulation" provinces were Bengal, Madras, Bombay and Agra. The less advanced provinces acquired at a later time were generally ruled under a system by which larger discretion

was allowed to officers and in accordance with simpler codes based on the spirit of the regulations but modified to suit the circumstances of each special case. The provinces were thus distinguished as "regulation" or "non-regulation." So far as legislation is concerned the contrast is no longer between the old regulation and non-regulation areas but between backward tracts for which the Government of India, as mentioned above, can still legislate executively (by regulations) and the rest of British India, where, ordinarily legislation can only be accomplished by means of a legislative council. In other respects also the distinction between the more advanced "non-regulation" provinces and the "regulation" provinces has practically disappeared but certain differences in administrative arrangements remain. It will be convenient in the first place to describe the system prevailing in what were the "regulation" provinces and afterwards indicate the special features of the administration of the remaining provinces.

THE REGULATION SYSTEM:—In Madras there is no local officer above the head of the district (who is styled in the regulation provinces Collector and Magistrate). Elsewhere a commissioner of division is intermediate between the collector and the Provincial Government. A division is a group of several districts usually from four to six of which the commissioner has the general superintendence and in which he also acts as a court of appeal in revenue cases. In the regulation provinces the commissioner is always a senior officer of the Indian Civil Service. The commissioners originally exercised judicial as well as administrative and revenue functions and held periodical jail deliveries in the districts under their supervision. These judicial duties were later transferred to district judges.

The collector and magistrate is the representative of the Government in the district under his charge. He has the assistance of a large staff of subordinate officers some of whom are his assistants at headquarters while others hold charge

of portions of the district. In general the districts are split up into "sub-divisions" under junior officers of the Indian Civil Service or members of the provincial service styled Deputy Collectors and these again into minor charges bearing different names and held by officers of the subordinate service. The sub-divisional officer has under the control of the collector general charge of the executive and magisterial administration of his sub-division. The administrative arrangements within the sub-division vary considerably in different provinces. At the basis of the system the Indian village organisation which is of great antiquity still finds its place with the modifications necessitated by the greater control and complexity of our system of government, in the fabric of British rule. Of the village officials who are largely hereditary, the most important are the headman who collects the revenue and in some provinces particularly in Madras and Burma may be also a petty magistrate or civil judge; the KARNAM, KARKUN OR PÀTWARI who keeps the village accounts, registers of holdings, and in general all records connected with the land revenue; and the CHAUKIDAR or village watch-man who is the rural policeman.

NON-REGULATION PROVINCES:—The extent to which the non-regulation systems diverge from that just described varies in different provinces in accordance with their importance and the progress they have made. One important point of difference is that the higher posts are not wholly reserved to the Indian Civil Service. In former times members of the "commissions" of the non-regulation provinces were drawn from a variety of sources; recruitment is now in general confined to the Indian Civil Service and officers of the Indian Army, and, the recruitment of military officers having been discontinued in the Punjab since 1903, and in Assam since 1906, Burma is the only major province in which military as well as civilian officers are still recruited for the commission. The executive head of the district is styled "Deputy Commissioner" and not Collector, while those of his subordinates who belong to the commission are

called "Assistant Commissioners" and members of the provincial service "Extra Assistant Commissioners." The district administration runs on the same lines as in the regulation provinces; but the district magistrates and some of their first-class subordinates exercise more extensive criminal jurisdiction. They may be invested with power to try all cases not punishable with death and to inflict sentences of imprisonment or transportation up to seven years.

In non-regulation provinces the deputy commissioner and his assistants used to be charged with the administration of civil as well as criminal justice and the commissioner took the place of the civil and the sessions judge; but in all the larger provinces (except Upper Burma) the commissioner has been relieved of his judicial functions which have been committed to a separate staff of judges, and district officers have generally now little to do with civil litigation for which separate courts have been established.

In the minor provinces (including under this head the North-West Frontier Province, British Baluchistan, Delhi, Coorg, Ajmer-Merwara, and the Andaman and Nicobar Islands) the administrative arrangements outlined above are necessarily modified to a greater or less extent as a result of the special conditions or small area of the charges. The North-West Frontier Province and British Baluchistan are divided into districts administered by Deputy Commissioners as in the larger non-regulation provinces. In the former province there are between the Deputy Commissioners and the Chief Commissioner separate Revenue and Judicial Commissioners; in British Baluchistan a single officer is both Revenue and Judicial Commissioner.

C Civil Services.

EXTRACT FROM THE REPORT OF THE DECENTRALISATION COMMISSION (PARAS 34, 35, 38, and 40)

The Imperial, provincial and subordinate services

34. The Civil Service of the country, which deals with revenue and general administration, is divided into:—

(i) The "Indian Civil Service," recruited by competitive examination at which natives of India, like other subjects of His Majesty can compete; and

(ii) The Provincial and "Subordinate" Civil Services, recruited in India, and, as a rule, only open to persons who are natives of that country or domiciled therein.

Members of the Indian Civil Service hold most of the Commissionerships, Collectorates and Deputy Commissionerships, and District Judgeships, as well as Secretariat and other head-quarters administrative appointments; while its junior men are in training for higher functions generally as Assistants to the Collectors. The Indian Civil Service forms a single service for the whole of India; but its members, on first arrival in the country, are distributed to the different provinces; and though an Indian civilian may be borrowed by the Government of India for work in connection with the Supreme Government, or for temporary service in another province, he is not, as a rule, transferred from one province to another.

35. Each province has its own separate "Provincial" and "Subordinate" services, but while it has a free hand in recruiting for the latter, appointments to the former are regulated by rules which have to receive the approval of the Government of India. "Provincial" Civil Servants, in their capacity as Deputy or Extra Asistant Commissioners and Sub-Judges, discharge responsible executive and judicial functions and are also eligible for a certain number of posts, such as those of Collector or District Judge, ordinarily held by Indian civilians. The number of posts of the latter description tenable by "Provincial" officers is fixed for each province by the Government of India.

There are similar distinctions in regard to special departments, the higher officials of which are usually recruited from England, e. g., Police, Forests, Education, and Public Works. The British element is here styled the "Imperial" service, while the Provincial and Subordinate services are locally recruited in India.

It must, however, be borne in mind that the terms Imperial and Provincial as applied to these services, refer to the personal status of the officer as decided by the method of his recruitment, and not to the Government under which he serves. The majority of so-called "Imperial" officers are, as a matter of fact, working under the Provincial Governments.

Special Departments.

38. Originally Collectors and their subordinates were responsible for almost all the administrative work of their districts, subject to the superintendence of Commissioners and Boards of Revenue. During the last 50 years, however, separate administrative departments have been gradually evolved, the most important of which are those dealing with Public Works, Education, Police, Forests, Medical administration, Sanitation, and Prisons. These departments have their own separate staffs and head in each province, viz :—.

Chief Engineers for (a) Irrigation, and (b) ordinary Public Works;

The Director of Public Instruction;

The Inspector-General of Police;

Conservators, or a Chief Conservator of Forests;

The Inspector-General of Civil Hospitals (Surgeon-General in Madras and Bombay);

The Sanitary Commissioner; and

The Inspector-General of Prisons.

The Inspector General of Police is often an Indian Civilian, but otherwise the head of each department is usually drawn, either locally or by transfer from another province, from the departmental service. These departmental heads are in direct subordination to the Local Government.

40. There are other heads of departments who are members of the Indian Civil Service, and who work in closer connection with the ordinary district staff, through whose agency a great deal of the work which they have to supervise

is discharged. The chief of these are the Commissioner of Excise, the Director of Agriculture, the Director of Land Records and, in some provinces, the Commissioner for Revenue Settlements. These officers are under the Board of Revenue or Financial Commissioner, where either exists.

II—The District Officer before the Reforms.

SOURCE :—Paras 123-124 Montagu-Chelmsford Report.

123..... The district officer has a dual capacity; as collector he is the head of the revenue organisation and as magistrate he exercises general supervision over the inferior courts, and, in particular, directs the police work. In areas where there is no permanent revenue settlement he can at any time be in touch through his revenue subordinates with every inch of his territory. This organisation in the first place serves its peculiar purpose of collecting the revenue and of keeping the peace. But, because, it is so close-knit, so well-established, and so thorougly understood by the people, it simultaneously discharges easily and efficiently an immense number of other duties. It deals with the registration, alteration, and partition of holdings; the settlement of disputes: the management of indebted estates; loans to agriculturists; and, above all, famine relief. Because it controls revenue which depends on agriculture, the supreme interest of the people, it naturally serves also as the general administration staff. The revenue officials and to a much more limited extent the police convey the orders of Government to the people in a hundred ways. Taken together these two agencies act as the general representatives of Government over the country to its remotest borders and, apart from them, there is no other. Several other specialised services exist with staffs of their own such as the establishments for irrigation, roads and buildings, agriculture, industries, factories and co-operative credit. These are controlled not by the district officer but by their own departmental heads; they may be regarded as a different set of strings connecting the Government with the people.

But in varying degrees the district officer influences the policies in all these matters, and he is always there in the background to lend his support, or if need be to mediate between a specialised service and the people.

Local Self-Government.

124. But we shall be asked what room is left for such all-pervading official activity since all towns of reasonable size have been made into municipalities and since rural affairs are committed to district or local boards? We have seen already that the hopes entertained of these bodies have not in the past been fulfilled. The avowed policy of directing the growth of local self-government from without rather than from within has, on the whole, been sacrificed to the need for results; and with the best intentions the presence of an official element on the boards has been prolonged beyond the point at which it would merely have afforded very necessary help up to a point at which it has impeded the growth of initiative and responsibility. Municipal practice varies between provinces; some have gone further in the direction of elected majorities, others in the direction of elected chairmen: Bengal has gone far in both directions. But over much of the country urban self-government in the smaller towns still depends largely on official support and guidance. The elected members of the boards appear to have difficulty in facing the disfavour aroused by a raising of the rates or a purification of the electoral roll, or drastic sanitary improvements unless they feel that the district officer is behind them; and even when he is not a member of the Board he is generally armed with powers of advice and inspection. In rural areas where people are less educated and less practised in affairs and where the interests involved are diffused over large areas instead of being concentrated under their eyes every day the boards are constituted on a less popular basis. . . . The Decentralisation Commission advised that the district officer should continue to preside over the District Board because they did not wish to cut him off from district interests and were anxious to retain his administrative

experience;.... Generally speaking therefore we may say that while within town areas elected town councils control the administration of their roads, schools, drainage, conservancy lighting and the like, the district officer is still at hand as a stimulus and a mentor; and in the more backward district boards he still plays an impotant part because as chairman he directs the executive agency of the board. Rural education, dispensaries, sanitation, country roads, bridges, water supply, drainage, tree-planting, veterinary work, pounds fairs, ferries, sarais, and the like are all matters which to a great extent he still administers not primarily as a servant of government but on behalf of, indeed in some provinces, as the formally elected president of a popular body, and the commissioner above him exercises considerable supervision over the boards' proceedings. It will, of course, be understood that we are speaking of mufassil practice. The great presidency corporations whose beginnings date from the 17th century are in a class by themselves. Mainly elective in character, they work largely through an official chairman or executive officer and are not subject to close supervision from outside.

III—The Services before the Reforms.

i History of:—

SOURCES:—(1) Decennial Report on Moral and Material Progress 1892.

(2) " " " " " " " 1913.

(3) Report of the Lee Commission.

(1) Extract from the Decennial Report on Moral nnd Material Progress, 1892:—

THE INDIAN CIVIL SERVICE.—This service is derived from the staff of merchants, factors and writers employed by the East India Company when its functions in India were purely commercial. For some six years after the Company had received a political status in the country, the administration of the revenue and justice under the DIWANI grant in Bengal, Bihar, and Orissa,

was left in the hands of the native subordinates to whom it had been entrusted by the Musalman authorities. In 1772 the Company began to take the administration in their own hands, and in 1790 and 1793, the direct administration of all branches of the public service by European officers was placed on a clear and permanent basis. All civil posts beneath the rank of members of Council were reserved to this service, and the promotion to any of them was regulated by seniority of appointment. A college was set up in Calcutta soon after for the training of junior civilians in law and Oriental languages, but no provision was made regarding their education before joining this institution till 1806, when the Haileybury College was established. Admission to this College was obtained on nomination by the Court of Directors of the Company and, after a two years' course of study, the qualifications of the candidates were tested by means of examinations. In 1853 the principle of regulating admission to the college by open competition was laid down, but in the course of the discussion which took place regarding the best means of giving effect to this provision, a recommendation was made that this institution should be no longer maintained. Then came the transfer of the Government of India from the Company to the Crown, on which occasion the principle of recruitment by means of open competition was re-affirmed. It is not necessary to refer here to the alterations made at various times in the ages between which competition or admission respectively should be allowed, or to those affecting the scope of the examinations. It suffices to say that a high value was throughout attributed to a course of University study and discipline, as it is understood in England, the open question being whether that course was more profitably undergone before or after admission to the special training required before final selection for the service.

The reservation to the civil service of the Company of all civil posts under its administration was obviously one that could be maintained in its integrity no longer than whilst the sphere of action was limited to the circumstances of the time at which

it was prescribed. The exigencies of the administration resulting from the acquisition of fresh territory on the one hand, and the extension of the obligations of the State in the more settled tracts on the other, were met by the nomination to the reserved posts of many Europeans and natives, who did not belong to the Company's civil service, in the restricted sense of that term. The appointments thus made were validated by Act 24 and Vict. Cap. 54.

THE STATUTORY CIVIL SERVICE.—As regards the admission of the latter (natives), it was enacted in 1883 that "no native of the said territories (India), nor any natural born subject of His Majesty resident therein, shall by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment, under the said (East India) Company." The great extension of the system of State instruction that has since taken place together with the establishment of Universities in the five principal towns of India, soon supplied the Governments with a wide and amply-stocked field of selection for most of the offices other than those usually held by members of the Covenanted Service. For this last, however, in spite of the removal of disabilities of race or creed, up to 1870, only one native of the country had successfully competed. In that year, therefore, an Act was passed (33 Vict. cap. 3) under which natives of India of proved merit and ability could be employed in the civil service of Her Majesty in India without entering that service in the manner provided in the Act for the Government of India, 1858. The rules under this Act, which had to be sanctioned by the Secretary of State, were at first drawn up so as to confine the field of choice to those who had proved their merit and ability by their previous service in the subordinate ranks of the service of the Crown, but a revised code was afterwards sanctioned in which this restriction was removed. One or two appointments only, and those to the judicial branch of the service, were made under it. The subject was reconsidered in 1879, and fresh provision made, under which

the recruitment by this means could extend up to one-fifth of the total number of civilians appointed in the year, and the nominee should be on probation for two years after his selection. A most important point was prominently brought by the Government of India in promulgating these rules to the notice of the local authorities who had the duty of selecting the nominees; namely, that, in their opinion, the appointments should, generally speaking, be confined to young men of good family and social position, possessed of fair abilities and education, to whom the offices open to them in the inferior ranks or uncovenanted service, had not proved a sufficient inducement to come forward for employment, whilst the appointment of men already in the service of Government, or in the practice of a profession should be quite exceptional, and confined to persons who had obtained great distinction in their former career. This recommendation was based on the experience of the results of the extension of public instruction... Advantage of the new system had been taken to the full by the sedentary or literate classes, who, except under the Brahman Peshwas, and as financiers and accountants under the Musalman rule, had been debarred from reaping the whole benefit of their intellectual superiority. But the ruling classes of the Hindus, and still more markedly, the upper grades of the foreign community that was in power immediately before the introduction of the British regime, kept studiously aloof from institutions that would bring them into rivalry, and probably in unsuccessful one with the classes whom they had so long regarded as their inferiors in position and capacity. In a very few years, however, it was found that the attempt to introduce the latter element into the administration by the above means was a failure, as men could not be got who combined high social position with the requisite intellectual and educational qualifications, and the men who were appointed were in many cases of a class that would have been content to have been provided for in the lower grades of the public service, above which their qualifications in either sense, social or intellectual, did not rise. In consideration

of the fact, therefore, that through the scheme inaugurated under the Statute of 1870, the end which it had been the wish of the Government to attain, whether on the ground of political expediency or of administrative advantage, had been in no way furthered, it was determined to institute an inquiry by means of a Commission on which the natives of India should be as adequately as possible represented, with the object of devising a scheme which might reasonably be hoped to possess the necessary elements of finality, and to do justice to the claims of natives of India to higher employment in the public service. The Report of the Commission was submitted to the Government of India in December 1887.

(2) Extract from the Decennial Report on Moral and Material Progress 1913:—

On the advice of this Commission, the Civil Service was divided into the three branches mentioned above, viz., the Indian Civil Service, the Provincial and the Subordinate Civil Services. The members of the provincial services (styled the Bengal Civil Service, the Madras Civil Service, and so on) fill the important executive, judicial, and administrative posts not held by members of the Indian Civil Service, including the higher appointments formerly held by the "Uncovenanted" Civil Service, and a certain number of posts originally reserved for the Covenanted Service. On the introduction of the new system, the terms "Covenanted Service" and "Uncovenanted Service" were abolished.....

Admission to the Provincial services is regulated by rules framed by the local Governments and approved by the Government of India. Sometimes it is by nomination, sometimes by examination, and sometimes by promotion from the subordinate service.... The service is divided into executive and judicial branches, the former including appointments of deputy collector and magistrate, etc. and the latter those of subordinate judge, etc. The subordinate services include the holders of minor posts,

including the lower grade appointments formerly held by the Uncovenanted Civil Service.

Specialised departments.

....When public education and the development of the country were in their infancy, the control of almost all branches of the administration, the education of the people, and the construction of roads, railways, and irrigation works progressed, demands arose for officers of special training and experience. The development of the Agricultural Department ....illustrates the growth of a department consisting of officers of this kind. Among the other special services may be mentioned the Public Works Department, the Survey of India, and the Postal, Telegraph, Education, Police, Salt, Civil Medical and Civil Veterinary Department. These services are variously organised according to the degree in which they are controlled by the Government of India and the Provincial Governments respectively.

(3) Extract from the Lee Commission's Report paras 7-11:—

7. The Civil Services in India came under detailed review by the Royal Commission on the Public Services presided over by Lord Islington (generally known as the Islington Commission) which assembled on the 31st December, 1912, and signed its Report on the 14th August, 1915. It was not the task of that Commission to attempt to alter the structure of administration which it found in existence. Its labours were directed merely to making such adaptations in the composition of the Services, and their organisation or financial conditions, as the circumstances of the time required. Apart from numerous recommendations directed to improving what may be called the technical organisation and efficiency of the Services, the commission devoted itself mainly to exploring the possibilities of a wider employment of Indians in the Superior Services and to an examination of the conditions of service, particularly on their financial side.

8. The report of the Islington commission was signed in August 1915 when the war had been in progress for a year. The

Governments both in India and in England were fully occupied with the prosecution of the war. Consequently the consideration of the proposals of the commission was deferred and the report was not published till the 26th January, 1917. Before the report could be taken into serious consideration the facts on which it was based had materially changed. On 20th August, 1917, the Secretary of State announced in the House of Commons that the policy of His Majesty's Government was that of "the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire." Further, the war had in India as elsewhere throughout the world produced an upheaval of prices which had greatly increased the cost of living and this factor had obviously not been taken into account in the rates of pay which the commission proposed.

There were thus three new factors in the situation:— (a) the special stress laid on the increasing association of Indians in every branch of the administration; (b) the new policy directed towards the progressive realisation of responsible government; (c) the marked change in the cost of living. It was easier to recongnise these new factors than to devise measures to meet them. The Government of India in their elaborate examination of the recommendations of the Islington commission and the Secretary of State in the orders which he passed clearly endeavoured to give due weight to the changed and changing conditions. It was, however, impossible to produce a scheme which would fit the new circumstances without a complete re-examination of the problem and the orders which were passed during the course of the years 1919-1920 on the recommendations of the Islington commission suffered inevitably from having been based on an investigation which subsequent events were rendering obsolete.

9. The Montagu-Chelmsford Inquiry.—It will be convenient at this point to summarise briefly the chief events which led

up to the appointment of the present Royal commission. We have already referred to the announcement of the new policy contained in the declaration of August 20th, 1917. In pursuance of this declaration the Secretary of State for India visited the country in the winter of 1917-18 and in collaboration with the Viceroy made a detailed inquiry into the measures necessary to give effect to the new policy. The result of this inquiry is contained in the report on the Indian constitutional reforms by Mr. Montagu and Lord Chelmsford. This elaborate review of the whole situation formed the basis for, lengthy and detailed discussion in India and in England out of which the Government of India Act 1919 finally emerged. This Act with the rules made thereunder embodies the present constitution of India.

10. SUBSEQUENT DEVELOPMENTS.--It was hoped that the inception of the new policy would eliminate the primary cause of unrest in India but unhappily the development of events belied this hope. Owing to causes which it is not within our province to examine unrest increased. The relations between the political classes and the services instead of being improved were markedly worsened. In the minds of the services the uncertainty of the political future of India combined with attacks on them in the press and on the platform and their steadily deteriorating financial condition produced feelings of anxiety and discontent. In Indian political circles on the other hand the new system seemed incomplete and slow in its operation. It seemed incomplete because the self-government granted in the " transferred " field was limited by the fact that the members of the all-India services engaged therein were still under the ultimate control of the Secretary of State. It seemed slow in operation because the rate of Indianisation adopted since 1919 was regarded as illiberal. In the course of our tour through India we inquired into each of these causes of discontent.....It is enough now to point out that in the course of 1922 they impelled both the Secretary of State and the Government of India to take action.

11. The immediate pre-occupation of the Secretary of State was the check in the flow of recruits for the Indian services. Accordingly he appointed a committee presided over by Lord MacDonnell to inquire into the impediments to recruitment. The committee reported on 21st June, 1922. Though certain detailed suggestions for improvement were made, the majority of members in a supplementary note admitted that these recommendations were mere palliatives and suggested that the time had come to consider on broader lines how the organisation of the public services could be adjusted to suit the recent constitutional changes.

While the Secretary of State was considering the problem arising out of the decline in European recruitment the Government of India was being incessantly pressed tb accelerate Indianisation. In order to clear the ground all local Governments were consulted on 30th May, 1922 in a letter which has become famous in the vocabulary of recent Indian politics under the name of the "O'Donnel circular." In this letter the arguments for and against a drastic reduction or complete cessation of European recruitment were clearly summarised. Thus within four years from the passing of the Government of India Act both the Secretary of State and the Government of India had been obliged to reconsider the whole question of the services. But the problems were only stated, they were not solved by the Macdonnel Committee's report and the O'Donnell circular, and it was the need for a fresh, full and impartial inquiry into the means of solving them that led to the appointment of the present Royal commission (Lee commission).

ii Position of the Indian Civil Service before the Reforms.

(A) Extract from the Report of the Public Services Commission 1916 (para 1 Annexure X.)

Throughout the history of the administration of India the Indian civil service has been regarded as the senior of all the services and as the one upon which the responsibility for good government ultimately rests. Its functions are to provide

officers to fill those posts of general supervision which are referred to commonly as the superior, or the Indian civil service, posts. On its executive side the service is responsible for the general administration and on its judicial is also concerned with administration of justice. On the executive side it administers the system of land tenures and the land revenue and deals with all matters affecting the well-being of the people. It controls the local administration of excise, income-tax, stamp-duty and certain other sources of revenue, and supervises the management of the district treasuries. In the sphere of local self-government it guides and controls the working of the district councils and of municipal bodies. It is responsible for the public peace and the suppression of crime, and exercises general control over the working of the police. It also provides officers to perform the duties of the chief or district magistrates and to supervise the work of all the other magistrates. The superior posts on this side begin ordinarily with the headships of districts, termed collectorships or deputy commissionerships, or their equivalents, and rise through commissionerships of divisions, memberships of boards of revenue or financial commissionerships, and memberships of executive councils, to the chief commissionerships and lieutenant-governorships of certain provinces. On the judicial side, the officers filling the lowest superior posts are ordinarily the district and sessions judges, who exercise unlimited original jurisdiction in civil and criminal cases arising within their districts and also large appellate powers. They are further vested with administrative control over the establishments of the local courts presided over by judicial officers recruited in the province. Judicial officers also rise to be judicial commissioners or members of the various high or chief courts. There are also superior posts in the political and other departments, and in the secretariates of the local Governments and of the Government of India, which are filled by officers of the service, and some of them are also nominated to serve on the various legislative councils. The

service also carries a reserve of junior officers. These occupy leave and deputation vacancies as they occur in the superior posts, and receive training by performing the duties of the minor charges or, as they are sometimes termed, the inferior posts.

(B) Section 98 of the Government of India Act 1915 reproduced below, reserved most of the important posts in the country for members of the Indian Civil Service:—

Offices reserved to the Indian Civil Service.

Subject to the provisions of this Act, all vacancies happening in any of the offices specified or referred to in the Third Schedule to this Act, and all such offices which may be created hereafter, shall be filled from amongst the members of the Indian Civil Service.

THIRD SCHEDULE.

SECTION 98

Offices reserved to the Indian Civil Service.

PART I.—General.

1. Secretaries, Joint Secretaries, Deputy Secretaries and Under-Secretaries to the several Governments in India, except the Secretaries, Joint Secretaries, Deputy Secretaries and under-Secretaries in the Army, Marine and Public Works Departments. 2. Accountants-General. 3. Members of the Board of Revenue in the presidencies of Bengal and Madras, the United Provinces of Agra and Oudh and the Province of Bihar and Orissa. 4. Secretaries to those Boards of Revenue. 5. Commissioners of Customs, Salt, Excise and Opium. 6. Opium Agent.

PART II. Offices in the Provinces which were known in the year 1861 as "Regulation Provinces."

7. District and Sessions Judges. 8. Additional District or Sessions Judges and Assistant Sessions Judges. 9. District Magistrates. 10. Joint Magistrates, 11. Assistant Magistrates. 12. Commissioners of Revenue. 13. Collectors of Revenue or Chief Revenue officers of districts. 14. Assistant Collectors.

(C) Extract from the Montagu-Chelmsford Report:—

*This executive organisation which we have described has been well likened to a nerve system of official posts actuated up till now, chiefly by impulses of its own but affected by the popular ideas which impinge on it from three sources—the British Parliament, the Legislative councils and the local

*Para 12

boards. Parliament can, of course, make its commands effective at any moment but rarely chooses to do so. The effect of the councils and the local bodies in India has been to influence, but not yet to control official working. The system has in the main depended for its effectiveness on the experience, wisdom and the energy of the services themselves. It has for the most part been represented by the Indian Civil Service which, though having little to do with the technical departments of Government, has for over one hundred years in practice had the administration entrusted into its hands, because with the exception of the offices of the Governor-General, Governors and some members of the executive councils it has held practically all the places involving superior control. It has been in effect much more of a Government corporation than of a purely civil service in the English sense. It has been made a reproach to the Indian Civil Service that it regards itself as the Government, but a view which strikes the critic familiar with parliamentary government as arrogant is little more than a condensed truth. It has long been a tradition of the Service that men in it are entitled not only to administer but to advise. From the outset of their career they have been habituated to the exercise of responsibility; they have had to take important decisions of their own in emergencies; and they have acquired at first hand, and not merely from precedent or prescription, a stock of practical knowledge which they have been used and been encouraged to contribute to the common purpose. Because they have looked forward to attaining positions where they could decide or help to decide policy they have, within the restraints imposed by discipline and good order, been accustomed to express their ideas freely as to India's needs and to criticise and advise a government which has in essentials been one with themselves.

*Para 326.....The position of the Indian civil servant is not analogous to that of the civil servant at Home; he takes his place in the legislative and executive councils; he assists in the formation of policy.....

*M. C. R.

iii Strength and weakness of the official system.

SOURCE :—Para 125 of the Montagu-Chelmsford Report.

The system which we have described was originally due to imitation of the quasi-military organisation of the Mughal Empire. The councils and local bodies are innovations due to the totally different conception of administration which springs from English political thought. In large centers of population municipal institutions are a reality and they form an oasis of popular control in the midst of an official system. In smaller towns official influence is still actually though not technically strong. The boards to whom rural affairs are committed though they often enjoy elected majorities are in practical working, probably still weaker in relation to the official system than the Morley-Minto changes left the councils in relation to Government. The organisation is still in many ways well-suited to the needs of a backward people and is well understood by them. Among all the suggestions made to us it has never been suggested that the system has broken down. It has the great advantage that in every district and portion of a district, that is to say in many parts of the country within not more than twelve or fifteen miles of every single inhabitant—there is a direct representative of Government to whom complaints on every conceivable subject can be addressed and through whom the Government can act. Its weaknesses are, we conceive, equally apparent. It is humanly impossible for the district officer to control the whole business of government and to look after his army of subordinates as closely as is required. His utmost vigilance and energy do not suffice to prevent petty corruption and oppression from disfiguring official business. The people are slow to complain and prefer to suffer rather than to have the trouble of resisting. This mischief is being slowly remedied with the improvement of subordinate services. It could be remedied further at great expense by decreasing district areas and increasing the supervising staff. But there can be no general improvement except through the awakening of public

opinion which we believe that our reforms will stimulate. Strong as it is, the official system is too weak to perfect the enormous task before it without the co-operation of the people.

IV —The Services and the Reforms

1. Intentions of the authors of Reforms.

i Indianisation.

SOURCE:—Paras 313-16 Montagu-Chelmsford Report.

313. In the forefront of announcement of August 20th the policy of the increasing association of Indians in every branch of the administration was definitely placed..... Our inquiry has since given us ample opportunity of judging the importance which Indian opinion attaches to this question. While we take account of this attitude a factor which carries more weight with us is that since the report was signed an entirely new policy towards Indian government has been adopted which must be very largely dependent for success on the extent to which it is found possible to introduce Indians into every branch of the administration. It is a great weakness of public life in India today that it contains so few men who have found opportunity for practical experience of the problems of administration. Although there are distinguished exceptions principally among the Dewans of Native States, most Indian public men have not had an opportunity of grappling with the difficulties of administration nor of testing their theories by putting them into practice. Administrative experience not only sobers judgment and teaches appreciation of the practical difficulties in the way of the wholesale introduction of reforms, however attractive, and the attainment of theoretical ideals, but by training an increasing number of men in the details of day-to-day business it will eventually provide India with public men versed in the whole art of government. If responsible government is to be established in India there will be a far greater need than is even dreamt of at present for persons to take part in public affairs in the Legislative Assemblies and elsewhere;

The case for increasing the Indian element.

and for this reason the more Indians we can employ in the public services the better. Moreover it will lessen the burden of Imperial responsibilities if a body of capable Indian administrators could be produced. We regard it as therefore necessary that recruitment of a largely increased proportion of Indians should be begun at once. The personnel of service cannot be altered in a day: it must be a steady and a long process; if, therefore, the services are to be substantially Indian in personnel by the time that India is ripe for responsible government, no time should be lost in increasing the proportion of Indian recruits.

Limitations to this process.

314. At the same time we must take note of certain limitations to the policy of change. The characteristics which we have learned to associate with the Indian public services must as far as possible be maintained; and the leaven of officers possessed of them should be strong enough to assure and develop them in the service as a whole. The qualities of courage, leadership, decision, fixity of purpose, detached judgment, and integrity in her public servants will be as necessary as ever to India. There must be no such sudden swamping of any service with any new element that its whole character suffers a rapid alteration. As practical men we must also recognise that there are essential differences between the various services and that it is possible to increase the employment of Indians in some more than in others. The solution lies therefore in recruiting year by year such a number of Indians as the existing members of the service will be able to train in an adequate manner and to inspire with the spirit of the whole. Again it is important that there should be so far as possible an even distribution of Europeans and Indians, not indeed between one service and another, but at least between the different grades of the same service. Apart from other considerations, this is a reason for exercising caution in filling up the large number of vacancies which have resulted from short recruitment during the last

four years. We must also remember how greatly conditions vary between the provinces.....Lastly it would be unwise to create a demand in excess of the supply. At present the number of candidates of higher quality than those who are now forthcoming for the provincial services is strictly limited, and though the opening of the more attractive services may be expected to stimulate the supply it will still be necessary, if the present quality of the services is not to be unduly impaired, to take special steps to see that recruits are of a satisfactory standard.

315. *Subject to these governing conditions we will now put forward certain principles on which we suggest that the action to be taken should be based. First, we would remove from the regulations the few remaining distinctions that are based on race, and would make the appointments to all branches of the public service without racial discrimination.

Removal of racial distinctions.

316. Next, we consider that for all the public services, for which there is recruitment in England open to Europeans and Indians alike, there must be a system of appointment in India. It is obvious that we cannot rely on the present method of recruitment in England to supply a sufficiency of Indian candidates. That system must be supplemented in some way or other; and we propose to supplement it by fixing a definite percentage of recruitment to be made in India. This seems to us to be the only practical method of obtaining the increased Indian element in the services which we desire.

Institutions of recruitment in India.

2. **Improvements in the Conditions of European Services.**

SOURCE :—Para 318 Montagu-Chelmsford Report.

The restriction of the number of Europeans in the services, and the constitutional changes taken together will make it absolutely necessary for India to secure the very best type of European officers that she can get. We are therefore anxious that the present opportunity should be taken to do something

towards restoring the real pay of the existing services to the level which proved attractive twenty years ago. We recognise and we regret that the improvement of the conditions of the European services in India has encountered opposition from Indians. We hope and believe that if proposals for such improvement are accompanied by opportunities being given to Indians in the services this opposition will cease. But in any case we feel that it is necessary to do something substantial in order to improve the conditions of service and to secure the European recruitment which we regard as essential.

3. Protection of Service Interests.

SOURCE :—Para 325, Montagu-Chelmsford Report.

325. On more than one occasion we have declared our intention to protect the interests of the services if necessary; and it may be well to make it clear what we mean by this phrase. The question of methods depends on a number of Acts and rules and regulations, for which reason we reserve it for detailed consideration hereafter in connexion with the question of demarcating functions and powers. But our purpose is that any public servant, whatever the Government under which he is employed, shall be properly supported and protected in the legitimate exercise of his functions; and that any rights and privileges guaranteed or implied in the conditions of his appointment shall be secured to him. No changes that will occur can be allowed to impair the power of the Government of India or the Governor in Council to secure these essential requirements.

4 Change in the position of the Civil Service.

SOURCE:—Paras 127-128, 156, 259, 323-324, and 326, Montagu-Chelmsford Report.

127... It is impossible but that the application of our guiding principles should react on the district organisation, and we have to see how this will be. Clearly our first and immediate task is to make a living reality of local self-government. This cannot be done by a few amendments of the Indian statute book and a few notifications and executive orders. Such methods only

prepare the ground. We can bid the Government official—district officer or tahsildar—step aside from his position as executive officer of the boards, and assume for the future the ROLE OF ONLOOKER and FRIENDLY ADVISER. We can transfer the execution of the board's orders from subordinates responsible to Government to emloyees of the boards themselves and, in part, we may perhaps hope, to honorary agency. But we cannot ourselves breathe the breath of life into these institutions. That must come with the awakening of the sense of duty and public spirit which the war has fostered, and which opportunity will develop.

128. Further, as the principle of popular control is admitted into the Government through the medium of the legislative councils, some means must be devised of enabling the established services TO FALL IN WITH THE NEW ORDER OF THINGS. Naturally there will be many men to whom the change will be irksome, while some men will find it grateful. But we shall be wise to minimise by every means that human foresight can devise the friction which a change in a long-established system tends to produce. Our aim throughout must be to make the change not needlessly difficult for the services, to enlist their CO-OPERATION WITH THE POPULAR ELEMENT IN THE GOVERNMENT, and to induce on both sides the habit of good-will and mutual toleration, which is essential if India is to pass peaceably through the trying transitional period in front of her. We have, as we shall show, made due provision for the exercise of the duty which lies upon us to protect services: but without good-will and a readiness to co-operate, it will not be possible either to retain the men who compose them, or to get from them the best that they can give. Our labours will be vain, and worse than vain, unless the Indian public men, who will be responsible for the working of the reforms which we advise, succeed in so working them as to retain for India the willing help and guidance of many men like those who have led her thus far on her way, until such time as she has produced a generation of adminstrators of her own to compare with them

in strength and foresight, integrity and detachment. Of the services much is being asked. We are confident that they will respond to the demand. But it will rest with the Indian leaders also to show themselves capable of statesmanship and self-restraint.

156. At a time when great changes are coming in India, the possible consequences and re-actions of which no one can foresee, the element of EXPERIENCE AND CONTINUITY which the services supply will be of such value that in the interests of India herself they must be secured. Moreover in THE EDUCATIVE work of the immediate future they have an important part to play. Not only will they provide the executive machinery of Government; it will be their part to assist as only they can do, in the training of the rural classes for self-government; their help will be greatly needed to explain the new principles of government to many who will find them strange. They will be prepared, we have not the slightest doubt, to face some temporary sacrifice of efficiency, recognising that efficiency may be too dearly bought at the price of moral inanition. We are confident that the services, always conspicuously loyal in the carrying out of any new policy, will respond to this call. We are hopeful that the British element will so enter on a new career, and gain a new security in the progressive development of India. Meanwhile, we repeat that the Government must recognise its responsibilities to those whom it has recruited, and must retain the power to protect and support them in the discharge of the duties imposed upon them.

259. We should now make it clear what the relations of the executive officers in the provinces will be to the new government. Let us say at once that we HAVE NO INTENTION OF INTRODUCING ANY DUALITY INTO THE SERVICES. It would be unfair to expect ministers new to responsibility to assume the burden of office unless they could command the assistance of the present highly trained services. To require them to inaugurate new services for their own departments would, we think, be to saddle

them with difficulties that would doom the experiment to failure. This consideration, among others, was prominent in our minds when we concluded that ministers should form part of the executive Government of the province rather than a separate Government. That there are difficulties in either case we do not deny, but they would certainly be greater if one and the same officer received his orders from two Governments instead of one. The objection may be taken that the same authority may not be felt to attach to orders coming from ministers as to orders coming from the executive council. We do not admit that they will come from either. All orders will come from the Government, and they will all be Government orders. At the present time it is not the business of an executive officer to differentiate between an order conveyed to him by the secretary to Government in one department, and an order conveyed to him by the secretary in another department, and the procedure will not differ in the future.

323. . . .**Do the changes which we propose point to the gradual, possibly the rapid, extrusion of the Englishman with all the consequences that may follow therefrom? Is it conceivable that India's only surviving connexion with the Empire will be found in the presence of British troops for the purpose of defending her borders? We may say at once that the last contingency cannot be contemplated. We cannot imagine that Indian self-respect or British commonsense would assent for a moment to such a proposition. At least so long as the Empire is charged with the defence of India, a substantial element of Englishmen must remain and must be secured both in her Government and in her public services. But that is not the practical or the immediate question before us. What we have had to bear in mind—how our reforms may react on the position and the numbers of Europeans in the Indian services. We are making over certain functions to popular control, and in respect of these—and they will be an increasing number—English commissioners, magistrates, doctors, and engineers will be required

** Para 323 M. C. R.

to carry out the policy of Indian ministers. Simultaneously we are opening the door of the services more widely to Indians and thereby necessarily affecting the cohesion of the service. Some people have been so much impressed by the undoubted difference of view between the services and educated Indians and by the anticipated effects of a larger Indian element in the services that they apprehend that this may result in increasing pressure to get rid of Englishmen, and increasing reluctance on the part of Englishmen to give their further services to India under the new conditions. This danger is one which we have anxiously considered. We are certain that the English members of the services will continue to be as necessary as ever to India. They may be diminished in numbers; but they must not fall off in quality. Higher qualifications than ever will be required of them if they are to help India along her difficult journey to self-government. We have therefore taken thought to improve the conditions of the services, and to secure them from attack. But we sincerely hope that our protection will not be needed.

324. We believe then that, so far in the future as any man can foresee, a strong element of Europeans will be required in India's public service. Indeed we go further; we think that with the new political and economic development on which she is entering there will be wholly fresh opportunities for helping her with the services of men who have known the problems of government in other parts of the Empire, or who have special knowledge of technical science. It may conceivably be that the utilities of the European official in India will gradually undergo a change; that instead of continuing to the same degree as now as the executive agency of Government he will stand aside more from the work of carrying out orders and assume the position of a skilled consultant, a technical adviser and an inspecting and reporting officer. To attempt to forecast the future organisation and disposition of the services would be idle. These matters will settle themselves in the course of political evolution. But we can see no reason for alarm. Our

policy is irrevocably declared and it ought to content all sober minds. We are no longer seeking to govern a subject race by means of the services; we are seeking to make the Indian people self-governing. To this end we believe that the continued presence of the English officer is vital, and we intend to act on that belief....

Of the Indian Civil Service in particular we have something further to say. Its past record we might well leave to speak for itself.... The position of the Indian Civil Servant, as we have already said, is not analogous to that of the civil servant at Home. He takes his place in the legislative and executive councils; he assists in the formulation of policy. But when his doings are attacked he remains except for a few official and rather formal spokesmen in the legislative councils mute. This gives him in the eyes of the educated Indians a certain tangible superiority of position, a cold invulnerability, which makes sympathetic relations between them impossible. We do not think this condition of silence can altogether be maintained. With coming changes there must be A GREATER LIBERTY of action to the European public servant in India, to defend his position when attacked. He ought not to leave the task of POLITICAL EDUCATION solely to the politicians. HE also must EXPLAIN AND PERSUADE, AND ARGUE AND REFUTE. We believe he will do it quite effectively. The matter is, however, by no means free from difficulty; there are obvious limitations to the discretion which can be granted; and these will be considered by the Government of India.

ii changes relating to services in the Government of India Act 1919.

(A) PART IV OF THE GOVERNMENT OF INDIA ACT 1919 deals with the civil services of India. The effect of its main provisions is summarised in 'INDIA IN 1919' as follows:—

Part IV deals with the Civil Services of India. Every person in the Civil Service of the Crown in India holds office during His Majesty's pleasure and he may be employed in any

manner required by proper authority within the scope of his duty, but he cannot be dismissed by any authority subordinate to that by which he was appointed. An aggrieved officer who has been appointed by the Secretary of State in Council also has the right to complain to the Governor without prejudice to any other right of redress. The Secretary of State in Council is also authorised to regulate by rule the classification of the civil services, the methods of their recruitment and the conditions of service. A Public Service Commission consisting of five members is to be appointed for a period of five years to discharge in regard to recruitment and control of the public services in India such functions as may be assigned to them by rules to be made by the Secretary of State in Council. With regard to the appointments which have hitherto been considered as exclusively tenable by members of the Indian Civil Service under section 98 of the Government of India Act of 1915, Under-Secretaryships in all departments have been removed from this category and the schedule has been slightly further modified.

*The Education and Foreign and Political Departments have been taken out from the list of the departments in which the offices of Secretary, Joint Secretary, and deputy secretary were reserved for members of the Indian Civil Service and in the Legislative Department either the Secretary or the Deputy Secretary may be a non-Civilian. Only three Accountants-General will now be taken from the Civil Service.

B. Objections to regulating conditions of service by an Imperial Act.

Source:—Keith's Minute of Dissent to Crew Committee's Report.

†As regards the public services of India, I am strongly of opinion that there are grave constitutional objections to regulating their conditions of service by an Imperial Act or by regulations made under it, thus withdrawing from the legislatures

*See the new Schedule to sec. 98 of the Government of India Act.

† Para 28.

of India the control of legislation regarding these services. Moreover it is essential in the interest of decentralisation that, as far as possible, the Secretary of State should abandon detailed control of the conditions of service of officers in India, and that changes in the existing conditions should be subjected to the criticism of the legislatures under safeguards against unjust treatment of members already in the services. The proposal to compel the Secretary of State in Council to create a Public Service Commission, and to assign to it such functions as he thinks fit conflicts with the fundamental principles of the reform scheme.

iii Actual experience of the effects of Reforms on the Services.

A Effect on the spirit and outlook of the services.

SOURCE:—Para 43, Minority Report, the Reforms Enquiry Committee.

In paragraphs 27 to 32 above we have dealt with the allegation that the members of the permanent services had failed to co-operate with the Ministers. Before we conclude with this part of our report we think that we should refer to another aspect of the evidence in regard to the permanent services which has been placed before us. This point is referred to in the reports of several local governments but we think we can illustrate it best by a quotation of the words of the Government of the United Provinces:—"The SPIRIT AND THE OUTLOOK of the services are not what they were. It may be difficult to specify the precise extent to which they have been affected or to disentangle the various causes. But of the broad fact there can be no doubt. In the heated political atmosphere of the first fifteen months after the inauguration of the reforms the European services were the object of constant vilification and abuse in the press and on the platform; indeed as will be seen from the published proceedings, in the legislative council also, where though criticism was more restrained it was often hostile and prejudiced. .....The constitution of the all-India Services is not well understood and many members of the legislature are influenced

by the feeling (for which there is justification) that in the past Indians have not received their fair share of the higher appointments. The natural effect, however, of the attitude of the legislature has been to create in the minds of the Englishmen serving in India an impression of hostility and a FEELING OF INSECURITY which makes it difficult for them to give of their best. There are distinct signs that the services are losing their former keenness. Since they have no longer the power of shaping policy to the extent which they had, they no longer feel that the progress of the country depends upon their efforts nor indeed that any efforts of theirs are likely to have abiding results. Enthusiasm and energy have also been sapped by financial pressure and by the cloud of uncertainty which hangs over the future of the country to which they have given their lives." We consider that this extract points to a regrettable feature of the present conditions prevailing in India. We are impressed with the desirability in the interests of India's constitutional development of securing contented permanent services and a return to that keenness which it is said is being lost.....

B Alleged Failure to co-operate with Ministers.

SOURCE:—Para 32 of theM ajority Report, the Reforms Enquiry Committee.

We are now in a position to summarise our conclusions upon this important question. We consider that there can be no doubt but that the members of the services generally loyally co-operated with the ministers in working the reforms. There may have been a few instances in which this was not the case but we believe they were exceptional. We consider that the evidence before us also goes to show that the members of the permanent services did not hesitate to carry out any policy once it had been decided upon by the ministers.... Any contrary conclusion save in regard to the few exceptional cases to which we have referred is not, we consider, supported by the answers given in examination by the witnesses themselves or by other evidence produced before us.

C Anomalous position of the services.

SOURCE:—Pages 161-163 of the Minority Report, the Reforms Enquiry Committee.

While it is possible to understand the feeling that the services have no longer the power of shaping the policy to the extent they had or their feeling that the progress of the country no longer depends upon their efforts or that any efforts of theirs are not likely to have abiding results, it may as well be pointed out here that this is the inevitable consequence of the transference of power, limited as it is, to local legislatures; and indeed it constituted the raison d'etre of the reforms.....The immunity which public services in England or the Dominions enjoy from hostile or unfriendly criticism cannot, we are afraid, be secured for the services in this country in any large measure unless among other things the relations of the services to the legislatures are brought into closer approximation with those prevailing in England or the Dominions. When it is recognised by the public that the services are mere instruments for the execution of the policy of the government and that they have no political functions to discharge we think they will cease to be targets of that criticism which is pointed out as an undesirable feature of the present political conditions in India; for when that stage is reached it will be the responsible ministers and not the services who will have to bear the brunt of public criticism. As matters stand at present the control of the services or their recruitment does not rest with the local Governments or with the Government of India. It seems to us, therefore, that in the best of circumstances the present position is apt to give rise at times to friction and a feeling of mutual distrust which cannot be conducive to efficient and good administration.

In the course of the evidence that we have recorded some allegations have been made suggesting or implying want of

co-operation on the part of the services with the ministers. We have carefully considered in this connection the evidence of ex-ministers who appeared before us....Our own conclusion upon a review of the evidence is that generally speaking the attitude of. the members of the services was one of loyal co-operation though in a few exceptional cases it might not have been so. At the same time we are bound to point out that our analysis of the situation leads us to think that two important factors have operated to affect the relations of the services to the ministers. The first is the natural difference between the points of view of members of the permanent services and the ministers in regard to questions of policy inasmuchas they represent two different schools of thoughts, one bureaucratic and the other popular. The second factor is that under the present constitution the Ministers feel that the services can look to higher powers for the enforcement of their views in cases of their differences which tends to undermine the minister's authority.

We venture to think that under the present system the entire constitution, the methods of recruitment and control of the services are incompatible with the situation created by the reforms and the possibility of their further developments..... And we are of the opinion that the relations of the services to the legislatures cannot be put on a satisfactory and enduring basis by a mere amendment of the rules or even by the delegation of certain powers under Section 96B. We desire to repeat what we have already stated that the position of the permanent services in India should be placed on the same basis as in England.....

V —Main recommendations of the Lee Commission.

i Appointment & control of the services in the Transferred field.

SOURCE :—Extract from Paras 14-16 Lee Commission's Report.

These are the Indian Educational Service, the Indian Agricultural Service, the Indian Veterinary Service and the

Indian Forest Service (in Burma and Bombay) and the Roads and Buildings Branch of the Indian Service of Engineers (except in Assam). The civil side of the Indian Medical Service also falls within the category but requires separate treatment. In the transferred field the responsibilites for administration rests on ministers dependent on the confidence of Provincial legislatures. It has been represented to us that although ministers have been given full power to prescribe policy they might be hampered in carrying it out by the limitations to their control over the all-India services inasmuchas members of these services unlike those of provincial services are appointed by the Secretary of State and cannot be dismissed except by him while their salaries are not subject to the control of the local legislatures. . . . . Our proposals are framed to remedy this particular anomaly.

We are accordingly of opinion that for the purposes of local governments no further recruitment should be made for the Indian Educational service, the Indian Agricultural service, and the Indian Veterinary service as at present constituted ; for the Indian Forest service in Bombay and Burma and (subject to the arrangements set out in paragraph 40 of our report) for the Roads and Buildings Branch of the Indian Service of Engineers. The personnel required for these branches of administration should in future be recruited and appointed by local governments.

So far our recommendations apply only to appointment, but it is a logical consequence of what we have said above that local governments should have power to make rules regulating the public services which will take the place of the present All-India services operating in the transferred field. We accordingly recommend that the Secretary of State should make the necessary delegation of powers under section 96B(2) of the Act. The delegation would naturally cover the existing provincial as well as the newly provincialised services.

The Government of India, the Secretary of State and Parliament all contemplated this use of section 96B(2) at the

time the Act was passed, but it was regarded as a corollary to the delegation of full control that the local legislatures should pass Public Service Acts regulating the Provincial services. These Acts might be expected inter alia :

(i) to secure selection over the widest possible field on merits and qualifications and to reduce the risks of political interference.

(ii) to lay down procedure for punishment and appeals.

(iii) to provide satisfactory conditions in regard to such matters as pensions, promotions and leave.

We accordingly recommend that if our proposals for devolution and control are accepted, local Governments and local legislative councils should take immediate steps to secure the legislation suggested above.

ii Public Services Commission.

SOURCE :—Extract from Paras 24-25, Lee Commission's Report.

Wherever democratic institutions exist, experience has shown that to secure an efficient Civil Service it is essential to protect it so far as possible from political or personal influences and to give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which Governments, of whatever political complexion, may give effect to their policies..... It was this need which the framers of the Government of India Act had in mind when they made provision in Section 96C for the establishment of a Public Service Commission to discharge "in regard to recruitment and control of the Public Services in India such functions as may be assigned thereto by rules made by the Secretary of State in Council."

We have given this matter our special attention and, in the light of the evidence as to Service conditions in general that has been placed before us, we are convinced that the statutory Public Service Commission contemplated by the Government of India Act should be established without delay.

It should, in our opinion, consist of a central body of five members, the maximum number permitted by the Act. As regards " the qualifications for appointment and the pay and pension (if any) attaching to the office of Chairman and member " (see section 96C. (1) of the Act) we do not wish to infringe in any way the prerogative and discretion of the Secretary of State in Council. We would venture, however, to emphasise the paramount importance of securing, as members of the Commission, men of the highest public standing, who will appreciate the vital and intimate relationship which should exist between the State and its servants. These Commissioners should be detached so far as practicable from all political associations. They should, we suggest, be whole-time officers and their emoluments should not be less than those of High Court Judges.....

The functions of the commission should fall, at the outset, into two categories (a) recruitment and (b) certain functions of a quasi-judicial character in connection with the disciplinary control and protection of the Services.

iii Indianisation.

SOURCE:—Points XIII, XVII of the Official Summary of the Lee Commission's Report.

INDIAN CIVIL SERVICE:— A proportion of 50 per cent Europeans and 50 per cent Indians in the cadre should be attained within about 15 years from the time that the new rate of recruitment recommended comes into force.....

INDIAN POLICE SERVICE:— Out of every 100 recruits 50 should be Europeans directly recruited, 30 should be Indians directly recruited and the remaining 20 should be Indians obtained by promotion from the provincial services.....

INDIAN FOREST SERVICE:—Recruitment should be in the ratio of 75 per cent Indians and 25 per cent Europeans in those provinces in which Forest administration is reserved.

INDIAN SERVICE OF ENGINEERS:—Recruitment for that portion of cadre working entirely in the Irrigation Branch in provinces in which it has been separated from the cadre working in the Buildings and Roads Branch should be in the ratio of 40 per cent Europeans, 40 per cent directly recruited Indians and 20 per cent Indians promoted from the provincial service.

CENTRAL SERVICES.

(a) Political Department:—Twenty-five per cent of the total number of officers recruited annually should be Indians who should be obtained as at present from the Indian Civil Service, the Provincial Civil Service and the Indian Army.

(b) Imperial Customs Service.—Recruitment should remain on the present basis, that is, not less than half the vacancies are to be filled by appointment in India of statutory natives of India.

(c) Superior Telegraph and Wireless Branch:—Recruitment should be 25 per cent in England and 75 per cent in India.

(d) State Railways Engineers: Superior Revenue Establishment, State Railways:—The extension of the existing training facilities in India for these services should be pushed forward in order that recruitment in India may be advanced so soon as practicable up to 75 per cent of the total number of vacancies in the Railway departments as a whole, the remaining 25 per cent being recruited in England.

(e) Recruitment for the remaining central services should be at the discretion of the Government of India.

(f) In services dealt with in (b), (c) and (d) recruitment should be by open competition.

iv Increase in emoluments and privileges.

A Increase in pay.

*The disparity of remuneration as between a commercial and an official career has become so conspicuous, and so discouraging to Civil Servants, that we feel something should be done without delay to restore contentment.

In dealing with this question we have borne constantly in mind the urgent need for economy in Indian administration, but after the most careful consideration we think that the improvement in emoluments set out in paragraphs 52 to 55 are absolutely necessary.

B Remittance Privileges.

In all Services, the Police included, from the 5th year of service onwards every officer of non-Asiatic domicile should be permitted to remit his overseas pay as above proposed through the High Commissioner at a rate of 2s. to the rupee, or to draw it in London in sterling at that rate.

C Passages.

**The evidence laid before us showed that the inadequacy of the existing rates of pay, combined with the great rise in shipping rates in recent years, has made it increasingly difficult for officers to meet passage charges. We feel strongly that the granting of some relief in this regard would be in the interest of Government as well as of the officer concerned.

An officer of non-Asiatic domicile in the Superior Civil Services should receive four return passages during his service (of the standard of P. & O., First Class B) and if married, his wife should be entitled to as many return passages as may be to his credit. One single passage should be granted to each child.

Officers already in the service, who have served less than 7 years, should be entitled to four return passages for themselves and their wives, those with over 7 years and less than 14

* Extract from para 48

** " " " 62.

years should be entitled to three, those with over 14 years and less than 21 years' service, should be entitled to two, and officers with 21 years' service and over to one. The scheme should be extended to Indian officers in the Indian Civil Service who were recruited by the Secretary of State and who receive over-seas pay but should not extend to their families.

D Pensions.

1. *Increase in Pensions in certain cases.

Members of the Indian Civil Service, who attain to the rank of Member of Council, should be given an increased pension, at the rate of £50 per annum for each year of service as such, upto a maximum pension of £1,250. Those who serve as Governors of Provinces should similarly be given £100 for each year of service, as such, up to a maximum pension of £1,500 per annum.

2. Proportionate Pensions.

†The privilege of retiring on proportionate pension should be extended to officers recruited in 1919 who, through no fault of their own, did not arrive in India before 1st January 1920.

A rule should be made and a clause inserted in the contracts of all future British recruits to the All-India Services, to the effect that if and when the field of service for which they have been recruited is transferred it shall be open to them either:—(a) to retain their All-India status; (b) To waive their contracts with the Secretary of State and to enter into new contracts with the Local Governments concerned; or (c) to retire on proportionate pension, the option to remain open for one year from the date of transfer.

3. Family Pension Funds.

**Family Pensions Funds, on the lines of that already existing for the Indian Civil Service, should be introduced for the other All-India Services as soon as practicable.

E Medical Attendance.

***The principle that attendance by medical officers of their own race should be available for members of the Services and their families should be accepted.

†*Para 31 of the Lee Commission's Report. ‡ Point XLiii of the offiical summary.

**Point XLViii of the official summary.

***Point Lix of the official summary.

V. Safeguards.

(1) *The Secretary of State should refer claims from a member or the members of a Service for compensation for the abolition of a higher appointment for consideration and report by the Public Services Commission.

(2) †Mutually binding legal covenants, enforceable in a civil court, should be entered into between all future recruits and the authority appointing them. To secure the position of existing members of the services a similar contract should be entered into, and so framed as to cover the remaining liabilities of their service. The contract should include clauses securing pay, leave rules, passages, remittance privileges, pension rules, etc., and the right to compensation in the event of dismissal without due notice or any breach of conditions of contract; as well as the right to retire on proportionate pension in certain circumstances.

*Point Li of the official summary.

†Point Liii „ „ „ „

CHAPTER VIII.

Local and Municipal Government.

I.—Village Organisation.

SOURCE:—Report of the Decentralisation Commission.

THE TYPICAL INDIAN VILLAGE:—Throughout the greater part of India the village constitutes the primary territorial unit of Government organisation, and from the villages are built up the larger administrative entities—tahsils, sub-divisions, and districts.

The typical Indian village has its central residential site, with an open space for a pond and a cattle stand.

Stretching around this nucleus lie the village lands, consisting of a cultivated area and (very often) grounds for grazing and wood-cutting.....The inhabitants of such a village pass their life in the midst of these simple surroundings, welded together in a little community with its own organisation and government, which differ in character in the various types of villages, its body of detailed customary rules, and its little staff of functionaries, artisans, and traders. It should be noted, however, that in certain portions of India, e. g., in the greater part of Assam, in Eastern Bengal, and on the west coast of the Madras Presidency, the village as here described does not exist, the people living in small collections of houses or in separate homesteads.

The villages above described fall under two main classes, viz. :—

Raiyatwari and Landlord villages.

(1) The "severalty" or raiyatwari village, which is the prevalent form outside Northern India. Here the revenue is assessed on individual cultivators. There is no joint responsibility among the villagers, though some of the non-cultivated lands may be set apart for a common purpose such as grazing, and waste land may be brought under the plough only with the permission of the revenue authorities, and on

payment of assessment. The village government vests in a hereditary headman, known by an old vernacular name, such as PATEL or REDDI, who is responsible for law and order, and for the collection of the Government revenue. He represents the primitive headship of the tribe or clan by which the village was originally settled.

(2) The joint or landlord village, the type prevalent in the United Provinces, the Punjab and the Frontier Province. Here the revenue was formerly assessed on the village as a whole, its incidence being distributed by the body of superior proprietors, and a certain amount of collective responsibility still as a rule remains. The village site is owned by the proprietary body, who allow residences to the tenantry, artisans, traders and others. The waste land is allotted to the village and, if wanted for cultivation, is partitioned among the shareholders. The village government was originally by the panchayet or group of heads of superior families. In later times one or more headmen have been added to the organisation to represent the village in its dealings with the local authorities; but the artificial character of this appointment, as compared with that which obtain in a raiyatwari village, is evidenced by the title of its holder, which is generally LAMBARDAR, a vernacular derivative from the English word "number." It is this type of village to which the well-known description in Sir H. Maine's Village Communities is alone applicable, and here the co-proprietors are in general a local oligarchy with the bulk of the village population as tenants or labourers under them.

Disappearance of the old village autonomy.

The Indian villages formerly possessed a large degree of local autonomy, since the native dynasties and their local representatives did not, as a rule, concern themselves with the individual cultivators, but regarded the village as a whole, or some large landholder, as responsible for the payment of the Government revenues, and the maintenance of local order.

This autonomy has now disappeared owing to the establishment of local civil and criminal courts, the present revenue and police organisation, the increase of communications, the growth of individualism, and the operation of the individual raiyatwari system which is extending even in the north of India. Nevertheless, the village remains the first unit of administration; the principal village functionaries—the headman, the accountant, and the village watchman are largely utilized and paid by Government, and there is still a certain amount of common village feeling and interests.

Present village organisation in the Provinces.

In Madras, where village officers are usually hereditary, the village headman, besides being responsible for the collection of the revenue and for the maintenance of order, has also petty civil and criminal powers.

In Bombay proper there is a single headman (or patel) in the smaller villages, exercising revenue and police functions. In the larger villages there are separate revenue and police patels. Police patels have petty criminal powers, and petty civil jurisdiction is exercised by village munsifs appointed under the Deccan Agriculturists Relief Act. The village officers are generally hereditary in the Deccan districts. In Sind such village organisation as exists is feudal or tribal rather than communal.

In Bengal and Eastern Bengal there are, as a rule, no recognised headmen of individual villages for Government purposes. In Assam there are assemblies of village householders styled MELS, who elect their headmen subject to the approval of the Deputy Commissioner or Sub-Divisional Officer. These headmen are recognised by Government, report vital statistics, and are supposed to assist the police, but do not collect land revenue. The MELS deal privately with cases brought before them for arbitration.

In the United Provinces there are no definite village headmen, and the lambardars there are merely representatives of a number of co-sharers in matters affecting the Government

land revenue, while the position in this respect is much the same in the Punjab. Village munsifs, dealing with petty civil suits have, however, been appointed, of late years, in the United Provinces.

In Burma village headmen are elected by the villagers, subject to the approval of the Deputy Commissioner, and the posts generally continue in the same families. The headman, who is also the village accountant, collects the revenue and has power to deal with petty civil and criminal cases. There are village "elders" who take an informal part in the village administration, but are not recognised by law. They assist the headman, however, in distributing the incidence of the THATHAMEDA, a rough household tax, in Upper Burma. The Burma law imposes a certain amount of collective responsibility upon the villagers in cases of crime.

In the Central Provinces proper, the village headmen (mukaddams) are merely elected representatives of the landholders. Berar possesses the Deccan system of hereditary patels, but these have no criminal powers.

In Baluchistan and the North-West Frontier Province the organisation is tribal rather than by villages, and the connection of the people with the work of Government is mainly through the JIRAGAS.

Artificial organisations.

Certain artificial organisations have also been formed by Government in large villages or groups of villages, for specific puposes, viz:—

(i) In Madras, Local Fund unions have been constituted for the purpose of dealing with village roads, sanitation and lighting; and they are empowered to levy a small house-tax. Their affairs are administered by nominated committees, styled panchayets, with a nominated chairman, and the headman of each village included in the union is ex-officio a member of the panchayet. There are nearly 400 of these unions in the Province, the proportion varying in different districts. They do not represent a complete net work of petty

rural boards, but merely include specially large or important village centres. There are a few unions of a somewhat similar character in the two Bengals.

(ii) In the United Provinces, Bombay and the Central Provinces special funds are raised, or allotted, for works of sanitary improvement and minor local purposes in important villages. The administration of these, and the assessment of a local rate, is carried out with the assistance of local committees, which are usually nominated, but include an elective element in the Central Provinces.

Chaukidari Unions.

(iii) In the two Bengals villages have been formed into groups for the purpose of the Chaukidari or village police. A local tax is levied for the support of this force, and the taxation is in the hands of small panchayets appointed by the District Magistrate. The present tendency is to give these bodies some power in connection with the control of the village police, and to utilize them more fully in other directions.

II.—History of Local self-Government under British Rule.

A. Municipalities.

SOURCES:—(1) Moral and Material Progress Report 1882;
(2) " " " " " 1913.

(1) Municipalities in India are the creation of British rule. They have no connection with the indigenous village commune which still survives, in a more or less perfect form, almost everywhere throughout the country. They are entirely constituted and regulated by a series of Acts of the Legislature, of which the first dates only from 1850.....The establishment of representative bodies in rural areas is still more modern, being for the most part the result of Lord Mayo's scheme of provincial finance promulgated in 1871....

The Presidency Towns.

The three Presidency towns of Calcutta, Madras, and Bombay, have always been under municipal regulations of their own. So far back as 1687 the Court of Directors ordered that a corporation should be

formed at Madras from both European and Native members, with a special view to the levying of local taxation. This corporation....does not appear to have been long lived. The mayor's courts, composed of a mayor and nine aldermen, which were established by Royal Charter at Calcutta, Madras, and Bombay in 1726, were courts of judicature rather than administrative corporations. The first distinct authority to levy taxation for local purposes was derived from the Regulating Act which empowered the Governor-General to nominate covenanted servants of the Company and other British inhabitants to be Justices of the Peace, whose commission issued from the Supreme Court in the name of the Crown, not of the Company. Following the precedent of English Highway and Licensing Acts, these Justices of the Peace were empowered to appoint scavengers for cleansing the streets of Calcutta, Madras, and Bombay; to order the watching and repairing of the streets; to make assessments for these purposes, and to grant licenses for the sale of spirituous liquors. After several intermediate statutes, the municipal constitution of the three towns was entirely remodelled by a series of Acts passed by the Legislative Council of India in 1856. A body corporate was established for each, under the style of Municipal Commissioners, composed of three salaried members, of whom one was to be president. Except at Bombay all the Commissioners were appointed by the Government; at Bombay the President alone was appointed by the Government, the two others by the Justices of the Peace. To this body large powers of assessing and collecting rates and of executing works of conservancy and general improvement were entrusted. So far, the three Presidency towns had been substantially subject to a uniform system of municipal administration. But henceforth the systems have diverged, in accordauce with the local legislative independence restored in 1861.

Calcutta.

The Calcutta municipality was remodelled by the Bengal Legislature in 1863, and again in 1876. By the first Act the Corporation was composed of a salaried

chairman appointed by the Government, together with all Justices of the Peace for the province resident in the town, and all Justices of the Peace for the town. All executive authority was vested in the chairman, but the justices (many of whom were natives) had a large measure of financial control.... By the Act of 1876, the Calcutta corporation consisted of a chairman, who was also Commissioner of the Police, together with 72 Municipal Commissioners, of whom 48 or two-thirds were elected by the ratepayers, and the remaining 24 nominated by the Government.

Bombay.

The Bombay municipality was remodelled by the local legislature in 1865, and again in 1872. By the first Act the corporation was composed of the Justices of the Peace for the Town and Island of Bombay, together with a salaried Commissioner, in whom was vested the entire executive power and responsibility, with the control of the police. The justices had the power to revise the budget of municipal income and expenditure, which it was the duty of the Commissioner to lay before them. Practically, however, it was found that the Commissioner was uncontrolled in matters of finance; and this led to the more discontent, because Bombay was passing at this time through a period of financial depression. The result was the Act of 1872, which may be regarded as the first introduction of local self-government into India. By that Act two representative bodies were constituted; (1) a Corporation composed of 64 members, of whom 32 or one half (were) elected by the ratepayers, while the rest (were) nominated in equal shares by the Justices of the Peace and the Government; (2) a Town Council, composed of 12 members of whom eight (or two-thirds) were elected by the Corporation out of their own body, and the rest (were) nominated by the Government. The Municipal Commissioner (retained) his executive responsibility but in matters of finance the Town Council (was) supreme.....

Madras.

The Madras municipality was remodelled by the local Legislature in 1867, and again in 1878. By the former Act the city was divided into eight wards, with four members (styled Commissioners) for each ward, who must be resident within its limits. These commissioners were nominated by Government, about one-third being usually official persons. A power to introduce election by the ratepayers was never acted upon. The entire executive power was vested in a President appointed by Government, and paid out of municipal funds; other officials, excepting four of the highest rank, were appointed by the President subject to the approval of the Commissioners.....By the Act of 1878, one half of the Commissioners (were) elected by the rate-payers; the position of the President (remained) unaltered, but two Vice-Presidents (were) appointed by Government, one for public works and sanitation, the other for the assessment and collection of rates.....

General Municipal Acts.

As regards the rest of India outside the three Presidency towns, two Acts of universal application were passed by the Legislative Council of the Governor-General. These are Act XXXVI of 1850, already referred to as the first Municipal Act, though the word "municipal" nowhere occurs in its provisions; and Act XX of 1856, known as the Chaukidari, or Local Police Act. In strict accuracy it is necessary to mention an earlier attempt at municipal legislation, Act X of 1842, "For enabling the inhabitants of any place of public resort or residence" (in Bengal outside the limits of Calcutta) to make better provision for purposes connected with public health and convenience." But this Act never really came into operation, and was repealed in 1850 as having "proved ineffectual". Act XXVI of 1850, which was permissive in its obligation, was largely availed of in the North-West Provinces and in Bombay, but remained almost a dead letter in the rest of India. The Government of any Province was empowered to bring the Act into operation in any town only when satisfied that an application to that effect is in accordance

with the wishes of the inhabitants....The Government was then authorised to appoint the Magistrate and such number of inhabitants as may appear necessary to be Commissioners, on whom large powers (were) conferred for making rules. It is under this power that the levy of octroi dues, now so common, first became legal in India.

The Chaukidari Act of 1856 was brought into operation chiefly in Bengal and the North-West Provinces. In this case no previous application from the inhabitants was necessary, and all authority was really vested in the Magistrate. He nominated a panchayet or committee of at least five members, whose sole duty it was to assess the rates in accordance with principle laid down by Government. He also appointed the police constables, fixed their rate of pay, and regulated their office establishment. The local taxation to be levied might take the form of either a personal assessment on householders or a rate on houses. After defraying the expenses of the police, any further sum available might be devoted to cleansing lighting, or otherwise improving the town.

Since the date of these two Acts, the municipalities throughout India outside the Presidency towns have been entirely remodelled by special legislation for each province.

(2) *It was not until after 1870 that much progress was made. Lord Mayo's Government, in their Resolution of that year introducing the system of provincial finance, referred to the necessity of taking further steps to bring local interest and supervision to bear on the management of funds devoted to education, sanitation, charity, and local public works. New municipal Acts were passed for the various provinces between 1871 and 1874, which, among other things, extended the elective principle, but only in the Central Provinces was popular representation generally and successfully introduced. In 1881-2 Lord Ripon's Government issued orders which had

*Decennial report on Moral and Material Progress 1913.

the effect of greatly extending the principle of local self-Government. Acts were passed in 1883-4 that greatly altered the constitution, powers, and functions of municipal bodies, a wide extension being given to the elective system, while independence and responsibility were conferred on the committees of many towns by permitting them to elect a private citizen as chairman. Arrangements were made also to increase municipal resources and financial responsibility, some items of provincial revenue suited to and capable of development under local management being transferred, with a proportionate amount of provincial expenditure, for local objects. The general principles thus laid down have continued to govern the administration of municipalities down to the present day.

B Local Boards of British India.

SOURCE:—MORAL AND MATERIAL PROGRESS REPORT 1913.

The establishment of boards for dealing with local affairs in rural areas is a relatively recent development. No such boards existed in 1858, though some semi-voluntary funds for local improvements had been raised in Madras and Bombay, while in Bengal and the United Provinces consultative committees, assisted the district officers in the management of funds devoted to local schools, roads, and dispensaries. The system of raising cesses in land for purposes of this description was introduced by legislation in Madras and Bombay between 1865 and 1869; in the case of Bombay, nominated committees were to administer the proceeds of the cess. The year 1871 saw a wide development of legislation for local administrative purposes, partly due to growing needs, and partly the result of the financial decentralisation scheme of Lord Mayo's Government, various Acts being passed in different provinces providing for the levy of rates and the constitution of local bodies, in some cases with an elected element, to administer the funds. The whole system was reorganised in accordance with the policy of Lord Ripon's Government. Under the Orders of 1881-2 the existing local committees were to be

replaced by a system of boards extending all over the country. The lowest administrative unit was to be small enough to secure local knowledge and interest on the part of each member of the board, and the various minor boards of the district were to be under the control of a general district board, and to send delegates to a district council for the settlement of measures common to all. The non-official element was to preponderate, and the elective principle was to be recognised, as in the case of municipalities, while the resources and financial responsibilites of the boards were to be increased by transferring items of provincial revenue and expenditure. It was, however, recognised that conditions were not sufficiently advanced or uniform to permit of one general system being imposed in all provinces, and a large discretion was left to local Governments.

III—Local Self-Government under the Reforms

SOURCE:—Pages 58-62 of "India in 1923-4."

The institutions of local self-government in India have unquestionably derived a more vigorous vitality from the development of constitutional reforms. After the momentous announcement of the 20th August, 1917, had laid down the ultimate aim of British rule in India, the Executive Government made a sustained effort to arouse local institutions from the stagnant conditions then characterising them. In 1918 the Government of India issued an important resolution laying down in general terms the lines of progress. While reiterating the principle enunciated long ago by Lord Ripon's Government, the new resolution went on to affirm that the general policy must henceforward be one of gradually removing all unnecessary official control, and differentiating between the spheres of action appropriate for governmental and for local institutions. These principles had hardly come into operation when the introduction of the Reforms transferred the control of local self-government to ministers, responsive to the wishes of the legislatures, and elected by popular suffrage. Almost every local government has displayed

Legislative activity.

itself during the last three years as zealous to foster in every way the progress of local institutions. In the Punjab, the local government has taken up three measures of considerable importance, providing for the creation of improvement trusts, for the more effective adminstration of smaller towns, and for the establishment of village councils..... In the United Provinces, a District Boards Bill was passed at the end of 1922, which completely deofficialised the boards; reduced the franchise; and conferred certain powers of taxation. Other measures were also put forward to modify the municipal franchise in the same direction. In Bihar and Orissa the legislative council has reviewed the whole field of local self-government, and three important acts have been passed.....In the Central Provinces a very important measure regulating municipalities has passed into law. Its chief features are the extension of municipal franchise, the reduction of official and nominated members, the extension of the powers of municipal committees, and the relaxation of official control.....In Assam, an important municipal measure has been passed by the local Legislature, to remove certain defects which previously existed, and to bring the law in Assam in line with the more modern municipal legislation in force elsewere in India. In Bengal two measures of first rate importance have recently taken shape. The Bengal Village Self-Government Act is intended for the promotion of local self-Government by the constitution of small rural units....An Act for reconstituting the Calcutta municipality was passed in 1923, by which the constitution of the corporation has been democratised, and women's suffrance has been introduced ....The Bengal Government have also realised the shortcomings of their municipal law, and have introduced a bill to remove them. This bill provides among other things for the liberalisation of the constitution of the municipalities; the relaxation of internal official control, the constitution of education committees and the compulsory

The Punjab.

United Provinces.

Bihar & Orissa.

Central Provinces.

Assam.

Bengal.

acquisition of lands for certain purposes. In Bombay a bill to consolidate and amend various acts relating to local boards has been passed by the legislative council. This measure extended the franchise, removed sex disqualifications, and gave increased powers to local boards; constituting in short a very liberal and progressive piece of legislation.

Bombay

In Burma a Rural Self-Government Act was passed to provide for the introduction of village committees in the Province; the Burma Village Act of 1907 has been amended.

Burma.

This fresh infusion of life into the machinery of local self-government, accompanied by the gradual awakening of civic consciousness, has found expression in a certain readiness to undertake experiments. Prior to the Reforms, the charge was not infrequently levelled against the Government that insufficient use was made of the village panchayet or committee of elders; for in India has been preserved better than anywhere else in the world the ancient unit of the village community. For some time there has been a fear lest this historic body might wither away. In several provinces, attempts were made before the introduction of the Reforms to invest the panchayet with certain powers. Of late, these attempts have been reinforced. In the Punjab, for example, a Village Panchayet Act was passed in 1921, which places this ancient institution upon modern legal basis, and provides panchayets with powers which will enable them to settle local disputes, and to take measures for the sanitation of villages. A similar measure is in force in the United Provinces which provides for the establishment, at the discretion of the district officer, of a panchayet for any village or group of villages with power to deal with petty civil suits, with petty criminal offences and with ordinary cases under the Cattle Trespass Act and Village Sanitation Act.....

Revival of the Panchayat.

United Provinces.

In Bihar, also, legal provision exists for the constitution of panchayets exercising judicial power both in civil and in criminal cases, but it appears that these bodies have not actually

been established and hence there is no means of judging of the success of the system.*

Future of village self-government.

There is, however, no reason to doubt that village self-government in India has a great future before it. Village boards and union committees are in general steadily increasing in numbers; although the set-back caused by the non-co-operation campaign in certain localities has not yet been made good. Progress must therefore necessarily be for the present somewhat slow; since villagers are particularly prone to suspicion of new institutions, and tend to fall victims to interested misrepresentation by the enemies of government. The aspect which presents itself to them with particular force is inevitably that of taxation and localities where village and unions boards do not exist sometimes fear that the establishment of these institutions may be accompanied by enhanced financial burdens.....

IV.—A brief survey of the Condition of Municipalities and District Boards in India

SOURCE :— INDIA IN 1923-4

(a) †A brief survey of the condition of municipalities and district boards in India in 1921-1922—the latest date for which complete statistics are available—will reveal the general progress which can be claimed for the institutions of local self-government.

Municipalities in British India

Taking first municipalities, it may be noticed that there are some 751 in British India, with something over 18,000,000 people resident within their limits. Of these municipalities, 683 have a population of less than 50,000 persons, and the remainder a population of 50,000 and over. As compared with the population of the particular provinces, the proportion resident within municipal limits

*For a more detailed description of village Tribunals see pages 105-117 of the Report of Civil Justice Committee.

†Pages 57-8 of India in 1913-1.

is largest in Bombay, where it amounts to 20 per cent, and smallest in Assam where the figure is only 2 per cent. In other major provinces it varies from 4 to 9 per cent of the total population. When we turn to the composition of these bodies, we find that considerably more than half the total numbers are elected and that there is a steady tendency to increase this proportion. In all the municipalities taken together, the elected members outnumber the officials by nearly six to one. Ex-officio members number only 8 per cent and nominated members, who as a rule represent special interests, number 27 per cent. The work discharged by municipal institutions falls under the head of public safety, health, convenience and instruction. The municipal income of Rs. 12·96 crores is derived principally from taxation; just over one-third coming from municipal property, from contributions out of provincial revenues and from miscellaneous sources. Generally speaking, the income of the average municipality is small; the four great cities of Calcutta, Bombay, Madras and Rangoon, together accounting for nearly 40 per cent of the total. The heaviest items of expenditure come under the heads of conservancy and public works, which amount to 16 per cent of the budget respectively. Water supply comes to 13 per cent and drainage to 7 per cent. Education has hitherto amounted to about 8 per cent; but this proportion seems generally on the increase and in some localities it is already considerably exceeded. For example, in the Bombay Presidency, excluding Bombay City, the expenditure on education amounts to more than 21 per cent of the total funds; while in the Central Provinces and Berar it is over 15 per cent.

Their functions

In view of the fact that only 10 per cent of the population of British India lives in towns, municipal administration cannot for some time to come effect in any large degree the majority of the people. Particular importance therefore attaches in India to the working and constitution of the district boards, which perform in rural areas the functions which are discharged in urban areas by the municipalities. In almost every district in British India, save

The District Board,

i the Province of Assam, there is a board, subordinate to which are two or more sub-district boards; while in Bengal, Madras, Bihar and Orissa there are also union committees. Throughout India at large the total number of district boards amounts to some 219, with 543 sub-district boards and more than 800 union committees. The number of the boards and sub-district boards numbered a little over 13,000 in 1921-1922 of whom 59 per cent were elected. As in the case of the municipalities, the tendency has been to increase the elected members at the expense of the nominated and official members. Indians constitute 96 per cent of the whole strength; and only 13 per cent of the total membership consists of officials. The income of the boards in 1921 amounted to Rs. 10·93 crores (£7, 280,000), the average income of each district board being Rs. 5 lakhs (£34,000). The most important item of revenue is provincial rates, representing a proportion of total income varying from 18 per cent in the North-West Frontier Province to 61 per cent in Bihar and Orissa. The principal objects of expenditure are education—which has come remarkably to the front within the last three years—and civil works, such as roads and bridges. Medical relief is also sharing with education, though in less degree, the lion's portion of the available revenue.

Some general tendencies in local self-Government.

We may note certain general tendencies which have revealed themselves in the course of the period covered by this Statement. We have already found occasion to notice the activity displayed by almost every local legislature in connection with the institutions of self-government. This activity may be taken as illustrative of an increasing interest in these institutions, which is by no means confined to the class from whom the elected members of the provincial legislature are drawn. Indeed, among the most striking consequences of the Montagu-Chelmsford Reforms may be reckoned the gradual growth of civic consciousness as manifested in the enhanced vitality of local institutions. It is particularly encouraging to find that

Increased Public Interest

the greater interest now evoked by the operation of municipalities and district boards extends beyond that section of political opinion keenly interested in the success of the reformed constitution....During the year 1922-23 as was mentioned in a previous Report, a number of non-co-operators entered municipal committees in certain parts of India.

This movement has continued throughout the course of the period now under review. In the early days, there was a natural tendency on the part of certain of Mr. Gandhi's followers, when they found themselves in a majority on municipal committees, to adopt an attitude of open defiance to Government, which was manifested in such steps as the refusal of grants to Government schools. In Bombay, for example, the Provincial Government found itself obliged to suspend two municipalities, and to remove the chairman of a third. But it is pleasant to be able to record that this aggressive attitude on the part of local bodies in which non-co-operators constituted a powerful element, was from the first the exception and not the rule. Such cases as those just described naturally attracted a large measure of public attention; but broadly speaking, the non-co-operation movement has done very little to damage the institutions of local self-government. Indeed, there are distinct signs of a directly opposite tendency....The available information seems to show that the introduction of the non-co-operating element has been accompanied by a distinct awakening on the part of certain municipalities to their obligations towards the public at large. Municipal elections have begun to excite the keenest interest; the proportion of voters who record their suffrages is on the increase; and, perhaps most significant of all, a commencement is being made in the formation of ratepayers' associations. It may be noted in passing that in the elections held during the period under review, the non-co-operation party has been as a rule more successful in the larger towns than in the smaller; while its very creditable success in the municipalities is by no means duplicated in the district boards. These latter bodies indeed, constitute a natural field of activity for the

Non-Co-operators and municipalities.

In District Boards.

landowners and men of property. Local influence has as a rule been predominant; but the mere fact of the candidature of the non-co-operation element has lent to district board elections in certain provinces an atmosphere of liveliness, which has gone some way to dispel the apathy that until recently was characteristic of rural politics.

There is another tendency, and that of a less pleasing character, which may generally be remarked in connection with the history of the institutions of local self-government during 1923-24. This is the prevalence of communal feeling.

Communal Feeling

Particularly throughout certain parts of Northern India, the relations between the Hindu and Mussulman members of municipal and district committees have been marked by serious tension.....

Financial stringency.

Last among the general tendencies which characterise the year 1923-24 may be noticed the financial stringency against which the majority of municipalities and district boards in India are still struggling. It should be remembered that the new regime under which local self-government has been almost entirely free from official control, is necessarily more expensive than the older system. So long as the district officer was virtually responsible for municipal administration, his paid staff performed a considerable proportion of the necessary executive functions. But now that the municipalities and district boards have become almost autonomous, they have naturally found it essential to engage their own corps of executive officials. The financial effects of the change are more serious in view of the higher prices which have characterised the post-war years in India. Further, the newly constituted local bodies have every where devoted their attention to elaborate schemes of education and medical relief, which entail an expenditure far greater than anything which the past can show. They have rightly looked to the local governments for a measure of assistance; but the unsatisfactory condition of Indian finances

has as a rule prevented the assistance from being forthcoming in the requisite degree. In many provinces therefore municipalities and district boards have fallen into debt.

V.— Local Self-Government in Bombay.

(A) General.

SOURCE:—Pages 71-2 of India in 1923-24.

In Bombay, the policy of freeing municipalities from internal control has been carried to its last stage. All municipalities now elect their own presidents; the number of nominated members has been reduced to a minimum: and the qualifications of electors are now theoretically based on the widest possible franchise. Yet it is reported that the working of the 159 municipalities in the Province has been on the whole disappointing.....No board has seriously applied itself to the task of putting its house in order. The finances of very few municipalities are in a sound condition; and even when normal obligations can be met, there is no working margin in hand for emergencies. Taxation of any kind, and particularly direct taxation, is apt to be shirked on account of the odium attaching to it. Municipal functions are incompletely performed, and few systematic attempts are being made to provide for the need of the towns.....In regerd to local boards, there is a more cheerful story to record. The people in general are taking a greater interest in local boards affairs; the members are displaying considerable energy; while the non-official presidents and vice-presidents are working well. The new local Boards Act has conferred upon these bodies wide powers of taxation; and increased resources should enable them to fulfil their functions more fully. The new Primary Education Act enables them to embark on the expansion of elementary education in a systematic manner. The financial position is generally more satisfactory than in the case of the municipalities; but increased expenditure on a large scale will inevitably result from the new functions entrusted to them.

(B) District Municipalities.

SOURCE:—Bombay 1923-24, pages 135-6.

There are in the Presidency 33 City Municipalities and 123 Town Municipalities. The distinction between the two is largely a matter of population. No town with a population of less than 15,000 can be declared a City Municipality, but when a town is so declared it can appoint a Chief Executive Officer with extensive responsibilities and wide powers as defined by the Bombay District Municipal Act of 1901. These municipalities may also appoint a Health Officer and an Engineer and their rules and bye-laws are sanctioned by Government. In the case of town municipalities this sanction is given by the Commissioner. During the last ten years ten town municipalities have been raised to the status of city municipalities, and all now have a Chief Officer. All permanent municipalities, with a few exceptions in Sind, must have not less than half its members elected and not more than one-half of the non-elected may be salaried servants of Government. In 1920 the popular composition of the municipalities was largely increased by a widening of the franchise and the cutting down of the nominated councillors to one-fifth of the total. Moreover all Presidents were elected. In 1921-22 the municipal franchise was put upon the same basis as that for the local Legislative Council and communal representation to Mahomedans was allowed in all municipalities.

The principal duties of municipalities lie in the direction of the provision and maintenance of public and utility services such as roads, dispensaries, water supply, sanitation and education. They are allowed to raise funds both by direct and indirect taxation. Moreover when the circumstances of a case require it and the Local Body is prepared to make adequate efforts to help itself, Government renders assistance both by loans and grants in aid (subject to a limit of 50 per cent of the cost in the latter case) towards the cost of big undertakings. By this means Ahmedabad, Poona, Lonavla, Nasik,

Jalgaon, Karad, Sholapur, Bijapur, Dharwar, Hubli, Hyderabad, Sukkur and other towns have been provided with an improved water supply and Ahmedabad and Poona with a complete system of underground drainage. In some cases where the question of good water supply is of more than local importance water-works have been constructed entirely at Government expense. Pandharpur, a great pilgrim centre, is a case in point. Town improvements and the opening out of congested and insanitary areas are other objects for which Government makes liberal grants. Municipalities with a population of 15,000 and over may appoint Health Officers and Sanitary Inspectors and Government bears two-third of the cost of the Health Officers and one-half of the cost of Sanitary Inspectors.

Municipalities are now allowed practically a free hand in the matter of the selection and appointment of their Chief Officers.

C Local Boards administration in Bombay.

SOURCE:—Pages 137-8, Bombay in 1923-4.

Every Local Board is presided over by a president who is elected from amongst the non-official members of the board. In addition a vice-president is also similarly elected. The funds at the disposal of the boards consist chiefly of the one anna cess on Land Revenue, but there are other sources of revenue, such proceeds of ferries, tolls on Local Fund roads, quarrying fees etc. The boards have also the power to levy, with the sanction of the Comissioner, such local taxes as a local authority is authorised to impose under section 80A (3) (a) of the Government of India Act. In addition, considerable grants are made by Government for education, roads, and bridges, the improvement of communications, water-supply and village sanitation, and the proper equipment and maintenance of dispensaries.

In 1922-23 Government's contribution to the expenditure of local boards under the more important heads of Education,

Medical and Civil Works compared with the total expenditure under the respective heads was as shown below :—

	Government contribution.	Total Expenditure.
	Rs.	Rs.
Education	75,91,564	87,29,121
Medical	1,04,760	8,99,885
Civil works	12,67,820	37,46,901

The greater part of the revenue is usually spent by the District Board on works of general utility to the whole district, but each taluka board has funds at its disposal to enable it to carry out and maintain works of purely local utility for which it is primarily responsible. At least one-third of the net revenue from the one-anna cess must be spent on education.

There was a no change in the number of District Local Boards (27) and Taluka Local Boards (222) during 1923-24. Twenty-six District Boards and 159 Taluka Boards had non-official Presidents, an increase in the latter of 29. The total membership was 3,054 of whom 2,006 were elected.

(D) Village Panchayets in Bombay.

SOURCE :—Pages 139-40 Bombay in 1923-4.

The number of Village Panchayets set up in each Division are as follows :—

	Number of villages	Number of panchayets established.
Northern Division	4,815	60
Central Division	9,632	230
Southern Division	8,151	96
Sind	5,107	Nil
Bombay Suburban Division	92	1

A Government resolution reviewing the administration of Local Boards for 1922-23, says :—" The Village Panchayet Act which was meant to be a source of financial and administrative relief to the Local Boards has not so far been of practical

utility in the direction. There are signs that the rural population is not anxious to have Panchayets, the main reason being that the people do not want to tax themselves, however lightly. A dislike of taxation is not peculiar to the villagers of this Presidency: it is only natural that taxation should not appeal to villagers who have not yet seen the benefits that will result from their contributions. From the applications received for cancelling the Panchayets already established, it seems that the people are showing a deplorable lack of appreciation of the opportunities afforded them for training in the art of Local self-Government. The President, District Local Board, Satara, observes that the District Local Board has taken steps to organise and train village panchayets, since it is to those panchayets that they must look for assistance in connection with education, village sanitation and inspection of village roads, but so long as local enthusiasm is not aroused there will be no real progress in Local Self-Government. If the village panchayets are to have any vitality they must have responsible functions and adequate funds; but complaints have been received that the members of the village panchayets are unwilling to facilitate the collection of the house tax imposed by these bodies and prefer that the odium of collection should fall on Government. This the President says is, perhaps, not unnatural as it is evident that the electorate will require more education as to the meaning of local Self-Government before its duties and responsibilities are fully realised by them. The Local Boards will have to carry on an intensive propaganda if they expect to have seccessful Panchayets established."

CHAPTER IX.

Police and Jails.

I —The Work of the Police and its difficulties

SOURCE:—Pages 74-76, India in 1923-1924.

There is no question but that the task of the Indian police is one which might well tax all the energies of the highly paid Forces in existence in other countries. To begin with, there is an extraordinary diversity of culture among the immense population inhabiting British India. The Indian policeman has to deal at one end of the scale with the ingenious criminal population of great cities; who are fully as expert in their nefarious practices as the most skilful of their Western confreres. At the other end of the scale he is brought into contact with individuals or communities deeply tinged with those dark superstitions which have now almost disappeared from the ken of Europe; such for example as that Kayasth devotee of the Black Art, who during 1922 murdered two women in Lucknow to propitiate his pet owl, and was subsequently declared insane; such also as those Katkaris of of the Kolaba District who beat a woman to death on the supposition that she was casting spells over their children. Between these two extremes of crime there stands an infinite gradation, ranging from ordinary theft, which is common in every country, to human sacrifice, which is still practised in certain remote fastnesses of the Burma-Assam border. In short, the work of the Indian police, both in its extent and in its variety, is probably unique. It is further noticeable that among the masses who make up British India, there exist many acute differences of custom and creed, which may at any time be the occasion for violent conflict. Popular excitement is readily aroused on matters affecting religion; and within the space of a few hours a community of apparently peaceful and law-abiding persons may be temporarily metamorphosed into a dangerous mob. The police are thus frequently called upon to face situations of the most serious kind; and where

communal questions are concerned, it is only natural that the impartiality of the individual policeman should be occasionally called in question. Moreover in the fulfillment of his always exacting and frequently dangerous functions, the policeman in India cannot rely to the same extent as his comrade in other countries upon the sympathy and co-operation of the individual citizen.....

These permanent factors, which of themselves constitute a serious handicap to the work of the police in India, have of recent years been reinforced by certain temporary influences making in the same direction. The reports of the Provincial Governments are unanimous in the contention that one effect of the non-co-operation campaign has been to inoculate the masses far and wide with a contempt for constituted authority... ..One consequence of the weakening of the authority of the police has been an increase in dacoity or gang robbery, which at the best of times is one of the most formidable problems which India presents. Bands of depredators, composed commonly of men of violent character and bad life, combine to rob and murder peaceful villagers in circumstances of almost inconceivable brutality. In the United and Central Provinces, in Central India and to a less extent in Bombay, gang robbery has attained serious dimensions during the period under review.

II.—History of the Police organisation in India

(A) History upto 1902.

SOURCE :— Paras 8-22 of the Report of the Police Commission 1902-3

The indigenous police system of India.

The indigenous system of police in India was very similar to that of Saxon England; both were organised on the basis of land tenure and just as the Thane in the time of King Alfred was required to produce the offender or to satisfy the claim, so in India the Zamindar was bound to apprehend all disturbers of the public peace and to restore the stolen property or make good its value. Under the large zamindars were a number of subordinate tenure-holders all of whom

were required in their degree to perform police duties and to bear for the areas of their charges the responsibilities which rested upon the zamindar for the whole estate; and finally, there was, as a rule, the joint responsibility of the villagers, which could only be transferred if they succeeded in tracking the offender to the limits of another village. This village responsibility was enforced through the headman who was always assisted by one or more village watchmen. These latter were the real executive police of the country. Although there was, as a rule, only one watchman for the village, he was, when necessity arose, assisted by all the male members of his family, by the other village servants, and in some cases by the whole village community. His duties were to keep watch at night, find out all arrivals and departures, observe all strangers, and report all suspicious persons to the headman. He was required to note the character of each man in the village, and if a theft were committed within the village bounds, it was his business to detect the thieves. If he failed to recover the stolen property, he was obliged to make up the amount of the value of it so far as his means permitted, and the remainder was levied on the whole village.....

To ensure greater protection than the village police were able to afford, payments were often made to the leaders of plundering tribes to induce them to prevent depredations by their followers...In large towns the administration of the police was entrusted to an officer called the "Kotwal," who was usually paid a large salary, from which he was required to defray the expenses of a considerable establishment of police. In Poona, for example, the kotwal received Rs. 9,000 a month, but he had to maintain a very large establishment of peons, some horse patrols, and a considerable number of Ramosis, while he was also answerable for the value of property stolen. His appointment, however, was considered, a lucrative one, as the pay of his establishment was very low, and both he and his subordinates supplemented their salaries by unauthorised exactions from the inhabitants.

9. The following extract from the edict framed by Abul Fazul, Minister of the Emperor Akbar, shows that the Moghul system of police followed closely on the lines of that indigenous to the country. The system of mutual security is almost identical with that which existed in England in Anglo-Saxon times and was continued by the Normans :—

Akbar's Police Organisation.

"The kotwals of cities, kusbahas, towns and villages, in conjunction with the royal clerks, shall prepare a register of the house and buildings of the same, which registers shall include a particular description of the inhabitants of each habitation. One house shall become security for another; so that they shall all be reciprocally pledged and bound each for the other. They shall be divided into districts, each having a chief or prefect, to whose superintendence the district shall be subject. Secret intelligencers or spies shall be appointed to each district, who shall keep a journal of local occurrences, arrivals and departures, happening either by day or night. When any theft, fire or other misfortune may happen, the neighbours shall render immediate assistance; especially the prefect and public informers, who, failing to attend on such occasions, unless unavoidably prevented, shall be held responsible for the omission. No person shall be permitted to travel beyond, or to arrive within, the limits of the district, without the knowledge of the prefect, the neighbours or public informers. Those who cannot provide security shall reside in a separate place of abode, to be allotted to them by the prefect of the district and the public informers.

A certain number of persons in each district shall be appointed to patrol by night the several streets and environs of the several cities, towns, villages, etc., taking care that no strangers infest them, and especially exerting themselves to discover, pursue and apprehend robbers, thieves, cut-purses, etc. If any articles be stolen or plundered, the police must restore the articles, produce the criminal, or, failing to do so, become responsible for the equivalent."

10. The system described above was no doubt well suited to the needs of a simple, homogeneous, agricultural community; but however effectual it may have once been, it could not support the strain of political disorder and the relaxation of control from above. Extortion and oppression flourished unchecked through all

Failure of the Indigenous system.

gradations of the officials responsible for the maintenance of peace and order. Both village watchmen and the heads of villages, and even the higher officials, connived at crime and harboured offenders in return for a share of the booty. Their liability to restore the stolen property or make good its value was disregarded; or if this obligation was enforced, neither the property nor its value was restored to the owner. Fines were imposed when a more severe punishment was called for; and offenders who were possessed of any property could always purchase their liberty.....

Changes introduced by the British.

11. "This was the state of things which the British found in existence on their assumption of the older provinces of the empire. The remedies adopted by them differed somewhat in different provinces but the general lines of reform in all were to retain the village system and to improve the machinery for supervision. The first step in this direction was to relieve the zamindars of their liability for police service, which was commuted for a payment of enhanced revenue. It was found that instead of protecting the inhabitants of their estates, these landowners had grossly abused the authority entrusted to them for that purpose.... Their place was accordingly taken by the Magistrates of districts who had under them for police purposes a staff of DAROGAS, with subordinate officers and a body of peons.....In cities the office of KOTWAL was continued, and a DAROGA was appointed for each ward of the city. At a later period special regulations were made for the police of cities, the cost being levied from the inhabitants by an assessment on each house and shop. Considerable reforms were also effected in the administration of criminal justice and a more mild and rational system of trial and punishment was substituted for the cruel and partial methods of the Native Governments.

Failure of the British Methods

12. The results of these reforms, however, were far from satisfactory. There was a marked increase of crime everywhere; robberies and murders, accompanied by the most atrocious and deliberate cruelties,

were of frequent occurrence; gangs of dacoits roamed unchecked about the country; and, in the expressive native phrase, "the people did not sleep in tranquility."....

Further remedies tried.

13. Lord Wellesley began to institute inquiries into the causes of the failure to preserve peace and order in Bengal so early as 1801; in Madras a committee of police was appointed with the same object by Lord William Bentinck in 1806; and in 1813 the Court of Directors appointed a special Committee of their own body to institute an inquiry into the administration of justice and police in the Company's territories in India. In 1814 the Court issued orders on the subject. They condemned the establishments of DAROGAS and their subordinates, and they insisted strongly upon the maintenance of the village police as forming in every village the best security of internal peace.... The Court finally directed that the duties of Magistrate and the control of the police should be transferred from the Zilla Judge to the Collector. Sir Thomas Munro and Mr. Stratton were appointed Commissioners to carry out these instructions in Madras, and on their recommendation Madras Regulation XI of 1816 was passed for the purpose of establishing a general police system throughout the presidency. The system which was then introduced was thus described by Sir Thomas Munro; "We have now in most places reverted to the old police of the country, executed by village watchmen, mostly hereditary, under the direction of the heads of the villages, tahsildars of districts and the Collector and Magistrate of the province. The establishments of the tahsildars are employed without distinction either in police or revenue duties, as the occasion requires."

In Bombay effect was given to the views of the Court of Directors by Regulation XII 1827, which established a system of police, "founded chiefly on the ancient usages of the country," and similar in all essential particulars to that adopted in Madras. At the head of the police was the Collector and Magistrate, aided by his Assistants; next came the mamlatdar, or tahsildar

whose establishment of peons was used indifferently for revenue and police purposes; and below the mamlatdar was the patel or village officer, who was authorised to employ on police duties all the revenue servants of the village. The head-quarters station and a certain area around it were at first placed, for police purposes, under the Criminal Judge, but this arrangement was soon abandoned as unworkable. The general superintendence of both criminal justice and police was vested in the Court of Sudder Faujdari Adawlut.

In Bengal, owing mainly to the permanent settlement and the consequent absence of the subordinate revenue establishments found in Madras and Bombay, it was impossible to abolish the DAROGA and his men, but some attempt had been made in 1811 to curtail his powers for evil by removing from his cognizance all complaints of petty offences, as well as of bailable offences, such as forgery, adultery and the like.

Appointment of an Inspector-General in Bengal

14. That this measure produced little improvement will be shown later, but meanwhile it is necessary to notice an important step taken in 1808, as it marks the first attempt to introduce special and expert control. This was the appointment of a Superintendent —or, as he would now be called, an Inspector-General of Police for the Divisions of Calcutta, Dacca and Murshidabad... .....The results obtained by the Superintendent of Police, especially in the suppression of dacoity, were so satisfactory that in 1810 the system was extended to the Divisions of Patna, Benares and Bareilly, the first being placed under the existing Superintendent and an additional Superintendent being appointed for the other two.....

In 1829 Divisional Commissioners, or Commissioners of Revenue and Circuit, as they were called, were first appointed, and the office of Superintendent of Police was then abolished, partly because its retention would have involved a dual control over the Magistrate, but mainly on the ground of expense. The office of Magistrate was at the same time transferred from

the Judge to the Collector, and the Collector-Magistrate became the head of the police, while the functions of Superintendent were performed for each Division by the Commissioner. These changes were followed by a deterioration in the state of the police and an increase of crime, especially dacoity.

15. The Select Committee appointed in 1832 to report on the affairs of the East India Company collected much valuable information on the subject of the police administration. The subordinates were shown to be corrupt, inefficient and oppressive, while the superior officers, owing to the multiplicity of their duties, were unable to exercise an adequate supervision. Four years later, after the renewal of their Charter, the Court of Directors drew attention to the improvements called for in the police, and expressed a desire that "no financial considerations should be allowed to stand in the way of a change so urgently required."

Action taken in Bengal.

16. No immediate action was, however, taken anywhere except in Bengal, where a committee was appointed for the purpose of drawing up a plan for the more efficient organisation of the mofussil police.....
.....Nothing, however, was done at the time, and it was in Bombay, ten years later, that the first steps were taken along the path of reform.

Reforms in Bombay.

17. After the annexation of Sind in 1843, one of the first measures undertaken by Sir Charles Napier, was the organisation of a regular police force. Napier took as his model the Irish Constabulary, as the circumstances of the newly conquered province required a semi-military rather than a purely civil force. The most important feature, however, in which the new force differed from the police of the rest of the country was in its being a separate and self-contained organisation, its officers having no other functions to perform. This characteristic of the system

attracted the attention of Sir George Clerk, the Governor of Bombay, who visited Sind in 1847. He attributed the unsatisfactory condition of the Bombay police to inefficiency in its superintendence, and he was quick to see that the Sind method of organisation provided a remedy for this defect. In 1853, therefore, the Bombay police was remodelled, the leading features of the reform being the appointment to every district of a Superintendent, who, while generally subordinate to the Magistrate, had exclusive control over the police; the appointment to every tahsil of a native police officer, holding to the Mamlatdar (tahsildar) the same relations as those between the Superintendent and the Magistrate; and the transfer of the supreme control over the police from the Court of Faujdari Adawlut to the Government. This last was the weak point in what was otherwise an excellent scheme, for the Government control devolved upon the Judicial Secretary an arrangement which proved unsatisfactory and was abandoned in 1855, when the administration of the police was transferred to a Commissioner of Police, who was also Inspector of Prisons.

Reforms in Madras.

18. Madras was the next province to adopt the new police. The Torture Commission of 1855 had brought to light great abuses in the working of the police in that presidency..... The Commission recommended the separation of revenue and police functions and the placing of the police establishments under independent European officers, who would be able to give their undivided time and energies exclusively to the control of the force. The Madras Government accepted these views and recommended the appointment of a Superintendent of Police for each district, adding that it would propably be found necessary eventually to have two Superintendents in some of the larger districts, an anticipation that has undoubtedly been verified by subsequent experience. They also strongly advocated the appointment of a Commissioner of Police for the whole presidency, as the success of the scheme would

largely depend upon the whole force being efficiently supervised by some central controlling authority. These proposals were accepted by the Court of Directors, and a Bill was drafted by Mr. J. D. Mayne to give effect to them. It had been the original intention of the Government of Lord Harris to deprive the Magistrate of all executive control over the police, but before the Bill was passed Sir Charles Trevelyan had become Governor of Madras, and it was decided that the Superintendent should be placed under the orders of the District Magistrate. The Bill was modified accordingly and was passed into law as Act XXIV of 1859.

Police Commission of 1860.

19. On the annexation of the Punjab in 1849 a police force was organised somewhat on the lines of the Sind police, it consisted of two branches—a military preventive police and a civil detective police. During the time of the Mutiny this force contributed greatly to the restoration and preservation of order; and comparatively large bodies of military police were raised in the other provinces of Bengal, while the Punjab force was largely increased. The heavy expenditure involved proved a serious financial burden, and in 1860 the Government of India urged on the Government of the Punjab the necessity for a general reorganisation of the police and a reduction of the cost. The question was accordingly taken up by Sir Robert Montgomery, who had in the previous year carried out the reform of the police of Oudh. The necessity for reform, however, was not confined to the Punjab, and in August 1860 the Government of India appointed a Commission to inquire into the whole question of police administration in British India to submit proposals for increasing the efficiency and reducing the excessive expenditure.

This Commission recommended the abolition of the military police as a separate organisation, and the constitution of a single homogeneous force of civil constabulary for the performance of all duties which could not properly be assigned to the

military arm. To secure unity of action and identity of system the general management of the force in each province was to be entrusted to an Inspector-General. The Police in each district were to be under a District Superintendent, who, in the large districts, would have an Assistant District Superintendent, both these officers being Europeans. The subordinate force recommended consisted of Inspectors, head constables, sergeants and constables, the head constable being in charge of a police station and the Inspector of a group of stations. No mention is made of any police officer of the rank of Deputy Inspector-General, but the Commission recommended that Commissioners of Divisions should cease to be Superintendents of Police, though it was explained that it was not intended to limit in any way their general control over the criminal administration, or their authority over District Magistrates. On the subject of the relations between the Magistracy and the police their conclusions were that no magistrate of lower grade than the District Magistrate should exercise any police functions, but that in the case of the District Magistrate it was inexpedient to deprive the police and the public of his valuable aid and supervision in the general management of police matters. The Commission submitted a Bill, based on the Madras Police Act, to give effect to these recommendations, and this was passed into law as Act V. of 1861.

20. The police forces of the various provinces, with the exception of Bombay, are still organised on the general lines laid down by the police Commission of 1860, though there has been some divergence therefrom in matters of greater or less importance.

Change in the method of recruitment of Officers.

21. When the new police was first constituted its officers were largely drawn from the commissioned ranks of the Native Army, but for various reasons this source of recruitment became gradually closed and police officers were appointed by nomination pure and simple. This method of selection was condemned by the Public Services Commission, and since 1893 recruitment in most provinces has

been by competition in England, by competition in India, and by the promotion of officers already in the public service.

22. In the foregoing paragraph the history of police organisation has been traced from its foundations in a system of village and local police and joint responsibility, through the changes introduced with somewhat disastrous results by the early British administrators, down to the reforms that were carried out about the year 1860. The system introduced in 1860 was, on the whole, a wise and efficient system. It has failed for these among other reasons; that the extent to which the village police must co-operate with the regular police has been lost sight of and an attempt has almost everywhere been made to do all the police work through the officers of the department; that the importance of police work has been underestimated and responsible duties have ordinarily been entrusted to untrained and ill-educated officers recruited in the lowest ranks from the lower strata of society; that supervision has been defective owing to the failure to appoint even the staff contemplated by the law and to increase that staff with the growing necessities of administration; that the superior officers of the department have been insufficiently trained and have been allowed from various causes to get out of acquaintance and sympathy with the people and out of touch even with their own subordinates; and that their sense of responsibility has been weakened by a degree of interference never contemplated by the authors of the system.

Conclusion

B. The recommendations of the Indian Police Commission 1902-3.

SOURCE:—Pages 91-2 of the Moral and Material Progress Report 1913.

The terms of reference to the Indian Police Commission, ...were of a comprehensive nature....It is impossible here to deal at all fully with the report of the Commission, which was submitted in May 1903: it included a summary of the most important recommendations under 127 heads.....The general nature of the recommendations of the Commission may be

indicated by a quotation from the final paragraph of the report :—"The proposals for reform submitted by the commission are not.... of a revolutionary character. They do not involve a complete subversion of the present system, though they aim at its radical amendment. They consist mainly in suggestions for the maintenance and development of indigenous local institutions so as to obviate the vexatious interference of the police in cases of little importance and to promote the co-operation of the people with the police in those of a more serious character; for the restriction of the lowest classes of officers to the discharge, under closer supervision, of those more mechanical duties for which alone they are qualified; for the conduct of investigation by trained officers drawn from the better educated and more respectable classes of the community; for inspection of police work by carefully selected and trained officers of capacity and tried integrity; for supervision and control by the best European and native officers available; and for organised and systematic action against organised and professional crime. They aim also at the removal of abuses which have been brought to light in connection with police work, at the employment of native agency to the utmost extent possible in each province without seriously impairing the efficiency of the service; at the attraction to the service of good native officers by offering them suitable position and prospects; at the recruiting of superior European officers of a higher class and insisting on their coming more into touch with the people; and at the adoption on the part of the whole force of a more considerate attitude towards all classes of the community so as to secure as far as possible the confidence and co-operation of the people."

Some of the specific proposals of the Commission may be briefly mentioned. In the first place, as regards organisation and recruitment they recommended that, with a view to securing better qualified men, direct appointment to the higher

grades should be substituted to a large extent for promotion from the ranks. In particular they thought that a clear line should be drawn above the head constable class. Thus the force would consist of (a) a European Service, recruited in England; (b) a Provincial Service, recruited in India, (c) an Upper Subordinate Service, consisting of Inspectors and sub-Inspectors; and (d) a Lower Subordinate Service, consisting of head constables and constables. Sub-inspectors were to be recruited as a general rule by direct appointment from men educated up to about the matriculation standard, though allowance was made for a certain proportion of promotions from below. Inspectorships were to be filled normally by the promotion of sub-inspectors, but in the new grade of Deputy Superintendent, to which reference has been made above, there was again to be a large measure of direct recruitment, to the extent of half the vacancies, from candidates with still higher educational qualifications. Other recommendations were that police stations should not be placed in charge of officers below the rank of sub-inspector; that a force of armed police should be kept in reserve in each district in readiness to proceed to any place where it might be needed; that a Criminal Investigation Department should be constituted in each province; that a provincial training school should be established in each of the larger provinces for the training of police officers of and above the rank of Sub-Inspector, and that central schools should similarly be established for the training of constables; that the minimum pay of constables should be such as to give a reasonable living wage, in no case less than Rs. 8 a month and that various improvements should be made in the rates of pay of the higher ranks; that the police forces should be increased in every province; that it was of paramount importance to develope and foster the existing village agencies available for police work; that the existing system of beats should be abolished and the visits of police constables to villages restricted to the purpose of obtaining specific information; that the investigation of offences should be made "on the spot";

that the detention of suspects without formal arrest was illegal and should be rigorously suppressed; that the practice of working for or relying on confessions should be discouraged in every possible way; and that police work should not be judged by statistics, but by local inspection and inquiry.

The proposals of the Commission were calculated to involve an additional expenditure of nearly £1,000,000 a year; the actual increase since 1905 has been considerably more than this. The Commission's main recommendations, including those enumerated above were accepted by the Government of India with some modifications in matters of detail and they have been carried into effect to a very large extent in all provinces. Everywhere the new organisation and methods of recruitment have been adopted, the rates of pay improved, and training schools for officers (though not in all cases for constables) established.

C. History of Thagi and Dakaiti and Criminal Intelligence Departments.

i History upto 1902.

SOURCE :—Para 21 of the Report of the Police Commission 1902-3.

21. No account of the Indian Police would be complete without some reference to the THAGI and DAKAITI Department which owes its origin to the determination of Lord William Bentinck to suppress the terrible crime of THAGI. Systematic operations for this purpose were commenced in 1830 and Captain Sleeman was placed in charge of them five years later. His own description of his method of working is well known, and a very brief notice of it will suffice here. Guided probably by Mr. Elaquiere's success in supressing dacoity by means of spies and informers (goyendas) he developed that system still further by enlisting the services of convicts who were willing to give information in return for a pardon. The rapid success of the operations was remarkable and in a comparatively short time thagi had ceased to exist as a systematically

Thagi and Dakaiti Department

organised and widely-spread crime. In 1839 the task of dealing with dacoity was added to the duties of the department. On the recommendation of the Police Commission of 1860 the department was abolished as a special agency in British territory as soon as the organisation of the police in the several provinces was sufficiently advanced to admit of it. Since that time operations have been confined to the Native States in Rajputana and Central India, and to Hyderabad though an agency existed in Baroda from 1871 to 1883. The department deals only with organised dacoity which has ramifications over India. With purely local crime it is not concerned. At one time it undertook the control of operations for the settlement and reclamation of criminal tribes but it now no longer exercises any control over these. Its staff consists of a General Superintendent who has Assistants and subordinate establishments in Rajputana, Central India and Hyderabad. It acts also to some extent as a central office of criminal intelligence for the whole of India.

ii History Since 1904.

SOURCE:—EXTRACT FROM THE DECENNIAL REPORT ON MORAL AND MATERIAL PROGRESS 1913.

In 1904 the Thagi and Dakaiti Department as thus constituted was abolished, its establishment in Hyderabad being merged in the police force of that State, while those in Central India and Rajputana were transferred to the control of the Agents to the Governor-General. The former central office was replaced by a central Criminal Intelligence Department under a Director. The object of the department is to collect and communicate information regarding such forms of organised crime as are committed by offenders operating along the railway system, and by criminal tribes, wandering gangs, organised dacoits, professional poisoners, forgers, coiners, and the like, whose operations extend beyond the limits of a single province. Provincial Criminal Investigation Departments have also been organised, with the

same object of providing systematic and full information as to important and organised crime and of making a small staff of trained detectives available to help in investigations when required by local officers. The Criminal Investigation Department and the Railway police are in most provinces under one Deputy Inspector-General.

III.—The Police Organisation in Bombay.

SOURCE:—Pages 41-2, 43, 47-48 of Bombay 1923-1924.

The Police force consists of two distinct bodies, the stipendiary and the village police. The stipendiary force is divided into grades, the members of which beginning as constables on a monthly pay of Rs. 19 in Southern Division, Rs. 20 in Northern and Central Divisions and Rs. 21 in Sind have the opportunity of becoming Head Constables, Sub-Inspectors, Inspectors, and even Deputy Superintendents. In the mofussil—

the Sub-Inspector has charge of the Police Station,

the Inspector has charge of a circle comprising several police stations or a large Town, and

an Assistant Superintendent of Police or a Deputy Superintendent has charge of a sub-division of a district.

For the purpose of control in the Presidency proper the whole force is under the Inspector-General of Police, who is assisted by three Deputy Inspectors-General of Police. Certain administrative powers have, however, been reserved to the Commissioners of Divisions.

The executive management of the police in each district is vested, under the general direction of the Magistrate of the District, in a Superintendent of Police, who is assisted by a Deputy Superintendent and has in some cases one or more Assistant Superintendents under him.....

.....The taluka which is the sub-division of a district for revenue purposes, is usually divided into two or more Police Stations and the Sub-Inspector in charge of a police station is

quite independent of the Mamlatdar in his executive control of the police under him and answerable only to the Superintendent, Assistant Superintendent or Deputy Superintendent of Police. Under a Police Station there are one or more outposts according to the size, criminality and local conditions of the area forming the Station. These outposts are manned from the regular police force allotted to the Police Station under which they are situated. Outposts are in charge of head constables, and head constables and constables have a number of villages assigned to them for patrol purposes.

Railway Police.—A special police organisation exists in connection with the railways of this presidency—the North-Western which traverses Sind, the B. B. and C. I., the G. I. P. and the M. and S. M. Railways. The police employed along these lines of rails are under the supervision of three superintendents. The Railway Police form a distinct body quite independent of the Police of the districts in which they serve, but their pay and prospects are identical with those of the District Police. Since the year 1919 the cost of the "Crime and Order Police" is wholly debited to the Provincial Revenues and that of the "Watch and Ward Staff" is borne by Railway Administrations.

Criminal Investigation Department.—In addition to the police attached to individual districts there exists a special organisation for the detection of crime called the Criminal Investigation Department, which includes the Finger Print Bureau and is under the immediate control of a Deputy Inspector General of Police. The Criminal Investigation Department, in co-operation with the Police of other provinces is employed in the prevention of the spread of serious crime, in the investigation into crime having ramifications over several jurisdictions and in the pursuit of criminals. The Finger Print Bureau has been working satisfactorily since its establishment in 1901.

Village Police.—Under the provisions of Bombay Act VIII of 1867 the village police are, subject to the control and

direction of the Commissioner, administered by the different District Magistrates. It is their special duty to prevent crime and public nuisances and to detect and arrest offenders within village limits. They are not stipendiary, but receive perquisites from the inhabitants of the village or rent-free lands or small sums of money from Government. In each village, the village police are under the charge of the police patel, who is often, but by no means, always, the person performing the duties of revenue patel. His duties as Police patel are to furnish the Magistrate of the district with any returns or information called for, and to keep him constantly informed as to the state of crime and all matters connected with the village police and the health and general condition of the community in his village. Under a form of administration which preserves the village as the unit of collection in revenue matters the institution of village police naturally holds an important place.

There are no village police in Sind, but in their place village or taluka trackers (paggis) are employed.....

The duty of serving summonses under sections 68 and 160, Criminal Procedure Code, was entrusted to the Village Police in the districts of Ahmednager, Dharwar and Belgaum as an experimental measure. The system has been in vogue for too short a time to express a definite opinion, as to its success or failure. The retention of the system is therefore, still under consideration.

JAILS.

I.—History of Jail Reform.

SOURCE:—Chapter II. Indian Jail Committee's Report 1919-20.

Prison reform in England.

Just a century has elapsed since the first effective steps were taken in Great Britain to introduce the elements of decency and humane administration into British prisons. As early as 1774, John Howard had first drawn attention to the terrible state of the prisons, but little permanent improvement followed; and it was not until well on in the 19th century that prison reform really

commenced. Up to then the prisons remained much as Howard described them, dark, unventilated, overcrowded, strongholds of vice and debauchery, frequently swept by epidemics where those who had money spent it in drink and gambling and those who had none were in risk of starvation. Even the separation of the sexes was not a universal rule, and beyond that, there was no attempt at segregation or at the separation of young from old, tried from untried, old offenders from new recruits. As has been written in a passage which may possibly be from the pen of Macaulay, the English prisons of those days were places "where many prisoners died of disease and where the rest were educated so as to become the future pests of society during the interval between their release and their being hanged." About 1820, however, the task of reform was seriously undertaken. Mrs. Fry had begun her labours among female prisoners in 1817; about the same epoch the Prison Discipline Society in its reports laid bare the horrors of jail life; and in 1824 the first essentials of decent prison administration were laid down by Act of Parliament. Since then the work of improvement has gone steadily forward through stages which it is unnecessary here to trace.

Prison reform in India-Committee of 1836-38.

It does not appear that the state of the prisons under British administration in India was ever quite as bad as it had been in England. The history of prison reform in India may be said to date from the appointment on 2nd January, 1836, of the famous Committee, of which Macaulay was a member. In their report, a powerfully written document dated just two years later, the Committee said that in the great essentials of cleanliness, provision of food and clothing and attention to the sick, the state of the Indian prisons compared favourably with those of Europe and "was highly honourable to the Government of British India." It criticised severely, however, the corruption of the subordinate establishment, the laxity of discipline and the system of employing the prisoners in extramural labour on the public roads, "without exception the worst method of treatment that

has ever been provided under the British Government for this class of persons." Under the influence of a reaction from these abuses, the Committee threw the whole weight of its authority in favour of increased rigour of treatment. It deliberately rejected all such reforming influences as moral and religious teaching, education or any system of rewards for good conduct and advocated the building of central prisons where the convict might be engaged, not in manufactures which it condemned on somewhat theoretical and unsound grounds but "in some dull, monotonous, wearisome and uninteresting task in which there shall be wanting even the enjoyment of knowing that a quicker release can be got by working the harder for a time." In spite of this strange delivery, the report of the Committee of 1836-38 marks a definite advance in the path of Indian prison reform. Its advocacy of proper buildings and intramural employment laid the foundations for further progress, and its vigorous grasp of principle placed the subject of prison reform in India on a higher plane than might otherwise have been at once attained.

Committee of 1864.

Twenty six years later, in March 1864, the Government of India, moved partly by the continued high death-rate in Indian prisons and partly by other allied considerations, appointed a second Committee to consider questions of jail management. This Committee included an expert element, the absence of which was the weak point in its predecessor of 1836-38, and it was enabled to deal authoritatively with many points of detail upon which experience had gradually been accumulated. Its report was, however, hardly as forcible a document as that of the Committe of 1836-38 nor was it marked by the same command of general principles.

Conference of 1877.

A third inquiry into prison administration was instituted twelve years later when a Conference of experts assembled in Calcutta in January 1877. On this occasion the Conference was almost entirely composed of

officials actually engaged in jail work. No interrogatories were issued and no witnesses examined, but the record of the Conference's deliberations shows that almost all questions bearing on prison administration were subjected to full and exhaustive examination. The plan was adopted of embodying in the Conference's Report a long account of the discussions, the arguments PRO and CON and the opinion even of individual members, with the result that the actual conclusions arrived at are somewhat buried under the mass of previous deliberation. The Report is, however, a valuable document and a mine of information as to the condition of Indian jails forty-five years ago.

Committee of 1888-89.

In 1888-89, the Government of India appointed a further Committee to examine jail administration. On this occasion the purview of the enquiry was expressly directed towards the routine working of the jails. "There is no wish" said the Resolution constituting the Committee, "on the part of the Governor-General in Council to reconsider the principles laid down" by the earlier Committees. The object in view was to examine into the actual carrying out of those principles and to endeavour to produce greater uniformity in practice throughout India. This task was committed to two experienced jail officials, Drs. Walker and Lethbridge, and the result was the production of an admirably clear and business-like report, which covered nearly the whole field of the internal administration of the Jail Department, but for the most part steered clear of wider issues and questions of principles. The work of Drs. Walker and Lethbridge was supplemented by that of a Committee which met in Calcutta in 1892 and which drew up proposals on the subject of prison offences and punishments subsequently incorporated in the Prison Act of 1894.

Progress since 1889.

During the thirty years which have elapsed since the labours of Drs. Walker and Lethbridge, the science of prison administration has made great advances. New views regarding the origin and causes of crime

have been propounded, new experiments in prison management have been carried out, and new methods of preventing crime have been invented or developed. It is no reproach to the men of 1888 and earlier days that they did not foresee these developments. It would have been extraordinary had they done so, for the new light has come largely from the very different atmosphere of America. Before passing on, we would here record our deep and genuine appreciation of all that has been accomplished by prison workers in India in the past. Buildings have been gradually provided, dietaries have been laid down, systems of labour have been elaborated; an excellent remission system has been developed, insanitary conditions have been corrected and death rates reduced. In the ten years ending 1864 the average death-rate in all the main provinces of India was 78.5 per mile while in Bengal it had been as high as 100.5 per mile. During the four years ending 1917 the average death-rate in all the jails of British India was 18.55 and in Bengal 20.10. These are the results of the work of a long series of devoted and capable officers, both medical and non-medical, during the past three-quarters of a century, and whatever changes may now be in store, we feel confident that the work they accomplished will always deserve the gratitude of the Indian people.

Present position of Indian jail administration.

It is, of course, not to be expected that methods of jail administration which have not been overhauled for thirty years should now be found quite up-to-date. The system as it now exists ought to be compared not with present-day standards but with those of 1888, or earlier. The Indian prisons have made notable advances, as we have said, in the material aspects of administration, health, food, labour and the like. But they have not made equivalent progress in other directions. Possibly the influence of the Report of 1838 has to this day not been quite exhausted. Whether this be so or not, it is certain that Indian prison administration has somewhat lagged behind on the reformative side of prison work. It has failed so far to

regard the prisoner as an individual and has conceived of him rather as a unit in the jail administrative machinery. It has a little lost sight of the effect which humanising and civilising influences might have on the mind of the individual prisoner and has focussed its attention on his material well-being, his diet, health and labour. Little attention has been paid to the possibility of moral or intellectual improvement. In consequence, while the results of the Indian prison treatment are admitted generally to be deterrent, they are not generally regarded as reformatory. Witness after witness from almost every Province in India has, with singular unanimity, declared that Indian jails do not exercise a good or healthy influence on their inmates, that they tend to harden if not to degrade, and that most men come out of prison worse than they went in. We do not all endorse this view but in so far as there is truth in it, it is a result, we are convinced, not of the men but of the system. The whole point of view needs to be altered, not merely isolated details; and we would add that the primary duty of keeping people out of prison, if it can possibly be done, needs to be more clearly recognised by all authorities and, not last, by the courts. We would also add that during the last five years prison administration in India has been severely handicapped by the war, which resulted in the withdrawal of a large number of the most experienced jail officers and that therefore in our inspection of Indian prisons we have seen them under rather less favourable conditions than might have appeared had the inspection been made in 1913.

II — The Established System.

SOURCE :—Page 99 of the Moral and Material Progress of India, 1913.

Jail administration in India is regulated generally by the Prisons Act of 1894, and by rules issued under it by the Government of India and the local governments.....

There are three classes of jails; in the first place, large central jails for convicts sentenced to more than one year's

imprisonment; secondly, district jails, at the headquarters of districts; and thirdly, subsidiary jails and "lock-ups" for under trial prisoners and convicts sentenced to short terms of imprisonment.

The jail department in each province is under the control of an Inspector-General; he is generally an officer of the Indian Medical Service with jail experience, and the superintendents of central jail are usually recruited from the same service. The district jail is under the charge of civil surgeons, and is frequently inspected by the district magistrate. The staff under the Superintendent includes, in large central jails, a deputy superintendent to supervise the jail manufactures, and in all central and district jails one or more subordinate medical officers. The executive staff consists of jailors and warders, and convict petty officers are employed in all central and district jails, the prospect of promotion to one of those posts being a strong inducement to good behaviour.

The general characteristic of the Indian prison system is confinement in association by day and night. The desirability of separate confinement by night, and of cellular confinement during the first part of long, and the whole of short, sentences, is, however, recognised and though difficulties exist among which may be mentioned the great cost of providing cellular accommodation, and the necessity for free ventilation in jails in the Indian plains—some progress has been made in recent years, and many sleeping wards have been fitted with cubicles. The provision of cells for separate confinement has been carried farthest in Madras. Prisoners are divided into the following classes, which are kept separate from one another: persons under trial, civil prisoners, females, boys, youths, and adult male convicts. Habitual offenders are also kept separate, as far as possible. The system of fettering prisoners generally has long been abandoned, and fetters are now used as a punishment or to restrain violence. The hours of work in jails amount to about nine a day. The dietary varies in different parts of the country with the staple food of the people.

III.—The Indian Jails Committee 1919.

SOURCE:—Pages 84-6, India in 1923-4.

The Jails Committee.

The maintenance of Indian prisons, though subject to all India legislation, now falls within the provincial sphere; but the obvious advisability of proceeding on certain general principles of uniform application recently led to the appointment of a Jails Committee. Its report contained the first comprehensive survey of Indian prison administration which had been made for thirty years; and its recommendations have already given rise to far-reaching developments. Stress was laid by the Committee upon the necessity of improving and increasing existing jail accommodation; of recruiting a better class of warders; of providing education for prisoners; and of developing prison industries so as to meet the needs of the consuming departments of Government. Among other recommendations may be mentioned the separation of civil from criminal offenders; the adoption of the English system of release on license in the case of adolescents; and the creation of childrens' courts. Much attention was also devoted in the report to the improvement of the reformative side of the Indian system. The Committee recommended the segregation of habituals; the provision of separate accommodation for under-trial prisoners; the institution of the star-class system, and the abolition of certain disciplinary practices which are liable to harden or degrade the prison population.

Action on the Report.

Consistent action has now everywhere been taken to carry into effect the recommendation of the Jails Committee. Unfortunately, the process has been hampered by financial stringency; since many of the changes advocated entail heavy expenditure. Overcrowding, which was noticed by the Committee as a serious defect in several provinces has now very largely been remedied. Fresh rules have been drawn up to govern such matters as jail punishment and jail offences, while the infliction of whipping is carefully regulated. Solitary confinement has been abolished as a prison punishment;

the remission system has been improved; and attempts are now being made to teach the convict a trade which will assist him to become a useful citizen when he has served his sentence. In several provinces special committees have been appointed to advise Government as to the religious needs of the various communities, represented in the jail population. Juvenile jails have been instituted; and where they cannot be provided owing to financial stringency arrangements are being made for the release of child offenders on bail under the custody of their parents. General improvements have also been made in the food and clothing of prisoners, the star-class system is being introduced; and concessions are made in regard to interviews and letters. In several provinces, advisory boards have been constituted to review periodically the sentences of long-term prisoners. The major portion of these reforms have been carried through by the initiative of the provincial governments; the Government of India having for the most part confined their attention to laying down certain general principles in regard to which uniformity is possible.

IV. Reformative work.

SOURCE :—Pages 85-6, India in 1923-4.

Reformative work

Quite apart from the stress which has recently been laid upon the refomative side of prison work by the Jails Committee, attention has been paid for a good many years to the ameliorative treatment of criminals. In the arrangements made for youthful offenders, India is not far behind modern administrations in other parts of the world. The Borstal system is flourishing in several provinces; reformatory and industrial schools are now provided in several of the larger cities. Many local governments are devoting particular attention to the institution of childrens' courts; and both Bengal and Madras have recently embarked upon legislation to provide the machinery by which children who show a tendency to lapse into crime may be removed from pernicious surroundings

and handed over to approved custody. But the success of any movement for reclaiming the criminal classes depends ultimately upon the help of the general public. Voluntary organisations now exist in various parts of India for the benefit of discharged prisoners. The Salvation Army, in India as else where, devotes special attention to the care of these unhappy individuals, and provides means of livelihood to prisoners conditionally released. Its work deserves the utmost sympathy and support. There also exist in various localities Released Prisoners' Aid Societies; which discover employment for discharged prisoners; restart men in their old business; provide food, clothing and shelter; and generally assist in every way to the rehabilitation of ex-prisoners as useful members of society. At the same time these organisations endeavour to organise and focus public opinion for the purpose of securing that sentences of imprisonment shall be passed only in cases where offenders cannot adequately be dealt with under the supervision of probation officers. Work of this kind, despite its immense value to society in general does not attract either the interest or the support of the public at large. There are, it is true, signs that the welfare of the prison population is gradually being recognised as a legitimate object of philanthropic endeavour. In many places it has been found possible to appoint honorary visitors; and the ministration of Muhammadan and Hindu preachers to the Jail population is everywhere spreading. The success of the Jail Department on its reformative side is intimately connected with the measure of support which the general public evinces in such activities as those just described.

CHAPTER X

Finance.

I.—Financial Machinery.

i Control of the Home Government in Financial matters.

A. The British Parliament.

The following sections of the Government of India Act provide for Parliamentary control in financial matters:—

Application of revenues to military operations beyond the frontier.

SECTION 22—Except for preventing or repelling actual invasion of His 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 defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon those revenues.

Accounts to be annually laid before Parliament.

SECTION 26—(1) The Secretary of State in Council shall, within the first twenty-eight days during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament—

(a) an account, for the financial year preceding that last completed, of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof in each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the Government of India, distinguishing the same under the respective heads thereof;

(b) the latest estimate of the same for the financial year last completed;

(c) accounts of all stocks, loans, debts and liabilities chargeable on the revenues of India at home and abroad, at the commencement and close of the financial year preceding that last completed, the loans, debts and liabilities raised or incurred within that year, the amounts paid off or discharged

during that year, the rates of interest borne by those loans, debts and liabilities respectively, and the annual amount of that interest;

(d) (repealed by schedule II of the Government of India Amending Act 1916);

(e) a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof.

(2) If any new or increased salary or pension of fifty pounds a year or upwards has been granted or created within any year in respect of the said establishment, the particulars thereof shall be specially stated and explained at the foot of the account for that year.

(3) The account shall be accompanied by a statement, prepared from detailed reports from each province, in such form as best exhibits the moral and material progress and condition of India.

CLAUSE (1) AND (7) OF SECTION 27:—(1) His Majesty may, by warrant under His Royal Sign Manual, countersigned by the Chancellor of the Exchequer, appoint a fit person to be auditor of the accounts of the Secretary of State in Council, and authorise that auditor to appoint and remove such assistants as may be specified in the warrant.

Audit of Indian accounts in the United Kingdom.

(7) The auditor shall lay all his reports before both Houses of Parliament, with the accounts of the year to which the reports relate.

B. Secretary of State and Secretary of State in Council.

(i) HIS STATUTORY POWERS.

The primary responsibility for the finances of India rests on the Secretary of State and the Secretary of State in Council under sections 2 (2) and 21 of the Government of India Act reproduced below:—

SECTION 2 (2) OF THE ACT:—In particular, the Secretary of State may, subject to the provisions of this Act or rules made

thereunder, superintend, direct and control all acts, operations and concerns which relate to the government or REVENUES of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India."

SECTION 21:—"Subject to the provisions of this Act, and rules made thereunder, the expenditure of the revenues of India, both in British 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 those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India.

Provided that a grant or appropriation made in accordance with provisions or restrictions prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council shall be deemed to be made with the concurrence of a majority of such votes."

(ii) DELEGATION BY THE SECRETARY OF STATE.

The extent and the conditions of the delegation of authority by the Secretary of State to the Government of India and to local Governments are described in statutory rules and other orders, the most important of which are the following:—

(1) Rules made by the Secretary of State in Council under section 19A* of the Principal Act. (see pages 49-52).

(2) The Local Government (Borrowing) Rules framed under section 30 (IA) of the Act. (see pages 124-5 and 139-40).

(3) The Devolution Rules framed under section 45A of of the Principal Act. (see pages 97 and 121-4).

(4) Rules prescribed by the Secretary of State to govern the powers of the Governors in Council in relation to expenditure from provincial revenues on transferred and reserved subjects. (see pages 127-130).

*Same as section 33 of the Government of India Act 1919.

(5) Rules prescribed by the Secretary of State to govern the expenditure powers of the Government of India, reproduced below.

RESOLUTION FROM THE GOVERNMENT OF INDIA, FINANCE DEPARTMENT. No. 1448-E. A., DATED 29TH SEPTEMBER 1922 AS MODIFIED BY RESOLUTION No. 518-Ex., DATED THE 2ND MARCH 1923:—

"His Majesty's Secretary of State for India in Council has been pleased to make the rules appended to this Resolution, defining the classes of expenditure from central revenues upon subjects other than provincial subjects which the Governor-General in Council may not sanction without the previous consent of the Secretary of State in Council. These rules supersede all previous rules of a similar nature and, subject to their observance, orders regarding specific cases of expenditure passed by the Secretary of State in Council under regulations previously in force will no longer be binding.

"Subject to the observance of these rules and to the provisions of Section 67A of the Government of India Act, the Governor-General in Council has full power to sanction expenditure from central revenues upon subjects other than provincial subjects and, with the previous consent of the Finance Department, delegate such power upon such conditions as he may think fit either to any officer subordinate to him or to a local Government acting as his agent in relation to a central subject. Any sanction given under this rule will remain valid for the specified period for which it is given, subject in the case of voted expenditure to the voting of supply in each year. Orders of delegation passed under this rule may contain a provision for redelegation by the authority to which the powers are delegated."

RULES RELATING TO EXPENDITURE BY THE GOVERNMENT OF INDIA ON SUBJECTS OTHER THAN PROVINCIAL.

The previous sanction of the Secretary of State in Council is necessary—

(1) To the creation of any new or the abolition of any existing permanent post, or to the increase or reduction of the

pay drawn by the incumbent of any permanent post, if the post in either case is one which would ordinarily be held by a member of one of the services named in the Schedule, or to the increase or reduction of the cadre of any of those services or of a service ordinarily filled by officers holding the King's Commission.

(2) To the creation of a permanent post on a maximum rate of pay exceeding Rs. 1,200 a month, or the increase of the maximum pay of a sanctioned permanent post to an amount exceeding Rs. 1,200 a month.

(3) To the creation of a temporary post on pay exceeding Rs. 4,000 a month, or the extension beyond a period of two years (or, in the case of a post for settlement operations of five years) of a temporary post or deputation on pay exceeding Rs. 1,200 a month.

(4) To the grant to any Government servant or to the family or other dependents of any deceased Government servant of an allowance, pension or gratuity which is not admissible under rules made or for the time being in force under section 96 B of the Government of India Act, or under Army Regulations, India, except in the following cases :—

(a) Compassionate gratuities to the families of Government servants left in indigent circumstances subject to such annual limits as the Secretary of State in Council may prescribe ; and

(b) pensions or gratuities to Government servants wounded or otherwise injured while employed in Government service, or to the families of Government servants dying as the result of wounds or injuries sustained while employed in such service, granted in accordance with such rules as have been or may be laid down by the Secretary of State in Council in this behalf.

(5) To any expenditure on a measure costing more than Rs. 5,00,000 (initial plus one year's recurring) and involving outlay chargeable to the Army or Marine Estimates.

(6) (a) To any expenditure on the inception of a Military works project which is estimated to cost or, forms part of a scheme which is estimated to cost more than Rs. 10,00,000.

(b) To any expenditure on a Military Works project in excess of the original sanctioned estimate, if—

(i) the excess is more than 10 per cent. of the original sanctioned estimate, and the estimated cost of the project thereby becomes more than Rs. 10,00,000.

(ii) The original estimate has been sanctioned by the Secretary of State, and the excess is more than 1 per cent. of that estimate or more than Rs. 10,00,000.

(c) To any expenditure on a Military Works project, in excess of a revised or completion estimate sanctioned by the Secretary of State.

Provided that for the purpose of clauses (b) (ii) and (c) of the rule, if any section accounting for 5 per cent or more of the estimated cost of a project sanctioned by the Secretary of State is abandoned the estimated cost of the Works in that section shall be excluded from the total sanctioned estimate of the project for the purpose of determining whether the Secretary of State's sanction is necessary.

(7) To any expenditure on the purchase of imported stores or stationery, otherwise than in accordance with such rule as may be made in this behalf by the Secretary of State in Council.

(8) To any expenditure, otherwise than in accordance with such rules as have been or may be laid down in this behalf by the Secretary of State in Council, upon—

(a) the erection, alteration, furnishing, or equipment, of a church; or a grant-in-aid towards the erection, alteration, furnishing or equipment of a church not wholly constructed out of public funds; or

(b) the provision of additions to the list of special saloon and inspection railway carriages reserved for the use of high officials; or

(c) the staff, household, and contract allowances, of the residences and furniture provided for the use of the Governor-General; or

(d) railways.

THE SCHEDULE.

(1) Indian Civil Service. (2) Indian Police Service. (3) Indian Forest Service. (4) Indian Educational Service. (5) Indian Agricultural Service. (6) Indian Service of Engineers. (7) Indian Veterinary Service. (8) Indian Medical Service. (9) Imperial Customs Service. (10) Indian Audit and Accounts Service (Civil & Military). (11) Superintendents and Class I of the Survey of India Department. (12) The Superior Telegraph Branch of the Posts and Telegraphs Department. (13) The Superior staff of the Geological Survey of India Department. (14) The State Railway Engineering Service. (15) The Superior Staff of the Mint and Assay Departments. (16) The Archaeological Department. (17) Any other service declared by the Secretary of State in Council to be included in this Schedule.

C. The India Office organisation in Financial matters.

Extract from Wattal's "The System of Financial Administration in British India":—

The Finance Department, India Office.

For the proper disposal of financial business, there is a Finance Department in the India Office with two Financial Secretaries in charge of the two branches. There is also the office of the Accountant-General which shares with the Finance Department the disposal of certain classes of financial business.....

The Finance Committee of the India Office.

To assist the Secretary of State in financial matters there is a Finance Committee which is one of the Committees of the Council of India appointed for the more covenient transaction of business under section 10 of the Government of India Act. This Committee is appointed annually and the Chairman is chosen by the Secretary of State. The Committee is an advisory body and considers the papers referred to it by the Secretary of State or other officers to whom such power has been delegated by the Secretary of State. Speaking generally, the Finance Committee

advises on the placing of India Office balances on loan or deposit, the annual estimates of receipts and disbursements of the India Office, questions relating to civil and military expenditure in India and all important financial questions dealt with in the Finance Department of the India Office. After Finance Committee has made its recommendations the papers generally go to the Permanent Under-Secretary who submits them for the orders of the Secretary of State. In cases where the concurrence of a majority of votes of the Council of India is necessary under the Act, the decision of the Council of India is so taken and recorded and given effect to, otherwise the business is disposed of by the Secretary of State under sections 9 and 11 of the Government of India Act.

ii The Government of India in Financial matters.

(1) Attention is invited here to the SEPARATION OF PROVINCIAL FROM CENTRAL FINANCE (Chapter 2), THE RELAXATION OF FINANCIAL CONTROL OF the Secretary of State and the Government of India (Chapter 2), and the statutory powers of the LEGISLATIVE ASSEMBLY IN FINANCIAL MATTERS (chapter 3).

(2) FINANCE DEPARTMENT OF THE GOVERNMENT OF INDIA.

SOURCE:—Government of India's Memorandum on Finance Submitted to the Functions Committee.

The financial system of India may be considered under the following heads:—(1) Pure Finance; (2) Control of revenue including taxation and loans; (3) Control of expenditure; (4) Accounts and Audit.

All these, with the exception of audit....are under the direct or the general administration of the Finance Department of the Government of India.....

Pure Finance.

2. Pure Finance is an expression which, for want of any better description, may be taken as covering the control of currency, including the mints; the service of

the public debt; and the complicated mechanism for maintaining a gold standard in a silver country, which involves the regulation of the sterling exchanges. The Finance Department is also closely associated with the banking and credit system of the country.....

Control of Central Revenue.

7. This narrative may now proceed with the working of the Central Finance Department in connection with central subjects. Its concern with the revenue-producing departments is universal; but its intervention varies largely with the agency of assessment and classification. In the working of railways, for example, it is rarely invoked except in broad matters of policy, and in settling the annual estimates and the programme of development loans. In connection with opium and salt, on the other hand, its grip on the administration is very much tighter.....

Control of central expenditure.

11.....The Finance department of the Government of India is the custodian of the interests of economy and general financial propriety. It is placed in a position to give effect to this responsiblity by rule 13 of the rules of executive business made by the Governor-General, which runs as follows:—"No proposal involving an abandonment of revenue for which credit has been taken in the budget, or involving expenditure which has not been provided for in the budget, or which, though provided for, has not been specifically sanctioned, shall be brought forward for the consideration of the Governor-General in Council, nor shall any orders giving effect to such proposals issue, without a previous reference to the Finance Department." The rule is subject to certain exceptions relating—(a) to cases requiring great secrecy of despatch, in which the Governor-General is empowered to waive the necessity for a previous reference to the Finance Department, and (b) to certain delegations to the great spending departments namely, the Army Department

the Commerce and Industry Department (for the Post and Telegraph Department), the Public Works Department (for civil works and irrigation works) and the Railway Department, provided that the expenditure proposed is not of character for which the sanction of the Secretary of State is required, and subject also to certain conditions with regard to budget provision and reappropriation.

12. The effect of this procedure is to give the Finance Department an opportunity of criticising all new expenditure of any importance, and of also inviting the department in the Government of India which is interested in the purpose of the expenditure to examine the project in its administrative aspects. It can challenge the necessity for expenditure; it can bring to notice obvious objections or extravagances; it can call for facts to which it considers that sufficient weight or sufficient publicity has not been given. But it cannot, as a Department, overrule either a local Government or another Department of the central authority.....If the central Finance Department has to control unnecessary or extravagant outlay, its success depends upon the support of the Governor-General in Council. In questioning expenditure which is improper rather than excessive it can always demand a reference to the Secretary of State under the standing order which requires his sanction to charges which are "of an unusual nature or devoted to objects outside the ordinary work of administration." This defence, however, is rare, and the real strength of financial control lies in the ability of the Finance Department to ask the Governor-General to take any proposal for expenditure into consideration, if necessary, in full Council....As regards the functions of the Finance Department in the matter of excesses over budget grants and reappropriation of savings for other expenditure, the Department has to assume a position which in other countries is taken up by the legislature itself. This is inevitable under the present constitution and it is rendered effective by the general official training and traditions of financial propriety...

iii Provincial Governments in Financial matters

A Provincial Departments of Finance.

SOURCE:—Devolution rules 37 to 45.

Functions of Finance Department.

37. The Finance Department shall perform the following functions:—(a) it shall be in charge of the account relating to loans granted by the local Government, and shall advise on the financial aspect of all transactions relating to such loans;

(b) it shall be responsible for the safety and proper employment of the famine insurance fund;

(c) it shall examine and report on all proposals for the increase or reduction of taxation;

(d) it shall examine and report on all proposals for borrowing by the local Government; shall take all steps necessary for the purpose of raising such loans as have been duly authorised and shall be in charge of all matters relating to the service of loans;

(e) it shall be responsible for seeing that proper financial rules are framed for the guidance of other departments and that suitable accounts are maintained by other departments and establishments subordinate to them;

(f) it shall prepare an estimate of the total receipts and disbursements of the province in each year, and shall be responsible during the year for watching the state of the local Government's balances;

(g) in connection with the budget and with supplementary estimates:—

(i) it shall prepare the statement of estimated revenue and expenditure which is to be laid before the Legislative Council in each year and any supplementary estimates or demands for excess grants which may be submitted to the vote of the Council.

(ii) for the purpose of such preparation, it shall obtain from the departments concerned material on which to base its estimates, and it shall be responsible for

the correctness of the estimates framed on the material so supplied;

(iii) it shall examine and advise on all schemes of new expenditure for which it is proposed to make provision in the estimates, for any scheme which has not been so examined;

(h) on receipt of a report from an audit officer to the effect that expenditure for which there is no sufficient sanction is being incurred, it shall require steps to be taken to obtain sanction or that the expenditure shall immediately cease;

(i) it shall lay the audit and appropriation reports before the committee on public accounts, and shall bring to the notice of the committee all expenditure which has not been duly authorised and any financial irregularities;

(j) It shall advise departments responsible for the collection of revenue regarding the progress of collection and the methods of collection employed.

Powers of Finance Department with reference to re-appropriation.

38. (1) After grants have been voted by the Legislative Council (a) the Finance Department shall have power to sanction any re-appropriation within a grant from one major, minor, or subordinate head to another.

(b) The member or minister in charge of a department shall have power to sanction any re-appropriation within a grant between heads subordinate to a minor head which does not involve undertaking a recurring liability, provided that a copy of any order sanctioning such a re-appropriation shall be communicated to the Finance Department as soon as it is passed.

2. The Finance Department shall have power to sanction the delegation by a member or minister to any office or class of officers of the power of reappropriation conferred on such member or minister by clause (1) (b) above.

3. Copies of orders sanctioning any re-appropriation which does not require the sanction of the Finance Department shall be communicated to that department as soon as such orders are passed.

Matters to be referred to Finance Department.

39. No expenditure on any of heads detailed in section 72-D (3) of the Act which is in excess of the estimate for that head shown in the budget of the year, shall be incurred without previous consultation with the Finance Department.

Establishment changes.

40. No Office may be added to, or withdrawn from, the public service in the province and the emoluments of no post may be varied except after consultation with the Finance Deparment: and, when it is proposed to add a permament or temporary post to the public service, the Finance Department shall, if it thinks necessay, refer for the decision of the Audit Department the question whether the sanction of the Secretary of State in Council is, or is not, necessary.

Allowances & pay.

41. No allowance and no special or personal pay shall be sanctioned for any post or class of posts or for any Government servant without previous consultation with the Finance Department.

Grants and concessions.

42. No grant of land or assignment of land revenue, except when the grant is made under the ordinary revenue rules of the province, shall be given without previous consultation with the Finance Department; and no concession, grant or lease of mineral or forest rights, or right to water power or of right-of-way or other easement, and no privilege in respect of such rights shall be given without such previous consultation.

Abandonment of revenue etc.

43. No proposal involving an abandonment of revenue for which credit has been taken in the budget, or involving expenditure for which no provision has been made in the budget, shall be submitted for the consideration of the local Government or the Legislative Council nor shall any orders giving effect to such proposals issue, without a previous reference to the Finance Department.

Disposal of reports by Finance Department.

44. Every report made by the Finance Department on any matter on which it is required to advice or report under these rules shall be forwarded to the department concerned and shall, if the Finance Department so require be submitted by the department concerned to the Governor for the orders of the local Government. The Governor may, if he thinks fit, direct that any such report shall be laid before the committee on public accounts.

Presumption of assent of Finance Department.

45. Wherever previous consultation with the Finance Department is required by these rules it shall be open to that department to prescribe by general or special order cases in which its assent may be presumed to have been given.

(FOR CRITICISM ON THE WORKING OF THE PROVINCIAL FINANCE DEPARTMENTS SEE PAGES 296-300)

(B) Control of Finance by the Provincial Legislature.

See Chapters III (pages 209-213) and IV (pages 244-246)

II.—General conditions of India's Finances

SOURCE:—Pages 103-6, India in 1923-4.

External Aspects.

By way of introduction we may summarise briefly certain general conditions which regulate the finances of the country. Taking first the external aspect, it should be noticed that India has large commitments in London, in payment for which a sum of from £ 25,000,000 to £ 30,000,000 sterling is annually required.* The major portion of this sum is represented by interest on the capital which India has borrowed for the purpose of internal development. Another item is payment for Government stores which cannot be obtained in India. This head is destined gradually to disappear as the industrial development of the country progresses and strenuous efforts have for some time been made to reduce it. Next come the payments made to England for the leave allowances of Government servants, and for their pensions after they have retired. Formerly there was a fourth item in the payment made by India

* These are known as Home charges.

to England, representing the cost of maintenance of the India Office. But as a result of the changed relation between the two countries, consequent on the declaration of August 20, 1917, a portion of the expense of the India Office is now borne by the British Exchequer. In substitution for this comes the cost of maintaining the High Commissioner for India, who now discharges functions in England similar to those of the High Commissioners representing the Self-Governing Dominions.

Internal Aspects.

We may now turn to the internal aspect of India's finances. In the first place it is to be noticed that a large proportion of the resources of Government is derived from such items as land revenue, customs, opium, railways, forests and irrigation. Taxation in the ordinary sense of the word bulks far less largely in her budget than in the finances of other countries. Since India is still in the main agricultural, her revenue is predominantly influenced by the character of the season—a fact which accounts for many of the difficulties, financial and otherwise, through which she has passed in recent years. In the second place we may briefly note the system of financial organization. As in the case of general administration, so also in the case of the economic structure, centralisation was for long the watch-word. All revenues went into the coffers of the Government of India, whose orders were necessary for any expenditure of a serious kind. Out of this system was evolved in course of time the plan of "divided heads". The budget of the Government of India still included the transactions of the local Governments, but the revenues enjoyed by the latter were mainly derived from sources of income which they shared with the Central Government. With the introduction of the Montagu-Chelmsford Reforms, this state of affairs passed away. A complete separation was introduced between the finances of the Central Government and those of the Provincial Administrations. No head of revenue was henceforth to be divided; land revenue, irrigation, excise and judicial stamps were to be provincialised; while income-tax and general stamps were to become central

heads of revenue. In asmuchas under this arrangement the Government of India's resources would be substantially curtailed, it was proposed that the deficit should be made good by contributions from the Provinces. In January 1920 a committee appointed to investigate the future financial relations between the local and central authorities proposed that in 1921-22 the Provincial Governments should contribute Rs. 983 lakhs (£6,500,000) to the Government of India. The recommendations of the Committee were revised and to some extent altered by the Joint Select Committee of both Houses of Parliament; it being finally settled that from the year 1921-22 a total contribution of Rs. 983 lakhs, or such smaller sum as may be determined by the Governor-General-in-Council, shall be paid by the local Governments. Provision was made for reduction when the Governor-General-in-Council fixed as the total amount of the contribution a sum smaller than that payable in the preceding year.

Provincial contributions.

Unfortunately, since this separation between central and provincial finances, both central and local administrations have undergone a period of financial distress. Expenditure has necessarily been on the up-grade, partly owing to rising prices, and partly owing to the increased cost which naturally attends the popularisation of a bureaucratic Government. The hope that the resources of the Provinces, increased as a result of the new financial settlement, would assist them in finding money for large schemes of economic and social development, has not been realised up to the time of writing. This handicap has seriously threatened the success of the Reforms; since the ministers in charge of "nation-building" subjects have not been able to effect those changes in the departments under their control which public opinion eagerly and insistently demands. Somewhat naturally, there has grown up in all provinces a strong feeling against the system of contributions to the Central Government. Certain provincial administrations, indeed, protested emphatically that they were utterly unable

to balance their budget under the protected arrangement; and it was actually found necessary in 1921 to remit the Bengal contribution for a period of three years. The case of Bengal was somewhat exceptional, for it had been recommended to the special consideration of the Government of India by the Select Committee. But the concession naturally led to similar demands from the other provinces. Since, however the finances of the Central Government were such as to make a reduction of Provincial subventions utterly unthinkable, it was found impossible to give further relief. In 1922-23 the position of the provincial Governments was serious. Only two out of the nine were working to a surplus; and the aggregate deficit of the remainder amounted to a difference of 352 lakhs (£2$^1/_3$ millions) between current revenue and expenditure. The Government of India made it clear that unless a marked revival in trade should occur, no reduction of the provincial contributions would be possible in the immediate future. The feeling that the provincial Governments could expect no help from the Government of India went far to stimulate their efforts to achieve financial stability; and during 1922-23 most of them proceeded to examine all possible avenues of retrenchment and at the same time sought the sanction of their Legislative Councils for new taxation. As a result of their efforts, the financial position of the provinces in 1923-24 has become far more satisfactory. The era of unbalanced budgets has almost everywhere disappeared, save in the Punjab, where the financial position has of late been deteriorating. The gap separating revenue and expenditure in the majority of provincial budgets is now very small; and as the processes of retrenchment of expenditure and enhancement of revenue are being pursued side by side it will, we may confidently hope, in no short space of time disappear entirely. But the Government of India fully realise the serious burden which is placed upon the provincial Governments by the system of contributions to the Central Exchequer. They have placed in

the very forefront of their financial policy the necessity of leaving the provinces free to undertake those large projects of social and industrial development upon which the success of the Reform scheme so largely depends.....

III.—Finances of the Central Government in recent years.

A. Five disastrous years.

SOURCE:—Pages 106-7, India in 1923-4.

We must now briefly examine the financial position of the Central Government. Until five years ago, the accounts of the Government of India had for the previous quarter of a century consistently revealed great financial strength. With the exception of one or two abnormal years, there were generally surpluses on the revenue side, which led to the division of large sums among the provinces for expenditure on education, sanitation and other agencies. Substantial amounts were moreover set aside from the revenues for productive purposes and State borrowings were kept at a low figure. But in 1918-19 an unfortunate change came over the situation. There was a deficit of Rs. 6 crores (£4,000,000). This was left uncovered. Next year, mainly owing to the unforeseen expenditure caused by the Afghan War, the deficit amounted to Rs. 24 crores (£16,000,000). The final accounts for 1920-21 swollen by the adjustments of various items, revealed a deficit of Rs. 26 crores. When the budget of 1921-22 was presented to the new Central Legislature, it was found that there was an anticipated deficit of more than Rs. 18 crores (£12,000,000)... The revised estimates disclosed a deficit of Rs. 33 crores (22,000,000). In these circumstances, Government decided to budget for a deficit in 1922-23, proposing to find Rs. 29 crores (£19⅓ Millions) and to leave the remainder uncovered. The Legislative Assembly became seriously perturbed and emphatically demanded thoroughgoing retrenchment. It insisted upon a general five per cent cut in the expenditure of all civil departments. On the taxation side it

rejected a proposed increase in the duty on imported piece-goods, and in the cotton excise. It also refused a proposed increase of the salt tax from Rs. 1/4 to Rs. 2/8 per maund of 82 lbs. The effect of these changes was to increase the estimated deficit from Rs. 3 crores to Rs. 9 crores.

B* Retrenchment.

SOURCE:—India in 1923-4 and 1922-3.

*The Government of India embarked with vigour upon the process of retrenchment. During 1922 every department radically overhauled its commitments with the idea of curtailing unnecessary expenditure. More important still, a strong Committee presided over by Lord Inchcape devoted more than two months in the winter of 1922-3 to a minute and searching scrutiny of the expenditure of every department of Government.

The Retrenchment Report.

**The Committee submitted a Report which was placed in the hands of the public in March, 1923. This document proved to be as remarkable as it was authoritative. The members were unanimous in recommending net reductions amounting to Rs. 19 1/4 crores in the expenditure of the Government of India.....The largest item of economy proposed was in military expenditure where the reduction amounted to nearly Rs. 10 1/2 crores (£7 millions). The Committee recommended that the total net budget for military services for 1923-24 should be fixed at Rs. 57 3/4 crores, subject to such addition as might be necessary on account of the delay which must ensure in carrying out the proposed changes.....The next most important head under which reductions were proposed was that of Railways. Here the proposed economies amounted to Rs. 4 1/2 crores...The third major head upon which the Committee found it possible to make large savings was Posts and Telegraphs. Here they suggested a reduction of Rs. 1.3 crores, exclusive of a reduction of 50 lakhs in the capital expenditure on the Telegraph Department.....Under the head of general adminis-

*India in 1923-4 page 107.

**India in 1922-3 pages 110-11.

tration, the committee suggested the large reduction of Rs. 50 lakhs to give effect to which they proposed a re-allocation of the business conducted by certain Departments of the Government of India and a regrouping of portfolios. They suggested the abolition of certain advisory appointments; the curtailment of the functions of several offices, the reduction of the net cost to the Indian revenue of the India Office and of the High Commissioner's Office. In short they subjected to the minutest scrutiny every branch of the activities of the Government of India, proposing the abolition or curtailment of every function which did not appear in their eyes to be vitally necessary for the essential work of administration.

Effects in 1923-24.

*It was of course impossible, as the Retrenchment Committee themselves clearly realised, that the full value of the proposed reductions could be obtained in the first year of their operation. None-the-less, by strenuous efforts, Government succeeded in including the major portion of the proposals in their 1923-24 budget. In the non-military portion of expenditure, an immediate reduction of Rs. 6.6 crores was made as against the Inchcape Committee's ultimate suggestion of Rs. 8 crores (£5⅓ millions). In the case of military expenditure, the total for which the Assembly was asked to provide funds in 1923-24 was Rs. 62 crores (£41⅓ millions) which represented economies to the amount of Rs. 5.75 (£3⅘ millions). The total effect of these and certain other reductions may be summarised in the statement that as compared with the original budget estimates of expenditure for 1922-3 of Rs. 215.27 crores (£143½ millions), inclusive of the working expenditure of the commercial departments, the total expenditure of the Government of India in 1923-24, taking sterling expenditure at the rate of exchange of 1s. 4d. per rupee, was now estimated at Rs. 204.37 crores (£136¼ millions), in spite of an increase of Rs. 1.75 crores (£1⅙ million) for interest. Unfortunately even reductions so large were not

*Extract from India in 1923-4; pages 108-9.

estimated as sufficient to balance the revenue and expenditure during 1923-24. As against an estimated expenditure of Rs. 204.37 crores (£136¼ millions), there was an expected revenue of Rs. 195.2 crores (£132⅓ millions). As we mentioned in last year's Statement, the Assembly, despite the cogent arguments adduced by the Finance Member, was deterred through considerations not primarily economic, from consenting to the enhancement of the Salt Tax which would have bridged the gulf between revenue and expenditure. Since Government considered that the possibilities of retrenchment had been taken fully into consideration, and that the balancing of India's budget could not be further delayed without damage to her credit, the Viceroy certified the enhancement of the Salt Tax until March 31, 1924. With the political effect of this action, we are not at the moment concerned; it suffices in this place to notice that after five years of deficit the Government of India had at last achieved a balanced budget. The financial effect of their success was apparent in the course of the succeeding twelvemonths. There was no longer any fear of their being forced to undesirable expedients, such as currency inflation, in order to meet their outgoings. The improved position was happily reflected in the enhanced market price of rupee securities.....

Budget for 1924-25

In forecasting the expenditure for 1924-25 Sir Basil Blackett estimated military expenditure at Rs. 63 crores gross, and Rs. 60.25 crores net. ....On the civil side, effect has now been given to almost all the recommendations of the Retrenchment Committee, and expenditure generally has been kept low. On the assumption that a proposed separation of railway from general finances is approved by the Assembly so that railway transactions will cease to be a direct charge on Central revenues, the total expenditure for 1924-25 was estimated to amount to Rs. 104.57 crores. On the assumption that the net receipts from railways were replaced by the fixed contribution of Rs. 4.27 crores on

the basis of the separation between railway and general finance the finance Member arrived at a total revenue estimate of Rs. 107.93 crores. This gave on the basis of existing taxation a surplus of Rs. 3.36 crores during 1924-25.

(C) The Financial Situation in 1925-6

SOURCE :—Extract from the Finance Member's Budget speech for 1925-6.

Those whose memory carries them back to the Budgets introduced in the first Assembly in March, 1921 and March, 1922, and those who have as vivid a recollection as I have of the Budget discussions of March, 1923, cannot fail to be impressed by the contrast between then and now. . . . Two years ago when the Budget for 1923-24 was introduced, not only had we to contemplate the picture of five successive years of deficits aggregating nearly 100 crores, but we had still to face a serious gap on the revenue side of the account between our revenue and our expenditure in the year then ahead of us. Inspite of drastic retrenchment involving the sacrifice of many useful and desirable objects of expenditure; in spite of the postponement of many items ultimately unavoidable with the certainty that the necessity of meeting them would add to the difficulties of succeeding years; and in spite of the heavy increases in taxation in 1921-22 and 1922-23, we found ourselves once again compelled to ask for the imposition of a further burden. Last year in presenting the Revised estimates for 1923-24, I was able to assure the House that our sacrifices had not been without regard, but it was still not possible to say with certainty that the year would end with an actual surplus of ordinary revenue over ordinary expenditure. Meanwhile in all the nine Provinces financial difficulties were beclouding the bright hopes of those who had been responsible for the initiation of the Reforms. . . . .

To-day we are in a happier position and we can look with quiet satisfaction on realised surpluses of substantial amounts both in 1923-24 and in 1924-25, the latter secured in

spite of the reduction of the salt tax to the figure at which it stood before the increase made the year before. Better still, for the year now ahead of us we have not merely the prospect of securing a realised surplus once again, but we are also taking a real and substantial step forward towards the eventual extinction of the Provincial contributions, and are thereby giving new hope to those who are working the reformed Constitution of India in the Provinces and fresh encouragement to devote their energies to the task of building up a new India without the exasperating restrictions imposed by financial penury.....

But if by contrast with the past our position now seems a brighter one, we cannot be blind to the vastness of the work still to be done. Apart from the Bengal contribution, there are still $6\frac{3}{4}$ crores of Provincial contributions between us and the day when the Central Government's Budget can be balanced without assistance from Provincial sources, and the task of reducing the level of Central taxation actively begun. In all countries of the world the war and its aftermath have raised the level of taxation high. Few countries have escaped as lightly as India, but the level of taxation here is nevertheless much above the pre-war figure. Our disposable surplus in 1925-26 takes us only a step towards our immediate goal.

(D) Separation of the Railway Budget from the general Budget in 1925.

(1) Extract from the Finance Member's Budget Speech for 1924-5:—I know of no reform which offers greater attractions and greater benefits to our finances and our Railways alike than a definite separation, if it can be achieved. The conditions of affairs hitherto prevailing has inevitably tended to an alternation between raids by the Railways on the taxpayer and raids by the taxpayer on the Railways. If we can succeed in putting an end to this state of affairs, we shall have achieved a piece of genuine constructive work, for which the credit will

be, in large measure, due to the initiative of the legislature which has pressed the problem upon the Government.....In my opinion the reform proposed will bring us valuable dividends in our future budgets, and at the same time lead to great economies in the working of our Railways. It will give them a real incentive to increase their efficiency and to provide better service at reduced cost to their customers, the Indian public.

In the figures of the general Budget as presented, the return which we expect to receive from our investment in the Railways is included in accordance with the new settlement now proposed. The taxpayer, instead of paying the whole of the expenses and taking the whole of the incoming of the railways, will enter into a bargain with the Railways to receive from them (a) a sum sufficient to pay in full the interest on the capital he has invested in the commercial lines, (b) an additional dividend of five sixths of one per cent. on that capital and (c) a share of one-fifth of any surplus earnings that may be secured in addition. In return, the railways will be left to carry on their business with the right to retain any surplus over and above what they pay to the Government and to apply it to railway purposes, first of all for creating reserves and then by using those reserves to improve the services they render to the public and reduce the price which they charge for those services. The Government of India and this Assembly will remain in complete control of the Railway Administration just as they now are. That control will be in no way impaired. But there will no longer be any need to consider from the narrow standpoint of their effect upon the general revenues in a particular period of twelve months, that is in a particular Budget period, proposals by the Railway authorities which, though excellent and desirable in themselves, might, under the present system, upset the apparent equilibrium of the Budget for the year. The taxpayer will secure a regular and increasing contribution from his investment, largely independent of fluctuations in railway receipts and expenditure,

and the railways will be able to spend money according to the real needs of the railway system, unimpeded by the necessity for conforming to the vagaries of Budget figures and the requirments of Budget accounting. The Railways will become a real commercial undertaking managed on commercial lines, and the taxpayer will get the benefit of commercial accounts and management.

(2) Extract from the Finance Member's Budget speech for 1925-6:—Still more important change in our procedure has taken effect for the first time this year. The last few days have brought home to all of us the reality of the separation of Railway Finance from General Finance a subject with which I dealt at some length in my Budget speech a year ago and on which a final agreement was happily reached last September. I cannot pass over in silence this most important reform in the Government of India's financial machinery. Of its ultimate advantages from the point of view of Railway administration, from the standpoint of the commercial and general public, and from that of the Government of India and of this House in dealing with the finances of the Central Government, I have no doubt whatever. Before many years are out, this country will, I feel sure, see its benefits in the practical form of more efficient and cheaper transportation with all that is therein involved for the economic development of a country with the immense potentialities which India possesses. Meanwhile, we are happily relieved of the difficulties and doubts which confronted us in dealing with our General Budget when it incorporated the gross receipts and the working expenses of the Railways and the difference between good and bad trade and a good and bad monsoon meant a difference of several crores of rupees in our Budget figures. The taxpayer is now assured of a regular and growing contribution in relief of taxation from his investments in Railways and the task of maintaining a continuous financial policy and of distinguishing between a temporary and permanent surplus or deficit in our accounts is immensely facilitated.

(E) Abstract of last 5 years' accounts.

The following tables show the receipts and expenditure of the central Government during the last 5 years:—

General Statement of the Central Government.

Revenue. Principal Heads of revenue	Accounts. 1920-1	Accounts. 1921-2	Accounts. 1922-3.	Accounts. 1923-4.	Revised Estimates. 1924-5.	Budget Estimates. 1925-6.
Customs ..	30,97,67,469	34,40,98,381	41,34,65,362	39,69,64,296	44,76,44,000	46,35,00,000
Taxes on income ..	20,91,74,432	18,74,13,424	17,99,41,150	18,23,55,516	16,47,26,000	17,34,87,000
Salt. ..	6,18,79,813	6,34,37,848	6,82,46,112	10,01,50,870	7,73,78,000	6,95,00,000
Opium. ..	3,53,40,611	3,07,24,798	3,78,92,068	4,24,81,654	3,68,30,000	3,55,85,000
Other Heads. ..	2,25,26,119	2,20,16,921	2,34,00,268	2,28,56,225	2,08,21,000	2,23,14,000
Total Principal Heads.	63,86,88,444	64,76,91,372	72,29,44,960	74,48,08,561	74,73,99,000	76,43,86,000
Railways: Net receipts.	25,01,61,164	15,20,82,829	26,82,98,476	32,69,42,393	34,19,37,000	33,89,44,000
Irrigation: „ ..	2,91,582	5,94,141	10,90,752	10,54,064	8,91,000	10,42,000
Posts & Telegraphs: „ ..	1,52,39,627	56,52,778	1,22,29,448	96,12,987	19,14,000	68,11,000
Interest receipts ..	3,69,16,065	1,11,00,700	1,15,70,696	3,16,59,620	3,79,59,000	3,60,44,000
Civil administration. ..	73,19,336	77,29,211	44,34,528	68,51,292	70,70,000	72,60,000
Currency, mint & Exchange	2,88,22,548	4,37,42,093	3,62,03,131	3,12,73,991	3,94,93,000	4,08,07,000
Civil works. ..	11,33,258	11,33,782	14,38,067	37,05,245	12,12,000	10,18,000
Miscellaneous. ..	2,60,23,901	7,18,56,875	62,46,225	94,78,186	33,50,000	43,21,000
Military receipts. ..	6,47,86,936	8,06,93,832	5,73,78,865	4,81,56,397	4,16,96,000	4,01,17,000
Contributions and Assignments to the Central Government by Provincial Governments. ..	9,83,00,000	12,98,72,704	9,22,93,608	9,21,54,718	9,25,16,000	6,72,14,000
Extraordinary items. ..				2,59,65,85	2,55,89,000	38,33,000
Total Revenues ..	1,16 80,47,592	1.15.21,50,317	1,21.11.29,156	1,33,16,63,305	1,34,82,26,000	1,31,17,97,000
Deficit ..	32,27,57,387	27,65,01,700	15,01,76,392			
TOTAL ...	1,49,08,04,979	1,42,86,52,017	1,36,43,05,548	1,33,16,63,305	1,34,82,26,000	1,31,17,97,000

General Statement of the Expenditure Charged to Revenue of the Central Government.

Expenditure.	Accounts. 1920-1	Accounts. 1921-2.	Accounts. 1922-3.	Accounts. 1923-4.	Revised Estimate 1924-5.	Budget Estimate 1925-6
Direct Demands on the Revenues.	4,14,05,207	5,27,12,199	5,22,04,980	5,44,04,114	5,45,62,000	5,28,91,000
Forest and other Capital outlay charged to Revenue	..	..	..	..	21,11,000	32,93,000
Railways: Interest and Miscellaneous charges	19,37,51,901	24,29,82,572	25,60,99,247	26,25,21,458	28,55,02,000	28,65,70,000
Irrigation.	11,88,202	14,48,454	13,75,391	16,42,139	21,94,000	17,79,000
Posts & Telegraphs.	1,34,56,370	1,66,00,497	76,98,536	25,37,942	—62,000	—28,17,000
Debt Services.	15,20,43,631	15,99,70,014	16,15,89,540	17,33,44,971	17,92,04,000	18,18,06,000
Civil Administration	9,34,34,823	9,40,80,047	9,94,32,040	9,33,97,308	10,26,87,000	10,97,98,000
Currency, Mint & Exchange	4,33,49,239	1,07,48,311	1,03,09,731	99,07,398	73,20,000	73,47,000
Civil Works.	1,95,56,710	1,54,20,200	1,34,81,040	1,70,31,590	1,93,27,000	1,68,47,000
Miscellaneous	4,39,77,117	5,58,91,383	5,20,56,088	4,46,49,882	4,47,95,000	4,01,91,000
Military Services	88,23,24,252	77,87,98,340	71,00,58,955	61,04,31,760	60,49,96,000	60,26,17,000
Miscellaneous adustments between the central and Provincial Governments.	63,24,000	..	..	37,98,778	56,32,000	15,74,000
Extraordinary Items	..	..	..	3,40,96,207	..	25,00,000
Surplus				2,38,99,758	9,99,58,000	74,01,000
Total.	1490804979	1428652017	1364305546	1331663305	1348226000	1311797000

IV.—Principal Heads of Revenue of the Central Government

i. Customs.

(1) History of our Revenue-Tariff.

SOURCES:—(1) Extract from Financial statistics 1922.*
(2) „ „ Paras 22-3 of the Fiscal commission's Report.

(1) Indian Customs revenue is mainly derived from the general import duty, certain special import duties such as those on arms, liquors, sugar, petroleum, tobacco, etc., and export duties on rice, jute and tea. General import duties, which were abolished in 1882, were reimposed in 1894, the general rate of duty on commodities imported into British India by sea being fixed at 5 per cent. ad valorem. Cotton was exempted in 1894 when the general duties were revived; in December 1894, a 5 per cent. ad valorem duty was imposed on imported cotton goods and yarns, while an excise duty of 5 per cent. was imposed on all yarns of counts above 20 spun at power mills in British India; in February 1896, cotton yarns and threads imported or manufactured in India were freed from duty, while a uniform 3½ per cent ad valorem duty was imposed on all woven cotton goods imported or manufactured in India at power mills. The products of hand looms were exempted.

The schedule were largely modified with effect from March, 1916, by the Indian Tariff (Amendment) Act, IV. of 1916. The general tariff rate of 5 per cent. on imported articles, which remained unchanged from its imposition in 1894, was raised to 7½ per cent., the rate of one per cent on certain descriptions of iron and steel enhanced to 2½ per cent., special increased duties levied on arms and ammunition, sugar, petroleum, spirit, cigars, cigarettes and other manufactured tobacco, silver plate and other manufactures, and the number of articles on the free list was considerably curtailed by the imposition of import duties on previously free articles, e. g. machinery (except cotton spinning and weaving), railway materials, food

grains, coal, printing materials, etc. From 1st March, 1921 by the amendment of the second schedule to the Indian Tariff Act, 1894, which was embodied in the Indian Finance Act, 1921, the general ad valorem tariff rate on imported articles has been raised from 7½ to 11 per cent, a specific rate of duty of 12 annas per gross of boxes has been imposed on matches, and a duty of 20 per cent. levied on certain articles of luxury such as confectionery, motor cars, etc. The special rates of duty on imported liquors, foreign sugar, and tobacco, other than manufactured tobacco, has been increased. Cotton machinery, hitherto free, has been brought under the 2½ per cent. rate and metallic ores of all sort made free. In the export trade rice was the only dutiable article, but from March, 1916, export duties have also been levied on jute and tea; and with effect from 11th September 1919, an export duty of 15 per cent has been levied on raw hides and skins.

*In 1922,.....it was found essential to make further far-reaching changes in the tariff. The general rate of duty was raised from 11 to 15 per cent., but the duty on cotton piece-goods remained at 11 per cent., the excise also remaining unchanged at 3 per cent. The duty on machinery was retained at 2½ per cent., but the duty on iron and steel and railway materials was raised from 2½ to 10 per cent. The duty on matches was doubled and that on sugar raised from 15 to 25 per cent. Cotton yarn, which had since 1896 been free, was taxed at 5 per cent. The duty on kerosene was raised by one anna per gallon and an excise duty of one anna per gallon was placed on kerosene produced in India. The duty on those articles which had been singled out for the special rate of 20 per cent. in 1921 was now raised to 30 per cent. Such increases as it was believed that liquors could still bear without failing to produce increased revenue were imposed, but the taxation on tobacco was considered already to have reached the productive limit.

Para 22 Fiscal Commission's Report.

It is obvious that the 1922 tariff has travelled a long way from the tariff in force before the war. The general rate of duty is no longer low, and wide breaches have been made in the old principle of uniformity. Omitting a limited free list, we have an important class taxed at 2½ per cent., a second important class at 10 per cent., and a third at 30 per cent., while such largely consumed commodities as cotton piece-goods, cotton yarn, sugar, petroleum and matches in addition to liquors and tobacco are taxed at special rates. It is obvious too that considerations other than those of revenue cannot fail to obtrude themselves in the framing of a tariff containing such high duties and such a great variety of rates.

(NOTE:—Some small changes in the revenue tariff were made in 1924, the most important being the reduction of the excise duty on motor spirit to 4½ annas a gallon and the imposition of specific duties on empty match boxes and splints. Further minor changes were effected in 1925 viz the abolition of the import duty of 2½ per cent on grain and pulse, the reduction from 15 per cent to 2½ per cent ad valorem of the duty on reeds, healds, and various other articles, chiefly used in power looms, and the modification of the duties on petrol in such a way as to fix the duty to be paid by all petrol alike whether imported or home produced at 4 as a gallon.)

(2) Increasing reliance on the customs revenue.

†A tendency which should be noted in considering the recent development of the Indian tariff is the rapidly increasing revenue derived from it, and the increasing proportion which that revenue bears to the total revenue. The following table shows the revenue derived in recent years from import and export duties and the cotton excise as compared with the total imperial or central revenues. The figures in column 6 represent the revenue derived from those heads which at present form the central revenue. The revenue from import and export

†Para 25 Fiscal Commission's Report.

duties and the cotton excise in 1921-22 was 35½ crores of rupees as against an average for the 5 years preceding the war of something under 10 crores, while the percentage which those sources of income bear to the total central revenues has risen from 14.7 for the 5 years preceding the war to 31.4 in 1921-22.

LAKHS OF RUPEES.

Year.	Customs Revenue.				Total Revenue (Imperial).	Percentage which the customs revenue bears to the total imperial revenue.
	Import duties.	Export duties.	Cotton excise.	Grand Total.		
1	2	3	4	5	6	7
1909-10 to 1913-14 (average)	7,94	1,30	48	9,84	66,70	14·7
1913-14 ..	9,36	1,29	54	11,33	67,45	16·8
1914-15 ..	8,07	83	49	9,52	62,86	15·2
1915-16 ..	7,38	79	49	8,81	65,86	13·4
1916-17 ..	9,90	2,47	45	12,99	83,18	15·6
1917-18 ..	12,00	3,32	76	16,55	103,04	16·1
1918-19 ..	12,57	3,69	1,38	18,18	114,07	15·7
1919-20 ..	15,43	4,81	1,55	22,48	117,37	19·2
1920-21 ..	23,15	4,84	2,36	31,97	116,80	27·4
1921-22 ..	27,64	4,50	2,22	35,48	113,15	31·4

(3) Adoption of Discriminating Protection.

SOURCE:—Extract from India in 1923-4.

The Tariff.

*For the last quarter of a century, powerful sections of Indian opinion have been demanding the formulation of some scheme of protection to safeguard the nascent industries of the country against the overwhelming burden of competition. In the fiscal affairs of India, a new era has dawned with the introduction of the Montagu- Chelmsford Reforms. In consequence of the changed relations

*Pages 131-4

between India and England, it was laid down that India will in future control in ever-increasing degree her own fiscal policy. As a matter of convention, the Secretary of State for India now normally refrains from interference in fiscal matters when the Government of India and the Indian Legislature are in agreement. The non-official members both of the Council of State and of the Legislative Assembly took the earliest opportunity of impressing upon the Administration the desirability of taking early steps to realise the results which the country could derive from the new convention. Accordingly in 1921 a Commission was appointed to examine, with reference to all interest concerned, the tariff policy of Government. The Commission began its work in November 1921, and its conclusions were published in the summer of 1922. The preliminary recommendations formulated in the Report urged the Government of India to adopt a policy of protection, which was to be applied with discrimination along certain general lines carefully indicated. In the selection of industries for protection, and in the degree of protection to be afforded, the Commission recommended that the inevitable burden on the community should be as light as was compatible with the development of the industries themselves. The Report recommended the creation of a permanent Tariff Board, consisting of three members nominated by Government to investigate the claims of particular industries to protection, to watch the operation of the tariff, and generally to advise Government and the Legislature in carrying out the policy formulated by the Commission... Government decided to accept in principle the recommendations of the Report, but to lay stress upon the fact that India's tariff policy must be guided by the requirements of revenue, as well as by the interests of industry. Early in 1923 the Commerce Member of the Viceroy's Council moved the adoption by the Legislative Assembly of a motion accepting in principle the proposition that India's fiscal policy may be legitimately directed towards fostering the development of her industries. In the application of this principle, the mover

The Fiscal Commission.

Action taken.

explained, regard must be had to the financial needs of the country and to the present reliance of Government upon the revenues derived from customs and excise. He announced that the authorities had decided to constitute a Tariff Board, as an experimental measure for one year. After an animated debate in which the mutually conflicting interests of commerce and agriculture found clear expression, the Assembly adopted the official motion as a reasonable compromise. Shortly afterwards, Government announced that they had appointed to the Tariff Board Mr. G. Rainy, a member of the Indian Civil Service, with two non-officials, Professor Kale and Mr. Ginwala, both of whom possessed considerable experience in economic matters.

The Tariff Board. The new Tariff Board proceeded to devote careful attention to the question of protecting the Indian iron and steel industry. They employed several months in a careful and elaborate investigation of the evidence submitted to them from various quarters; and their conclusions, which were published shortly after the close of the period covered by this statement, showed that the claims for protection put forward on behalf of this industry were not ill-founded. The recommendations of Government, based upon the conclusions of the Tariff Board, were submitted to a special session of the Indian Legislature, fixed for the end of May and the beginning of June 1924.

NOTE:—The Assembly passed the steel protection Bill, but in the course of a few months the protective tariff proved inadequate for the needs of the industry and Government had to give bounties to the industry to the extent of 60 lakhs.

ii Income-Tax—History of :—

SOURCE:—EXTRACT FROM FINANCIAL STATISTICS 1922 (PAGE 264)

The general income Tax was first levied in 1860 to relieve the financial burdens of the immediately preceding years. The Act was on the English model and was to have effect for a period of 5 years. It ceased, therefore, to operate in 1865 but the financial position did not permit of

direct taxation being abandoned. In 1867 an Act was therefore passed, imposing a license tax on professions and trades excluding agriculture, and the tax continued to be levied till the end of 1872-73. No further taxation was imposed until 1877 when a license tax was levied on traders and artisans to meet a portion of the Famine Insurance grant, and Acts were passed in 1878 for this purpose for the United Provinces, the Punjab, Bengal, Madras and Bombay. These Acts remained in force until 1886. The license tax of 1878 was, however, converted into a general income tax by the Income-Tax Act., II of 1886, applying to all India, which came into operation on the 1st April 1886. All sources of non-agricultural income were taxed. They were divided into four classes, namely, (1) Salaries and pensions, (2) Profits of Companies, (3) Interest on Securities, and (4) other sources. A general rate of 5 pies in the rupee (a little more than 2½ per cent) was levied on all incomes over Rs. 2,000 per annum, incomes between Rs. 500 to Rs. 2,000 derived from salaries and interest on securities were taxed at the rate of 4 pies in the rupee (a little over 2 per cent) and similar incomes derived from other sources were taxed at fixed rates according to classes. Incomes below 500 were not assessed with the result that the tax was collected from a very small proportion of the total population. Incomes derived from land and agriculture were exempted. Charities and religious endowments were also free from the tax. In 1903 the favourable financial conditions permitted the exemption from the tax of incomes between Rs. 500 and Rs. 1,000 per annum, that is to say the taxable minimum of income was raised from Rs. 500 to 1,000 by the Indian Income Tax (Amendment) Act, XI of 1903, with effect from 1st April, 1903. In 1916 the income tax was revised, raised, and graduated by the Income Tax (Amendment) Act (V of 1916) in order to meet the deficit arising out of war conditions. By this Act salaries and pensions between Rs. 1000 and less than Rs. 2000 were taxed at 4 pies in the rupee, those between Rs. 2,000 and less than Rs 5000 at 5 pies, those between Rs. 5000 and less

than Rs. 10,000 at 6 pies, those between Rs. 10,000 and less than Rs, 25,000 at 9 pies and those amounting to Rs. 25,000 and upwards at one anna. Profits of companies and interest on securities were taxed at one anna in the rupee, but this was subject to abatement or exemption in the case of individual shareholders who could show that their total income was such as to warrant a lower rate of taxation or none at all. Other sources of income between Rs. 1,000 and less than Rs. 2,000 were taxed at fixed rates according to classes and those amounting to Rs. 2,000 and above according to rates and scales similar to those fixed for salaries and pensions of like amounts. In 1918 a new Income-Tax Act (VII of 1918) was passed consolidating and amending the laws relating to Income-tax. By this Act the sources of taxable income were classified as (i) salaries, (ii) interest on securities (iii) income derived from house property, (iv) income drived from business, (v) professional earnings, and (vi) income drived from other sources. Assessements are no longer made separately on different sources of income but on all sources combined. Agricultural income was exempted as before. The rates of tax imposed on all these classes of taxable income are the same as provided in Act V of 1916, except in the case of a company or a firm constituted under a registered instrument of partnership specifying the individual shares of the partners, the rate of tax for such a company or firm being one anna in the rupee (i. e. the maximum rate of income-tax). In 1919 the taxable minimum of income was raised from Rs. 1000 to Rs. 2000 by the Indian Income-Tax (Amendment) Act., IV of 1919 with effect from 1st April, 1919.

NOTE BY THE AUTHORS :—A Super-Tax Act was passed in 1920 under which "Super-Tax is payable in addition to income-tax on incomes exceeding Rs. 50,000 per annum. The rates of the ordinary income-tax as well as the Super-tax were raised in 1922, and the scale fixed was as follows :—

(a) In the case of every individual, unregistered firm and every undivided Hindu family....

(1) When the total income is less than Rs. 2,000		Nil
(2) When the total income is Rs. upwards but is less than	2,000 or „ 5,000 ...	Five pies in the rupee.
(3) When the total income is „ upwards but is less than „	5,000 or 10,000 ...	Six pies in the rupee.
(4) When the total income is „ upwards but is less than „	10,000 or 20,000 ...	Nine pies in the rupee.
(5) When the total income is „ upwards but is less than „	20,000 or 30,000 ...	One anna in the rupee.
(6) When the total income is „ upwards but is less than „	30,000 or 40,000 ...	One anna and three pies in the rupee.
(7) Whe the total income is „ upwards	40,000 or	One anna and six pies in the rupee
(b) In the case of every company and every registered firm, whatever its total income		One anna and six pies in the rupee.

Rates of Super-tax.

In respect of the excess over fifty thousand rupees of total income:—

(1) In the case of every company ...	1 anna in the rupee.
(2) (a) in the case of every Hindu undivided family	
(i) in respect of the first twenty-five thousand rupees of the excess..... ...	Nil.
(ii) for every rupee of the next twenty-five thousand rupees of such excess	1 anna in the rupee.
(b) in the case of every individual and every unregistered firm, for every rupee of the first fifty thousand rupees of such excess. ...	1 anna in the rupee.
(c) in the case of every individual, every unregistered firm and every Hindu undivided family.....	
(i) for every rupee of the second fifty thousand rupees of such excess. ...	1½ annas in the rupee.
(ii) for every rupee of the next fifty thousand rupees of such excess ...	2 annas in the rupee.
(iii) for every rupee of the next fifty thousand rupees of such excess..... ...	2½ annas in the rupee.
(iv) for every rupee of the next fifty thousand rupees of such excess.... ...	3 annas in therupee.
(v) for every rupee of the next fifty thousand rupees for such excess... ...	3½ annas in the rupee.
(vi) for every rupee of the next fifty thousand rupees of such excess... ...	4 annas in the rupee.

(vii) for every rupee of the next fifty thousand rupees of such excess...	...	4½ annas in the rupee.
(viii) for every rupee of the next fifty thousand rupees of such excess...	...	5 annas in the rupee.
(ix) for every rupee of the next fifty thousand rupees of such excess...	...	5½ annas in the rupee.
(x) for every rupee of the remainder of the excess	...	6 annas in the rupee.

iii Salt.

A. History of the Salt tax.

(1) Upto 1882.

Extract from the Moral & Material Progress Report 1882:—

It remains to give an historical summary of fiscal policy with regard to salt. Down to 1882 there had been great variety in the rates of duty in different parts of India. In Bengal the duty has always been comparatively high. In Madras the duty has been gradually increased fourfold since its imposition at the beginning of the century. In Bombay, a duty was first imposed in 1827, and had increased fivefold by 1878. In both Madras and Bombay this great increase of duty must be regarded as in part a compensation for the abolition of a number of transit duties and other imposts on trade. In Northern India generally the rate has remained pretty uniform, though it is here that the greatest reforms have been effected, partly by the introduction of Government monopoly and partly by the improvement of railway communication. Down to 1869, the Sambhar Lake, the one great source of supply for Northern and Central India, lay within what must be called for fiscal purposes independent territory. In order to protect our own salt revenue, it was necessary to maintain a customs line stretching across the peninsula from the river Indus to the river Mahanadi, 2300 miles in length, guarded by nearly 12,000 men, at a cost of £ 162,000 a year. At this barrier duty was levied upon the import of salt from Native States and upon the export of sugar from Britsh territory. In 1869, under the Government of Lord Mayo, the Sambhar Lake was taken on lease; and the rates of duty were raised in both Madras and Bombay, as a step towards ultimate equalisation.

In 1874, under Lord Northbrook, the extension of railways in Central India rendered possible the abolition of about 800 miles of the customs line. But the greatest reform is due to the Government of Lord Lytton, with Sir John Strachey as Finance Minister. In 1878, the rates of duty in Madras and Bombay were again raised, while the rates in Northern India and Bengal were reduced, thus making a further approximation to uniformity. In the same year leases were obtained of the remaining salt sources in Rajputana; and with the opening of the next financial year (1879-80) the entire customs line, with its salt and sugar duties, was swept away. Finally, in 1882, under Lord Ripon, the duty on salt was rendered uniform throughout all India (except British Burma) by a reduction in every other Province to the standard rate of 4 s. per maund.[1]

2 SALT TAX DURING THE PERIOD 1882-1924.

Extract from a Memorandum on some of the Results of Indian Administration 1911 :—These measures resulted in a large increase of the consumption, the quantity of duty-paid salt consumed in 1888 being 50 per cent. in excess of the figure for 1868. In 1888 it was found necessary to raise the salt duty from Rs. 2 to Rs. 2½ per maund, in order to meet financial difficulties mainly caused by the fall in the gold price of silver, and at that rate it remained till 1905. In 1903 it was reduced to Rs. 2 per maund, in 1905 to Rs. 1½ and in 1907 to Re. 1 per maund.

(In 1916 it was raised to Re. 1/4/- and in 1923 to Rs. 2/8/-; In 1224 it was reduced to Rs. 2/- per maund).

B Salt tax controversy 1923.

Extract from Lord Reading's statement of reasons for certifying the salt tax in 1923:—"Ever since my arrival in this country, the legislature, all sections of the press, and public men in deputations, addresses, and speeches, have insistently urged on me the vital necessity of securing financial equilibrium. In addition representations had persistently been made that the

Government of India should balance its budget in order that it might begin to remit the contributions of 9¼ crores from the provincial Governments to the Government of India, a matter vitally important to the progress of those departments which have under the Reforms Scheme been committed to the charge of Ministers.

The rehabilitation of India's credit presenting a balanced budget was not a measure which could be delayed. The need for large funds for material development obliges the Indian Government to enter the money market for considerable sums both in England and in India; it would be in the highest degree unfortunate if it had been obliged to present a deficit for the sixth year in succession, and when the circumstances no longer permitted a hope that the deficit was purely temporary or was one which would yield to a determined effort at retrenchment.....

The most careful and anxious consideration was given to the posibility of finding an alternative to the salt tax as a means of raising the additional revenue necessary to attain equilibrium. No alternative presented itself to Government nor indeed, when the matter came to be discussed, to the Legislature..... I have myself given most careful consideration to the objections which appear to exist against the enhancement of the salt tax whether on economic grounds or those of sentiment. The tax is said to have historic unpopularity but it existed before British rule. In the period from 1861-1877 it stood in Northern India at Rs. 3. In 1878 the rate was Rs. 2/12, from 1879-1881 and again from 1888-1902 it stood at Rs. 2/8, and since 1916 it has been at Rs. 1/4. The objection is thus not to the tax itself but to its present enhancement. Every increase in the rate of a tax is unpopular; yet it must be remembered that it has been collected in the ordinary way at the enhanced rate throughout British India since the 1st of March of this year. The economic arguments against the tax appear to stand on shadowy foundations. Perhaps never in

the recent history of India has there been a year in which such enhancement will press more lightly on the poor. Wages are still on a favourable basis; but prices of food-stuffs have markedly fallen and with the abundant promise of a rich harvest around us may be expected to decrease still further. Even a slight fall in the price of food-stuffs is of great importance to the poor family. The mill labourer is shown to spend approximately 56 per cent. of his income on food and of this amount salt represents only two-fifths of 1 per cent. The increase in salt tax must have an infinitesimal effect at a period such as this; prices of food grains fell by 20 per cent between October 1921 and December 1922; between January 1922 and 1923 retail prices of wheat fell by 100 per cent. in important centres of Northern India.

These considerations were duly laid before the Legislative Assembly. The Assembly was unable to agree on the adoption of any alternative form of taxation which would secure the full amount required. Nevertheless, it rejected the proposal for an enhancement of the salt tax. It was in these circumstances that it became my duty to certify the measure."

iv. Opium.

(1) Extract from the Decennial Report on Moral & Material Progress of India 1913:—

*Opium contributes to the revenues of India under two heads. The net revenue credited in the public accounts under the head "opium" is that derived from the export of opium to other countries. There is also a very considerable, though hitherto much smaller, revenue from opium consumed in India, which is credited under the head "Excise."....

The principal areas in which the poppy is (or was until recently) grown in India are, firstly, Bihar and the districts of the United Provinces lying along and in the north of the Ganges valley, and, secondly, a number of Native States in the Central India and Rajputana Agencies, principally Indore, Gwalior, Bhopal, and Mewar. There is also some production in Baroda.

* Pages 190-1.

The produce of the first region is known as Bengal and that of the second as Malwa, opium. Cultivation in Bihar was brought to an end in 1911. Small quantities of opium are produced also in certain restricted areas in the Punjab and Ajmer-Merwara, in the Shan States beyond British limits, and in some Kachin Villages in Upper Burma.

Bengal Opium. The manufacture of Bengal opium is a Sate monopoly, and cultivation and manufacture are under the superintendence of a special department....The opium for exports known as "provision" opium, is packed in chests and sold by public auction in Calcutta. "Excise" opium is distributed from the factory, or from the Calcutta warehouse, to the Government treasuries, whence it is issued, on payment, to licensed vendors and druggists only. Out of the sale proceeds a sum representing the estimated cost of production is credited to the opium revenue; the remainder is credited under Excise. The crop being particularly sensitive to seasonal influences, and the out-turn very variable, a reserve stock is maintained.

Malwa Opium. The Malwa opium revenue is derived from a pass-duty levied on opium exported from the Native States, and, since the beginning of 1912 partly also from sums paid for the right to export such opium from India....The duty is levied at convenient stations maintained by the British Government at Indore and elsewhere, whence the bulk of the opium is consigned to a central depot at Bombay for issue to traders. The duty on Malwa opium intended for export was raised from Rs. 600 to Rs. 1,200 (i. e. from £40 to £80) a chest at the beginning of 1912; and at the same time a system of putting up to auction the right of export was introduced. A considerable increase in the revenue from this class of opium resulted. A proportion of the receipts it should be added, is, under the new arrangements, made over to the Native States concerned.

Arrangements with China. The outstanding feature of the period under review was the conclusion of agreements with

the Chinese Government for the gradual diminution, and ultimate extinction, of the export of Indian opium to China. The first arrangements, made in 1907 were based on an average shipment of opium from India to the amount of 67,000 chests a year, of which 51,000 were for China. It was agreed that the total quantity of opium sold or passed for export from India should be limited to 61,900 chests in 1908, and reduced by 5,100 chests (one-tenth of the average export to China) in each of the two succeeding years. Under an agreement signed in May 1911 the same rate of reduction was continued, and the reduction was brought to bear directly on the export to China by arranging that each chest of opium sold for export to China should be provided with a certificate, and that opium not so certificated should be excluded from the country. Provision was also made for an earlier cessation of the export to China in the event of the native Chinese production of opium being suppressed before the expiration of the period of ten years.

The above measures were taken at the instance of the Chinese Government, and were welcomed by them as meeting their wishes.

(2) Extract from the Memorandum on some of the results of Indian Administration 1911:—

The Chief changes in the administration of this revenue during the past fifty years have been the enhancement of the export duty on Bombay opium; conventions with Native States, whereby, for a liberal payment, they unite with the Indian exchequer to safeguard the duty on opium grown in Native States; the increase of the price paid to poppy cultivators for all produce delivered at the Bengal opium factories; the formation of a reserve opium stock in Calcutta, whereby the amount of opium sold monthly can be steadily maintained from year to year, instead of fluctuating violently from season to season according as the crop is good or bad; and lately an arrangement with the Chinese Government for the gradual contraction of the export trade.

V.—Pubiic Debt

Extract from the Budget Speech of Finance Member 1925-6:—

30. I devoted a considerable portion of my last year's speech to an analysis of our Public Debt and a sketch of a

programme for systematising our provision for Reduction and Avoidance of Debt. As the subject of our Public Debt was discused at considerable length in this House on February the 17th, there is no need to-day to repeat at length the statement which I then made to the House. It will, however, be convenient I think to include in this speech some of the more important figures. They show some slight variations from the figures previously given being based in certain cases on later information.

Statement showing the Debt of India outstanding on the 31st March 1914, the 31st March 1924 and 31st March 1925.

In India:

(Figures in crores of rupees)

	31st Mar. 1914.	31st Mar. 1924.	31st Mar. 1925
Loans	145.69	358.81	370.18
Treasury Bills in the hands of the public	..	2.12	..
Treasury Bills in the Paper Currency Reserve	..	49.65	..
Other obligations—			
Post Office Savings Banks	23.17	24.79	25.9
Cash Certificates	..	8.42	13.0
Provident Funds, etc.	10.93	39.20	43.16
Total Loans etc.	145.69	410.58	419.23
Total other obligations	34.10	72.41	82.10
Total in India	179.79	482.99	501.93
In England (at Rs. 15 to the £).			
Loans	265.60	366.80	395.33
War Contribution	..	28.90	28.20
Capital value of liabilities undergoing redemption by way of terminable railway annuities	105.90 (=£70,600,893)	90.14 (=£60,095,487)	88.25 (=£58,836,487)
Total in England	371.50	485.84	511.78
Total Debt	551.29	968.83	1013.71

31. The above figures include the debt due by the Provincial Governments to the Government of India, amounting to 97.56 crores on the 31st March, 1924, and 106.95 crores on the 31st March, 1925. The productive debt was 673.59 crores on the 31st March, 1924, and will be 725.15 crores on the 31st March, 1925. The unproductive debt was 295,24 crores on the 31st March, 1924, and will be 288.56 crores on the 31st March, 1925. Exclusive of Provincial Governments' debt, which may also be regarded as almost entirely productive, the increase in the productive debt during the current financial year amounts to 42.17 crores. It is almost entirely accounted for by capital expenditure on Railway development and includes not only the new capital expended during the year, but also the amount of £18½ millions of the East Indian Railway Company's debentures taken over by the Government of India on the termination of the Company's contract. This latter figure, while it represents an addition to the direct obligations of the Government, does not of course represent any addition to the indebtedness of India as a whole, being merely a transfer from the Railway Company to the Government of the liability to meet the same interest charge out of the earnings of the same Railway. Unproductive debt decreased during 1924-25 by 6.68 crores, but the real decrease was larger since to the extent of 1½ crores the nominal total of the debt has been increased by the conversion of 7 per cent. Government of India sterling loan into 3 per cent. stock, a conversion which, while doubling the nominal amount, has the effect of reducing the interest charge on the nominal total from 7 per cent. to 3 per cent. and represents an annual saving in interest.

32. Our internal debt (again excluding Provincial Governments' debts to the Government of India) on the 31st March, 1924, was 385.43 crores and on the 31st March, 1925, will be 394.98 crores. Our external debt was 485.84 crores on the 31st March, 1924, and 511.78 crores on the 31st March, 1925. (For

the purposes of calculation of our external debt I convert sterling at Rs. 15 to the £ in order to facilitate comparison with previous years. I may, however, add that at the present rate of exchange of 18d. the external debt amounts only to 454.92 crores). The increase in our external debt is, however, purely nominal and the explanation of it is the same as that already given in another connection, namely, that the later figure includes 27.75 crores or £18½ millions of East Indian Railway Company's debentures which are not really an increase in the debt of India at all, while a further 1½ crores represent the increase due to conversion of the 7 per cent. loan into 3 per cent. stock. Apart from these nominal changes, we have reduced our external debt during 1924-25, by nearly £2¼ millions.

33. The method which I outlined last year for the regularisation of the provision for the reduction or avoidance of debt has been adopted substantially in the form proposed in the scheme recently announced by the Government of India..... Under that scheme, for a period of five years in the first instance, the annual provision for reduction or avoidance of debt to be charged against annual revenues is fixed at 4 crores a year plus 1/80th of the excess of the debt outstanding at the end of each year over that outstanding on the 31st March, 1923. The provision required under this arrangement for 1925-26 is 4.78 crores, the increase being due partly to the considerable addition to our Permanent Debt as a Government involved in the taking over of £18½ millions of the debentures stock of the East Indian Railway. When it is remembered that the gross amount of the debt owed by the Government of India to its various creditors exceeds 1,000 crores of rupees, a provision of 4.78 crores cannot be regarded as other than modest, amounting as it does to less than half of 1 per cent. of the gross amount.....

VI.—Income and Expenditure in Bombay.

SOURCE:—Bombay 1921-2.

*Before the war the income of the Presidency was 7·9 crores and the expenditure 7·8 crores. During the war expenditure was drastically restricted in order to assist the Central Government in the task of preserving the solvency of the State in the face of the immense military expenditure and as a result expenditure was kept steadily within the income. There were increases in imperial taxation—in income-tax and in customs—but provincial taxation was not disturbed. The steady rise in the cost of living had to be met by corresponding increases in the pay of Government servants and the cost of administration generally went steadily up without a corresponding natural rise in the normal sources of revenue, the most important of which is Land Revenue. This varies according to season but apart from seasonal vicissitudes does not increase rapidly. In 1914-15 Land Revenue produced 5,11 lakhs; in 1920-21 it fell to 490 lakhs. In 1921-22 Revenue amounted to 12,35 lakhs and expenditure to 13,75 lakhs. Expanding sources of revenue such as Income Tax and Customs go to the revenues of the Central Government.

Excise revenue increased from 2,20 in 1914-15 to 3,83 in 1920-21. The increase was due to higher taxation and not to increased consumption; the consumption of country liquor in 1914-15 was 25½ lakhs of gallons and in 1920-21, 28·4 lakhs of gallons. The revenue from stamps rose to 170 lakhs from 81 in 1914-15.

Forests yielded 47 in 1914-15, 155 lakhs in 1918-19, and 87 lakhs in 1920-21.

Expenditure on general administration rose from 21 lakhs to 42 lakhs due to increased salaries and the growth of the establishment which the increasing volume and complexity of administration has rendered necessary. The cost of the

* Pages 45-6.

administration of justice rose to 80 lakhs from 58 and the expenditure on education from 83 to 1,83 lakhs, medical relief from 18 to 57 lakhs, Public Health from 6½ to 24 lakhs, Agriculture from 12½ to 28 lakhs, Civil Works from 1,13 to 2,42. The percentage increases were Medical 280 per cent., Public Health 400 per cent. and Agriculture 225 per cent.

CHAPTER XI

Land Revenue.

I.—General Features of the Land Revenue System

Extract from the Moral and Material Progress Report 1913:—

The land revenue of modern India is a form of public income derived from the immemorial custom of the country. In its primary shape it was that portion of the cultivator's grain-heap that the State annexed for the public use, and this crude method of realising the bulk of the State income appears to have been practically the only method in force throughout the greater part of India until the sixteenth century. . . . Under the Mughal rule, cash payments—fixed, when possible, for a period of years—were to a large extent substituted for payment in kind; but under later rulers the collection of land revenue became practically little more than a disorganised scramble for the greatest amount of income that could be wrung from the land. As the several provinces came under British control, their assesments were gradually reduced to order, the systems selected being at first tentatively adopted according to the varying circumstances of the different tracts, and becoming more and more crystalised as time went on.

Zamindari and Rayatwari Tenures.—A number of different systems were thus evolved on lines that were for the most part mutually independent. It is usual to differentiate them roughly on broad lines according to the status of the person from whom the revenne is actually demanded. When the revenue is assessed on an individual or community owning an estate, and occupying a position identical with, or analogous to, that of a landlord, the assessment is known as Zamindari; when the revenue is assessed on individuals who are the actual occupants, or are accepted as representing the actual occupants of smaller holdings, the assessment is known as Rayatwari. The distinction has its historic origin in the varying degrees in which, in different parts of the country, tribal occupation of

territory had superseded the rights of the ruler, or full proprietary rights had been granted to the individual. Under Zamindari tenure the land is held as independent property; under rayatwari tenure it is held of the Crown in a right of occupancy, which is, however, under British rule, both heritable and transferable. Under either system there may be rent-paying sub-tenants. The Zamindari or landlord system prevails in Bengal, the United Provinces, the Punjab (proprietary cultivating communities), and the Central Provinces—over rather more than a half of British India altogether—and the rayatwari, or peasant proprietary system in Bombay, Madras, Assam, and Burma. In the Punjab and the United Provinces the present tendency is for co-sharers to divide their responsibilities and become directly responsible to Government for their separate shares.

PERMANENT AND TEMPORARY SETTLEMENT.—A second general distinction is that between the areas in which the assessment is permanently fixed and those in which it is fixed for a period of years only. In 1793 the assessment in Bengal was declared to be fixed in perpetuity, and the settlement then made, with some subsequent additions, constitutes what is known as the Permanent Settlement of Bengal. Shortly afterwards the permanent system was extended to the Benares districts (now in the United Provinces) and to certain portions of the Madras Presidency. Under these arrangements, areas making up altogether about one-fifth of British India are permanently settled.

In the remaining areas assessments are fixed for a period of years, the ordinary term at the present time being 30 years in Bombay, Madras, and the United Provinces, and 20 years in the Punjab and Central Provinces. In backward tracts, such as Burma and Assam, and in exceptional circumstances, such as exist in Sind, shorter terms have hitherto been permitted, but the 20 years period is being adopted in Burma and Assam.

The general features of the land revenue administration, whether Zamindari or Rayatwari, may be noted under three

heads; (1) the preparation of the cadastral record, (2) the assessment of the revenue, and (3) the collection of the revenue so assessed. The processes coming under the first two heads are known collectively in most provinces as the "settlement" of the land revenue, and the officer who carries them out is known as the "settlement officer". During the last twenty or thirty years the object of shortening and simplifying settlement procedure has been kept steadily in view. Thus each province has a Land Records staff which....keeps the village maps and records up to date and preserves the survey boundary marks, and in other respects changes have been made that help to reduce the volume of work to be undertaken when a settlement is revised. Settlements, or re-settlements, in new or in temporarily settled areas are always in progress. In consequence of the attention now given to the maintenance of the village records, and of improved methods, the process occupies a much shorter period than formerly, and involves comparatively little harassment of the people. The duties of the assessing staff entail a minute local inspection from village to village through large tracts of country, and there are few officers of Government who are thrown more into contact with the people, or have greater opportunities of understanding their wants and feelings than settlement officers. Settlement operations of any importance are now everywhere carried out by members of the Indian Civil Service, or persons of like status, who are placed on special duty for the purpose.

The cadastral Record and Record of Rights.—An essential preliminary to the assessment of land is the preparation of a cadastral map. In Bengal, where the revenue was permanently assessed in 1793, the assessment rests on information obtained without the aid of a survey; but this defect has given rise to inconveniences both fiscal and administrative, and it was found necessary in 1891 to introduce a cadastral survey and record in the Bihar districts in order to regulate the relations of landlord and tenant. In other provinces the

existing assessments are based almost without exception on a field to field survey. The maps were until recently prepared in some instances by the scientific staff of the survey Department; in others the skeleton data alone were so provided, the rest of the work being plotted by a local staff. All cadastral survey work is now done by the provincial land records and settlement departments. A separate map is usually prepared for each "village," the village in India being a tract of land corresponding in someways to the parish in Great Britain. The cadastral map having been completed, the record of holdings is drawn up. This is primarily a fiscal record, the object of which is to show from whom the assessment of each holding is to be realised and the amount in each case. But the determination of the matters is closely bound up with the general question of land tenures and it has been usual to supplement entries in this record, either by additional entries or by a separate record, in such a way as to show to a greater or less extent the existing rights in, and encumbrances on, the land. In most of the provinces where such a record of rights is prepared, it is given by law a presumptive force, being held to be correct until the contrary is proved. Arrangements are now in force in most provinces by which the cadastral records are revised either annually or at short intervals in such a way as to maintain the accuracy of the record, and there is thus being gradually built up a very extensive and complete system of registration of title by public entry.

The assessment of the Land Revenue.—The revenue is levied by means of a cash demand on each unit assessed. Under the zamindari system, the demand is assessed on the village or estate, which may be owned by a single proprietor, or by a proprietary body of co-sharers jointly responsible for payment of the revenue. The demand is a definite sum payable either in perpetuity or for a fixed term of years, during which the whole of any increased profits due to extension of cultivation, enhancement of rents etc., is enjoyed

by the individual landlord or the proprietary body. Under the roytwari system, the assessment is on each field as demarcated by the cadastral survey. It takes the form of revenue rates for different classes of land, which are settled for a term of years : and, as the occupant may surrender any portion of his holding, or obtain an unoccupied field, the total sum payable by him as revenue may vary from year to year. The earliest cash assessments were the equivalents of fractional shares of the gross produce of the land ; but it is unnecessary here to refer to the estimates that have been made of the fractions of the gross produce represented by the existing rates of land revenue, beyond saying that it is clear that Government now takes a very much lower share of the gross produce than was customary in pre-British days. Except in Bombay, where the assessment is not fixed in terms of the produce at all, the revenue throughout India is assessed so as to represent a share, not of the gross, but of the "net produce" (in roytwari areas ; "net assets" in zamindari areas.) The meaning of the term "net produce" or "net assets," as employed for the purposes of assessment, varies in different parts of India. In Northern India and in the Central Provinces it represents the rent, where rent is paid, or that portion of the gross produce which would, if the land were rented, be taken by the landlord. In Madras and Lower Burma, on the other hand, where Government deals as a rule, direct with the cultivator, the net produce is the difference between the assumed value of the gross produce and a very liberal estimate of the expense incurred in raising and disposing of the crop. Speaking generally, the "net assets" represent a larger share of the produce in Burma and Madras, where no middleman intervenes between the peasant proprietor and the Government, than they do in Northern India. There is no hard and fast rule as to the proportion of the net assets to be taken as land revenue but approximate standards, which differ somewhat from province to province, are laid down in the instructions to assessing officers. For India as a whole it may

be said that the standard share of the calculated net assets or produce to be taken by Government is approximately one-half. Apart, however, from the fact that the net produce is usually calculated on very moderate lines, the share actually taken is more frequently below than above one-half. In the application of standard rates to individual cases, considerable play is given to the working of local considerations and to the judgement and discretion of the assessing officer.

The distinguishing and essential feature of the assessments of Bombay is that they rest on the principle of adhering to what are known as "general considerations" rather than to statistical calculations of the net produce. The factors taken into account include the nature of the soil, the economic conditions of the tract, the past revenue history, prices, and the selling, letting, and mortgage value of the land.

The general rule that the assessment is (for the term of a settlement) a fixed cash is subject to some modification in precarious tracts, in regard to which the principle of a fluctuating assessment, by which the demand fluctuates year by year has been accepted and applied to some extent by most local Governments. The fluctuating assessment usually takes the form of acreage rates on the areas sown or matured in each harvest, the rates so imposed being, like the fixed lump assessment, unchangeable for a period of years.

In Madras there are "season remission rules" the effect of which is to adjust the revenue demand to some extent, particularly in the case of irrigated fields, to the character of the crop grown in a particular season.

Various provisions are made in the different provinces for exempting from assessment, either permanently or for a term of years increases of income due to improvements such as wells, tanks, and embankments made by private individuals; for the grant of favourable terms to cultivators who take up and clear waste land; for the avoidance of sudden enhancements of the land revenue demand: and for the relief from over-assessment

of holdings which have suffered deterioration since they were assessed.

THE COLLECTION OF THE REVENUE.—Little of a general nature need be said as to the collection of the revenue. Owing partly to the prevailing lack of capital among the agricultural population, the land revenue is generally recovered not by a single annual payment, but in instalments, the dates and amounts of which are fixed to meet local circumstances. For the recovery of sums not paid by due date the Government has extensive powers conferred by law.....

SUSPENSIONS AND REMISSIONS. It has been mentioned above that the rigidity of fixed assessments has been modified, and the demand of each year apportioned more closely to the outturn from which that demand is paid, to some extent, by the adoption of fluctuating assessments. In areas that are under a fixed assessment, although that assessment represents an amount fairly payable on an average, experience has shown that the landholder cannot be counted on to lay by in good seasons enough to meet the revenue demand in very bad years, and it has been customary of last years in most provinces to grant with greater freedom, as necessity arises, a postponement of the whole or part of the demand on a harvest, and even, in cases where ultimate recovery would entail real hardship, to allow an absolute remission of the demand.....

II.—History of Land revenue System.

i Land Revenue before the British Rule :—

SOURCE :—Extract from the Moral and Material Progress Report 1882.

" By Hindu law and practice in times previous to the subjugation of India by the Muhammadans, the king or ruler of any territory, whether a great monarch or a petty chief, was entitled to a share of the produce of cultivated land. This was generally converted by the Muhammadan conquerors into a cash tax or rent. The most extensive measure which effected this change was the celebrated settlement of Akbar. It was

based upon a field survey, and its principle was the assessment of the value of each field in cash. The assessment was fixed at one-third, or in some places apparently at one-fourth, of the average gross produce of the field, according to the average prices obtaining over a series of preceding years. The assessment thus ascertained was fixed for ten years, during which period the cultivator was to have the full returns of his own improvements, and was then liable to revision on similar principles. In joint villages, the community was mutually responsible for the total revenue assessed on the village lands. By the reign of Aurangzeb, the land revenue appears to have been administered on principles more or less closely resembling those introduced by Akbar over the greater part of the territories under the direct administration of the Mughal Emperors or their deputies. In Bengal, however, the revenue was generally collected by contractors, sometimes the representatives of ancient chiefs, sometimes mere speculators. And in Southern India, which did not come under Musalman rule till a late period, the ancient Hindu principle as to the right of the ruler to an actual share of the produce, usually a very large one, was generally maintained. But the cultivators were often required to pay in cash the value of that share at rates annually fixed with reference to the current prices of produce.

"The enlightened system of Akbar did not survive the break-up of the Mughal Empire. During the period of anarchy which lasted from the death of Aurangzeb till the commencement of the present century, every power which became predominant, and especially the conquering Marathas, endeavoured to extort the utmost possible from the landowners or cultivators. To better effect this object, the farming, or, in the technical sense of the word, the Zamindari system was extensively employed throughout almost all India.....

ii **Bengal: The Permanent Settlement.**

SOURCE:—Extract from the Moral and Material Progress Report 1882.

The diwani or financial administration of Bengal was conferred upon the East India Company in 1765, but at first

the native system of Government was left without interference. In 1772, Warren Hastings was appointed Governor, with express orders to manage the revenue by the direct agency of the Company's servants. His first step was to grant a lease of the land revenue for five years at the amount already fixed, with the intention of conducting in the meantime an elaborate inquiry into the resources of the country. As a matter of fact, this enquiry was never carried out; dissensions in Council, and the pressure of foreign affairs, diverted Hastings from giving adequate attention to the administration of the revenue. When the five years' lease expired in 1777, it was renewed on the best terms available until the Decennial Settlement of Lord Cornwallis in 1789. Lord Cornwallis had received instructions from the Court of Directors to make a settlement for ten years, with a view to its being ultimately fixed in perpetuity. The chief advocate for a permanent settlement had been Francis, the great rival of Hastings; but the credit of determining the assessment belongs to John Shore (afterwards Lord Teignmouth), who, however, strenuously argued that it was premature to fix it for ever. The Decennial Settlement, as it was called at first, was made in 1789, and declared permanent, by authority of the Court of Directors, in 1793.....

iii. **Madras—The Rayatwari System.**

SOURCE:—The Moral and Material Progress Report 1882.

The first territorial acquisition placed under Fort St. George or Madras was the tract known as the Northern Circars, which was ceded by the Emperor of Delhi in 1765. The land was found to be divided into two classes, ZAMINDARIS or large estates owned by powerful hereditary chiefs, and (2) HAVELI, or Crown demesnes. The zamindaris remain for the most part to the present day, having been assessed in 1802 at a peshkash or

'permanent tribute.' The haveli lands were in the same year parcelled out into estates of convenient size, called MUTAS, each yielding from £350 to £1,750 of annual revenue, which were permanently assessed and then sold in full proprietorship to the highest bidder at auction. Most of these MUTAS have since lapsed to Government for nonpayment of arrears, and are now become rayatwari. The tract round Madras, formerly known as the jagir (now Chingleput District), was ceded by the Nawab of Arcot in 1750 and 1763, but was not placed under British administration until 1794. In that year a settlement was made with the village communities which, under the name of MIRASI, were found to be strongly organised. But shortly afterwards the precedent of the Bengal Permanent Settlement made itself felt. In 1802, all the villages were distributed among 61 MUTAS, paying from £700 to £1,750, and sold at auction subject to an assessment in perpetuity. Here, again, the MUTAS have now become rayatwari though the mirasidars or village proprietors still cling firmly to their ancestral privileges.

RAYATWARI SYSTEM. The greater part of the present area of the Madras Presidency was acquired by conquest from Mysore in 1792 and 1800, and by cession from the Nawab of Arcot in 1801. As in the Northern Circars, hereditary chiefs of various origin, called in the south PALIGARS, were found in possession of considerable tracts of country. Many of these PALIGARS resisted British authority, and were only subjected after a long and harassing war. Others accepted permanent settlements at a low assessment of about one-third of their estimated revenue; and their descendants are now in the same position as the old Zamindars in the Northern Circars. The rest of the country was settled in different ways at different times. The first attempt at the modern rayatwari system was made in 1792 in the tract then known as the Baramahal, comprising the present District of Salem and part of Madras. A Commission was appointed of which Captain Read was the chief, and Munro (afterwards Sir Thomas) one of four subordinate members. They effected a rough survey of the land, and made a

settlement with the rayats or actual cultivators of the soil at rates averaging about 3 s. an acre. In 1802, the artificial system of MUTAS was introduced into the Baramahal, but with no more success than elsewhere, and rayatwari was shortly afterwards restored. Meanwhile, Munro passed on in 1800 into Malabar and Kanara, where he introduced a system analogous to rayatwari, so far as the traditional tenures of the people would permit; and a few years later he settled the Ceded Districts (Bellary and Cuddapath) also on the rayatwari principle. At about this time, the village system had been tried in several of the Southern Districts, beginning from 1808; while the zamindari system continued to prevail in the north. In 1817, however, the Court of Directors issued final orders that rayatwari should be adopted wherever practicable; and Munro, the great advocate of RAYATWARI, was appointed Governor of Madras in 1820.....

iv. Land Revenue System in Bombay.

SOURCE:—(1) The Decennial report on Moral and Material Progress 1882.

(2) Bombay Government's note on Land Revenue 1915.

The old settlement.

(1) *The characteristics of land administration in Bombay is that form of Rayatwari known as the "survey tenure" which dates from 1825. The greater part of the Presidency was acquired in 1818, on the downfall of the Peshwa; and the early efforts of British rule were no more successful here than in other parts of India. The first attempt at regular settlement, which was conducted in the Deccan by Mr. Pringle, resulted in complete failure. This settlement was based upon a survey, left entirely to native agency, an elaborate calculation of the gross and net produce, and an assessment fixed at 55 per cent. of the net produce. But the survey was inaccurate, the calculations of gross produce were equally erroneous, and

*Moral and Material Progress Report 1882.

the actual assessment was much higher than the cultivators could afford to pay. In addition the prices of grain fell heavily during this period. The result was that the nominal revenue was never exacted, and land rapidly began to go out of cultivation.

(2) *It was when matters had reached this crisis that, at the end of 1835, an examination and correction of the operations of Mr. Pringle's survey in the Indapur taluka of the Poona Collectorate were ordered in view to a revision of the settlement in that district. The duty of conducting the work was entrusted to Mr. Goldsmid of the Civil Service, then an Assistant Collector, and Lieutenant Wingate of the Engineers. With these gentlemen Lieutenant Nash, of the Engineers, was subsequently associated. This was the real commencement of the revenue survey in the Bombay Presidency....An entirely new method of classification was adopted....Soils were divided into 9 classes based primarily upon their depth and quality of texture, and by a process of field classification which comprised an examination of the soil of each field for depth and quality, all the fields within the talukas were assigned to one of these classes.

Introduction of the new system, 1835.

An assessment rate was then assigned to each soil class by visiting fields of each of the nine kinds of soil, and determining with the assistance of those best skilled in agriculture and by the knowledge and judgment they themselves possessed, what assessment, after taking into consideration the uncertainty of rain and all other circumstances, an acre of each sort of soil could bear, and applying rates thus fixed to returns, prepared and checked with the greatest care, of the quantity of soil of each sort existing in each field."

The assessment so determined was then guaranteed for thirty years, the cultivator being absolutely secured against any additional assessment on account of any improvements he might make to his holding during its currency.

The system was frankly empirical, but the results showed the wisdom of the course taken....A marked extension of

*Extract from Bombay Government's Note.

cultivation was one of the immediate results of the settlement, nearly 68,000 acres of waste land having been brought under the plough by the end of the second year.

EXTENSION OF SURVEY OPERATIONS:-The Indapur experiment having proved thus signally successful the survey operations were rapidly extended to other districts, the same results following everywhere....As experience was gained, improvements were introduced in the methods of procedure....The main improvements so introduced were:—(a) the improvement of survey methods and the gradual evolution of an accurate village map; (b) the permanent demarcation of the fields by official boundary marks (usually large earthen mounds) at the corners by which the survey was stereotyped; (c) improvements in the details of field 'classification' and particularly the evolution of system of classification for application to irrigated lands, such as land watered from wells, tanks or dams, and rice lands by Lieutenant Davisson and Mr. Frazer Tytler; (d) improvements in methods of assessment by the collection of large bodies of statistics and closer inquiry into agricultural conditions.

THE JOINT REPORT. 1847.—But it was not till 1847 that a definite and permanent form was given to the system of survey operations. In that year, in accordance with the orders of government, the superintedents of the three surveys met at Poona, and drew up a Joint Report....The Superintendents, besides defining the objects of a revenue survey, and the general principles on which the assessment of land should in their opinion, be conducted, submitted a body of rules for definition and demarcation of fields, the settlement of boundary disputes, the classification of soils, the interior regulation of surveys and the administration of settlements, which, having received the approval of government, became an authoritative Manual for the conduct of all future survey operations.....

FURTHER EXTENSION OF THE SURVEY. 1854.—In 1854 the new survey was extended to Gujarat and Konkan districts and was

slowly extended over the whole Presidency till the last taluka Devgad of Ratnagiri was brought under its operation in 1891. Long before that time, however, the first surveyed talukas fell in for the revision of their assessment on the expiration of the period of 30 years' guarantee, beginning with Indapur in 1868. From that time original and revision settlements proceeded pari passu.....

(3) * The province of Sind has a land system of its own, though since 1862 the main features of the Bombay survey have been introduced. The prevailing tenure is peasant proprietorship, with holdings seldom exceeding 10 acres, though there are also some large landlords or Zamindars. The village community can hardly be said to exist. Under native rule the revenue was universally paid in kind, according to the system known as batai, which was continued during the early years after British conquest. In 1847, a seven years' settlement was effected, based upon a measurement of crops and a commutation price for the rayatwari holdings, and upon a gross assessment for the zamindari estates. When this expired in 1853-54 a rough survey was commenced, upon which it was intended to base a regular settlement. By 1862 about one-third of the Province had been measured, at a total cost of £85,000; but no assessments had been attempted. In that year a settlement officer was introduced from Bombay, and the department began in 1863-64 the operations now known as the original settlement. The only classification of soils was into four kinds, differing according to the proportion of sand, and liable to be degraded by the presence of "faults." A more important principle of classification was founded upon the nature of the water supply, for Sind is a rainless country where agriculture depends absolutely on irrigation from the river Indus. The three main classes of water supply are natural flooding, flow by gravitation through canals, and lift by Persian wheel from canals. In each class the certainty of the flood, the constancy of the flow, and the expense of the lift had to be taken into

* Extract from the Moral and Material Progress Report in 1882.

consideration. The chief difficulty in Sind has been to determine the question of fallow or waste land. Under the original settlement of 1863-64, large "survey numbers" were formed with the object of including a sufficient proportion of waste and a low rate of assessment was fixed for the whole, so that the holder could afford to leave a proper amount fallow year by year. But in the result it was found that the holder preferred to cultivate the entire survey number at once until it was exhausted, and then took up fresh land out of the waste which had to be roughly surveyed and assessed for the purpose; the revenue thus suffered in two ways, first, from the original low assessment, and second, by the laxity that attended the summary assessment of the land. Accordingly a new system was introduced for the revision settlement, under which the survey numbers are small and a full rate of assessment is imposed upon them, reserving to the holder a right of lien over his fallow fields without any payment of revenue.

v **United Provinces.**

SOURCE:—The U. P. Administration Report 1921-2.

In 1788 Mr. Jonathan Duncan was authorised to amend the system of revenue management in the Benares division, which was oppressive and caused much distress; the revenue was simply levied at the highest sum which any body would offer. He obtained valuations of the produce of parganas and fixed standard rates for different classes of soil. His summary settlement was carefully revised with a view to making the demand permanent and after a few corrections was declared unalterable by Regulation I of 1795.

It was at first desired to introduce a similar permanent settlement in what is now the province of Agra. But the Court of Directors refused to sanction a permanent settlement, and short term assessments continued. The system was far from satisfactory....And in 1807 a special commission was appointed to supervise the settlement, which grew into the

Western Board of Revenue. Matters improved with each successive settlement, but the collectors could deal only with persons actually in possession and the courts were not numerous enough, nor able, to cope with claims to recover possession.....

MR. MACKENZIE'S MEMORANDUM OF 1819 AND REGULATION VII OF 1822.—Mr. Holt Mackenzie brought matters to a head in 1819 in a remarkable memorandum which covered the whole ground and once more urged the need of a permanent settlement. Though the Directors refused again to commit themselves to this, they approved of his suggestion for a complete inquiry, and the result was Regulation VII of 1822.... Though the Regulation marks the first advance towards a systematic assessment on the rental assets of each village, it involved most elaborate and minute inquiries, and in 1820 the Board went so far as to describe the system as unworkable.... At last the matter was focussed by Lord William Bentinck's minute of the 26th September, 1832.

REGULATION IX OF 1838.—In this minute he laid down seven principles of action.....These principles were accepted by Regulation IX of 1833 which laid down the new procedure. Village maps, a field book, a rent roll, and statements of the revenue demand, receipts and balances were drawn up, and the revenue demand was fixed on a consideration of these papers. Incidentally, the Regulation created the appointment of deputy collectors.

FIRST REGULAR SETTLEMENT:—On these lines the first regular settlement was completed by Messrs. Bird and Thomason between the years 1833 and 1849 and was confirmed for 30 years. Its results may be summarized as follows:—

(1) Settlement was made wherever possible with village proprietors; and the rayatwari system of Bundelkhand was replaced by a zamindari system with joint responsibility. In the eastern districts the subordinate proprietors or BIRTIAS were given full propietary rights. The taluqdar generally disappeared

save in rare cases where the village proprietors desired the connection to continue, in which case their payments to him were fixed; elsewhere the taluqdar received a rent charge or MALIKANA; originally fixed at 18 per cent. on the assets. The taluqdari system is now rare in Agra.

(2) Hereditary tenants, and tenants, who had resided and cultivated in the same village for 12 years, were given rights of occupancy when they claimed them, or even when they did not claim them, if the local officer thought they might have done so.

(3) The assessments were on the whole moderate; though they amounted on an average to 66 per cent. of the rental assets.

SAHARANPUR SETTLEMENT:—In 1855 were issued the Saharanpur rules of Mr. Colvin, then Lieutenant Governor. This modified the proportion of the assets taken by Government to about 50 per cent; the assets were to be the "well ascertained" net average assets, after consideration of other data, though time was not to be wasted in "minute and probably fruitless attempts to ascertain exactly" the amount of such assets. The passage is somewhat confusing and certainly has given rise to some confusion; but at all events this standard is still in force, though it is applied with increasing moderation, and today it is exceptional to take a full 50 per cent. assessment. The term "net assets" has also been restricted to the assets as actually existing at settlement and no allowance is made for prospective increase of values.

FIRST SUMMARY SETTLEMENT OF OUDH:—When Oudh was annexed in 1856 Lord Dalhousie decided to introduce the system of settlement with the village proprietors.... After the mutiny, however, Lord Canning reverted to a taluqdari settlement.

SECOND SUMMARY SETTLEMENT OF OUDH:—The result was the second summary settlement of Oudh in 1858, by which the taluqdars were given full proprietary rights in all the villages which they held at annexation and the gift was confirmed by sanad.

SECOND REGULAR SETTLEMENT IN AGRA.—In the second regular settlement there were various improvements. As stated above the assessment had been based upon the average rental assets, but the patwari's papers were still far from reliable and the assets were calculated on the rates of rent actually found to be paid in the locality. The soils were now classified, at first field by field, but afterwards (1868) by a system of demarcating blocks of soils, and standard rates of rent were fixed for each class. The assessment was based upon this estimated rental, which might be higher than the amount actually paid, but represented the sum which could be realised.

PROPOSALS FOR A PERMANENT SETTLEMENT.—The idea of a permanent settlement was revived in 1860 as a consequence of Colonel Baird Smith's report on the famine of that year. The discussion was long, and meantime it was discovered that in some parts the rents were rising rapidly, whilst elsewhere they were so low that no assessment on the rates of neighbouring tracts would have been possible. A financial crisis turned all concerned against the proposal and in 1874 the question was shelved. In 1882 proposals were made for a scheme whereby enhancement of revenue would only be possible in case of an increase in the area under cultivation, a rise in prices or an increase in production due to improvements made at Government expense. The scheme was considered impracticable and finally rejected in 1885.

THIRD REGULAR SETTLEMENT.—The discussion, however, led to a simplification of procedure. Steps were taken to provide for more careful preparation and check of the patwari's record so as to form a reliable basis of assessment, and revised rules were issued in 1884-86. The change lay in the fact that whilst the circle rent rate, ascertained by inquiry and selection, had formerly been the basis of assessment, the actual rent roll now became that basis and the circle rent was used as a check. At the same time (as already mentioned) all consideration of prospective increase in value was definitely

excluded from the assets, and concessions were made to private individuals for improvements made by them. The method of survey and revision of records was materially cheapened, and the principle that existing settlements should be continued where no substantial enhancement was likely to occur was accepted. The settlement of a district now takes 2 or 3 years instead of from 6 to 10 years.

vi The Punjab.

SOURCES:—(1) Extract from the Moral and Material Progress Report 1882; (2) Extract from the Moral and Material Progress Report 1913.

The earliest regular settlements are those of the Delhi and Hissar Divisions, made between 1836 and 1847, when this tract still formed part of the North-West Provinces. The rest of the Punjab was summarily settled immediately after annexation for short terms. The assessment then made was based upon the Sikh collections in grain, converted into money at ruling prices. But a rapid fall in prices followed, and large reductions had to be made. A regular settlement was made between 1846 and 1855 of the territories annexed after the first Sikh War. The general result was to reduce still further the earlier summary assessments. The frontier districts on the Indus were regularly settled for the first time between 1868 and 1880. The first regular settlement was for various terms, from 10 to 30 years.....It is one of the characteristics of the Punjab system to regard settlement not as a unique process, but as one of the ordinary duties of administration, performed by a special staff. It is assumed that districts will continue to come up for settlement in the future with such regularity as to keep five settlement parties continually employed.

(2) In the Punjab as in Bengal and the United Provinces, the system of land tenures is that known as zamindari. The zamindars in an estate are technically bound by a common responsibility towards Government in the matter of the land revenue, but the tendency is towards individualism, and with

lighter and more elastic assessments the enforcement of collective responsibility has become practically obsolete. In practice the owner, or owners, of each holding is, or are, assessed separately. The term of a settlement is now usually 30 years in the case of fully developed districts, and 20 years where conditions are less advanced. There has been a considerable extension in recent years, especially on river-side areas and in rainless tracts of the Western Punjab, of the "Fluctuating" system of assessment, under which the fixed cash assessment is replaced by cash acreage rates on the actual area cropped at each harvest. The assessment is calculated on the net "assets," but competition rents are rarely paid in cash, and in the more usual case of kind-rents the value of the "assets" can be arrived at only after a number of elaborate and somewhat uncertain calculations as to prices, yields, etc. Although, therefore, the standard of assessment is represented, as in the United Provinces, by one-half the net "assets," the standard is looked upon not as determining the average assessment, but as fixing an outside maximum. The assessments in the Punjab have generally been noted for their moderation. A return laid before Parliament in 1908 gave in detail the results of settlement operations in the Punjab from 1855 onwards. It showed that the rate of land revenue per cultivated acre, measured in rupees had not varied much, and that its incidence measured in gold had therefore greatly decreased.

vii The Central Provinces.

Extract from the Moral and Material Progress Report 1882:—The land system of the Central Provinces, though based upon that of the North-West, out of which the new administration was constituted in 1861, possesses many peculiar features, due to its history, its geographical position, and its backward state of cultivation. In that portion known as the Sagar and Narbada territories, which was acquired in 1818, a series of summary settlements continued until 1834, when a regular settlement, for 20 years was undertaken. Nagpur proper, which lapsed to the British in 1853, was at first settled from year to year in the same way. All these early assessments erred by attempting to exact too much from a country that

had been laid waste by the Mahrattas. The first general settlement of the whole Province was begun in 1859 and finished in 1869.....The field survey was conducted by native amins and patwaris, as in the North-West; the principle of assessing at one-half the "assets" or estimated rental was also adopted from the North-West; the determination of all rights by the settlement officer and not by the civil courts is identical with the Oudh and Punjab system. One peculiarity of the Central Provinces is that the professional Revenue Survey did not precede but followed the ordinary operations of settlement.

TENURES.—The land tenures of the Central Provinces exhibit the result of the confusion caused by the Mahrattas. The prevailing system is neither Zamindari as in Bengal, nor based upon the Village community as in Northern India, nor rayatwari as in the South; but a mixture of all three. It is best described as MALGUZARI, a term which implies merely that the settlement is made with those persons (whoever they may be) by whom the revenue had formerly been paid. In some cases these are zamindars proper or landlords of large estates, preserved from partition by the custom of primogeniture. Sometimes they are talukdars (locally called tahutdars), whose proprietary right is limited by the rights of inferior tenure-holders. Most of them, however, are either village head-men or mere farmers of the revenue, upon whom a proprietary right has been conferred by the settlement. Where the village head-men are representatives of a coparcenary community, the Zamindari and pattidari tenures of the North-West exist. But in the majority of cases the malguzar is an individual landlord, whose rights against the cultivators are regulated by law and not by custom.....

III.—Land Revenue a Rent or a Tax

Extract from Indian Revenue in British India by Baden Powell:—It is fruitless to discuss exactly what the oriental institution of a land Revenue is—whether a land tax, a rent or

what. Certainly it bears very little resemblance to the land tax in England. At one time the tendency was to regard the ruler as the ultimate landlord or owner of the soil: the revenue was then called a rent. We shall have something to say about this hereafter; at present it will only be necessary to note that the British Government has everywhere conferred or recognized a private right in land, and in large areas of the country (Bengal, Oudh and the whole of Northern India for example) it has expressly declared the proprietary right of the landlords and the village owners. It is then impossible any longer to say broadly that the State takes a rent from the landholders regarded as its tenants. There are no doubt cases where Government is the immediate owner of particular lands, as it is of all waste and unoccupied land in general; but we are speaking of cultivated land in village and estates. The Government is certainly not owner of this; the utmost it does is to regard the land as hypothecated to itself as security (in the last resort) for the Land Revenue assessed on it. The Government also fulfils some of the functions of a landlord, inasmuch as it watches over the welfare of the agricultural population, it advances funds to landholders to help them in making improvements, well-sinking, embanking, draining and the like. It is these vestiges of the landlord character claimed by the former rulers, and perhaps the sort of residuary right which the Government still has in provinces where the landholders are called 'occupants' and not 'owners' that keep alive the question whether the Land Revenue is in any sense a rent. Practically the discussion is a profitless war of words, and we may be content to speak of the 'Land Revenue' as a thing per se. It operates as a tax on agricultural incomes—a contribution to the State out of the profits of land-cultivation, just as the income-tax is a contribution out of the proceeds of other industries and occupations.

IV.—Permanent Settlement.

(1) PERMANENT SETTLEMENT VS. TEMPORARY SETTLEMENTS

Extract from the Imperial Gazeteer Vol IV:—The respective merits of the two systems have been a good deal discussed....On the one hand, it is contended that the Government has lost and is losing an enormous revenue owing to the permanent settlement; that if a temporary settlement were substituted for it, the Government would now be entitled to a revenue of at least 9 crores of rupees per annum from the permanently settled tracts or double the existing demand; that the indirect benefits claimed for the permanent assessment far from compensate for this direct and material loss; that the relative incidence of the revenue, even if approximately fair in 1793, has become grossly unequal in the course of the last hundred years; that the rest of India has to be taxed more heavily in order that Bengali landlords may continue to enjoy purely unearned increment; that if India had been under representative government, the permanent settlement would long ago have been abolished; and that the state is justified in rescinding on behalf of the general taxpayer an obligation which has proved to be contrary to the public weal. On the other side, it is urged that if a permanent settlement were extended to the temporarily settled tracts, the expense and harassment of the present assessment operations would be avoided: that there would be no temptation to abandon cultivation on the approach of a revision of settlement in order to reduce the ostensible 'assets'; that the accumulation and investment of capital would be directly encouraged; that the people would lead a fuller and more contented life; and that the indirect benefit thus accruing in the future would more than compensate for the immediate loss of revenue.

(2) PERMANENT SETTLEMENT AND FAMINES.

Extract from the Government of India Resolution on Land Revenue Policy 1902:—At an earlier period the school of thought that is represented by the present critics of the Government of India, advocated the extension of the Permanent Settlement throughout India; and although this panacea is no longer proposed, the Government of India are invited by Mr. Dutt to believe that had such a policy been carried into effect 40 years ago, "India would have been spared those more dreadful and desolating famines which we have witnessed in recent years". It is also stated by the latter in his letter upon Land Settlement in Bengal that in consequence of the Permanent Settlement in that province the cultivators are more prosperous, more resourceful, and better able to help themselves in years of bad harvest, than cultivators in any other part of India, that agricultural enterprise has been fostered, cultivation extended, and private capital accummulated, which is devoted to useful industries, and to public works and institutions. The hypothetical forecast above recorded is not rendered more plausible to the Government of India by their complete inability to endorse the accompanying allegations of fact. Bengal, and particularly Eastern Bengal, possesses exceptional advantages in its fertility, in its comparative immunity from the vicissitudes of climate to which other parts of the country are liable, in a practical monopoly of the production of jute, and in the general trade and enterprise which radiate from its capital city. But neither these advantages nor the Permanent Settlement have availed to save Bengal from serious drought when the monsoon failure, from which it is ordinarily free, has spread to that part of India.

FAILURE OF THE PERMANENT SETTLEMENT TO PREVENT FAMINE.—Omitting to notice the frequent earlier famines, that known as the Behar famine of 1873-74 (so called from the part of the Bengal Province most seriously affected) cost the State £6,000,000; while it can be shown that in the famine of 1897 there were at the height of the distress considerably more than $^3/_4$ million persons on relief in the permanently settled districts

of Bengal, and that the total cost of that famine to the Bengal Administration was Rs. 1,08,04,000, or £720,266 (as compared with a famine expenditure of Rs. 98,28,000 or £655,200, in Madras, and Rs. 1,26,37,000, or £842,466, in Bombay), and this although the daily cost of relief for each person was less (Re. ·081 in Bengal as compared with Re. ·104 in Madras and Re. ·106 in Bombay). If the figures of persons in receipt of relief in the permanently settled districts of Western Bengal were compared with those of the adjoining temporarily settled districts of the North-Western Provinces, where the conditions were closely similar, it would also be found that the percentage was more than half as high again in Behar as in the North-Western Provinces. The Government of India indeed know of no ground whatever for the contention that Bengal has been saved from famine by the Permanent Settlement, a contention which appears to them to be disproved by history; and they are not therefore disposed to attach much value to predictions as to the benefits that might have ensued had a similar settlement been extended elsewhere.

Its influence on the condition of the tenantry in Bengal. As regards the condition of cultivators in Bengal, who are the tenants of the landowners instituted as a class in the last century by the British Government, there is still less ground for the contention that their position, owing to the Permanent Settlement, has been converted into one of exceptional comfort and prosperity. It is precisely because this was not the case and because, so far from being generously treated by the zamindars, the Bengal cultivator was rack-rented, impoverished, and oppressed, that the Government of India felt compelled to intervene on his behalf, and by the series of legislative measures that commenced with the Bengal Tenancy Act of 1859 and culminated in the Act of 1885, to place him in the position of greater security which he now enjoys. To confound this legislation with the Permanent Settlement, and to ascribe even in part to the latter the benefits which it had conspicuously

failed to confer, and which would never have accrued but for the former, is strangely to misread history. As for the allegation that the Permanent Settlement has been the means of developing in Bengal an exceptional flow of public spirited and charitable investment, while the Government of India are proud of the fact that there are many worthy and liberal-minded landlords in Bengal—as there also are in other parts of India—they know that the evils of absenteeism, of management of estates by unsympathetic agents, of unhappy relations between landlord and tenant, and of the multiplication of tenure-holders, or middlemen, between the zamindar and the cultivator in many and various degrees—are at least as marked and as much on the increase there as elsewhere; and they cannot conscientiously endorse the proposition that, in the interests of the cultivator, that system of agrarian tenure should be held up as a public model, which is not supported by the experience of any civilised country, which is not justified by the single great experiment that has been made in India, and which was found in the latter case to place the tenant so unreservedly at the mercy of the landlord that the State has been compelled to employ for his protection a more stringent measure of legislation than has been found necessary in temporarily settled areas. It is not in fine in the Permanent Settlement of Bengal that the ryot has found his salvation; it has been in the laws which have been passed by the Supreme Government to check its license and to moderate its abuses.

V. Tenant Right.

Extract from Moral and Material Progress Report 1913:—By the ancient custom of India the occupiers of the soil had the right to retain their holdings, so long as they paid the rent or revenue demandable from them. In Southern India, where most of the land is held by petty occupiers direct from the State, this custom has been respected from the beginning of British rule; and in both the permanently and temporarily settled districts of Northern India a considerable degree of

protection has now been given to the tenants or ryots. Upto 1859 tenant-right had not been adequately safeguarded by law, and for the great Province of Bengal the Court of Directors reported in 1858 that "the rights of the Bengal rayats had passed away SUB SILENTIO, and they had become, to all intents and purposes, tenants at-will". Since 1858 laws have been passed which make the petty occupiers of Madras, Bombay, Burma, and Assam proprietors of their holdings, subject to the payment of a moderate land revenue; and the petty proprietors are protected against future enhancements of land revenue on account of improvements effected by themselves. For nearly every other province in India laws have been passed securing tenant-right to all occupiers of any standing, prohibiting eviction or enhancement of rent save by consent or by decree of Court on good cause shown, and granting the ryots power to bequeath or sell their tenant-right.

The extent and character of the tenant-right declared or created by these laws vary in the different provinces; tenant-right is strongest in the Central Provinces, where the old land tenures were not very unlike the petty proprietorships of Bombay; it is less important in the Punjab, where the bulk of the land is occupied by proprietary brotherhoods, and the holdings of rent-paying tenants are comparatively small, and it is weak in Oudh, where the position of the talukdars or superior proprietors was exceptionally strong and had been confirmed by the British Government. The position of tenants or occupiers in every province is better and more secure than it was fifty years ago. In permanently settled Bengal the Tenancy Act of 1885 has greatly strengthened and improved the position of the ryot; and the cadastral survey which is being carried out in the province shows that the great bulk of the rayots enjoy tenant-right under the law. Thus Lord Cornwallis's intention in favour of the rayats, promulgated more than 100 years ago, has, so far as changed circumstances permitted, been at last carried into effect, for the rights of the occupiers of the soil have been in great part secured; and this has been done

without injustice to the Bengal landlords, whose tracts more than doubled during the past fifty years.

VI.—Land Revenue Administration in Bombay.

SOURCE :—Bombay, 1921-2.

The Revenue Administration of the Presidency of Bombay is carried on by the following officers acting under Government :—

Four Commissioners, 26 Collectors, 1 Deputy Commissioner and a number of Assistant Collectors. All these officers with the exception of two, who belong to the Bombay (Provincial) Civil Service, are members of the Covenanted Civil Service. In addition to the officers mentioned above, there are 90 Deputy Collectors. They are divided into three grades and are generally in charge of district treasuries or of divisions of districts.

A Collectorate generally contains ten talukas, each of which comprises about one hundred Government villages, that is, villages that are not alienated and the total revenues of which belong to the State. Each village has its regular complement of officers, a large number of whom are hereditary. The officers on whose services Government is mainly dependent are the patil, who is the head of the village for both revenue and police purposes ; the talati or kulkarni, who is the clerk and accountant ; the mhar who is a kind of beadle ; and the watchman. The patil and kulkarni either hold a certain quantity of rent-free land or are remunerated by a cash payment equivalent to a certain percentage on the collections. The mhar and watchman, in common with other village servants, also hold land on more or less favourable terms as regards assessment, and receive in addition grain and other payments in kind from the villagers. The remaining servants are the carpenter, blacksmith, potter, barber, and others whose services are necessary to the community. A village is for Government or social purposes complete in itself, so its revenue accounts are simple but complete. They are based on the Record

of Rights. Every plot of land held by an occupant is separately measured, assessed and entered in the name of the person or persons in actual possession of it. The land revenue demand is based on this Record which is thus both a Record of rights as well as of liability.

Over each taluka of a collectorate there is an officer termed Mamlatdar (or Mukhtiarkar in Sind) whose salary varies from Rs. 200 to 350 per mensem. This officer is responsible for the treasury business of his taluka. He has to see that the instalments are punctually paid by the several villages, that the village accounts are duly kept, that the occupants get their payments duly receipted, that the boundary marks are kept in proper repair; in fact to see that the village officers do their work properly. He is also a Magistrate.

An Assistant or Deputy Collector is placed in revenue charge of, on an average, three talukas. He has to travel about them during seven months in the year. He has to satisfy himself by direct personal inspection that the revenue work is being properly done; he sees that the revenue of each village is properly brought to account, nominates the village officers, judges for himself of the wants of his talukas in respect of local roads, wells, tree plantations and the like, hears appeal from the orders of Mamlatdars and when he has appellate powers replies to references made by them, and generally supervises their proceedings.

The Collector and District Magistrate is placed over the whole district. He goes on tour over his charge for at least four months in the year. Besides superintending the realisation of the land revenue the duties of administering the excise and other special taxes and of supervising the stamp revenue devolve in each district upon the Collector as executive head of the district; he is also the district Registrar and Visitor of the district Jail and has important duties to perform in connection with local funds and municipalities, with the Land Acquisition Act and the forests, and his opinion is required on all questions of executive administration.

The Revenue Commissioners, of whom there are three for the Presidency proper and one in Sind exercise a general superintendence and control over the revenue administration of the Presidency. These Officers are constantly on the move in their respective divisions during the fair season. They have thus an opportunity of judging for themselves of the requirements of the several parts of the country, of the manner in which both the revenue and police administration is being carried on, and of the qualifications of the several officials. They entertain appeals from the Collectors' decisions and are the channel of communication between them and the Government.

The functions of the Land Records Department are to provide statistics necessary for sound administration in all matters connected with the land, to reduce, simplify and cheapen litigation in the Revenue and Civil Courts, to provide a Record of Rights for the protection of all who hold interests in land and lastly to simplify and cheapen periodical settlement operations.

The Land Records staff consists of a Director of Land Records, who is also Settlement Commissioner, four Superintendents of Land Records, District Inspectors, and Circle Inspectors. Director of Land Records has been limited to inspection and advice and he has been expressly excluded from control over the district establishments which are subordinated to the Collectors.

CHAPTER XII

Famine Relief.

I —History of Famine Relief Policy.

(A) Till 1901.

Extract from the Report of the Famine Commission 1901:—

I.—The territorial rule in India of the East India Company extended in point of time from the Administration of Mr. Hastings, the first Governor-General, to the Administration of Lord Canning, the first Viceroy. During this period of about ninety years the Indian Peninsula suffered, in one part or another from twelve famines and four severe scarcities but no attempt was made in those early years of our dominion to grapple with the famine question, or to construct any system of famine relief. When a famine occurred, the efforts made to relieve distress were usually on a small scale, disconnected and spasmodic. A little employment was offered to the able-bodied, and a little gratuitous relief was distributed to the helpless from scanty funds collected from the charitably disposed. But there was no systematised and sustained action, and but little expenditure of public money. Amid the wars and distractions and financial difficulties that attended the building up of an Empire the claims of famine relief attracted small attention.

2. Since the transfer of the government from the East India Company to the Crown, there have been seven famines and one severe scarcity in various provinces of British India. The first of these was caused by the failure of the spring crops of 1861, but it affected a comparatively small tract of the country and it rests in official memory—it has faded out of the people's minds—only because poor-houses were then first used as a means of relief and because it was made the occasion of the first famine enquiry instituted by any Government in India.

3. That enquiry had but little educative effect on the public mind, for, when the great famine of 1866, commonly known as the Orissa famine supervened, the principles and methods of relief administration were still unsettled and unformed.

The Orissa famine may be regarded as the turning point in the history of Indian famines, for in the course of the enquiry conducted into it by the commission presided over by the late Sir George Campbell the foundations were laid of the humane policy, which the Government of India have now adopted. The Report of that Commission was not immediately fruitful so far as the formulation of a system of relief was concerned, but it effectually called attention to the responsibilities which rested on the Government in famine years.

4. Accordingly, when the failure of the rains of 1868 caused intense famine in Rajputana, and severe scarcity with local famine in parts of the North-Western Provinces, the Punjab and other regions, unprecedented action was taken by the Government to relieve distress. The humane principle of saving every life was now first enunciated and a departure was made from the hitherto accepted policy of leaving to public charity the duty of providing funds for gratuitous relief. The total expenditure of Government money on relief in 1869 (46 lakhs) may not appear large in the light of later experience, but a distinct advance was made in both the principles and practice of famine relief.

5. When the monsoon rains of 1873 failed over a great part of North Behar, and to a less extent in other regions, the Government at once took note of the situation. The situation, however, was not really so alarming as it at first appeared; the failure of the crops was complete only over a small area. But the dangers of the time were exaggerated as much by public apprehension lest the Orissa misfortune should be repeated as by official ignorance of the precise statistical facts. In the end, provision in excess of the need was made to meet the emergency but a great principle was finally asserted and methods of relief administration were devised during the Behar famine upon which subsequent experience has only improved.

6. If, in the matter of expenditure the pendulum swung its full arc in the Behar famine the inevitable reaction followed

when the really great famine of 1876-78 burst upon Madras and Bombay, and later upon the North-Western Provinces and Oudh, and the Punjab. In this famine, relief was to a large extent insufficient being largely due to the inability of private trade hampered by want of railways and communications to supply the demand for food. The mortality was, in consequence, extremely great. A recognition of all these facts led to the appointment of General Strechey's Famine commission, whose enquiries for the first time reduced to system the administration of famine relief, and whose report has powerfully influenced for good agrarian and administrative reform in India during the last twenty years.

7. The labours of the Commission of 1880 were of two kinds; on the one hand, they formulated general principles for the proper treatment of famines, and, on the other, they suggested particular measures of a préventive or protective character. In regard to the general principles, with which we are immediately concerned, the Commission of 1880 recognized to the full the obligation imposed on the State to offer to the necessitous the means of relief in times of famine. But it was the cardinal principle of their policy that this relief should be so administered as not to check the growth of thrift and self-reliance among the people, or to impair the structure of society, which, resting as it does in India upon the moral obligation of mutual assistance, is admirably adapted for common effort against a common misfortune. "The great object", they said, "of saving life and giving protection from extreme suffering may not only be as well secured, but in fact will be far better secured, if proper care be taken to prevent the abuse and demoralisation which all experience shows to be the consequence of ill-directed and excessive distribution of charitable relief"

8. In this spirit the Provisional Famine Code was framed, and the modern policy of famine relief administration was determined. That policy was first brought to a crucial test in

the famine of 1896-97, and the very elaborate enquiry into its results conducted by the Commission of 1898 completely vindicated the principles laid down in 1880, and demonstrated the success which a system of relief based upon them could achieve. Wherever there was failure, it was due not so much to defects in the system of relief as to defects in the administration of it.

9. But, while confirming the principles enunciated by the Commission of 1880, the Commission of 1898 departed from them in recommending a more liberal wage and a freer extension of gratuitous relief. Moreover, their repeated warnings against any measures of relief involving an element of risk were, in effect, an invitation to recede from the strictness, or, as we prefer to call it, the prudent boldness, of the former policy.

10. Before these recommendations had been fully considered and incorporated into the Provincial Famine Codes, the drought of 1899 occured, and Local Governments were compelled to face another great famine, without a settled policy, and in nearly all cases with their Famine Codes unrevised. This led to uncertainty and oscillation in the application and guidance of measures of relief; into the results of this uncertainty, as well as into the whole question of famine administration, we have now been instructed to enquire.

B. Recomendations of the Famine Commission of 1901.

Extract from its report (paras 24,25,27-30,32,34,37,41-3, 44,46,48-52).

SECTION I—Standing Preparations.

24. Recent experience has shown that no part of India, if unprotected by irrigation, can be considered free from the danger of a deficient rainfall and the consequent failure in the harvest, which a short rainfall entails. A large part of the Central Provinces was not long ago regarded as immune from famine, and the possibility that Gujarat would be desolated by drought and hunger was not foreseen. Nor was the occurrence

of two great famines within so short a period anticipated in any quarter. The unexpected, however, happened, and found the arrangements in most provinces incomplete. The first danger then, of a practical kind to which the experience of the late famine points is the danger of unpreparedness. Against this danger the safeguards are—

(1) an efficient system of intelligence.
(2) effective programmes of relief works.
(3) reserves of establishment.
(4) reserves of tools and plant.

....

SECTION II—Lessons of experience.

30. PUT HEART INTO THE PEOPLE:—We desire to place special emphasis on the immense importance of "moral Strategy". There is no greater evil than the depression of the people. It is a matter of universal experience that moral depression leads down a sharp incline to physical deterioration. . . . It is scarcely possible to overstate the tonic effect upon the people of early preparations, of an early enlistment of non-offical agency, of liberal advances in the earliest stages, and of early action in regard to suspensions of revenue. . . . .

32. MAKE LIBERAL PREPARATIONS IN ADVANCE OF PRESSURE. . .

34. BRING FROM THE OUTSET INFLUENTIAL NON-OFFICIAL INTERESTS INTO TOUCH WITH, AND SUPPORT OF, THE OFFICIAL ORGANIZATION.—We advocate, at all stages, the greater use of non-official agency. . . . .

SECTION III—Danger Signals

37. The risks attaching to the policy, which we advocate, of waiting on events are reduced to a minimum by a careful look-out for the regular premonitory symptons of distress. Apart from the failure in the rainfall and the movements of prices, the following warnings are nearly always given and in something like this order.—

(1) the contraction of private charity, indicated by the wandering of paupers;

(2) the contraction of credit;

(3) feverish activity in the grain trade;

(4) restlessness shown in an increase of crime;

(5) unusual movements of flocks and herds in search of pasturage;

(6) unusual wandering of people.

. . ! .

SECTION IV—The Order of Relief Measures.

FIRST STAGE

41. (i)—The first act of the Local Government should be to review the financial position and appropriate the necesary funds. (ii). Arrangements should then be made for the collection of establishment—administrative, executive and sanitary—and for the distribution of tools and plant. (iii). Liberal advances should be given at this stage for the construction of temporary, and the repair of permanent, wells and for other village improvements—(1) as a means of employing labour; (2) as a means of securing the kharif and rabi crops; (3) and as an act of moral strategy, to give confidence to the people, and to stimulate local credit..... (iv) The recruiting of non-official agency and the organization of private charity should be vigorously taken in hand. (v) Liberal advances should also be given for the purchase of seed for the ensuing crop.....(vi) The police should be supplied with funds to relieve wanderers in distress. (vii) Test works should be started, and poor-houses should be opened at the chief centres of population. (viii) Enquiries as to suspension of revenue should be begun. (ix) Relief circles should be organised, and the necessary inspections should be made.....(x) Preliminary lists should be drawn up of persons eligible for gratuitous relief. (xi) If there are threatenings of a scarcity of fodder or drinking water steps should be taken to meet it, and to encourage private enterprise to import fodder and to develop the water-supply.....

SECOND STAGE.

48. Directly the numbers attending test works indicate that further relief measures are necessary a new stage begins, and the full machinery of relief should be brought into play.....

49. In any case there should be no delay whatever in converting test works into relief works directly they have served their purpose as tests. Conversion should take the form of the addition of relief to dependents, either by cooked food or by cash doles....

50. Simultaneously village inspection must be fully developed, the staff should be increased, and the circles mentioned in paragraph 41 above should be sub-divided if sub-division be required....

51. The distribution of gratuitous relief should also begin when test works are converted to relief works, and care should be taken to see that all those entitled by the Code to receive it are brought upon the list.

52. It is necessary at the outset to be strict in the administration of gratuitous relief, but the existing categories of persons entitled to such relief are sufficiently strict. And, while we should strongly condemn, as demoralising, any profusion in this matter, we attach great importance to bringing on gratuitous relief at an early stage all those who on a fair interpretation of the rules are entitled to it.

II —The Present System of Famine Relief.

EXTRACT FROM THE DECENNIAL REPORT ON MORAL AND MATERIAL PROGRESS 1913 :—Famine relief, as now administered, is based on an elaborate system that embodies the results of much past experience. Standing preparations are made on a large scale in ordinary times; programmes of suitable relief works are maintained in each district, and the country is mapped out into relief circles of convenient size. When the rains fail, preliminary inquiries are started, and a careful look-out is kept for the recognised

dagner signals of approaching distress. As the uneasiness is intensified, the Government makes the necessary financial arrangements and declares its general policy, and "test works" are started. A test work is a work employing unskilled labour, usually earth work; the conditions are strict, but not unduly repellent. When the test works, or village inspection, disclose real distress, relief works are opened, the lists of persons entitled to gratuitous relief are revised, and the distribution of gratuitous relief begins. Distress usually reaches its maximum in May. Policy changes somewhat with the advent of the rains. Relief works are generally closed, and there is an extension of local gratuitous relief. Gradually the remaining relief works are closed and gratuitous relief is discontinued, and by the middle of October famine is ordinarily at an end.

The extension of communications, and particularly of railways, in recent years, has revolutionised relief. The final horror of famine, an absolute dearth of food is now unknown. As the administration has been freed from the primary necessity of finding food, the relief system has become increasingly elastic. Relief works are organised with due regard to the feelings of the people. Those who cannot work are relieved, as a rule, in their villages, and children and weakly persons are specially treated. An elaborate scheme for making relief acceptable to forest and hill tribes has been worked out; and weavers and artisans, who formerly suffered on ordinary relief works, are now as far as possible relieved in their own trades. The strictness of Government relief, which must inevitably be confined to the provision of necessaries, is softened and supplemented by private relief funds, among which the Indian People's Famine Trust, founded in 1900 by a donation of £106,000 from the Maharaja of Jaipur may be mentioned.

III—Financial Arrangement for Famine Insurance.

Extract from Moral and Material Progress Report, 1913:—Before 1878 no special measures were taken to meet the financial obligations imposed by the periodic recurrence of famine. The experience of the famine of 1876-78 convinced the Government of India that such a state of things was unsound, and that efforts should be made to treat the cost of famine as an ordinary charge on the state. The result was the provision of an annual sum of 1½ crores of rupees for "famine insurance". The manner of utilising this sum has varied from time to time but the actual relief of famine in years of scarcity has always been the first charge on the grant.... The grant was applied in the first place to direct famine relief; secondly to the construction or maintenance of "protective" railways and irrigation works; and thirdly to the construction of "productive" public works which would otherwise necessitate additional borrowing. In 1907 an important change was made in the system of famine insurance in view of the difficulties to which the provinces were liable to be subjected under the then existing arrangement by which the cost of famine relief was a wholly provincial charge. An addition was made to the annual fixed assignments of the local Governments whose territories are liable to famine, roughly in proportion to the average expenditure incurred by them on famine relief during the preceding 25 years.....

(For subsequent development in respect of Famine Relief Finance see pages 79 and 127.)

IV—Famine Protection

A Railways (see chapter XIII.)

B Irrigation (see chapter XIV.)

C Provincial Departments of Agriculture for the improvement of Agriculture.

Department of agriculture in Bombay.

Extract from Bombay in 1921-2:—The Agricultural Department came into existence in 1883 but the Director's time was taken up largely in the organisation and supervision of the

Land Records staff which was created to supply the improved statistics recommended by the Famine Commission of 1881.

The separation in 1905 of the Departments of Land Records and Registration from the Agricultural Department enabled the Director to devote his energies to the organisation of the latter Department and to the realisation of the following recommendations of the Government of India on the report of the Famine Commission:

(1) That systematic prosecution of agricultural inquiry must precede any attempt at agricultural improvement.

(2) That the Agricultural Department in the section of its duties appertaining to agricultural inquiry must be brought into close contact with the Land Revenue Department proper.

Much valuable experimental work had been done before 1905 by the Deputy Director of Agriculture and the small staff trained by him. On this sound basis it was possible with the help of an annual subvention of three and a half lakhs of rupees from the Government of India to effect a rapid extension of the new Department, which has made great progress during the last decade. The Presidency has been divided into five divisions, each being placed under a Deputy Director, generally an officer of the Imperial Agricultural Service, who has under him a Divisional Superintendent. These officers tour throughout their charges, examine the working of the several agricultural farms and stations, and bring to the notice of the cultivators the results of their experiments in the various branches of the department. They also supervise the experimental work done at the farms and stations and initiate original experimental work on the farms at their respective headquarter stations. The work done at these stations consists generally in the selection of varieties of crops suitable for different localities, selection of seeds, hybridization of different varieties so as to obtain a strain of a superior quality, and experiments with different kinds of manures and demonstration of improved agricultural implements of all kinds.

The most important work carried out is in connection with the cotton and sugarcane, two of the most valuable crops of the Presidency. Considerable success has been achieved in the selection and distribution of pure seeds of superior varieties of cotton, especially for the Khandesh, Dharwar and the Broach-Surat-Navasari tracts, where lower varieties were gradually displacing the superior kind. The experiments with American and Egyptian cottons in Sind have also been promising. A special trained staff has been entertained for cotton work which is carried out on the farms and stations specially intended for the purpose.

Another direction in which the cultivator has been benefited is the introduction of foreign high class seeds for commercial crops like wheat, groundnuts, potatoes, etc., and their popularity is proved by the continuously increasing demand from agriculturists.

An equally important duty of the Agricultural staff is propaganda which is conducted by the Deputy Directors through District Agricultural Overseers who are generally agricultural graduates.....

Besides its work in connection with pure agriculture the Department attends to such allied branches as agricultural engineering, animal breeding, horticulture and soil physics, and these different branches of work are controlled by separate officers.....

For imparting scientific instruction in agriculture a fully equipped college has been established in Poona with a Principal and Professors, of Agriculture, Botany and Animal Husbandry, assisted by a large staff of Assistant Professors. Instruction in Dairying is also imparted at the College. The College Dairy and the Manjri farms provide the students with practical training. The College has been affiliated to the Bombay University and a degree of Bachelor of Agriculture has been instituted.

D. Provincial Departments of Industries for encouraging diversification of occupations.

Department of Industries in Bombay.

Extract from Bombay in 1923-4:—The Department of Industries came into existence in 1917. Its administration is vested in the Director of Industries. The Director's main functions are the promotion of local industrial enterprises by (a) advice and information, (b) the introduction of new methods and improved implements, (c) the management of pioneer and demonstration factories, and (d) examination of requests for loans and other concessions and suggestions of the form of assistance required. The Director also studies the economic conditions of the Presidency from the industrial point of view, collects commercial information and investigates all existing industries which give promise of local development with a view to rendering them any assistance in his power. He is assisted by an Advisory Committee, of which he is ex-officio Chairman, consisting of persons interested in trade and industry. On the administration side the Director has one Deputy and one Assistant Director under him. The Assistant Director is stationed at Ahmedabad and the Deputy Director surveys industries in the Central and Southern Divisions. On the technical and industrial side the Department manages a hand-loom weaving section. It has also a pottery expert, and part-time services of officers of other departments and institutions are utilised for technical assistance and advice to the Department. The Department is also concerned with fisheries and has at its disposal the services of a Marine Biologist temporarily lent for local investigations.

(E) Relief of agricultural indebtedness (see the next section).

V.—Measures to relieve agricultural indebtedness

i Agricultural Loans and Advances.

EXTRACT FROM THE DECENNIAL REPORT ON MORAL AND MATERIAL PROGRESS 1913:—As has already been remarked, the agriculture of India is, generally speaking, in the hands of small men, and the peasant in India, as in most other agricultural countries, works on borrowed capital. The arrangements generally prevailing hitherto have been summed up in the statement that capital is supplied "in small sums by small capitalists to men of small commercial intelligence". There has been on the one hand excessively wide credit, and on the other excessively dear money and the agriculture of India has suffered equally from both causes.... The Government have endeavoured to make available other sources of capital besides the village money lender, both by lending money themselves, and in more recent years, by encouraging the peasant to form co-operative credit societies.... Government loans (known as takavi) are regulated by the Land Improvement Loans Act of 1883 and the Agriculturists' Loans Act of 1884. The former enactment authorises the grant of loans by local officers subject to rules laid down by the local Governments, for the purpose of making any improvement, an "improvement" being defined as any work that adds to the letting value of the land. Wells take the first place among such works. Loans are repayable by instalments, and are recoverable generally as if they were arrears of land revenue. The Agriculturists' Loans Act makes similar provisions for advances for other purposes not specified in the Land Improvement Loans Act, but connected with agricultural objects including the relief of distress and the purchase of seed and cattle.... Advances are made only for specific purposes connected with agriculture, they entail more formalities than the village loan, and the repayment is enforced with greater rigidity so that in the past Government loans though large in the aggregate, have not had any very great influence on the

agricultural credit of the country.....In times of famine Government loans are particularly usefull.

ii. Relief of indebted Agriculturists.*

A. Deccan Agriculturists Relief Act.

SOURCE:—Extract from Sir T. Hopes speech on the Deccan Agriculturists' Relief Bill, July 1879.

"I will now endeavour to set forth, as clearly and fully as time and the occasion permit, the principal provisions of the Bill I am introducing.....The first object aimed at is to establish precautions against fraud by either debtor or creditor in their original transactions with each other, and so keep them on good terms and out of Court, as far as possible. The Commission thus enumerate the chief frauds which are practised :—

BY CREDITORS.—(1) forging bonds (2) withholding the consideration mentioned in bond (3) obtaining new bonds in satisfaction of old bonds and of decrees, and nevertheless enforcing the latter (4) not giving credit for payment, (5) refusing to explain or wrongly representing their accounts to debtors.

By DEBTORS.—(6) tendering in evidence false receipts and false evidence of alleged payments, (7) pleading that bonds are false when they are really genuine.

* * * * * *

The next step contemplated is that, whenever serious misunderstanding unfortunately arises between a money-lender and a ryot, either party should be able to resort to a friendly non-judicial authority bound to use his best offices to reconcile the two, and that no litigation should be commenced without a certificate from the Conciliator (as the authority constituted by chapter VI will be termed) that his endeavours in this behalf have failed.....

Supposing that, notwithstanding all the preceding precautions, the dispute unfortunately develops into litigation, the Bill next endeavours to place the Courts of law within easier distance

*Only the measures adopted in Bombay have been noticed in this subsection.

from the homes of the people, and to make them more absolute, less technical, less dilatory and less expensive.....

Reviewing the Bill broadly, it may fairly be said to secure, to an extent not hitherto attempted, (1) precautions against fraud by either debtor or creditor in their original transactions with each other, (2) interposition of friendly conciliation between disputants, previous to litigation, (3) approximation of the Courts to the homes of the people, (4) some small simplification of procedure and diminution of the expense and technicalities arising from legal practitioners, (5) equitable jurisdiction to reduce all exorbitant, fictitious and fraudulent claims, (6) finality of judicial decisions, subject to adequate safe-guard, (7) prompt and unfailing enforcement, through the collector when necessary, of all adjudicated claims of reasonable amount and (8) discharge of the debtor from such claims or balance of them as after all reasonable enforcement for a long period could not be fully realised except by demoralisation or life-long bondage."

B. The Gujrat Talukdars Act.

EXTRACT FROM BOMBAY IN 1921-2:—In 1862 an Act was passed by the Government of Bombay for the amelioration of the condition of Talukdars in the Ahmedabad District, and for their relief from debt. Under this Act Government can take over the management of the estate of any Talukdar whose debts or liabilities are equal to five times the average annual income derived by the Talukdar from his estates during the previous five years. The management of such estates is not to extend beyound the period of twenty years.... Each Collector in Gujrat manages the talukdari estates in his district. While under management, steps are taken for the liquidation of the debts.

C. Encumbered Estates Rules, Kathiawar.

EXTRACT FROM BOMBAY IN 1921-2:—To provide for the relief of certain indebted Talukdars and Girassias and at the same time to secure the punctual payment of Government

tribute and to maintain the existing status of such Talukdars and Girassias, rules for the attachment and management of Encumbered Estates were introduced in Kathiawar in 1892 and modified in 1911. In virtue of these rules as revised from time to time an estate subject to debts or liabilities of such amount that there is no reasonable anticipation that they can or will be liquidated in any other way, may be declared by notification to be an Encumbered Estate and placed under a manager in whom vests all the rights of the Talukdar or Girassia over property both moveable and immoveable. The effect of such attachment is that proceedings pending in any Civil Court in respect of any debt or liability of the estate are stayed, that the operation of all processes, executions or attachments against the estate ceases and that so long as the estate remains under management it is not subject to the jurisdiction of any Civil Court. From the same date the Talukdar or Girassia becomes incompetent to incur any pecuniary liability or to deal with the property under management in any way. It is the duty of the Political Agent of the Prant in which the estate is situated to enquire into and to adjudicate upon all claims against the estate and in so doing he is empowered to go behind the decree of the Civil Court if he has reasonable ground for believing that the amount decreed is more than twice the original debt or that the rate of interest awarded is excessive. Having ascertained the total amount of debts and liabilities it is his duty to prepare and submit to the Agent to the Governor, Kathiawar, a liquidation scheme showing the manner in which it is proposed to discharge the debts. On the publication of this scheme all debts due from the encumbered estates are extinguished and no person is entitled to receive more than the amount provided in the scheme. The maximum period of management is twenty years from the date of the notification of an estate under the rules, and at the end of that period all debts and liabilities, except Government dues, existing at the date of the said notification, are extinguished. Similar rules were framed in

1897 for the Palanpur, Mahi Kantha and Rewa Kantha Agencies.

D. Sind Incumbered Estates Act.

EXTRACT FROM BOMBAY IN 1921-2:—The Sind Incumbered Estates Act of 1881, was passed by the Government of India in order to amend the law providing for the relief of Jagirdars and Zamindars in Sind and this Act was further amended in 1896. The management of such estates in Sind is undertaken upon an application by the landholders and a Special Officer designated "Manager, Sind Incumbered Estates" has been appointed to supervise the management of these estates under the control of the Commissioner in Sind.

E. The Court of Wards Act.

EXTRACT FROM BOMBAY IN 1921-2:—The Bombay Court of Wards Act was passed in 1905. Under this Act the Commissioners of Divisions are the Courts of Wards for the limits of their Divisions. With the sanction of Government they assume superintendence of estates of landholders who on account of minority or physical or mental defect or infirmity are not qualified to manage the property and also on application by the landholders of estates that are heavily indebted.

iii Co-operative credit societies.

(1) LEGISLATION.

EXTRACT FROM THE MORAL AND MATERIAL PROGRESS REPORT (Decennial) 1913 :—The possibility of improving the credit of the rural population in India by the establishment of a system of co-operative credit societies had at the beginning of the period under review been for some time engaging the attention of the Government of India. The question had previously been taken up independently in some provinces, and in some cases practical steps had been taken. The most striking development of the co-operative principle on indigenous lines had taken place in Madras, where the NIDHIS, described as mutual loan funds had attained on the whole a very considerable degree of success, in spite of numerous failures due to fraud, ignorance, the unsuitability of the law, and the absence of supervision. In other parts of the

country the societies that had been started had hardly passed the experimental stage. In the United Provinces steps had been taken in 1900, at the suggestion of the local Government, to establish societies in many districts; in the Punjab a few societies had been formed abut 1898 by district officers on their own initiative; and in Bengal several societies had been started, and appeared to have attained some success under the fostering influence of sympathetic officials.

In 1901 a committee was appointed by the Government of India to consider the whole subject in the light of reports from the local Governments and of the experience already gained in the provinces referred to above. The report of the Committee was laid before Parliament. It was now apparent that no real advance was possible without legislation, the elaborate provisions of the Companies Act being wholly unsuited to societies of the kind in question. Legislation was therefore undertaken with the object, firstly, of taking such societies out of the operation of the general law and substituting provisions specially adapted to their constitution and objects; secondly, of conferring upon them special privileges and facilities, so as to encourage their formation and assist their operations; and, thirdly as a necessary corollary, of taking precautions against the improper utilisation by speculators and capitalists of privileges not intended for them.

A Co-operative Credit Societies Bill was accordingly introduced in the Governor-General's Legislative Council in October 1903, and passed into law as Act X of 1904. In view of the wide diversity of conditions in India, and the experimental nature of the measure, simplicity and elasticity were kept in view as cardinal points. Broad principles were laid down, and certain precautions insisted on, subject to which, and to rules to be made by local Government in the same spirit, in accordance with local needs, the people were to be left to work out their salvation on their own lines, the function of Government being confined to sympathy, assistance, and advice. The object of the Act, as stated in its preamble, was

"to encourage thrift, self-help, and co-operation among agriculturists, artisans, and persons of limited means". Local Governments were empowered to appoint provincial Registrars of co-operative credit societies, whose duty it would be to scrutinise applications for registration under the Act. Subject to the provision that any association of not less than 10 persons might be registered by the special order of a local Government, the Act laid down that a society should consist of persons residing in the same town or village or the same group of villages, or, subject to the sanction of the registrar, of members of the same tribe, class, or caste. Societies were classed as "rural" or "urban", and it was laid down that four-fifths of the members must be, in the first case, agriculturists, and in the second, non-agriculturists. In the case of rural societies the liability of members was to be unlimited, unless a departure from this rule were specially sanctioned by the local Government; in the case of urban societies liability might be either limited or unlimited, as might be provided by byelaws or rules made under the Act. Profits, in the case of a rural society, were in the first instance to be carried to a reserve fund, or applied to the reduction of the rate of interest, and a bonus might be distributed only when requirements in these directions had been fully met; urban societies were also to carry at least a quarter of the annual profits to a reserve fund. Loans were to be made only to members, or, subject to the consent of the registrar, to a rural society. Limitations were placed on the interest in a society that might be held by a single member and on the transfer of shares. Privileges included the exemption of a member's shares or other interests in the capital of a society from attachment for private debts, the grant to societies of a measure of priority over ordinary creditors in enforcing claims on crops, cattle, etc, and provisions for exemption, at the discretion of the Government of India, from income-tax, stamp duties, and registration fees. Provision was made for compulsory inspection and audit by the Registrar, for compulsory dissolution, subject to appeal to the local Government, and for

liquidation under a simple procedure. Finally, wide rule-making powers were conferred upon local Governments.

The development of co-operative societies during the period under review took place under the Act of 1904; but in the last month of the decade the Act was repealed and replaced by the Co-operative Societies Act (Act II) of 1912, which introduced important changes in the law. Experience had shown that, in spite of the simplicity and elasticity of the earlier Act, there were certain respects in which it was desirable to extend its scope, and some points in regard to which amendment of the detailed provisions was required. The first change made is indicated by the difference between the titles of the two Acts. With the spread of co-operative credit societies, there had arisen in many parts of India a desire to initiate other societies of a co-operative type, having for their aim the production or distribution of commodities and not merely the provision of credit. The new Act accordingly provides for the registration under the Act of any society "which has as its object the promotion of the economic interests of its members in accordance with co-operative principles," or any society "established with the object of facilitating the operations of such a society." The statutory distinction between "rural" and urban" societies is dropped, the radical differentiation between societies with limited and unlimited liability alone being retained. The principle that agricultural credit societies must generally be constituted on the basis of unlimited liability is retained, but with a view to bringing within the provisions of the Act societies that have grown up and done useful work in some parts of the country, the distribution of profits by "unlimited" societies is allowed in cases where this course is sanctioned by the local Government. The fourth new feature of importance in the Act of 1912 is that it provides for the formation of societies the members of which shall be other co-operative societies. The grouping of societies in this way into unions, and their financing by means of central banks, is an essential feature in European systems, and action

on these lines had already been found feasible in most provinces of India. The other changes introduced by the new Act were of less importance and do not call for special notice.

Progress of the Co-operative Movement. The provincial Registrars appointed after the passing of the Act of 1904 were expected not only to carry out their formal duties under the Act but also to foster in every possible way the growth of the co-operative movement. In the instructions issued by the Government of India, local Governments were invited to select a few districts in each province in which the experiment might be most hopefully tried, and it was pointed out that it would be advisable to start cautiously and to progress gradually. Stress was laid on the necessity of reducing restriction to a minimum, so that the people might be encouraged (subject to certain necessary safeguards) to work out the problem on their own lines with such guidance and help as could be given to them.

When the Act was under discussion many doubts and fears were expressed. These have in great part been dispelled by subsequent experience. It has been found that the root of the matter does exist in India, and that Indians will co-operate, that unlimited liability is not a bugbear, that societies have succeeded in attracting capital, and that they have not found the absence of a summary procedure an insuperable difficulty in the way of collecting their debts. Making every allowance for the facts that India has been able to profit by the experience gained in other countries, and that the pioneer work has been done by the State and not by individuals, progress has indeed been extraordinarily rapid. Even so, the movement has as yet touched only the fringe of the vast population concerned.

The lines of development have been different in different parts of India, but the same general questions have arisen. It soon became evident that the future of movement depended on the successful solution of two connected problems of finance—i.e.

the provision of funds—and supervision. The main obstacle to expansion in the earliest stages was the difficulty of attracting outside capital; and, on the other hand, the limits of personal supervision by the registrars were soon reached. The importance of avoiding anything like a general officialising of the co-operative movement has always been kept in view, and development was intended to proceed along lines which would render it possible for societies to provide supervison for themselves. It was recognised that the combination of village societies for the purposes of finance and control was as important as the combination of individuals, and that such combination was intimately connected with the problem of giving them access to the outside money market. Pending the solution of these problems, the policy generally adopted by registrars was one of consolidation rather than extention. The ideal held up was the formation of societies into local and central unions which would not only finance their own societies but also supervise them and encourage the further growth of the movement. So far as finance is concerned, there are now in all provinces a number of "central" societies, which lend to other societies only, and are established for that purpose. As regards supervision, progress has been made in varying degrees in the direction of the ideal above referred to. "Unions" have been formed in many parts some of which exercise supervisory functions only, while others, such as the "Central Banking Unions" of Bengal, also finance their affiliated societies. It is impossible here to describe the various forms of these main types.....

The provincial Registrars have hitherto been officials, generally members of the Indian Civil Service: but, as will be gathered from what has already been said, the part played by the State has been confined, as far as possible, to the encouragement of societies in their initial stages. Besides the Registrars, a staff of inspectors. auditors, and clerks, varying in strength in the different provinces, is entertained by Government.

(2) Progress of Co-operation in Bombay.

Extract from India in 1923-4 :—In Bombay, a Province where co-operation has of late flourished exceedingly, the total number of societies rose from 3,411 to 3,533 between 1922 and 1923. Membership increased from 327,000 to 335,000, and the working capital Rs. 435 lakhs to Rs. 533 lakhs. There is still great room for expansion, as will be gathered from the fact that only 11 per cent of the total number of agriculturists who occupy Government land in the Presidency are members of credit socities. The advantages of the movement are, however, being increasingly perceived. From Sind, for example, it is reported that members of co-operative societies have altogether stopped their dealings with the village money lender. The local co-operative society shows signs of becoming the village rendezvous, where members meet and discuss matters of common interest. Local disputes and factions are brought to arbitration; and collections are made for works of public utility. A stimulus has been lent to the development of agricultural co-operation by the constitution of Divisional Boards. Much attention has been devoted by these bodies to non-credit societies: and constant endeavours are being made to encourage the growth of co-operative marketting and sales societies. This movement, which in all countries has been one of the later developments of co-operation, is but just beginning; and it is estimated that the present activities must be multiplied by about thirtyfold before the co-operative movement can be considered to have fulfilled its responsibilities in this direction. Cotton sales societies are already flourishing and special societies dealing with the sales of miscellaneous grain, areca nut and chillies are beginning to show an increased turnover. But perhaps the most striking characteristic of the co-operative movement in Bombay is the recent development of co-operative Banking. The movement has set before itself the aim of erecting, in every considerable town and in every district, banks which will help the artisan, the small professional man and the small trader; and which will at the same time,

by popularising credit and the instruments of credit, abolish the present difficulties of conveying money from place to place. In view of the widespread illiteracy of the cultivator, which so greatly impedes progress, it is probably at present of the first importance to spread modern banking facilities through co-operation as rapidly as possible; and thereby prepare and arm the people for the new era of commercial agriculture into which they are already beginning to enter. Already considerable progress has been made. Three years ago, the central banks including the Provincial Bank, were 14 in number with a working capital of Rs. 65 lakhs. They are now 20 in number with a working capital of Rs. 169 lakhs. During the same period, urban banks have increased from 15 to 31, while their working capital has risen from Rs. 53 to Rs. 112 lakhs. The use of cheque is now being introduced and has already reached the considerable figure of 23,000, to the value of more than Rs. 6 crores. Compared with countries like the United States, or even the British Isles, where deposit banking and the use of cheques have been familiar for generations, these figures will of course appear insignificant. They do, however, represent substantial progress in increasing the money in circulation in the country, and thereby the wealth available at any moment. More important still, they stand for a real advance towards greater familiarity with modern business methods. Government has realised the importance of this development, and has given encouragement to the cheque system by exempting cheques issued by members of societies from stamp duty up to the value of Rs. 20. The Imperial Bank has also assisted in the same direction by agreeing to cash the cheques of district central banks, and of certain selected primary societies. Overlooking all the branches of co-operative enterprise throughout the Bombay Presidency is the Central Co-operative Institute. Four branches of this now exist, for Bombay City, for the Deccan, for the Carnatic, and for Gujrat. Training classes are held for college students and for the public, for honorary

organizers, and for bank managers, for secretaries and for other workers, paid and unpaid, interested in co-operation. Good progress is being made in the publication of vernacular literature and in the popularisation of the principles for which co-operation stands. Regular programmes of inspection and lecturing tours of propaganda and instruction are organised; a co-operative quarterly magazine is published; and educational work, particularly in the direction of night schools is fostered.

CHAPTER XIII

Railways

I.—History of the Relations of the Government to Railways in India.

SOURCE :—Appendix A, Report of the Railway Board 1923-4.

The first proposals for the construction of railways in India were submitted in 1844 to the East India Company in England by Mr. R. M. Stephenson, afterwards Chief Engineer of the East Indian Railway, and others; they included the construction of lines by railway companies to be incorporated for the purpose and the guarantee by the East India Company of a specified return. A contract for the construction by the East India Railway Company of an experimental line of 100 miles from Calcutta towards Mirzapore or Rajmehal at an estimated cost of £1,000,000 was made in 1849 and a return of 5 per cent. was guaranteed by the East India Company on the capital; and a similar contract was made in the same year with the Great Indian Peninsula Railway Company for a line from Bombay to Kalyan at an estimated cost of £500,000. But the policy of entrusting generally the construction of Indian railways to guaranteed companies was not adopted until 1854 on the recommendation of Lord Dalhousie, who in a minute, dated 20th April 1853, explained his reasons for preferring the agency of companies, under the supervision and control of the Government, to the construction of lines on behalf of the Government by its own officers. He held that the State Engineer officers would make railways as well, and possibly as cheaply and as expeditiously as companies, but that the withdrawal from other duties of the large number of officers required would be detrimental to the public interest, that the conduct of commercial undertakings did not fall within the proper functions of any Government and least of all within the functions of the Government of India since the dependence of the population on the Government was in India one of the greatest drawbacks to the advance of the country, and that the

country would therefore benefit by the introduction of English energy and English capital for railway purposes with the possibility that such energy and capital would in due course be encouraged to assist in the development of India in other directions.

Old guaranteed Railways.—The policy by Lord Dalhousie was adopted, and between 1854 and 1860 contracts for the construction of Railways in India were made by the East India Company, or (after 1858) by the Secretary of State for India with the East Indian, Great Indian Peninsula, Madras, Bombay, Baroda and Central India, Scinde (afterwards the Scinde, Punjab and Delhi), Eastern Bengal, Great Southern of India (afterwards, when amalgamated with the Carnatic Railway company—see below—the South India) and Calcutta and South-Eastern Railway Companies. Under these contracts the railway companies undertook to construct and manage specified lines, while the East India Company (or the Secretary of State for India) agreed to provide land and guaranteed interest on the capital, the rate fixed being in various cases, 5, 4¾ and 4½ per cent, according to the market rates prevailing when the various contracts were made. Half of any surplus profits earned was to be used towards repaying to the Government any sums by which it had been called upon to supplement the net earnings of any previous period in order to make good the guarantee of interest; and the remainder was to belong to the shareholders. In practically all matters of importance except the choice of staff, the companies were placed by the contracts under the supervision and control of the Government, which had power to decide on the standard and details of construction; the rolling stock to be provided; the number, time and speed of trains; the rates and fares to be charged; the expenditure to be incurred; the standard of maintenance; and the form of accounts. The railways were to be held by the companies on leases terminating at the end of 99 years, and on such termination the fair value of their rolling stock, plant

and machinery was to be paid to them. But provision was also made to enable the Government to purchase the lines after 25 or 50 years on terms calculated to be the equivalent of the Companies' interest therein and also to enable companies to surrender their lines to the Government and to receive in return their capital at par.

EARLY ATTEMPTS TO SECURE FUNDS FOR RAILWAY CONSTRUCTION WITHOUT A GUARANTEE.—An attempt to secure the construction of railways in India, on terms more favourable to the Government than those of the contracts with the original guaranteed companies, was first made in 1862, when a subsidy, but not a guarantee was granted to the Indian Branch Railway company which proposed to make feeders to the trunk lines in Northern India, and did actually make one such line. Similar assistance was granted later to the Indian Tramway Company, which made a short line in Madras..... These terms failed to attract capital, and the two unguaranteed companies which had begun work found themselves after a few years unable to proceed without further assistance from the Government....In 1869, Sir John Lawrence summed up the result of the experiment of the construction of railways by unguaranteed companies as follows:—"The Government of India has for several years been striving to induce capitalists to undertake the construction of railways in India at their own risk, and on their responsibilitywith a minimum of Government interference. But the attempt has entirely failed, and it has become guarantee of interest fully equal to that which the Government would have to pay if it borrowed directly on its own account."

The attempt to encourage unguaranteed companies having thus been unsuccessful, it became necessary to decide whether the old practice of relying on guaranteed companies, of the type that had provided capital for, and had constructed, the first railways in India, should be continued. The Government of India expressed their objections to this course. They doubted whether their power of control over such companies

secured the greatest possible economy in construction. They also disliked the arrangement under which they guaranteed the interest on the capital of companies, and thus became responsible for loss on working while having only a comparatively remote prospect of profiting by the result of successful working. Two important changes were consequently made in the practice that had been followed since the beginning of railway construction in India:—

1. Arrangements were made with some of the most important of the guaranteed companies that, in lieu of the provision that half of any surplus profits was to be applied in repayment of sums advanced by the Government under the guarantee of interest, half of the surplus profits for each half-year should be the property of the Government. In consideration of this modification, the Government relinquished, in the case of three companies, the Great Indian Peninsula, the Bombay, Baroda and Central India and the Madras, its rights to purchase the lines at the end of the first 25 years from the dates of the respective contracts.

2. It was decided by the Secretary of State that the time had arrived when in both raising and expending such additional capital as might be required for new lines in India, the Government should secure to itself the full benefit of its own credit and of the cheaper methods which it was expected that it would be able to use. Accordingly, for several years after 1869, the chief capital expenditure on railways was chiefly incurred direct by the State and no fresh contracts with guaranteed companies were made except for small extensions. Among the lines constructed or begun by State agency and from State capital between 1869 and 1880 were the Indus Valley, Punjab Northern, Rajputana-Malwa, Northern Bengal, Rangoon and Irrawaddy Valley and Tirhoot.

Progress in the Construction of Railways. By the end of 1879, in about 25 years from the introduction of railways in India, 6128 miles of railway had been constructed by companies

which had expended, approximately, £97,872,000 (these figures include the Calcutta and South-Eastern and Nalhati Railways which were constructed by companies but were purchased by the Government in 1868 and 1872, respectively). By the same date 2,175 miles of railway had been constructed by the Government at a cost of £23,695,226.

In 1880, the necessity for great extension of the railway system was urged by the Famine Commissioners, appointed after the great famine of 1878, who estimated that at least 5,000 miles were still necessary for the protection of the country from famine. It was held by the Government of the time that a limit was necessary on the capital borrowed annually; and it was clear that the limit fixed was not high enough to allow of such progress in railway construction as was desirable. With reference to this difficulty the Famine Commissioners remarked; "that there would be manifest advantages in giving free scope to the extension of railways by private enterprise if it were possible; and, though the original form of guarantee has been condemned, it may not be impossible to find some substitute which shall be free from its defects, and may secure the investment of capital in these undertakings without involving the Government in financial or other liabilities of an objectionable nature."

Action of the direction suggested by the Commission was taken by the formation of three companies without a guarantee (the Bengal Central in 1881 and the Bengal and North-Western and Rohilkund and Kumaon in 1882) and three new guaranteed companies (Southern Mahratta in 1882, the Indian Midland in 1885, and the Bengal-Nagpur in 1887)....

The Assam-Bengal Railway Company was formed on similar lines in 1892, except that any surplus profits were to be divided between the Secretary of State and the company in proportion to the capital provided by each. The rate of guarantee in this case was 3½ per cent. for the first six years and thereafter 3 per cent. The Burma Railways Company was formed in 1897 to manage and develop the

line in that Province that had been constructed by the State. Interest at $2\frac{1}{2}$ per cent was guaranteed on the share capital raised by the company, and the surplus profits were originally divisible in the proportion of four-fifths to the Secretary of State and one-fifth to the company, but since 1908 the division has been proportional to the capital invested by each in the undertaking. The contract with the Burma Railway Company is terminable by the Secretary of State in 1928, or on subsequent occasions on repayment of the company's capital at par.

The terms of guarantee given to the companies formed since 1880 have thus been much more favourable to the Government than in the case of those formed before 1869.

Termination of Contracts of the Old Guaranteed Companies. In dealing with the guaranteed companies formed before 1869 and with those formed in 1881 and subsequently it has been the practice (except in the cases mentioned above, when the purchase of some of the old guaranteed lines was postponed in order to secure to the Government a share in surplus profits) to use in some way or other at the earliest possible date the right reserved by the Government of terminating the contracts of the various companies. The method of making use of this right has differed in different cases. The Eastern Bengal, Oudh and Rohilkhand and Scinde-Punjab-Delhi lines were purchased and transferred to State management, the last named now forming part of the North Western Railway. Similarly, the Bengal Central line was purchased and made part of the Eastern Bengal Railway. The Madras and the Indian Midland lines were acquired but left, after acquisition, under the management of companies working other lines with which it was advantageous to amalgamate them. In all other cases (East Indian, South Indian, Great Indian Peninsula, Bombay, Baroda and Central India, Southern Mahratta, and Bengal-Nagpur,) the course adopted has been to arrange for the continuance of management by the original company (or by a new company

closely related to the old one), but to secure more favourable financial conditions for the State by one or more of the following methods:—reduction of the amount of capital retained by the State on such capital, and modification in favour of the Government of the clauses relating to the division of surplus profits.

ARRANGEMENTS BETWEEN THE GOVERNMENT AND COMPANIES AT PRESENT.—The relation between the Government and the guaranteed companies now working railways may be summarised as follows:—

The lines that they work are the property of the State

The greater part of the capital is the property of the Government, either through having been originally supplied by it or through acquisition by the Government of the greater part of the companies' interests on the termination of old contracts.

When funds are required for further capital expenditure, the Government has the option either of providing them or of calling on the company to provide them The company receives guaranteed interest at a fixed rate on its capital; and similar payments out of the earnings are made to the Government. If, after these have been made, surplus profits remain, they are divided between the Government and the company in the various proportions provided for by the contracts. The company's share is in all cases only a small fraction of the Government's share.

All the contracts, except one, which is for a fixed term of 25 years, are terminable at the option of the Secretary of State at specified dates; and on termination the company's capital is repayable at par (except in the case of the East Indian Railway Company, which is for special reasons to receive a terminable annuity instead of a cash payment).

The administrative control exercised by the Government over the companies is as follows:—

The company is bound to keep the line in good repair, in good working condition, and fully supplied with rolling stock, plant, and machinery; to keep the rolling stock in good repair and in good working condition; and to maintain a sufficient staff for the purpose of the line—all to the satisfaction of the Secretary of State.

The Secretary of State may require the company to carry out any alteration or improvement in the line, or in the working that he may think necessary for the safety of the public or for the effectual working of the line.

The Secretary of State may require the company to enter into agreements on reasonable terms and conditions, with the administrations of adjoining railways for the exercise of running powers, for the supply to one another of surplus rolling-stock, for the interchange of traffic and rolling-stock and the settlement of through rates, and for

additions and alterations to, or the redistribution of existing accommodation in junctions or other stations in view to their convenient mutual use.

The train service is to be such as the Secretary of State may require. In order to secure a general control over the rates quoted by companies, the Secretary of State has retained power to settle the classification of goods and to authorise maximum and minimum rates within which the companies shall be entitled to charge the public for the conveyance of passengers and goods of each class.

The company has to keep such accounts as the Secretary of State may require, and these are subject to audit by the Secretary of State.

In all other matters relating to the line the company is made subject to the supervision and control of the Secretary of State, who may appoint such persons as he may think proper for the purpose of inspecting the line, auditing the accounts, or otherwise exercising the power of supervision and control reserved to him. In particular, the Secretary of State has the right to appoint a Government Director to the Board of the company, with a power of vote on all proceedings of the Board. All the moneys received by the company in respect of the undertaking whether on capital or revenue account, have to be paid over to the Secretary of State. All expenditure by the company has to be stated and submitted for the sanction of the Secretary of State.

Thus, the Government has the preponderating financial interest in the lines worked by the two classes of guaranteed companies, those formed before 1869 and retained as working agencies with reduced capital after purchase, and those formed on terms more favourable to the State after 1880; it has exceedingly wide control over the methods of working; and it has the right of taking possession of the lines at specified times on repayment at par of the capital of the companies.

II. - The Organisation of Government Control.

SOURCE :—Appendix B, Report of the Railway Board 1923-4.

1. As will be seen from Appendix A, the initial policy for the construction and working of railways was the establishment of Guaranteed Railway Companies of English domicile and it was not until 1868 when the Calcutta and South Eastern Railway was surrendered to the Indian Government under the terms of the contract between the Secretary of State and the Company that Government owned any portion of the railways in India.

2. Control over the operation of Guaranteed Railway Companies was at first secured through the appointment of a Consulting Engineer of Guaranteed Railways. Some years later, Local Consulting Engineers were appointed for the exercise of control over Guaranteed Railways and over State-owned Railways leased to Companies for working. . . .

3. The Government of India having in 1869 definitely adopted the policy of direct construction and ownership of railways a period of rapid development in railway construction ensued, and it became necessary to relieve the Public Works Department Secretariat of the Government of India in some measure of the detailed control of railways. Accordingly in 1874 a State Railway Directorate was established and the greater portion of the State Railway establishment and business connected with State Railway administration was transferred to the control of the Director of State Railways. This officer functioned on much the same lines as the head of a department under the Government of India. The consulting Engineer to the Government of India for State Railways was associated with him but affairs of consequence had still to be referred to the Public Works Department.

A special Deputy Secretary in the Railway Branch of the Secretariat of the Public Works Department was also appointed to conduct the correspondence between the Government of India and these officers.

4. Early in 1877 a further change was made in the organisation responsible for the administration and control of State Railways. In place of one Director of State Railways three Directors of Territorial System and one Director of State Railway Stores were appointed. The territorial divisions comprised the following:—Central—1,179 miles, Western—927 miles and North-Eastern—830 miles.

This division of the administration on a territorial basis proved unsatisfactory in practice as it resulted in the issue of conflicting orders and in order to remedy this defect it was decided in 1880 to abolish the Directors of the Central Western

systems and to transfer the work allotted to them to the Consulting Engineer of the neighbouring Guaranteed Railways.

The abolition of these two appointments resulted in an increase in the administrative work of the Secretariat, and it was found necessary to raise the status of the Deputy Secretary, to whom was entrusted the powers previously exercised by the Directors to that of the Director General of Railways.....

5.....In the revised organisation the Consulting Engineer to the Government of India for State Railways was associated with the Director General of Railways and assisted the latter primarily in an advisory capacity in matters affecting civil engineering; the Director of Stores similarly acted in an advisory capacity in matters concerning stores and rolling-stock. He was also an adviser in matters affecting establishment. A Director of Traffic was appointed as an adviser on matters affecting traffic problems, and the accounts work of the department was placed under the Accountant General, Public Works Department.

6. Government control and supervision of the Guaranteed Railways continued to be exercised by the Local Consulting Engineers to Government. There were five such officers at the time with headquarters at Bombay, Madras, Calcutta, Lahore and Lucknow. The Consulting Engineers at Madras and Bombay worked directly under the Government of these Presidencies, while those of Calcutta, Lahore and Lucknow were under the immediate orders of the Government of India. Under this arrangement for supervision and control over the work of Guaranteed Railway Companies, which arrangement was extended at a later date to cover the case of State Railways leased for working to Railway Companies, practically all powers affecting the finances and day to day management of the railways were vested either in the Consulting Engineers or in the Government.

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8. Since 1881 further alterations in the administrative organisation, more or less of a detailed character, were made and by 1890 the following changes had taken place. Instead

of the Deputy Secretary and Under Secretary, Railway Branch, there were then only an Under Secretary and an Assistant Secretary, Railways in the General Branch. The posts of Director of State Railways, Stores, and Director of Construction had disappeared and in their place there was an Under Secretary who was an ex-officio Deputy Director General of Railways. The post of Accountant General, Railways, had also been abolished and the Accountant General, Public Works Department, was once more made responsible for this work.

9. Further changes were made in 1897. In that year the post of Director General of Railways was abolished and the post of a Secretary to the Government of India in the Public Works Department was created in its place.....

10. In October 1901, Sir Thomas Robertson, C.V.O., was appointed by His Majesty's Secretary of State for India in Council as Special Commissioner for Indian Railways to enquire into and report on the administration and working of Indian railways. In his report, which became available in 1903, Sir Thomas recommended that the administration of the railways in India should be entrusted to a small Board consisting of a President or Chief Commissioner who should have a thorough practical knowledge of railway working, and should be a member of the Viceroy's Council for railway matters and two other Commissioners who should be men of high railway standing and should have a similar training to that of the President.....

11. Sir Thomas Robertson's recommendations were carefully considered by the Governor-General in Council and the Secretary of State, and early in 1905 it was decided that the Railway Branch of the Public Works Department of the Government of India should be abolished and that the control of the railway systems in India should be transferred to a Railway Board consisting of three persons, a Chairman and two Members. The Chairman of the Board was vested with the general control of all questions committed to the Railway Board with power to act on his own responsibility subject to confirmation by the Board

The Railway Board were authorised to delegate to the Chairman or a Member the power of settling questions which might arise on any tour of inspection, such decision to be recorded subsequently as an act of the Railway Board. The Board was made subordinate and directly responsible to the Government of India in the Department of Commerce and Industry.....

12. Within a short time of the constitution of the Railway Board, it was found that work was being hampered by having the Commerce and Industry Department between the Railway Board and the Governor-General in Council, and in October 1908 on the recommendations of the Railway Finance Committee presided over by Sir James Mackay (now Lord Inchcape), the following changes were introduced:—

The designation of the appointment of Chairman of the Railway Board was changed into President of the Railway Board and enhanced powers were vested in the President.

The Board with its staff became collectively the Railway Department distinct from and independent of the Department of Commerce and Industry, though remaining under the administrative charge of the Hon'ble Member, Commerce and Industry Department, as the Railway Member.

The President of the Board was given direct access to the Viceroy as if he were a Secretary to the Government of India.

At the same time in consequence of the amalgamation of the Public Works Department Accounts and Civil Audit Establishments under the control of the Finance Member of the Government of India the appointment of Accountant General, Public Works Department, was abolished and a new appointment of Accountant General, Railways, was created.

13. In 1909 the post of Director of Railway Construction was abolished and the appointment of Chief Engineer with the Railway Board for the purpose of advising the Railway Board on technical matters connected with Civil Engineering was created.

14. In January 1914, it was decided that the importance of financial and commercial considerations in connection with the control of Indian Railway policy justified the modification of the rule that the President and Members of Railway Board should all be men of large experience in the actual working of railways. It was then decided that in future one member who equally with the others might be appointed President should be selected for commercial and financial experience and a member with the necessary qualifications was appointed.

This arrangement was, however, altered in 1920 when it was decided that all the three members of the Board should possess railway experience. To assist the Board, however, in the consideration of financial questions, the post of a Financial Adviser to Railway Board was created.

15. Owing to the expansion of railways in India and the increased work thrown on the Board a second Assistant Secretary, Engineering, was appointed in 1914, and in 1916 the duties of the Construction Branch were divided between one branch dealing with Projects under an Assistant Secretary and a second branch dealing with Way and Works which was sometimes under a separate officer and at other times under the Secretary or Chief Engineer. In 1922 the charge of the Way and Works branch was divided between the Assistant Secretary in charge of Projects and the Assistant Secretary in charge of Stores.

16. In November 1922, the Board's establishment was strengthened by the appointment of a Chief Mechanical Engineer. This appointment was created to enable the Board to have at the headquarters a reliable adviser on matters affecting mechanical engineering.

17. During 1921 a Committee presided over by Sir William Acworth visited India and one of the questions referred to was the evolution of a satisfactory authority for the administration of the varied functions which the Railway Board had to

perform....The Acworth Committee recommended in their report:—

(1) that a new Department of Communications responsible for railways, ports and inland navigation, road transport and posts and telegraphs under a Member of Council in charge of communications should be created;

(2) that under the Member of Council for Communications there should be a technical staff consisting on the railway side of a chief Commissioner and four Commissioners, and that of the four one should be in charge of finance and the organisation and staff of the office, and that the three other commissioners should be in charge of three respective geographical divisions, western, eastern, and southern.

(3) that the technical staff attached to the Commission should be strengthened specially on the traffic side.

18. The Government of India did not accept the first recommendation of the Acworth Committee. They agreed to the re-organisation of the Railway Board being undertaken on the principles underlying the report of the Acworth Committee. The appointment of Chief Commissioner was sanctioned in November 1922....The first duty of the Chief Commissioner was to work out detailed proposals for the re-organisation of the Railway Board. He made recommendations to the Government of India for the immediate appointment of a Financial Commissioner and his recommendation was strongly endorsed by the Indian Retrenchment Committee. The appointment of the Financial Commissioner was made in April 1923 with the sanction of the Secretary of State. The proposals of the Chief Commissioner for the re-organisation of the Railway Board were accepted by the Government of India and the Secretary of State, and were introduced at the close of the year under report....

19. The Railway Board as now constituted consists of the Chief Commissioner as president, the Financial Commissioner and 2 Members....The re-organisation provides for

arrangements to relieve the Chief Commissioner and Members from all but important work by the appointment of responsible Directors at the head of each of the main branches of work, namely, Civil Engineering, Mechanical Engineering, Traffic and Establishment. It is expected that the re-arrangement of the disposal of current work under this organisation will free the Chief Commissioner and the Members to devote their attention to larger questions of railway policy and enable them to tour over the various railway systems to a greater extent than they have been able to do in the past.....

Two of the four Directors were already in existence in the form of the Chief Engineer and the Chief Mechanical Engineer. Hitherto these officers have been employed mainly in consultative work, but under the re-organisation the scope of their duties is being enlarged so as to entrust them with the direct disposal of such matters dealt with in their branches as do not raise large questions of policy.

III.—Financial Results of Railways.

(1) Extract from Acworth Committee's Report:—How much the economic development of India has suffered not from hesitation to provide for the future—no attempt has been made to do this—but from the utter failure even to keep abreast of the day-to-day requirements of the traffic actually in sight and clamouring to be carried, it is impossible to say. Had the Government thought fit to borrow money even at a rate considerably higher than the rate of net return that the railways could earn on it, we believe its action would have been abundantly justified. But in fact the Indian Government never needed for many years previous to 1914 to face this opposition. A reference to the curve of net revenue given in the Adminsitration Report on Railways in India will show that, though in the earlier years the interest on railways capital had to be met partly out of taxation, for the last 45 years the net earnings of the capital invested in Indian Railways

has never sunk below 4 per cent. For the last 20 years it has only three times sunk below 5 per cent., and this result was attained though a substantial sum had been charged against revenue for repayment of capital and in spite of the fact that a not inconsiderable part of the total mileage had been built not on commercial grounds but for strategic purposes. Now the average rate payable by the Government of India on this borrowed money is about 3¾ per cent. We are unable with these figures before us to find any justification for the policy which has been persistently pursued of starving the development of Indian Railways.

Evidence was given to us from various quarters tending to show the indirect benefits to the economic development of the country and this must always imply a corresponding increase of taxable capacity to be obtained from extension of railway facilities. We have endeavoured to obtain from Land Settlement officers in different parts of the country precise figures on this point not, however, with much success. When conditions change in the 20 or 30 years' period between one settlement and the next, it is not easy to isolate a single cause and to say how much of the change is due to that single cause.....

(2) Extract from India in 1923-24:—During 1921-22, railways fell from the status of an important source of revenue to the position of a heavy liability. Owing to the unprecedented rise in working expenses, and the slump in trade, the receipts to Government in that year amounted to Rs. 81·94 crores while the total charges worked out to Rs. 91.21 crores. Fortunately, during the year 1922-23, the position again became satisfactory, the net gain to Government after providing for interest, annuity and other similar charges, being Rs. 1.22 crores. The total gross earnings of all railways in India amounted to Rs. 105.65 crores, as compared with Rs. 92·89 crores in 1921-22. These figures, however, include railways owned by Indian States and companies for which the Government of India has no direct

responsibility. The receipts to Government for the year 1922-23 showed the considerable rise of about Rs. 11½ crores in comparison with the figures of the previous year. This was due to a certain extent to an increase in passenger fares and good rates. But it is symptomatic of a reviving commercial prosperity of the country, that there was also an increase of 6½ million tons in the commodities carried; while the number of third-class passengers rose from 500·5 millions to 502·9 millions. It is, however, interesting to notice that this was accompanied by a considerable falling off in the number of upper class passengers carried.

The Railway Department, as the largest spending department of the Central Administration, naturally received considerable attention from the Retrenchment Committee presided over by Lord Inchcape. The Committee was of opinion that India could not afford to subsidise the railways; and that steps should be taken to curtail operating expenses in order to ensure both that the railways as a whole should exist on a self-supporting basis; and that an adequate return should be obtained for the large capital expenditure incurred by Government. They considered that a fair return would be 5½ per cent. In this connection it is interesting to notice that at the close of the year 1922-23 the percentage of net earnings on total capital outlay amounted to 4·88 per cent. The main recommendations in regard to the reduction of working expenses were adopted in the Budget for the year 1923-1924; and immediate steps were taken by the Railway Board to make this reduction effective.

V.—State Management versus Company Management.

SOURCE:—Report of the Acworth Committee.

"Our reference instructed us to consider four possible methods of management of the Indian railways belonging to the State: by English companies, by Indian companies, by a combination of English and Indian companies, or directly by the State; and to advise on the relative advantages of these

four methods. The Committee have unanimously ruled out management either by English companies or by combinations of English and Indian companies. There remains, therefore, for discussion only, the alternative between management by Indian companies and management directly by the State. But we desire to add to that portion of the Report to which the Committee have unanimously agreed, some further observations on the subject of the English companies, which in our judgment have a direct bearing on the question of State versus company management in India.

The Committee have unanimously recommended that the English companies shall be brought to an end on the broad ground that they do not correspond with modern Indian conditions. But in our judgment, there is another and even stronger ground, that they represent a system essentially unworkable. There is a great deal to be said for company management. Few people will be found to deny that a company, investing its own money, managing its own property, and judging its officials by their success in producing results in the shape of dividends, usually conducts its business with more enterprise, economy and flexibility than are found by experience to be attained in businesses directly managed by the State. It is, we think, strictly germane to the question we have now to consider, to point out that the English companies ceased many years ago to be companies in this sense.

The property entrusted to their management is not their own, and their financial stake in the undertakings is, as we have said, relatively very small. But it might be urged that the objection on these grounds to their continuance is merely theoretical. In a work-a-day world it matters little whether a system is logical, provided that it works. Our experience and investigations in India have led us to the quite definite conclusion that the system never has worked satisfactorily,

and cannot be made to do so. The management of the undertakings is nominally entrusted to the several guaranteed companies. We say "nominally," for the Government, feeling itself to be the real owner and ultimately responsible, not only financially, but also morally and politically, for the policy pursued, has always refused to leave any real initiative in their hands. And as by the interposition of the companies the Government is kept apart from direct management, it in its turn does not feel an obligation to undertake the intiative itself.....

Our conclusion, therefore, is, in a word, that the guaranteed companies do not possess the essential attributes which belong to ordinary companies. To claim that, because ordinary companies possess the advantages of energy, enterprise, and so forth, therefore companies of the nature which we have described may be expected to possess these advantages, is to be misled by a mere name.

We now proceed to discuss the question from a quite different angle. Indian public opinion is practically unanimous in demanding that the owner shall manage directly.....We attach great importance to the fact that Indian public opinion is against company management, and this not only on the general ground that Indian opinion is entitled to great weight on a question such as this, but for another reason of great practical importance. It is with money secured on Indian taxation that the Indian railways have been almost entirely built. It is the Indian public that uses the railways and pays the railway rates and fares. It is the Legislative Assembly at Delhi which under the new constitution votes the railway budget. It is of the utmost importance that Indian public opinion should not be prepossessed against the railway management. As a matter of practical politics it must always be remembered that a railway undertaking is a large and widespread concern; it employs a staff numbering very many thousands; and this staff, some of whom will certainly be stupid, careless and possibly even corrupt, comes in contact

every year with millions of customers, whether as traders or as passengers. "Give a dog a bad name and hang him" is a very true proverb in this connection. We do not think in this fallible world company management can be so good as to escape fierce, often unfair, criticism from Indian opinion. Even if we were to assume that State management would not be better, we are quite sure that its failures would be judged more leniently by the Indian public.

We think it necessary here to draw special attention to the CAVEAT which we have to enter. It is not State management as it has hitherto existed in India, whose functions we recommend to be so greatly extended. In earlier chapters of this Report the Committee have pointed out the failure and drawbacks of the existing system of control of Indian railways, whether considered from the executive and administrative or from the financial point of view. To the Government Departments concerned, as at present constituted and administered, we should hesitate to entrust any new responsibilities, in respect either of State or company managed railways. Our recommendation as to State management must therefore be read as coupled with and conditioned on the adoption,—at least substantially, and in main outline—of the recommendations which we have made with respect to financial and administrative reforms.

Our colleagues who desire to introduce the new system of guaranteed companies with Indian domicile have, in paras 248 to 310, set out their objections to direct State management. We will deal with them very briefly. Their first point is that "reliance cannot be placed solely on Government for the provision of the necessary funds". That the Government has not provided sufficient money in the past, we fully agree. We fail to find any evidence that it has not been or will not be able to do so...

Our colleagues further claim that the improvements in the administration of State railways which have been effected are due to the emulation inspired by company management. But in fact, and speaking of present conditions we have found no reason in India to think that company management is more efficent or more enterprising than State management. We have found quite as much zeal for improvement, quite as much readiness to adopt new methods, on State railways as on company lines.....

Our colleagues further suggest that experience in other countries justifies their preference for company management. Our reply is twofold: that in India company management in the ordinary meaning of the words does not exist, and cannot, we believe, be brought into existence; and secondly, that a report on Indian railways is not the place to discuss the general question of State versus Company management. Unless it is fully discussed isolated details are valueless. For its adequate discussion a volume would hardly suffice. We are not unfamiliar with the instances advanced and with the surrounding circumstances or with the example of successful management which might be adduced on the other side. But we prefer to leave to our colleagues all the advantage which their reference may afford them.

The whole reference to foreign countries is, in our opinion, irrelevant. It may be that State ownership in the countries mentioned is a mistake. We have, however, not to advise about the past policy of other countries, but about a future policy for India under the conditions that we find there to-day. Conditions in India being what they are, we have failed to find any solution of the problem submitted to us consistent with the retention of company management. We therefore do not hesitate though most of us have approached the question with a strong prepossession in favour of private enterprise as a general proposition, to recommend that in

India the State should manage directly the railways which it already owns.

Our colleagues have adduced lengthy statistics which they consider prove the inferiority of State management in India. The figures would have been more persuasive if the comparison had been made of like with like, or even if all the State managed lines had been compared with all the guaranteed companies lines and not with a selection from them.

Our colleagues suggest that company management will better secure the appointment and promotion of Indians in railway administration. They give no reasons in support of this opinion. We are unable to supply them. From the evidence we have received we conclude that the Indian public take the opposite view.....

The management of a great railway system by an Indian-domiciled company is admittedly an experiment. State management is not an experiment; it has long existed in India, and our colleagues admit that it must continue in at least one very important case. Even, however, if it were a question of choice between two experiments, it appears to us that, assuming either experiment to be a failure, it would be easier to transfer a State managed railway to a private company, as has frequently been done in the past, than to disestablish, on six or twelve months notice, a company already established. The machinery for testing the State experiment is in existence at this moment, while the machinery for the company experiment would need to be specially created. Further, in the former case, if the experiment failed, there would be no premium to pay, as our colleagues suggest would be necessary if the State were to take away from the newly formed company the management of the East Indian Railway.

We regret we have been forced into controversy with our colleagues. We have based our recommendation mainly on the broad ground which seems to us incontrovertible, that as a matter of practical politics companies substantially

independent cannot be formed in India, and that without such independence the advantages of private enterprise are lost. The fact that our colleagues can only propose the formation of companies in which the State would own the great bulk of the stock, appoint half the directors, and nominate the chairman, with an ultimate appeal in case of disagreement on the board to the Government itself, has confirmed us in our belief that we have correctly understood the position.

VI.—Other Main Recommendations of the Acworth Committee.

SOURCE:—The Acworth Committee's Report.

(1) "We propose great changes in the constitution, status and functions of the Railway Board. We recommend that at the head of the Railway Department there shall be a member of Council in constant touch with railway affairs; and we suggest that with this object there shall be created a new Department of Communications responsible for railways, ports, and inland navigation, road transport (so far as the Central Government deals with this subject) and posts and telegraphs." . . . .

(2) "We recommend that, on the one hand, the reconstituted Railway Department should delegate considerably increased power of day-to-day management to the local railway administrations, and on the other hand should be relieved from control by the India office and by the Government of India except on large questions of finance and general policy."

(3) "We recommend that the Finance Department should cease to control the internal finance of the railways, that the railways should have a separate budget of their own."*

(4) "We lay stress on the importance of giving to the Indian public an adequate voice in the management of their railways. And accordingly we recommend the establishment of Central and Local Railway Advisory Councils. . ."

(5) "We recommend the establishment of a Rates Tribunal, consisting of an experienced lawyer as chairman, and two

*See pages 466-8.

members representing respectively railway and commercial interests; and that there be given to them jurisdiction over all questions of the reasonableness of rates and of facilities; that they be instructed to investigate the conditions attached to "owners" and "railways" risk notes at the present time, and to frame new standard forms for use in future; and that there be, under certain circumstances, an appeal from the decision of the Rates Tribunal to the Governor-General in Council."

(6) "We recommend that greater facilities should be provided for training Indians for the superior posts in railway service; and that the process of their employment in such posts should be accelerated."

CHAPTER XIV.

Irrigation.

I.—The Necessity for irrigation

SOURCE:—Triennial Review of Irrigation 1918-21.

No review of irrigation in India, however brief, would be complete without some reference to the meteorological conditions which render such irrigation necessary. The vast extent of the country precludes more than a general outline of these conditions being given, but even an outline will serve to show why, over a great portion of the peninsula, successful cultivation cannot be assured for any considerable period unless facilities are available for the artificial watering of the crops, when necessary.

RAINFALL. The chief characteristics of the Indian rainfall are its unequal distribution over the country, its irregular distribution throughout the seasons and its liability to failure or serious deficiency. India, indeed, probably presents a greater variety of meteorological conditions than any area of similar size in the world.....

The second important characteristic of the rainfall is its unequal distribution throughout the seasons.....

But from the agricultural point of view undoubtedly the most unsatisfactory feature of the Indian rainfall is its liability to failure or serious deficiency. The average annual rainfall over the whole country is about 45 inches and there is but little variation from this average from year to year, the greatest recorded being only about seven inches. But if separate tracts are considered, extraordinary variations are found. At many stations annual rainfalls of less than half the average are not uncommon, while at some less than a quarter of the normal amount has been recorded in a year of extreme drought.

The effect of these variations, as productive of famine and scarcity differs considerably according to the average rainfall of the tract, being least in those parts where the

average is either very high or very low. Where the average rainfall is high, a large deficiency can be experienced and yet sufficient remain to ensure successful agriculture; where the average is very low, ten inches or less, cultivation without irrigation becomes in any case practically impossible and agriculture consequently ceases to depend upon the rainfall and relies wholly upon water obtained from other sources. In portions of such tracts which are devoted to pasturing cattle, high prices or the drying up of natural grasses may lead to distress, but famine from failure of crops need not be apprehended. But between these extremes, in which the crops are rendered safe either by an assured and abundent rainfall or by exclusive reliance upon irrigation, there lies a vast area, in which the average rainfall varies between 75 and 10 inches, no portion of which can be deemed absolutely secure against the uncertainties of the season and the scourge of famine.

In general it has been found that the lower the rainfall in a tract, the greater is its liability to serious deficiency from the average, and the most precarious area is that in which the normal rainfall is less than 50 inches. This area includes practically the whole of the Punjab and N. W. F. Province, the United Provinces except the submontane districts, Sind, a large portion of Bihar, most of Madras, most of the Bombay Presidency except a strip along the coast, portions of the Central Provinces and a small tract in Burma. It is in this area that the principal irrigation works in India are to be found.

Frequency of years of scarcity. Classing a year in which the deficiency is 25 per cent. as a dry year and one in which it is 40 per cent. as a year of severe drought, the examination of past statistics shows that, over the precarious area, one year in five may be expected to be a dry year and one in ten a year of severe drought. It is largely in order to remove the menace of these years

that the great irrigation systems of India have been constructed.

II.—History of Irrigation in India

(A) Irrigation before British Rule.

SOURCE:—The report of Irrigation Commission 1903.

36. In the early records of the people of India, dating back to many centuries before the commencement of our era, there are frequent references to the practice of irrigation. Wells have been in use from time immemorial, most of the almost innumerable tanks of the Southern India have been in existence for many generations, two in the Chingleput District of Madras, which still irrigate annually from two to four thousand acres, are referred to in inscriptions which are said to be of the 8th and 9th centuries of our era, the practice of drawing of the flood waters of the Indus and its tributaries by means of small inundation canals has been followed from a very early date, and in the submontane districts of Northern India are still to be found the remains of ancient irrigating channels which have been buried for centuries in the undergrowth of the forests. But the numerous large works which now exist for utilising the supplies of the larger rivers are of comparatively recent date, and little seems to have been done in this direction before the country came under British rule. The most notable exceptions are the 'Grand Anicut' across the Coleroon river in Madras, some of the inundation canals on the Indus and its tributaries, and two canals taking out of the Jumna river at a point where, passing through a gorge in the outer ranges of the Himalayas, it debouches on to the plains.

37. To the 'Grand Anicut', tradition assigns a period corresponding to the close of the second century, though it is probably of much later date. This work is, so far as is known, the greatest engineering work carried out in India before British rule began. It consisted of a solid mass of rough stones, over 1,000 feet in length, 40 to 60 feet in breadth, and 15 to

18 feet in depth, stretching across the whole width of the Cauvery river. It fulfilled its purposes for some centuries and in 1830 was still in operation, but the vagaries of the river had not been watched, and by that time the main stream had begun to flow down a northern channel known as the Coleroon, and the district of Tanjore had lost much of its former prosperity.

38. Most of the existing inundation canals in the Multan, Muzaffargarh, and Dera Ghazi Khan districts, were constructed by the former Muhammadan and Sikh rulers, and on many of these canals a high degree of efficiency was attained under the management of the great and energetic canal maker, Diwan Sawan Mal.

39. A canal, known as the Hasli was also constructed by the Sikh or Muhammadan rulers of the Punjab to carry water to Lahore from a point on the Ravi river at a distance of 130 miles. When the Punjab came under British rule, the area irrigated by the canal was paying a revenue of eighty five thousand rupees.....

40. Owing to the proximity of the Jumna to Delhi, the Muhammadan rulers of India turned their attention at an early period to utilising the water of that river for the irrigation of the higher lands on its banks. In the fourteenth century, Firoz Shah Tughlak constructed a canal, taking water from the right or western bank of the Jumna, a distance of about 150 miles, to irrigate his favourite hunting grounds at Hissar. This canal which had silted up, was repaired during Akbar's reign by the Governor of Delhi for the irrigation of lands in his private estate, but for want of repairs it again stopped flowing. About the year 1647 A. D. the canal was repaired under the direction of Ali Mardan Khan, the celebrated Engineer of Shah Jahan, and a new channel excavated to carry water into the city of Delhi. During the decline of the Mughal empire the canal again gradually silted up until it ceased to flow. The canal on the Eastern bank of the Jumna was also

constructed during the Mughal Dynasty, probably during the reign of Muhammed Shah (1718-1748), but it appears to have been very soon abandoned, if indeed it had ever been used for the carriage of water. In 1784 the work was partially restored by Rohilla Chief who succeeded in bringing water to some short distance below Saharanpur, and there are traditions of serious injury having been caused thereby to the towns of Saharanpur and Bhut.....

41. Doubts have been expressed as to whether these works, in their former condition, ever irrigated any considerable areas or conferred much benefit upon the people. Be this as it may, it is certain that it was the existence of the 'Grand Anicut' in Madras, and the remains of the old Muhammadan channels in the Punjab and United Provinces, which suggested and led to the construction of the earliest works carried out under British rule. India, therefore in a great measure owes to her former rulers the first inception of her present unrivalled systems of State irrigation works. The most efficient and useful works which were constructed in former times are, however, the smaller works—tanks, weirs and river-channels—which are to be found scattered throughout the Peninsula, and in Upper Burma. They are most numerous in the Madras Presidency, where to this day they irrigate collectively an area equal to that irrigated by all the larger works which have been constructed by the British Government in that Presidency.

(B). Early development of State irrigation works under British rule.

SOURCE:—Report of the Irrigation Commission.

42. With the early history of the construction of the irrigation works by the British Government, two names must always be inseparably associated—those of Sir Arthur Cotton and Sir Proby Cautley, the former in Southern and the latter in Northern India. In 1836, Sir Arthur Cotton constructed what is known as the 'Upper Anicut' across the Coleroon river, so as to maintain the level required for the full utilisation of the ancient

dam or 'Grand Anicut' across the Cauvery which he also strengthened and restored. To this work carried out at a cost of about 15 lakhs, the district of Tanjore, which pays annually to the state a revenue of 58¾ lakhs, owes its present agricultural prosperity. Subsequently Sir Arthur Cotton designed the works which, constructed and improved at a cost of about three crores, irrigate more than two million acres in the Godavari and Kistna Deltas. It would be difficult to find in any country three works of similar magnitude or cost which have conferred the same degree of benefit upon the people and the State.

43. In Northern India, at a still earlier date, during the administration of the Marquis of Hastings (1814-1823), the canal of Ali Mardan Khan, on the western bank of the Jumna, was restored, and the work of reconstructing the eastern canal was taken in hand. Subsequently in 1837, Captain Cautley, an Artillery Officer quartered at Dhera, a town which from some time in the seventeenth century had been supplied with drinking water by means of a small canal from the Rispana river, was deputed to make an estimate of the cost of a small canal from the Tons, a tributory of the Jumna. Here, and subsequently on the Eastern Jumna Canal, Captain Cautley gained the knowledge and experience which he afterwards utilised to such wonderful effect in the construction of the great Ganges Canal, a work which in magnitude and boldness of design has not been surpassed by any irrigation work in India or elsewhere. By the construction of this work was laid the foundation of the numerous large canal systems which now carry their waters so widely over the plains of North-Western India.

(C.) Failure of Private Companies.

SOURCE:—Decennial report on Moral and Material Progress 1882.

Encouraged by the success of these works, two private companies were formed in England to promote Indian irrigation on a large scale. The Madras Irrigation and Canal Company received in 1863 a guarantee from Government of 5 per cent.

on a capital of £1,000,000 sterling for the construction of a canal from the Tungabhadra river in Kurnool District. The scheme was never completed in its entirety, and has proved a financial failure. In 1883, this canal was purchased from the Company by the Government. The East India Irrigation and Canal Company, which was formed in 1860, proposed to carry out two important systems of irrigation in Bengal without any guarantee from the State. One of these systems consisted of a network of canals in the Mahanadi delta in Orissa, similar to those on the Madras coast, together with a canal for navigation between Calcutta and Cuttock. The other scheme proposed was to utilise for both irrigation and navigation the waters of the Son, a large tributary of the Ganges in South Behar. The Company never began work on the Son; and its operations in Orissa were stopped after a few years by want of funds. In 1868 both schemes were abandoned to the State, in consideration of a payment of £1,050,000; and have since been pushed on by the Bengal Government. At the present time, therefore, all irrigation in India, except so far as conducted by the cultivators from their own resources is the concern of the Government, which supplies the capital required and manages the working.

(D) The Irrigation Commission, 1901–3.

During the famines that occurred in nearly every province of British India and in most of the Native States between 1896 and 1901, the protective value of irrigation was very plainly shown, inspite of failures of some of the smaller storage works, and the question naturally arose whether this protection might not be extended in those tracts in which the most severe distress had occurred. The general question of irrigation, particularly in its bearing upon famine, was referred to a commission. The commissions's report was presented to Parliament. It expressed the opinion that the field for the construction of new works of any magnitude on which the net revenue would exceed the interest charges was restricted to the Punjab, Sind, and parts of Madras, and that the tracts in which most of such

works could be constructed were not liable to famine. Where protective irrigation was most urgently required—in the Deccan districts of Bombay, Madras, the Central Provinces, and Bundelkhund—the Commission found that there was no prospect of new irrigation works on any considerable scale proving directly remunerative; but they recommended that works should be undertaken in these tracts with a view to reducing the cost and mitigating the intensity of future famines. The commission reviewed all the irrigation works of importance in every province of India, pointed to a great number of suggested projects, and recommended a thorough investigation of the irrigation capabilities of every part of India. They sketched out a rough programme of works for the next twenty years to add 6½ million acres to the irrigated area at an estimated cost of nearly £30,000,000. The Report gave a great impetus to the growth of irrigation in India. The systematic investigations that followed indicated that the possibilities of irrigation were even greater than had been contemplated by the commission. The recommendations of the Report, with few exceptions, have been accepted by the Government of India, and form the basis of its policy.

III.—Irrigation in Bombay.

SOURCE:—Review of Irrigation 1917-18.

i. Deccan and Gujrat.

GENERAL CONDITIONS IN THE DECCAN AND GUJRAT.—In the Deccan and Gujrat the cultivation depends chiefly upon rainfall, and the tanks and canals are mainly useful for the purpose of growing the more valuable crops or to counteract, when required, the evil effects of years of drought or of prolonged breaks in the monsoon. There are not many streams in the Deccan from which it is possible to obtain much water, except during the monsoon, and hence the necessity for the construction of costly storage reservoirs. Moreover, the Deccan plains are most irregular and a canal cut through them has to overcome numerous difficulties in regard to slope, soil and alignment.

Panjhra River works.—1851.—The oldest of the Government irrigation works in the Deccan are the Panjhra River works in Khandesh. They date from 1851-52.

Progress from 1852-1870.—After 1852 there was a considerable interval during which no further projects were taken in hand, but between 1865 and 1870 a number of small works came into operation, of which the Kadwa river works in Nasik and the Krishna Canal in Satara were the most important. Six other smaller works also came into existence in various districts, extending from Khandesh in the north to Dharwar in the South.

Mutha Canal 1870-1880.—Between 1870 and 1880 twelve more works were added, of which by far the most important was the Mutha Canal, built at a cost of 79 lakhs of rupees, with a large storage reservoir of 4,000 million cubic feet capacity at Lake Fife in the Poona district. The system now brings in a gross revenue of more than 4 lakhs of rupees per annum, but nearly two lakhs of this are obtained from the supply of drinking water to Poona City and Cantonment. The Ekruk tank and the Hathmati and Khari Cut Canal system, each constructed at a cost of 13 lakhs, also belong to this decade. The Hathmati Canal was the first and is still the most important work in Gujrat.

Nira Left Bank Canal, 1880-1890.—A considerable impetus to the construction of irrigation works was given by the occurrence of the great famine of 1876; and in the succeeding ten years, from 1880 to 1890, 12 new works came into operation which added 175,000 acres of irrigable area to the previous total of 147,000 acres. The two largest works—the Nira Left Bank Canals and the Mhaswad Tank, were classified as protective works, the remainder falling in the category of minor works. The Nira Left Bank Canal, which received its supply partly from the Nira river and partly from Lake Whiting, a reservoir of 5,300 million cubic feet capacity on a tributary of the same, was built at a cost of 65 lakhs rupees

and has proved a remarkable successful work, the net revenue having recently been as much as 6½ per cent. on the capital outlay. The Gokak Canal a small canal taking off direct from the Ghataprabha river without a storage reservoir, was opened in 1884.

No progress made in 1890-1900.—During the decade from 1890 to 1900 no further advance was made....

The rainfall from 1890 to 1900 was, however, generally scanty, and the century ended with a famine of exceptional severity and duration, which gave rise to a very earnest reconsideration of the measures necessary to improve the condition of the people and to combat scarcity and famine.

Progress since 1900. The Girna Left Bank and Godavary Canal.—The irrigation commission of 1903 gave much excellent advice as to these measures and this was promptly acted upon, since that time very great progress has been made with large and useful irrigation works. The Girna Left Bank Canal, fed from the Chankpur tank, and constructed at a cost of 19 lakhs of rupees, has been completed except for an extension of the canal, which is now in progress. The irrigable area will eventually be 9,000 acres. The Godavari Left and Right Bank Canals, with storage at Lake Beale, have been practically completed at a cost of a crore of rupees.... In addition to the Godavari canals five large tanks, the Dharma Canal and numerous small tanks came into operation during this period.

Works under construction. Pravara and Nira Right Bank Canal.—Two large protective works are under construction in the Deccan, viz (1) The Pravara River Works and (2) The Nira Right Bank Canal....

ii Sind.

Description of works in Sind.—The Canal systems in Sind are entirely different from those in the Deccan. They are mostly very large and carry their supplies during the inundation season only. Many of them are canals which existed before the advent of British rule and which have since been improved;

some of them although classed as minor works, are among the largest in existence, as for example the Fuleli canal, nearly 1,000 miles in length with a head discharge of 12,000 cubic feet per second, and the Ghar Canal, 306 miles in length with a discharge of nearly 11,000 cubic feet per second.....

THE EASTERN NARA SYSTEM AND THE BEGARI AND GHAR CANALS. 1850-1860.—The first system to come into operation was the Eastern Nara, consisting of the Mithrao, Thar, Hiral and Khipro Canals. Over 70 lakhs of rupees have up-to-date, been expended upon this system, which was opened in 1854, although its principal canal, the Mithrao, was not constructed until some years later. The system depends for its supply upon the water of the Nara river, which is fed from the Indus through a twelve mile cut, excavated in 1858-59, known as the Eastern Nara Supply Channel. The area irrigated by the systems is about a quarter of a million acres, and it returns a net revenue of over 4 lakhs of rupees. The Begari Canal and the Ghar Canal also came into operation during the decade.....

FULELI CANAL, 1860-1870.—Between 1860 and 1870 the the Fuleli Canal, the largest of all the Sind Canals, was opened at a cost of 20 lakhs of rupees. Nearly 425,000 acres are irrigated from this canal; owing to the position of the head-works the annual variations in the quantity of water obtainable are small and it is one of the few Sind Canals which carries an appreciable supply all the year round.

DESERT AND SUKKUR CANALS 1870-1880.—Five more canals were added during the ten years from 1870-1880. Of these the two most important are the Desert Canal, costing 27 lakhs and irrigating over 200,000 acres in the Northernmost part of Sind, and the Sukkur Canal, just above Sukkur, which serves a further 80,000 acres. The remaining three are small canals, lying in the Hyderabad district on the left bank of the Indus.

PERIOD OF INACTIVITY 1880-1900.—A period of comparative inactivity followed during the 20 years from 1880 and 1900, the only work to be opened being the Unharwah Canal between the Desert and Begari Canals, with 85,000 acres of

irrigation. Towards the end of the period, however, a start was made upon three new canals, the Jamrao, Mahiwah and Dad, which came into operation in the first year of the new century.

DEVELOPMENTS, SINCE 1900.—In 1900, the Jamrao Canal came into being. This was an entirely new canal taken off from the Eastern Nara river above the Mithrao Canal, already mentioned, and, like that canal, it is assured of a perennial supply, depending for its water partly upon the Nara river and partly upon the Eastern Nara Supply Channel. The cost of the canal is 89 lakhs of rupees, it irrigates 250,000 acres, and produces a net revenue of 4½ lakhs. Between 1901 and 1904 the Mahiwah, Dad and Nasrat Canals were also opened. Built at a cost of about 60 lakhs of rupees, they have added about 170,000 acres to the irrigated area in Sind. Two small Canals below Kotri on the Indus, the Sattah and Hassanali Canals, also came into operation since 1900.

PROGRESS OF IRRIGATION IN SIND.—Since 1880 the total irrigation from Government works in Sind has increased from 1½ to 3¾ million acres, and the net revenue realised from 14 to 58 lakhs of rupees. These works include a large number of small canals and channels, which are not included among those specifically mentioned and which serve about 1½ million acres of land.

THE SUKKUR BARRAGE PROJECT.—The only work in contemplation in Sind is the Sukkur Barrage.....

INCREASE IN IRRIGATED AREA DURING THE PAST 40 YEARS.—During the past 40 years the area irrigated by productive and unproductive works in the Bombay Presidency has nearly sextupled. The steady increase which has taken place is shown by the following figures:—

Year.	Area irrigated in Acres.
1877-78	250,000
1887-88	475,000
1897-98	871,000
1907-08	1,275,000
1917-18	1,477,000

IV.—Classification of Irrigation Works.

SOURCE:—Chapter II, Triennial Review of Irrigation 1918 -21.

The Government irrigation works of India may be divided into two main classes, those provided with artificial storage, and those dependent throughout the year on the natural supplies of the rivers from which they have their origin. . . .

NON-STORAGE WORKS.—It is in Northern India, upon the Himalayan rivers, and in Madras, where the cold weather rains are ever heavier than those of the south, that the principal non-storage systems are found, although, in the latter case, there is a period of almost complete drought in the rivers during the hot weather.

In the Himalayan rivers there is water and to spare during the monsoon, during the early cold weather the saturated hills gradually give up their moisture, thereby maintaining the supply, and winter rains usually supplement this source to some extent. The volume, however, continues to fall rapidly until a minimum is reached, generally about February, when the approaching hot weather commences to melt the snow and a rapid increase is experienced which lasts till the break of the following monsoon. From rivers such as these a supply of water sufficient to support cultivation can be relied upon throughout the year.

PERENNIAL CANALS.—The canals which rely solely upon the natural flow of the rivers for their supplies may be divided into two main types, perennial canals and inundation canals. Perennial canals are provided with some arrangement in the vicinity of their heads, usually in the form of obstruction across the bed of the parent stream, by means of which they are enabled to obtain their supplies irrespective of the level of the water in the river. The water is, by means of this obstruction, ponded up to the height required in the canal, and seasonal fluctuations in the water level in the river are thus counteracted. The obstruction usually takes the form of a

weir or barrage fitted with shutters and sluices whereby surplus water, not needed in the canal, can be escaped down the river.

INUNDATION CANALS.—Inundation Canals, on the contrary, have no such weirs and their supplies fluctuate with the natural water level in the river. When this rises, the level in the canal rises, when it falls, the level in the canal falls with it..... Generally speaking, inundation canals obtain a supply only when the parent stream is in flood and the adequacy or otherwise of this supply, and therewith the area irrigable in the year in question, is consequently solely dependent upon the seasonal conditions. There may be an ample volume in the river but, in the absence of any method of raising its level, it cannot be forced into the canal until the water rises, of its own accord, to a sufficient height.

It may possibly be asked why, in view of the advantages to be obtained thereby, all canals have not been made perennial. The answer is, expense. The majority of and by far the most important inundation canals are to be found in Sind and the Punjab on the Indus and Sutlej rivers.....It is fully recognised that inundation irrigation cannot be regarded as other than an inefficient substitute for perennial irrigation and steps are now being taken, wherever possible, to supersede it by the latter class.

STORAGE WORKS.—The expedient of storing water in the monsoon for utilisation during the subsequent dry weather has been practised in India from time immemorial. In their simplest form, such storage works consist of an earthen embankment constructed across a valley or depression, behind which the water collects, and those under Government control range from small tanks irrigating only a few acres each to the huge reservoirs now under construction in the Deccan which will be capable of storing over 20,000 million cubic feet of water. By gradually escaping water from a work of the latter type, a supply can be maintained long after the

river on which the reservoir is situated would otherwise be dry and useless.

PRODUCTIVE WORKS.—For the purpose of determining the source from which the funds for the construction of Government works are provided, they are divided into three classes, productive, protective, and minor works. Of these only productive works might, under the rules in force up to the end of the triennium, be financed from loans. The main criterion to be satisfied before a work can be classed as productive is that it shall, within ten years of the completion of construction, produce sufficient revenue to cover its working expenses and the interest charges on its capital cost. Most of the largest irrigation systems in India belong to the produtive class.

FAILED PRODUCTIVE WORKS.—It will readily be realised that it is often extremely difficult, when a project is prepared, to forecast with accuracy what financial results will be obtained, and consequently it has happened that works sanctioned originally as productive, have, in operation, proved unremunerative. When this occurs the work is relegated to a sub-class, and termed a "failed productive" work.....

PROTECTIVE WORKS.—Protective works are constructed primarily with a view to the protection of precarious tracts and to guard against the necessity for periodical expenditure on the relief of the population in times of famine. They are financed from the current revenue of India, generally from the annual grant for famine relief and insurance, and are not directly remunerative, the construction of each such work being separately justified by a comparison of the value of each acre protected (based upon such factors as the probable cost of famine relief, the population of the tract, the area already protected and the minimum area which must be protected in order to tide over a period of severe drought) with the cost of such protection. A sum of Rs. 1,173 lakhs has up to date been expended on works of this nature.

MINOR WORKS.—It is difficult to define the class of minor works otherwise than by saying that works not classified either

as productive or protective are minor works. They include a few small works which have been initiated and carried out by the British Government, but the majority are indigeneous works which Government have taken over, improved and maintained.... It may be remarked that the system of classification which was in vogue during the triennium has since been altered and it will, in future, be possible to finance any work of public utility from loan funds. The classes of protective and minor works have been abolished, all works being classified as either productive or unproductive without reference to the source whence the funds for their construction were provided. In the case of pre-British works it has further been decided that the amount expended upon them by the British Government shall be regarded as the capital charge so that capital accounts are now being opened in the case of many works for which no such accounts were maintained in the past.

V.—Value of Irrigation.

(I) Financial returns.

SOURCE :—Triennial Review of Irrigation 1918-21.

The total capital invested in the works has risen from Rs. 4,236 lakhs in 1900-01 to Rs. 7,861 lakhs in 1920-21, an average increase of Rs. 180 lakhs a year. As regards revenue the Government irrigation works of India, taken as a whole, yield a return of from 7 to 8 per cent. on the capital invested in them ; this is satisfactory result as Rs. 1,173 lakhs of the total have been spent on protective works which return less than 1 per cent., and Rs. 703 lakhs on minor works, the yield from which varies between 4 and 6 per cent. The capital outlay also includes expenditure on a number of large works under construction, which have not yet commenced to earn revenue. It follows that, besides increasing the yield of the crops and making agriculture possible in tracts where, without an assured supply of water, nothing would grow and protecting large areas from famine and scarcity, the irrigation

works of India form also a remunerative investment for the funds sunk in them.

II Protective Value.

SOURCE :—Report of the Irrigation Commission 1903.

*It would be difficult to over-estimate the value to the country of these fine systems of irrigation works which may be said, with some slight reservations in respect of the Cauvery works in Madras, to have been entirely created by the British Government..... In some parts, as in Sind, there can be no cultivation, and therefore no population, without canal irrigation. In others, the effect of the works in maintaining or raising the level of the subsoil water, on which the well irrigation depends, is of the utmost value and importance. The value of the crops irrigated by the canals in a single year is about equal to the whole capital cost of the works ; and in years of famine, the produce of the irrigated area, being largely available for transport to distressed tracts, becomes an important item in the general food supply of the country.

VI.—The System of Management & Administration

(1) EXTRACT FROM THE TRIENNIAL REVIEW OF IRRIGATION 1918-21 :—In most of the provinces, with the exception of Madras, Sind and parts of Bombay, the distribution of the water and the assessment of the revenue form part of the duties of the engineers of the Public Works Department. The unit of management is the division under an Executive Engineer. This is sub-divided into sub-divisions, each under an Assistant Executive, or Assistant Engineer, or a selected subordinate, who is responsible to the Executive Engineer for the administration of his sub-division. A number of divisions, usually from 3 to 6 form a Circle under the administrative charge of a Superintending Engineer and over all is the Chief Engineer, of whom there may be one or two in each province, according to the extent of the irrigation affected. At present the Punjab, United Provinces, and Bombay have two Chief

*Para 78 of the report.

Engineers for irrigation, while the other Provinces have one—each.

The system under which engineers are entrusted with revenue management of the canals may, at first sight, appear anomalous, but it has been amply justified by results, and the Indian Irrigation Commission of 1901-03 strongly advocated its retention.....

(2) EXTRACT FROM BOMBAY IN 1921-2:—The Public works department has long been an important feature of the British administration in India. Its history dates from 1854 when it first came to be organised on a definite basis in succession to the old military boards, constituted mainly for the carrying out of military works. In order to meet the increasing demand for public works, three separate branches of the Department were formed in 1866, viz., the Military Works branch, the Civil Works branch, including Irrigation, and the Railway Branch; and to these was added in 1870 the Public Works Account Branch.

By 1895 the Public Works Department had become a purely Civil Department owing to the separation of the Military Works Branch. Up to the end of 1907 there was a separate Railway Department of the Bombay Secretariat but this Department was abolished in 1908 when the Railway Board took over the executive control of all the Indian Railways and such Railway work affecting the Presidency as might arise was entrusted to the Public Works Department. The next notable change in the Department was the abolition in 1910 of the Public Works Accounts Branch as a separate entity and its amalgamation with the Civil Accounts Department.

The question of effecting a gradual transfer of certain Public works to selected District Local Boards in the Presidency is being considered by Government in accordance with the recommendations of the Public Works Department Reorganization Committee which was appointed in 1916.

As at present constituted the Department is administered by two Chief Engineers, the senior of whom is Secretary to

Government and the junior, the Joint Secretary to Government. One Chief Engineer controls the Buildings, Roads and Railway Branches, the other the Irrigation Branch. There is a third post of Chief Engineer for Irrigation in Sind who is also Secretary to the Indus River Commission. There are 8 Superintending Engineers, 60 Executive Engineers and 30 Assistant Executive Engineers. A new service known as the 'Bombay Engineering Service' was instituted in 1920, with a sanctioned cadre of 180 officers, to hold sub-divisional charges. So far only 87 appointments have been filled up in this service. The number of temporary Engineers on yearly sanction stands at 15. There are also the following three Specialist Branches:—

(1) The Sanitary Branch consisting of one Sanitary Engineer, one Executive Engineer, one Executive Engineer in charge of boring Works and two Assistants to the Boring Engineer.

(2) The Architectural Branch consisting of one Consulting Architect to Government, five Assistant Architects and one Quantity Surveyor; and

(3) The Electrical Branch consisting of one Electrical Engineer to Government, one Deputy Electrical Engineer and Electrical Inspector to Government, one Electrical Inspector in Sind and one Assistant Electrical Engineer.

CHAPTER XV

Education & Sanitation.

I.—History of Education in India.

i Education before British rule.

SOURCE:—Report of the Education Commission 1882.

Since their first appearance in authentic history the Indians have always enjoyed the reputation of being a learned people. Megasthenes, the Greek ambassador to the Court of Chandra Gupta about 300 B.C., found a grave and polished society in which philosophy and science were successfully cultivated and held in honour. The rich stores of Sanskrit literature which have come down to the present age confirm this description. In the four stages prescribed for a Brahmin's life, the first, including youth and early manhood, was that of the Brahmachari, or learner, and extended over many years. But the Brahmins confined their teaching of the Dharm-Shastras to their own and the other two "twice-born" castes and made it penal to communicate any but elementary-knowledge to the servile and mixed multitude. The Buddhist reformation placed religion and education on a more popular basis. The Chinese travellers and the Pali texts alike bear witness to this fact, and in seventh century the vast monastary of Nalanda formed a seat of learning which recall, by the number and the zeal of its students, the later Universities of mediaeval Europe. After the Musulman conquest, the mosque became in India, as in other countries of Islam, a centre of instruction and of literary activity. Education alike among the Muhammadans and the Hindus is based upon religion, and was supported by endowments and bequests in pios usus. The East India Company found the four ancient methods of education still at work, in the instructions given by the Brahmins to their disciples, in the tols or seats of Sanskrit learning, and in the maktabs and madrasas or schools and colleges of the Muhammadans, and in the large

number of humbler village schools which also existed. These village schools gave an elementry education to the trading classes and to the children of the petty landholders and well to do families among the cultivators.

ii Early beginnings under British rule.

SOURCE:—Report of the Education Commission 1882.

When the East India Company received charge of Bengal from the Delhi Emperor, it aimed only at discharging the duties fulfilled by the previous ruling power. It respected endowments made to educational institutions, and its earliest efforts were confined to the establishment of a Muhammadan and a Sanskrit college of the old types. But three influences were at work which forced it into new fields of educational activity. A knowedge of English became a means of livelihood to natives at the centres of Government, and a demand arose for English instruction in the Presidency towns. As the old exotic court language, Persian, feli into disuse, and especially when it ceased to be the language of official life, the demand for education in the vernaculars which had superseded the foreign tongue made itself more widely felt. Meanwhile a new influence in favour of popular education was being brought to bear upon the Indian Government by missionary and philanthropic bodies both in this country and in Europe. The old system, however, did not give place to the new without a struggle. For many years the medium and character of the instruction to be given in Government schools and colleges were the subject of a vigorous controversy between the Anglicists and the Orientalists. The former party urged that all instruction of the higher kind should be given through the English language, and should be in accordance with modern ideas. The latter, while admitting that what was then taught as science had no right to that title, wished to maintain the study of the Oriental classics in accordance with the methods indigenous to the country. Both parties broadly and prominently admitted the claims of the vernacular languages. Among the Orientalists were many distinguished Officers of

Government, and for some time their views prevailed in the General Committee of Public Instruction. But the minority gradually become more and more powerful, and when in 1835 the two parties were so evenly balanced that things had come to a dead-lock, it was Macaulay's advocacy of English education that turned the scale agaginst the Orientalists.

His famous Minute was immediately followed by a Resolution of the Governor-General, which plainly declared for English as against Oriental education. A few years later, the Orientalists made several efforts to rescind this Resolution and revert to the previous policy in favour of the classical languages of India. They received, however, no encouragement from the Government, and in 1839 Lord Auckland published a Minute which finally closed the controversy. The purport of this Minute was 'that although English was to be retained as the medium of higher instruction in European literature, philosophy, and science, the existing oriental institutions were to be kept up in full efficiency, and were to receive the same encouragement as might be given to the students at English institutions. Vernacular instruction was to be combined with English, full choice being allowed to the pupils to attend whichever tuition they might individually prefer". Since that time education in India has proceeded upon the recognition of the value of English instruction, of the duty of the state to spread Western knowledge among its subjects, and of the valuable aid which missionary and philanthropic bodies can render in the task.

iii Despatches of 1854 and 1859.

SOURCE:—Report of the Education Commission 1882

We have now traced the early efforts of the East India Company towards the education of the people. These efforts differed in regard both to the scale of operations and to the methods employed in the various Provinces. In 1854 the education of the whole people of India was definitely accepted as a State duty, and the Court of Directors laid down with fullness and precision the principles

which were to guide the Indian Government in the performance of this great task. Their Despatch of 1854 still forms the Charter of Education in India, and after the East India Company itself had disappeared, its principles were confirmed by the Secretary of State in the Despatch of the 7th April 1859. The purport of these two documents may be thus summarised. The Desptch of 1854 commends to the special attention of the Government of India the improvement and far wider extension of education, both English and vernacular, and prescribes as the means for the attainment of these objects, (i) the constitution of a separate Department of the administration for education, (2) the institution of Universities at the Presidency towns, (3) the establishment of institutions for training teachers for all classes of schools, (4) the maintenance of the existing Government colleges and high schools and the increase of their number when necessary, (5) the establishment of new middle schools, (6) increased attention to vernacular schools, indigenous or other, for elementary education and (7) the introduction of a system of grants in aid. The attention of Government is specially directed to the importance of placing the means of acquiring useful and practical knowledge within reach of the great mass of the people. The English language is to be the medium of instruction in the higher branches, and the vernacular in the lower. English is to be taught wherever there is a demand for it, but it is not be substituted for the vernacular languages of the country. The system of grants-in-aid is to be based on the principle of perfect religious neutrality.. ..Grants are to be for specific objects, and their amount and continuance are to depend on the periodical reports of Government Inspectors. No Government colleges or schools are to be founded where a sufficient number of institutions exist, capable with the aid of Government of meeting the local demand for education, but new schools and colleges are to be established and temporarily maintained where there is little or no prospect of adequate local effort being made to meet local requirements. The discontinuance of any general system of education entirely

provided by Government is anticipated with the gradual advance of the system of grants-in-aid, but the progress on education is not to be checked in the slightest degree by the abandonment of a single school to probable decay. A comprehensive system of scholarships is to be instituted, so as to connect lower schools with higher, and higher schools with colleges. Female education is to receive the frank and cordial support of Government. The principal officials in every District are required to aid in the extension of education, and in making appointments to posts in the service of Government, a person who has received a good education is to be preferred to one who has not.

The second great despatch on education, that of 1859, reviews the progress made under the earlier Despatch, which it reiterates and confirms with a single exception as to the course to be adopted for promoting elementary education. While it records with satisfaction that the system of grants-in-aid has been freely accepted by private schools, both English and Anglo-vernacular, it notes that the native community have failed to co-operate with Government in promoting elementary vernacular education. The efforts of educational officers to obtain the necessary local support for the establishment of vernacular schools under the grant-in-aid system are, it points out, likely to create a prejudice against education, to render the Government unpopular, and even to compromise its dignity. The soliciting of contributions from the people is declared inexpedient, and strong doubts are expressed as to the suitability of the grant-in-aid system as hitherto in force for the supply of vernacular education to the masses of the population. Such vernacular instruction should, it is suggested, be provided by the direct instrumentality of the officers of Government, on the basis of some one of the plans already in operation for the improvement of indigenous schools, or by any modification of those plans which may suit the circumstances of different provinces. The expediency of imposing a special

rate on the land for the provision of elementary education is also commended to the careful consideration of the Government.

Other important Despatches have since been received from the Secretary of State.....But the Despatches of 1854 and 1859 stand out from all later documents as the fundamental codes on which Indian education rests.

iv Progress During the period 1859—1913.

SOURCE:—Extract from the Decennial Report on Moral and Material Progress 1913.

The Universities of Calcutta, Madras, and Bombay were incorporated in 1857, and those of the Punjab and Allahabad in 1882 and 1887 respectively. The growth of schools and colleges proceeded most rapidly between 1871 and 1882, and was further augmented by the development of the municipal system, and by the Acts that were passed from 1865 onwards providing for the imposition of local cesses that might be applied to the establishment of schools. By the year 1882 there were more than two million and a quarter of pupils under instruction in public institutions. The Commission of 1882-83 furnished a valuable report upon the state of education as then existing, and submitted further detailed proposals for carrying out the principles of the despatch of 1854. They advised increased reliance upon, and systematic encouragement of, private effort, and their recommendations were approved by the Government of India. Shortly afterwards a considerable devolution of the management of schools upon municipalities and district boards was effected, in accordance with the principles of local self-Government then brought into operation.

Since 1882 the condition and progress of the educational system have periodically been passed under review, and Government has on each occasion issued such fresh regulations and orders as appeared at the time to be desirable. The review made in 1898 was followed by a searching inquiry and vigorous measures of reform. A conference of

Indian educationists and administrators was convened at Simla in 1901 to discuss all branches of the subject..... In 1902 the Government of India, whose attention had for some years been specially directed to the problems connected with university education, appointed a Commission to report on the constitution and working of the Universities, and to recommend measures for raising the standard of university teaching and promoting the advancement of learning. After full consideration of the report of this Commission, and of the criticisms that it called forth, the Government of India came to the conclusion that certain reforms in the constitution and management of the universities were necessary. Among other things, the Commission recommended a reduction in the size of the senates, which from various causes—including the bestowal of fellowships in many cases by way of compliment only—had been unduly enlarged, to the prejudice of the good government of the universities. To give effect to this and other recommendations, the Indian Universities Act (VIII of 1904) was passed.

The Act in the first place defined the functions of the Universities in wide and general terms. Although it had not been intended, when the universities were founded, that they should be examining boards and nothing more, it had been thought sufficient, in framing their legal powers, to provide for their functions as degree-giving bodies, and the provisions in question were sometimes narrowly construed. The Act of 1904 specifically recognised the wider functions of the universities by declaring them to be incorporated for the purpose (among others) of making provision for the instruction of students, with power to appoint University Professors and Lecturers, to hold and manage educational endowments, to erect, equip, and maintain university laboratories and museums, to make regulations relating to the residence and conduct of students, and "to do all acts, consistent with the Act of Incorporation and this Act, which tend to the promotion of study and research."

The importance of these provisions lay in the possibilities of future development that they indicated; for immediate purposes the important sections of the Act were those which, leaving untouched the principle of affiliating distant colleges to a central examining university, endeavoured to make this connection between colleges and university closer and more effective than it had hitherto been. To each university territorial limits were assigned; the conditions that a college must fulfil in order to receive and retain the privileges of affiliation were prescribed in some detail; and in order that the university might be satisfied as to the fulfilment of these conditions, systematic inspection of colleges by university inspectors was established. The Act also required the appointment of new senates, syndicates, and faculties for all the universities; it made the office of a senator tenable for five years only, instead of for life; limited the numbers of senators and syndics, while increasing the proportion of elected fellows and securing the presence of a strong professional element; and it required the senates to prepare and submit for the sanction of Government within a year (or longer, if the Government should so appoint) a new body of regulations, the Government having power, after consulting the senate, to make such additions and alterations as they considered necessary, and having power to make the regulations if the appointed time should pass without the senate submitting a draft.

Immediately after the passing of the Act, the Government of India made a recurring grant, to last for five years, of £33,300 per annum for the improvement of university and college education.

The new regulations of the five universities were promulgated during 1905 and 1906, without any considerable recourse on the part of the Government to their power of amending the proposals placed before them by the senates.....

v. University education since 1913.

SOURCE:—Extract from the Progress of Education in India 1917-22

THE INSTITUTION OF AFFILIATING UNIVERSITIES.—These five universities were all of the affiliating type. They consisted of

groups of colleges, situated sometimes several hundred miles apart, bound to each other by a legally constituted central organisation, which determined the qualifications of admission to the university, prescribed the courses of study, conducted the examination preliminary to the award of degrees and, through the agency of affiliating system and by occasional visits of inspection, exercised a mild form of supervision over the work of the affiliated colleges. There was nothing under this system to limit the number of institutions affiliated to a university, and for thirty years, i. e., from 1887 to 1916, the growing demand for university education was met, not by the creation of new universities, but by enlarging the size of the constituent colleges and increasing their number.....

It had become obvious that further expansion on the same lines was no longer possible without a serious loss of efficiency, indeed that efficiency was already suffering from the excessive demands made on organisations not adapted for indefinite expansion. The Universities had ceased to be living organisms since many of their constituent members contributed nothing to the common life of the university of which they were a part and, so far from being essential to its existence, actually impaired its vitality. They were in some cases little more than agglomerations of teaching units, bound to the central institution only by their need for some external examination for their students which should command public confidence.

NEED FOR UNITARY TEACHING UNIVERSITIES.—The Government of India in their resolution of 1913 recognised these facts. "It is necessary," they said, "to restrict the area over which the affiliating universities have control by securing in the first instance a separate university for each of the leading provinces in India and secondly, to create new local teaching and residential universities within each of the provinces in harmony with the best modern opinion as to the right road to educational efficiency." The development of the policy advocated by the Government of India on the ground of educational efficiency

might have been long delayed had this motive not been reinforced by the strength of communal feeling and the growth of local and provincial patriotism. To the local patriotism of the peoples of Bihar, Oudh and Burma may primarily be ascribed the foundation of the Universities of Patna, Lucknow and Rangoon. The Universities of Benares and Aligarh represent educational movements on the part of the Hindu and Muhammadan communities respectively. The University of Dacca is the product of both forces, being designed to meet the wishes of the people of Eastern Bengal for a local university centre and to encourage the higher education of Muhammadans, who form the majority of the population of Eastern Bengal.

The Calcutta University Commission.—The disintegration of the older universities had already commenced under the attacks of these local and communal forces, when the educational argument advanced by the Government of India in favour of unitary teaching universities received most powerful support from the report of the Calcutta University Commission. The report of the Commission did more than strengthen the case of the advocates of university reform, it offered constructive proposals as to the lines to be followed in university reform.

The recommendations.—The Commission met in November 1917 in Calcutta and after hearing 93 witnesses and receiving written evidence from 412 people and further visiting a large number of institutions in Bengal and other parts of India presented its report in March 1919. The commission in this monumental work, after reviewing the conditions of student life in Bengal and describing in detail the organisation and functions of the Calcutta University, recommended a complete reorganisation of the system of higher education in Bengal. They recommended in the first place the immediate establishment of a new unitary teaching university at Decca and the gradual development of other centres of collegiate education with a view to the establishment of similar universities. They

recommended a synthesis of the work of the various colleges situated in Calcutta, the co-ordination of the work of the outside colleges by means of a mofussil board, and a complete revision of the constitution of the Calcutta University with the special purpose of differentiating between the academic and purely administrative sides of its work. Finally, in order to raise the standard of university education in Bengal, they recommended the delegation of all work up to the intermediate standard, hitherto conducted by the University, to institutions of a new type, called intermediate colleges, which should provide both general and special education under the supervision of a board of secondary and intermediate education. To this body, which should contain representatives of Government, the University, the intermediate colleges and the high schools, they suggested that the administration and control of secondary education should be transferred from the university and the Education Department.

ACTION TAKEN ON THE COMMISSION'S RECOMMENDATION.—In order to give effect to these recommendations the Government of India drafted a bill for the reconstruction of the University of Calcutta. Questions of finance and questions of detail delayed the introduction of the bill in the Imperial Legislature. The position was altered by the constitutional changes that took place in 1921. It was decided to transfer the control of the Calcutta University from the Government of India to the Government of Bengal and to leave any further initiative for the reform of the University to be taken by the local Government. An Act was passed in March 1921 substituting the Governor of Bengal for the Governor General as the Chancellor of the University. Except for this change and for the excision of the Dacca University area from the control of the Calcutta University, the report of the commissioners has had little effect on the condition of the University which they were called in to advise.

NEW UNIVERSITY ACTS.—Schemes for the establishment of universities at Dacca, Patna, Benares and Aligarh had

been under consideration during the previous quinquennium. The Patna University followed as a natural corollary on the formation in 1912 of the new province of Bihar and Orissa. The original scheme for a unitary residential university, which had been drawn up by an influential committee under the chairmanship of the late Sir Robert Nathan, had perforce been abandoned for financial reasons, and the university as it was finally incorporated by the Act passed in September 1917 does not differ greatly in form from the older universities except in the possession of a wholetime paid Vice-Chancellor. The Benares Hindu University Act was passed in October 1915; it was followed by the Patna University Act in September 1917, the Dacca University Act in March 1920, the Lucknow University Act in November 1920, the Allahabad University Act in December 1921 and the Delhi University Act in March 1922.

THE NEW FORM OF UNIVERSITY CONSTITUTION.—The university of Dacca was the first to adopt the revised form of constitution recommended by the Calcutta University Commission. Since this constitution with modifications has been adopted in all subsequent university legislation, a short description of it is necessary. In place of the Senate and Syndicate of the older universities, there are three main university bodies :—

(i) A large body, called, the Court, on which are represented the chief interests of the community, either by election or by nomination. The functions of the Court are to make statutes and to pass recommendations on financial accounts and the annual report, submitted by the Executive Council. They also have power to cancel ordinances made by the executive council. Thus, every important change made in the University is brought to the notice of the Court and can be discussed by them, while in matters of university legislation they have important powers not only of discussion but of check.

(ii) The Executive Council, in whom the executive authority in regard to finance and university appointments and also all residual powers are vested

(iii) The Academic Council, who are responsible for the control, general regulation and maintenance of standards of instruction, education and examination within the University and for the initiation of all changes in academic matters and without whose consent no changes in such matters can be made. The Academic Council consists almost entirely of university teachers and is designed so as to secure the representation of the various departments of study undertaken by the University.

SEPARATION OF THE INTERMEDIATE CLASSES. One important part of the Commission's recommendations has been accepted by the Government of the United Provinces and Government of India and incorporated in the Acts establishing the Lucknow, Dacca and Aligarh Universities and reconstituting that of Allahabad, namely, the separation of the intermediate classes from the sphere of university work and the transfer of control over them from the university to a Board of Secondary and Intermediate Education. Such a board was constituted for the Dacca University area by a notification of the Bengal Government in 1921. It contains twenty-two members of whom seven are elected by the University. The United Provinces Board was constituted by an Act passed in the same year. It consists of some forty members of whom approximately one quarter represent the universities in the Province. An Intermediate Examination Board was also formed for the Aligarh University by an Ordinance in 1922.

II.—Present Position.

SOURCE:—India in 1923-4.

The most obvious features of India's educational position at the present moment are two. In the first place, much remains to be done before the instructional machine can be placed upon a broad and substantial basis. In the second place, the control of this important nation-building work has now been transferred to Ministers responsible to the Legislative Councils. In the pages that follow, we shall briefly indicate in some detail the implications of these two facts. To take first

the defects in the present educational structure,....out of the 247 millions inhabitants of British India, less than 9 millions are at present being educated. In other words, considerably less than 4 per cent of this vast population is under the influence of instruction. In the primary school, which must constitute the very foundation of any sound educational structure, scarcely 3 per cent of the population is enrolled. As might be expected from these figures, the prevalence of illiteracy is general. According to the census of 1921, the number of literates in India was 22.6 millions, composed of 19.8 million males and 2.8 million females. In other words, only 122 per mille of Indian men, and 18 per mille of Indian women can read and write. These figures reveal a slight improvement since the census of 1911, when the respective proportion were 106 per mille for men, and 10 for women. On the other hand, the position in regard to secondary education is somewhat remarkable. No less than 0.6 per cent. of the total population is under instruction in secondary schools. In view of the fact that the female population can almost be excluded from the calculation, this is a proportion far greater than the corresponding figure for England and Wales. Still more striking are the figures of university education, where the percentage of the population undergoing instruction is no less than 0.027 per cent. Since again females are almost negligible in the reckoning, this figure compares strikingly with the 0.089 per cent of England and Wales. It thus appears that the structure of Indian education is ill-balanced, for while the poorer classes are predominantly illiterate, the middle classes are educated in a proportion equal to that of countries whose social and economic conditions are more highly developed. This remarkable characteristic has impressed itself upon the kind of education generally fashionable. The middle class parent has emphatically demanded for his children a literary type of instruction, because he looks forward to their enlistment either in Government employment, or in the legal profession. Vocational training, which has recently been

advocated by educationists, has not so far attained great success. There is difficulty in filling the classes; and until opportunities for the employment of such training in later life become more frequent, it is doubtful whether the predominantly literary type of instruction will be seriously challenged in secondary schools. Primary education in addition to being unsatisfactory in quantity, is also defective in quality. Investigations show that the majority of children in primary schools are under instruction for between 3 and 4 years only; and for the greater portion of the time, four out of every five linger in the lowest class. In consequence, there is a tendency to lapse into illiteracy after the short period of instruction comes to a close.

III.—Education under the Reforms.

SOURCE :—India in 1923-4.

Owing to the strengthened contact between the Education Department and public opinion, the transfer of the educational structure to the charge of popular Ministers has resulted in the encouragement of many developments which were slowly shaping themselves under the older system. Broadly speaking, the Provincial Legislative Councils are now empowered to determine the best method of adapting the existing machinery to local requirements. The proceedings of the Local Legislatures clearly reveal the keen interest aroused by educational problems among the Indian intelligensia. Almost every Province is now displaying great educational activity; and in most places attention is being directed to a concerted attack upon illiteracy in its very stronghold, namely, the masses of the population. Even before the transfer, Primary Education Acts had been passed in many Provinces, permitting local bodies to introduce, under certain conditions, the principle of compulsory education.

STRONG ATTACK ON ILLITERACY.—Bombay led the way with a private bill which was passed into law in 1918. Other bills followed for Bihar and Orissa, for Bengal and for the United Provinces in 1919. Government measures were passed

for the Punjab in 1919, and for the Central Provinces and Madras in 1920. A similar measure is at present under consideration in Assam. But while these Provincial Legislative Councils have shown themselves clearly favourable to the compulsory principle, the actual introduction of the necessary steps, and their adoption by local bodies, have been attended by considerable difficulty. As we have already noticed in our discussion of the institution of local self-government, there is a general reluctance on the part of municipalities and boards to apply coercive measures even to such a vital matter as the collection of their own rates. It is therefore not surprising to discover that they have displayed an even greater timidity in employing compulsion in the sphere of education. In the Central Provinces, for example, only two schemes for the application of the 1920 Act had been put forward by 1922-23. In Madras, at the close of the same period, no more than 7 municipalities had actually introduced compulsory elementary education. Under these circumstances, as will be realised, the progress achieved has not been so substantial as was at one time anticipated. In part, the difficulty has arisen from the general political atmosphere of the country, which has rendered the last two years an unfavourable period for the general adoption of the compulsory principle. But local Governments are now in general occupied in investigating the best means of translating compulsory primary education from theory into practice. In Bombay, for example, the comparatively unsatisfactory results of the earlier Compulsory Education Act have led to a recognition that the initiative in the matter of compulsion can most easily come from Government. This principle has been embodied in a fresh measure. It is provided that a local authority may declare its intention to provide compulsory elementary education in the whole or part of the area subject to its jurisdiction; and a local authority which makes no attempt to introduce compulsion may be called upon to do so by Government. The Administration is vested with powers enabling

it adequately to enforce the compulsory principle. In the United Provinces, also, Government addressed the municipalities with the object of inducing them seriously to apply the compulsory principle, agreeing to be responsible for two-thirds of the extra cost involved under certain conditions. The results of this enquiry were promising, 32 municipal boards having expressed their willingness to take the necessary measures. By the close of the year 1922-23, 8 municipalities were beginning to work the scheme. In the Punjab also, the careful application of the principle of compulsion to suitable areas, has been attended by most satisfactory results in increasing the number of pupils in primary schools. In general, it would seem, the utility of the compulsory principle to India, at least in the immediate future, consists rather in the power which it vests in the authorities of keeping pupils under instruction until they have made real progress than in swelling the numbers reading in the primary schools. The sphere which exists in the country for voluntary efforts, so far from being exhausted, has scarcely been trenched upon; and it is only when intensive propaganda concerning the advantages of education shall have discharged its function, that compulsion need seriously be taken into account as a measure for filling the generality of institutions, as opposed to those exceptional cases wherein compulsion is dictated as a measure of economy for the concentration of pupils.

Progress of Secondary Education.—The stimulus to popular enthusiasm in matters educational, which has accompanied their transfer to popular control, is by no means confined to the primary stages. There has been of late an increasing realisation among the Provincial authorities that secondary and university education in India, although quantitatively more satisfactory than primary education, have qualitatively certain serious defects. Secondary education in particular is still of poor standard and badly regulated..... The proposals of the (Sader Commission's) Report regarding the separation of secondary from university education, the

erection of the former into a self-contained system, and the confining of each to its proper sphere, are now being carried out in several Indian Provinces. Boards for secondary and intermediate education—stages which together constitute a complete pre-university course—have been set up in various parts of India; and progress is being made, as rapidly as the financial situation allows, with the constitution of intermediate colleges at suitable centres. In addition, several Provincial Governments are overhauling their high-school system; are revising their methods of inspection; are raising the pay of their schoolmasters; and are encouraging manual training, physical development, and the Boy Scout movement.

Recent changes in Indian Universities.—The general control of the University system, with the exception of certain All-India sectarian institutions and the Delhi University, has been placed within the province of the Local Governments. The Government of India, however, still retain certain functions in connection with University matters, particularly in the sphere of legislation. Of late, university education in India has undergone a striking change as a result of the lead supplied by the recommendations of the Calcutta University commission.....The task of giving effect to such recommendations of the Calcutta University commission as seemed to harmonise with local conditions, has fallen to the reformed Provincial Governments. The lead was taken by the United Provinces, where new universities have lately been opened at Aligarh and at Lucknow; while the original university at Allahabad has been reconstructed in an attempt to follow the general lines recommended by the Commission. Allahabad University now contains both an internal and an external side; the internal side following the lines of a unitary and residential University; the external side carrying on the old work of affiliation for the benefit of outlying Colleges. The operation of this dual system has been attended by certain disadvantages; and a movement is now on foot to start an affiliating university at Agra to which the outside Colleges could

be attached. In Rajputana also, the need for a separate university is now being felt. A university has recently been established at Delhi: and another at Nagpur; while during the period under review the centralised residential university incorporated at Rangoon has been modified in such a manner as to allow for the affiliation of outside colleges. Elsewhere, existing universities are being remodelled. In Bengal, the university at Calcutta is about to undergo certain modifications. The universities of the Punjab and of Bombay have developed new honours courses, and added university teachers. The Madras University has also been remodelled by a recent Act., which provides for intercollegiate teaching in Madras itself; and differentiates outside institutions affiliated to the University into those which are and those which are not to be developed as potential university centres. During the period under review, the financial difficulties of the Calcutta University and its requests for additional grants gave rise to some discussion in the local council as to the relations between the University and the Provincial Government. A draft measure of legislation proposing that the local authorities should exercise closer financial control over university affairs, provoked such criticism on the part of the University that a conference was convened representative of the parties affected. Negotiations were still proceeding at the close of 1923.

Transfer of Education. Unfavourable Time.—It will be plain from what has already been said that the transfer of education to popular control has been accompanied by developments in many directions. It must however be realised that this transfer was accomplished under somewhat unfavourable circumstances. It coincided in the first place with the advent of widespread financial stringency, and in the second place, with the period of excitement connected with the non-co-operation movement. Of the two, the former difficulty has proved the most serious. Not only were provincial resources at a low ebb owing to the prevailing conditions in agriculture and commerce; but in addition, the finances of Central Government

made it imperative to call upon the Provinces for heavy subventions. In consequence, education, like other nation-building departments, has suffered through financial disabilites....

SANITATION

I—Progress in Sanitation 1858-1911.

Extract from Memorandum on some of the results of Indian administration:—In 1858 nothing had been done for sanitary reform outside a very few large cities and cantonments: and no attempt had been made to ascertain the facts regarding death and disease over the country. During the past 50 years a system of registering deaths, causes of death, and births has been gradually extended over nearly the whole of India. In some provinces and in most large towns the registration is now fairly correct; and a valuable body of information is being collected concerning the mortality and disease of the population in different tracts. Sanitary reform is being attempted in all cities and towns that have any kind of municipal organization, and during the last 20 years real progress has been made in the maritime capitals and other important centres. The construction of water-works, by means of funds borrowed from the Government, has been a successful feature of municipal administration.....But in most towns, and even in the cities of Calcutta, Bombay, and Madras, insanitary conditions still cause much preventable disease and death. The necessity for improving the conditions under which the people live, especially in the larger towns, has of late been emphasised by the calamitous epidemic of plague which has ravaged India since 1896. Liberal grants-in-aid from general revenues are now made to municipal bodies for this purpose, and great attention and trained intelligence are being applied to the sanitary problems of Indian urban life with, it may be hoped, good results in the immediate future.

In rural tracts sanitary reform is necessarily more backward, and progress is impeded by the inadequacy of local revenues, the insufficiency of the staff at the disposal of the local authorities and by old seated habits and prejudices on the part of the rural population. It cannot be said that any

marked reduction has been yet effected in the recurrence of cholera or in the prevalence of fever, though small-pox has been perceptibly checked, and fevers mitigated by supplies of cheap quinine from the Government cinchona plantations. For the direction of sanitary officers Sanitary Commissioners or Boards have been established in every province. The detailed executive management of sanitary matters in rural India is vested in district and village authorities constituted on a popular basis, and representative in an increasing degree of public opinion. As these bodies grow in experience and their finances improve, they are found more ready to promote measures for the improvement of the public health. There are signs that even among the rural population apathy to sanitary improvement is giving way to a perception of its advantages.

II.—Difficulties.

EXTRACT FROM INDIA IN 1923-4:—Among the lines of progress to which organised effort such as that embodied in the co-operative movement is already beginning to contribute is one most necessary to the well being the Indian people namely, sanitation. In previous statements mention has been made of the difficulties with which sanitary reform in India is beset. If one may argue from the analogy of Europe and America, the necessary preliminary to any satisfactory advance in this direction is the growth among the educated classes of a missionary and humanitarian spirit which will lead them to consecrate time, money and energy to the task of ameliorating the conditions in which their less fortunate brethren live. Hitherto, in the face of widespread popular apathy, the meagre resources of Government have been able to accomplish but little. The problem is in the first instance educational, but the terms in which it is stated are so enormous that its solution is necessarily slow. A great change has to be introduced into the general ideas of the Indian people regarding hygiene, and the change is rendered more difficult by the fact that these ideas are intimately connected with religious and social customs. Indian can never be safeguarded from a heavy death rate, punctuated by disastrous epidemics until her people can be weaned from their tenacious adherence to social

observances which are as diametrically opposed to public health as they are to economic prosperity. With an increase in the receptivity of the educated classes to new ideas, and with the slow amelioration of the social and economic status of the masses, it should be possible eventually to remedy India's backwardness in sanitary matters. But so revolutionary a progress cannot be accomplished in a day. The poverty of the Indian masses is a complicating factor; but it is far less serious as an obstacle than their social heritage. Diseases are still generally attributed to the wrath of heaven; and when sickness occurs, the Indian's first impulse is to propitiate offended deities rather than to disinfect his water supply, and to prevent the contamination of his food. Throughout town and country alike, even elementary sanitary knowledge is conspicuous by its absence; and until the value of fresh air, pure water, and whole some food can be appreciated by the Indian people, no real progress will be possible. It is in the Indian home, and particularly among Indian women, that a better knowledge and keener appreciation of the elements of domestic and personal hygiene are most urgently required. For it is in this sphere that the old forces of tradition, and the innate conservatism of the people, combine to exercise their strongest opposition to the introduction of new and more healthful practices.

Any radical amelioration of the sanitary condition of India requires two principal postulates. In the first place, the administrative agency must enjoy popular confidence, and must proceed along lines in conformity with the prevailing mental processes of the people. In the next place, this agency must supply the driving force necessary to overcome the dead weight to age-old inertia. So far as the first essential is concerned, it is probably in a fair way to be realised through the transfer of sanitation to popular control. But the second requisite is still lamentably to seek in India. The number of Indian public men who have devoted their time, energy, and enthusiasm,

to the improvement of the lot of their countrymen is comparatively small. During the last ten years, it is true, much has been done to improve the sanitation of the larger towns; but financial stringency has of late been responsible for failure to maintain progress. The opening up of congested areas, and the replanning of cities on better lines, are peculiarly difficult in India: for their expense is a very serious consideration in a poor country; and they meet with unenlightened opposition from those in whose interest they are mainly designed. Further, the sanitary activities of a municipality are not as a rule appreciated by the general public. The commonest regulations designed for the improvement of public health and public convenience frequently bring upon the heads of those responsible for them a heavy burden of unpopularity, for no other reason than the fact that they interfere with traditional habits and methods of livelihood. Such interference, even for the most benevolent of objects, with deep-rooted customs, is bitterly resented: with the result that sanitary regulations are as a rule proposed with timidity and enforced without zeal. In the matter of rural sanitation which affects the lives of some 90 per cent. of India's millions, very little has been accomplished. The average Indian village, as it has been said, is as a rule little better than a collection of insanitary dwellings situated on a dung-hill.

III.—Recent Efforts.

Extract from India in 1923-4.—Towards the improvement of these conditions, cooperation is already accomplishing something. The reformed local Governments are also directing attention to sanitary measures, and to the prevention of epidemic diseases. In Bengal, for example, every District Board save one now possesses a fully qualified health officer, under whose guidance a large amount of useful work has been initiated. Local bodies in general are devoting increased energy to sanitation; but their efforts have been handicappedly financial difficulties. Public attention is, however, being gradually aroused to the importance of the whole matter. Organised propaganda

work is commencing in rural areas through magic lantern lectures, concert parties, informal talks with villagers, and the distribution of pamphlets and leaflets prepared by the Public Health Departments. Perhaps the happiest augury for the future is to be found in the increasing attention now devoted to public health work in the more advanced Provinces by voluntary agencies. In Bengal, for example, there are some 90 anti-malarial societies in existence, which in addition to their primary function of malaria prevention, undertake valuable educational work among the masses for the encouragement of more hygenic conditions.

Among the most pressing problems of India's health is that presented by the apalling infant mortality. It has been calculated that every year no fewer than 2 million Indian babies die. Indeed, although birth registration is still too inaccurate to make precise figures reliable, it may be stated with confidence that one in five, or perhaps even one in four of the infants born in India die within the first year of life. In crowded cities, particularly industrial cities, the rate is even more lamentable. Fortunately, both administrative and voluntary effort is being increasingly directed to the necessity for remedial measures. The Infant Welfare Movement, which owed much to the All India Maternity and Infant Welfare League initiated by Lady Chelmsford, has made excellent progress under the patronage of Lady Reading, who, during the year 1923, inaugurated an All-India Baby Week with the object of educating Indian mothers in the better rearing of infants, and in the reduction of infantile mortality. The exhibitions, the lectures, and the baby shows which took place in this connection in all the most important centres of India, have done very much to arouse public interest. Most hopeful sign of all, must be counted the fact that Indian ladies are beginning to take up the work of child welfare. In this sphere, we may again refer to the labours of the Poona Seva Sadan. At its headquarters, child welfare work is being conducted upon highly practical lines. Further, the efforts of the National Association for

Supplying Female Medical Aid to the Women of India continue to produce good results. This organisation is supported by the authorities, and now receives a subsidy of Rs. 3·7 lakhs from Central revenues. The Countess of Reading has initiated a scheme for training Indian nurses and doctors in larger numbers, which should do much to improve the situation as time goes on. But the magnitude of the field of child welfare work in India is such, that despite devoted labour from many quarters, the problem is still scarcely in a way to solution. If any appreciable reduction is to be made in the mortality of young children, work on a scale hitherto without precedent must be undertaken.

IV.—Medical Research.

Extract from India in 1923-24 :—Of immediate bearing upon the progress of sanitation in India is the advance of medical research. Throughout the year, financial stringency has continued seriously to hinder developments in this field. The appointments of Director of Medical Research and Epidemiological Statistician under the Central Government, have had to be held temporarily in abeyance. The activities of the Indian Research Association have had to be curtailed and certain enquiries terminated for want of funds. The Association has none the less continued to conduct important investigations into such diseases as kala azar, malaria, leprosy, relapsing and typhus fevers, among the epidemics with which India is afflicted. The School of Tropical Medicine and Hygiene in Calcutta, which owes its inception to Sir Leonard Rogers, has continued to do excellent work. It is now fully equipped to discharge the duties for which it was established; and investigations into hook-worm and kala azar, bowel disease, leprosy, and certain other complaints of frequent occurrence in the tropics, are being conducted.

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