

**INDIAN  
CONSTITUTIONAL PROBLEMS**



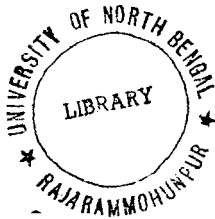
# CONSTITUTIONAL PROBLEMS

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*(Died 5th Nov. 1946. Born Feb. 7, 1864)*



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## PREFACE

The greater part of the substance of this book was the subject of a course of lectures delivered by me in the University of Madras in the latter part of 1927 under the terms of an endowment in memory of my friend the late Mr. V. Krishnaswami Aiyer. When the University offered the lectureship to me, they left the choice of topics entirely to my discretion. In view of the fact that the appointment of the statutory commission for the revision of the Indian constitution was then impending, it seemed to me that a discussion of the main problems which would be likely to arise in connection with the revision of the constitution would serve a more useful purpose than a treatment of the history of the Indian constitution, or a mere description of its present form.

It has been remarked that the constitutional development of India has not proceeded on any systematic or preorganized plan. The reason for this is that, until the historic announcement of August 20, 1917, in the House of Commons, there had been no declaration by the government as to the aim of British rule in India. Responsible government in India as an integral part of the British

Empire was for the first time then formulated and authoritatively declared to be the goal of British administration. The Montagu-Chelmsford Report is the first, and by far the most, important document in which the development of the Indian constitution has been envisaged in its entirety. Any discussion of the questions arising on revision must necessarily start from this declaration of policy as the fundamental basis. The goal as declared in the historic announcement cannot be changed or lost sight of. Any suggestions which may be made for the improvement of the constitution must be consistent with the realization of this ultimate aim. All schemes which proceed upon the assumption that the solemn declaration of August 20, 1917, was a mistake, or that the system of parliamentary government is not suited to the genius of the East must be ruled out as inadmissible. The one touchstone by which all proposals for constitutional reforms must be tested is whether they will be conducive to the attainment of the goal, or will retard the progress towards it, or lead India away from it. It is from this point of view that I have approached the subject of constitutional revision.

I have attempted to deal with the questions which would have to be considered, if the system of responsible government were introduced into India. To some critics it may appear that such a discussion is idle on the ground that responsible government will not be realized in the near future. Whether responsible government in the provinces, or provincial autonomy as it has been called, will be introduced is a matter of conjecture. Whether res-

possibility will be introduced in the internal civil administration of the country by the central government is still more a matter of conjecture. Into these matters of prophecy as to the future intentions of the government, I do not enter. I can only express my opinion as to what changes are called for. Even if responsible government is not going to be introduced in the immediate future, the discussion of the problems involved in a constitution providing for responsible government would still be of advantage; for it is essential that whatever intermediate steps in revision may be taken, they should not be inconsistent with the eventual attainment of the goal.

It was not possible for me to deal with all the topics involved in a scheme of constitutional revision. But I have dealt with the more salient problems relating to the structure and functions of the legislature and the executive in both the provincial and the central governments. The subject of local self-government has not been included within the scope of my work, partly for the reason that considerations of space forbade such inclusion and partly for the reason that the subject is not one of a controversial nature like the problems arising in connection with the provincial and central governments and is comparatively of secondary importance. The questions to which I have specially directed attention and upon which I have dwelt at considerable length are those which have been pointed out as the chief stumbling-blocks in the way of responsible government. They relate to the subjects of defence, the relations between the Government of India and the

Indian states and the protection of minorities. I have endeavoured to deal with the various topics in the light both of general principles and of practical considerations. In all cases admitting of a difference of opinion, while I have not hesitated to express my own view, I have tried to present as fairly and impartially as possible the case for and against my own conclusions.

After the delivery of the course of lectures, it was represented to me that their publication might appeal to a wider audience. I have since thoroughly revised and recast the matter of the lectures and made considerable additions to it.

In dealing with the subject of Indian states and their relations to British India, I have examined the question whether it is feasible to bring the states into any real federal union with British India. My conclusion against the feasibility of any such scheme is mainly based upon the attitude of the Indian princes themselves and their unwillingness to sacrifice even a tittle of their individuality. I have remarked that the conception of any closer union with British India entertained by the princes does not stretch beyond a mere loose confederacy of states. At the time I wrote the chapters dealing with the Indian states, no scheme had been put forward in public by the princes themselves. I could only discuss some of the proposals which had been put forward by a publicist in Mysore. Since then a scheme has been published in the papers and it has been associated with the name of Sir Leslie Scott, the counsel employed by the princes to present their case to the Butler committee. It is said to have

been partly sponsored by the standing committee of the Chamber of Princes. It is not known whether the scheme has assumed a final form and whether it has been adopted by the princes generally. At the time of the Princes' conference held at Bombay in April last before the submission of the scheme to the Butler committee, it was stated that there was no general agreement among the princes and that the rulers of Hyderabad, Baroda, Mysore, Travancore and Cochin had not agreed to it. Down to this moment, there has been no official publication of the memorandum submitted by Sir Leslie Scott to the Butler committee. I have therefore considered it inadvisable to discuss it in the body of the book. It is not a little curious that though the enquiry largely concerns the relations between the Indian states and British India, no steps have been taken to ascertain public opinion in British India on the matters under enquiry. The ways of government and of committees appointed by the government are often inscrutable. It is not possible to discuss Sir Leslie Scott's scheme within the limits of a preface. Nor is it worth while to do so, when we do not know what modifications the scheme may undergo before the final presentation of the case to the States Enquiry Committee. I must, however, observe that a perusal of the scheme has confirmed my conviction that the attitude of the princes renders any close organic association with British India impossible and that the most expedient course is to leave matters as they are at present. No reasonable objection can be taken to the desire of the princes for an ascertainment of their rights, but



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PREFACE

any attempt to bring about an organic relationship with British India, is now impracticable. One fundamental principle of all corporate organization is what may be called the rule of the majority, and this principle the princes have not learned and will not learn. To put it briefly, the whole of Sir Leslie Scott's scheme is based upon a want of touch with the realities of the situation. The scheme is inspired by vague ideas derived from the League of Nations and the Permanent Court of International Justice and by a notion of equality of status between the princes and the paramount power. The scheme is also quite incompatible with the Dominion status which is the aspiration of British India.

The appointment of the statutory commission has produced some fantastic schemes for the revision of the constitution and notably by English publicists. Some of them have been struck with the want of party cohesion and the instability of ministries and have put forward *inter alia* suggestions for making the ministries more or less irremovable. These schemes betray an ignorance of the evolution of the party system and its working in western countries. The instability of ministries may be admitted to be an evil, but it is not confined to this country and is, on the other hand, very conspicuous in other countries also. The enforcement of the principle of joint responsibility of the cabinet is bound to promote party cohesion. The principle of an irremovable executive is a prominent feature of the presidential system and is inconsistent with the parliamentary system. Though the Americans have got accustomed to the presidential system and have been

able to work it somehow, its inherent defects are so patent that it is a wonder how it can work at all. No inference in favour of the suitability of such a system to other countries can be drawn from the example of America. The Swiss system also is so unique that it can be hardly looked to for guidance.

The growing estrangement between the government and the people of British India is a source of sincere sorrow to persons like myself who have been firm believers in the value of the British connection. I can only point out the dangers ahead and the remedies which seem necessary and practicable for the purpose of putting an end to the unrest in the country. But the chances are that the government will be unable to distinguish friends from foes and will regard all criticisms as equally inspired by a spirit of hostility to the British connection. The reactionary friends of the government have always endeavoured to asperse the advocates of political reforms as self-seeking agitators indifferent to the welfare of the country and much less in touch with their countrymen than the members of the ruling race. To all such criticisms one can afford to be perfectly indifferent. It is sufficient to have done one's duty to the best of his lights.

Among the text-books on politics from the study of which I have derived help, I should like to make particular and grateful mention of Bryce's *Modern Democracies*, Keith's *Responsible Government in the Dominions* and Marriott's *Mechanism of the Modern State*.

It only remains for me to acknowledge my indebtedness to my friend Mr. V. S. Ramaswami Sastri for the trouble he has taken in going through the proofs and to my friend Mr. S. N. Panchanadesvar for his kindness in preparing the index.

*3rd July, 1928.*

OOTACAMUND.

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# Indian Constitutional Problems

## CHAPTER I

### INTRODUCTORY

In his monograph on "India a Federation?", it is observed by Sir Frederick Whyte that the Indian constitution has like the English constitution grown in a more or less haphazard manner and is the product of makeshifts contrived to meet particular temporary necessities, rather than of a survey of the constitutional problem as a whole. It has not been framed in accordance with any design for the construction of a complete edifice based on fundamental principles. The political and administrative preoccupations of the Government of India and to a greater extent the English characteristic of unwillingness to tackle any questions that are not of immediate urgency have prevented the authorities from addressing themselves to a study of the constitutional problems as a whole. This method of development has not been without compensation in the past. A premature attempt to frame a constitution might have resulted in a rigid structure controlling and hampering future development in accordance with changing conditions. Political conditions and ideas are in a state of flux and a scheme built upon a study of the conditions existing at a given moment cannot endure, unless it is flexible enough to meet the fresh requirements of the future. The time has now come when the task of examining the constitutional

problem as a whole can be no longer put off. The revision of the Government of India Act is at hand and the appointment of the statutory commission is imminent.<sup>1</sup> Dissatisfaction with the existing constitution has been expressed almost from the time of the introduction of the Montagu-Chelmsford reforms, and demands have from time to time been made for an early revision of the constitution in accordance with popular wishes. But, in view of the unwillingness of the Imperial Government to undertake the revision at an early date, no serious attention has been given in the country to the study of the various questions which have to be tackled in connection with the revision. About two years ago, Lord Birkenhead threw out a challenge to the Indian public to produce some agreed scheme of constitutional reform acceptable to all parties and promised to consider it when brought forward. The main and earliest response to this challenge is the Commonwealth of India Bill, produced by Dr. Besant who has devoted not a little of her time and inexhaustible energies to this subject among many others. It must be confessed, however, that her attempts to enlist the co-operation and support of the Indian public have not met with the reception which she was led to expect. Now that the appointment of the Royal Commission is expected to be announced before the close of the year, it is the duty of thoughtful members of the Indian public to devote their attention to this subject. I have no idea of putting forward any complete scheme of constitutional reform; nor could I expect

<sup>1</sup> The Royal Commission has since been appointed with Sir John Simon as Chairman.

any success in a field where persons of greater ability and influence have tried and failed. The aim which I place before myself is the modest one of drawing the attention of the public to some of the main problems which will have to be considered in a revision of the existing constitution and placing before them the more important aspects and principles to be borne in mind. In putting forward my views upon these problems, I have no intention of offering cut and dried solutions, nor any expectation of securing concurrence at large for my views. I shall be quite satisfied, if the discussion which I wish to stimulate sets people thinking and if the views, which I have formed in the light of my own experience, studies and reflection, furnish helpful material for decision.

Constitution-making is a fascinating pursuit which is beset with puzzles and pitfalls. The temptation to make experiments and to borrow the latest constitutional devices of foreign countries is particularly strong with the younger minds. Lord Bryce observed with regret that even Bolshevism made an appeal to some of the under-graduate circles in the University of Oxford.<sup>1</sup> There is, on the other hand, a tendency on the part of some of the older generation in this country to look with distrust upon western institutions, and a few are disposed to seek for light in the writings of our ancient law-givers. We must build up our new constitution upon our knowledge of existing conditions in this country, and upon a careful study of

<sup>1</sup> Fisher's *Life of Lord Bryce*, vol. ii, p. 244.

the working of the British constitution, which has furnished the model to nearly all the countries which have adopted the system of parliamentary government. We may also profit by the experience of the working of parliamentary institutions in other countries, especially in the self-governing dominions of the British Commonwealth and by a study of their defects and merits. There are some English critics, by no means unsympathetic, who consider that the scheme of constitutional reforms, which was passed into law in 1919, proceeded too much upon western lines, that it is not congenial to the Indian soil, and that the people of India must be left to devise and work out some scheme better suited to oriental conditions and traditions. There are other English critics who, justly proud of their own heritage, take the view that English parliamentary institutions are a special product of English conditions and cannot be successfully transplanted in other climes. We must not allow ourselves to be scared by these opinions and criticisms. The charge of want of political inventiveness is not confined to Indians, but has been made against other peoples also both in Europe and in America. I will not enter into a discussion of the question whether democratic institutions were known in ancient times in India. Of one thing we may be fairly certain, that the leaven of democracy which has been introduced by the constitutional reforms of 1919 has begun to work, and that the political ferment is bound to produce its usual results. In our consideration of the problems of the future constitution of India we shall do well to proceed upon this assumption. There may be some perhaps who are

of opinion that the reforms of 1919 were of too democratic a character, just as there are others who consider that the reforms were not sufficiently democratic. But, whichever of these views is correct, there can be no doubt that it is not now possible to go back upon the reforms introduced and that the only course possible is to go forward. In our study of these problems, we shall further assume that the Imperial Government are prepared to advance not merely in the sphere of provincial government, but also in the sphere of the central government. Whether they will be prepared to introduce responsibility at the higher level or not, we do not know. But, before we frame our scheme, we must examine the problem in all its aspects so that we may evolve a satisfactory and consistent scheme which can meet the wishes of the people and the needs of the country. Whatever the changes which may be introduced in any part of the structure of the government, care must be taken to see that they are in no way inconsistent with the ultimate goal as we conceive it and as it has been promised. The ultimate goal, as declared in the historic announcement of the 20th of August, 1917, is the realization of responsible government in British India as an integral part of the British Empire. Responsibility has been introduced only at the level of provincial government and even there only in a limited sphere. In the central government, there is no element of responsibility to the people. There is a representative legislature in the sphere of the central government but, while it has considerable means of influencing the views of the government, it has no

responsibility whatever. It is a matter of common observation that a system of representative government without responsibility is, by its very nature, of an unstable character and generally tends either to develop into a system of responsible government, or relapse into a system of government under which the legislature as well as the executive is controlled by the Crown. Though, as a matter of general principle, it is not true that the right to grant or create a constitution implies a right to revoke or destroy it, section 84 A of the Government of India Act reserves power to the Imperial Government to restrict any degree of responsible government already granted as the result of the enquiry by the statutory commission. It is, however, very unlikely that any such power will be exercised and we may safely assume that the only question will be whether the degree of responsible government now in existence should be modified or enlarged and if so, to what extent.

In defining the goal of constitutional progress in British India, the declaration of the 20th of August, 1917, used the words "responsible government in British India as an integral part of the British Empire". In the popular discussions upon the subject and the demands which have been made before and after the declaration, the words "dominion status" have often been adopted. It is perfectly clear that those who put forward the demand for responsible government mean to ask for responsible government as existing in the self-governing dominions. For all practical purposes, there is no distinction between the two expressions. In the

course of the discussion in the Indian Legislative Assembly in 1924 on Mr. Rangachariar's resolution, which sought to secure for India full self-governing dominion status, the Home Member, Sir Malcolm Hailey, expressed the opinion that the term "full dominion self-government" was of wider extent than the expression "responsible government" by itself.<sup>1</sup> He thought that it implied that not only would the executive be responsible to the legislature, but that the legislature would in itself have the full powers which are typical of the self-governing dominions. He thought that responsible government was not necessarily incompatible with a legislature with limited or restricted powers. It is no doubt true that responsible government only connotes responsibility within the sphere of activity allowed by law to the executive government. In cases in which the executive government is responsible to a legislature with restricted powers, it will generally be found that the executive is also restricted in its activities. An executive government responsible to a legislature with limited powers seldom possesses unrestricted powers of action. Sir Malcolm Hailey was not right in implying that the legislatures of the self-governing dominions are absolutely unrestricted in their powers. Though the powers of these legislatures are exceedingly wide, there are a few matters, like merchant shipping for instance, in which they are subject to restrictions imposed in the interests of the Imperial Government.<sup>2</sup> The number of subjects in

<sup>1</sup> Indian Legislative Assembly Debates, 1924.

<sup>2</sup> Keith's *Responsible Government in the Dominions* (second edition), vol. ii, p. 760.

which Imperial control is exercised over the dominions tends to become smaller and smaller every day ; but it cannot be said that the powers of the legislature of a self-governing colony are of exactly the same width and scope as those of the Imperial Parliament. The demand which has been always put forward on behalf of India is for the same kind of government as obtains in the self-governing colonies, but restricted, it may be, for a short period, in external affairs and defence. It was admitted by Sir Malcolm Hailey that full dominion self-government was a logical outcome of responsible government and was the inevitable and historical development of responsible government. We cannot believe that in passing the Reform Act of 1919 the Imperial Government intended, in using the term "responsible government" as the goal of British administration, to draw any distinction between Dominion status and the status of responsible government, or to hold out anything less than Dominion status as the goal of India.

The relations between the self-governing colonies and the Imperial Government have been gradually undergoing a change in the direction of equality between the Imperial Government and the former. In matters of internal administration, the Imperial Government practically ceased to interfere, as soon as responsible government was granted. The matters in which the Imperial Government used to exercise control over these colonial governments were treaty relations and foreign affairs, trade and currency, merchant shipping, copyright, divorce and status and military and naval defence. Even in these matters,



there has been a steady relaxation of control. The relations between the Imperial Government and the self-governing colonies have always been in a fluid condition and English statesmen were generally unwilling to commit themselves to any rigid definition of Dominion status. The idea of Imperial federation, which was once widely discussed as a means of closer association of the dominions with the United Kingdom and of giving them a voice in matters of Imperial concern, was distasteful to many as suggestive of a super-state and was quietly abandoned as inconsistent with the daily expanding notions of Dominion status. It was felt that any rigid definition of the status would interfere with the elasticity of the nexus which enables the Imperial Government to make concessions from time to time to the sentiments of the dominions. The Great War brought into prominence the fact that, while the self-governing colonies became involved in the war as a consequence of the declaration of war by the Imperial Government, these colonies had no previous voice in the matter. It is in the department of foreign policy that these colonies have especially claimed a right to be consulted. The justice of this claim has been recognized in the Imperial Conference of 1926. As a symbol of their right to a voice in foreign affairs, the self-governing colonies and India have been admitted to representation in the League of Nations and in the Imperial Conference. The difference, of course, in the representation of India and of the self-governing colonies is that, while the delegates of the latter are chosen by a responsible ministry, the delegates of the former are chosen by an irresponsible government.

In describing the Government of India as an irresponsible government, I do not forget that it is responsible to the Imperial Parliament, but I wish to emphasize the fact that it is not responsible to the people whom it governs. The latest development of Inter-Imperial relations is to be found in the report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926. The position of the dominions was defined in these words: "They (Britain and the group of self-governing dominions) are autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations." Equality of status was declared to be the root principle governing inter-Imperial relations. With regard to the conduct of foreign policy, it was recognized that though the major share of responsibility must, for some time, continue to rest with the Imperial Government and though practically all the dominions are engaged to some extent in the conduct of foreign relations, particularly with foreign countries on their borders, the governing consideration underlying all discussions of the problem must be that neither Great Britain nor the dominions could be committed to the acceptance of active obligations, except with the definite assent of their own governments. It will thus be seen that the status of a self-governing dominion within the British Empire is as high as can be wished for by the most ardent patriot, and that it offers the fullest scope and

security for the realization of national aspirations, while it carries with it all the great advantages of partnership in the most powerful empire in the world.

Assuming that a change in the character of the central government will be carried out wholly or partly either in the next revision or at a later date, it is necessary for us to consider the important question what the character of the relations of the central government with the provincial governments should be. Should the Government of India be of the type known as a unitary government or of that of a federal government or of any other type? What do we understand by the terms unitary and federal? And what is the principle which underlies the classification of states into unitary or federal? There has been no end of discussion on this subject and no little confusion of ideas in the discussion. Different definitions have been suggested by eminent authorities. In my opinion, the true test of a federal government is the distribution of the powers and functions of sovereignty between a central government and two or more provincial governments in such a manner that the distribution cannot be altered, except with the concurrence of both the central and provincial governments, or by the nation at large which is supreme over both the authorities. This is the sense in which I propose to use the term federal government and I will adhere to it throughout the whole book. In the *Attorney-General of the Commonwealth of Australia and others v. Colonial Sugar Refining Company Ltd., and others* (1914 A.C. 237), Lord Haldane adopted a narrower definition of the term "federal" according to which

- the constitution of the Dominion of Canada would not be federal. It is evident that his definition has been based on the constitution of the United States of America. This definition has been justly criticized as too narrow, and the constitutions of the United States and Canada are both regarded as belonging to the federal type, though they vary with regard to the important question of the allocation of residuary powers.
- In a country of the vast size and population and diversified conditions of India, there must necessarily be a large measure of decentralization by the central government, if the administration is to be conducted with any large measure of efficiency and in accordance with the wishes of the people. The same considerations which suggest the wisdom of decentralization in the sphere of local self-government apply with greater force to the sphere of provincial government. There has been in the past a large measure of decentralization by the central government to the provincial governments both before and after the reforms. Their powers, however, are the result of delegation by the Imperial Government and the Government of India. The position at the time of the Montagu-Chelmsford Report is correctly described in section 120 of that document. The joint authors point out that the Indian constitution is not federal in the true sense of the term. There is no element of pact or agreement between the provinces and the central government. Even after the reforms of 1919, India can only be described as a unitary state with the possibility of transformation into a federal state. In the special circumstances of India and

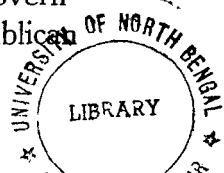
with its past history, it must be regarded as a piece of good fortune that it possesses a strong central government and that the question for consideration is not how much shall be yielded by the provinces to the central government, but how much shall be surrendered by the central government to the provincial governments. Disruptive forces have been very strong in the past history of India. It is the administration of India by a strong central government that has succeeded in bringing about uniformity of laws and standards of administration and a feeling of common nationality. The separatist tendencies likely to be produced by differences of race, religion, language and custom have been largely overcome, or kept in check, by the influence of a strong centralized government. A federal government of the type of what prevails in the United States or in Australia is likely to encourage separatist forces and particularist tendencies and check the consolidation of the Indian Empire. The past history of the country during the British period does not reveal the existence of the conditions which justified and led to the creation of a federal government in Australia or in the United States. In those countries, there were autonomous states which were quite independent of each other, but desired to enter into a union for the purpose of protecting themselves against external enemies, or for the purpose of securing the advantages to be derived from uniformity of tariffs, commercial legislation, etcetera, and those facilities for communications and commercial and other intercourse which could only be secured under a central government.

The historical conditions which led to the reservation and recognition of the powers and independence of the autonomous states have been wholly wanting in the case of India, ever since it came under British rule. It would be most unwise to sacrifice the position of advantage we are now occupying and to attempt to depart from the unitary type and to create a federal government; and far more so, to create a federal government of the type of the Australian Commonwealth. It may perhaps be urged that, though a unitary type may be suitable to British India, it will not be practicable to bring in the Indian States into the Indian constitution, unless we adopt federal principles. This is a very complicated and difficult problem which I will deal with later on. The future constitution envisaged in the despatch of Lord Hardinge's government in 1911 was one in which India would consist of a number of administrations, autonomous in provincial affairs, with the Government of India ordinarily restricting their functions to matters of Imperial concern. The preamble of the Government of India Act declares the expediency of giving to the 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. These statements must not be regarded as having committed us to any decision on this important question of principle.

An extensive measure of decentralization is quite compatible with the unitary system of government. In the working out of this principle of increasing the independence of the provinces, we have to preserve

a just balance between the central and the provincial governments and to take care that no step is taken which is likely to impair the strength and efficiency of the central government, or favour disintegrating forces, or put any check upon the forces which make for national union and solidarity. This consideration will have to be borne in mind in drawing a line of demarcation between the powers and functions of the central government and those of the provincial governments. It is not always possible, in allocating these powers and functions, to make a thoroughly logical and mutually exclusive division of the powers of the government between the central and provincial authorities. In several of the federal constitutions, it has been found impossible to avoid giving concurrent powers of legislation to both the central and provincial governments. In such cases, there is the possibility of divergence between the enactments of the provincial legislature and those of the central legislature. The solution ordinarily provided for such conflicts is that laws passed by the central legislature should prevail over the laws of the state legislatures. It also happens that the division of powers between the central government and the provinces or states is not complete or exhaustive and that there are fields which are uncovered by any specific provision as to jurisdiction. In such cases, the constitution of the Dominion of Canada vests the residuary power in the central government, while the opposite course has been adopted by the Commonwealth of Australia. The leaning towards centralization and a unitary form of government has been very pronounced in the new republics

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constitution of Germany. Besides the exclusive and concurrent jurisdictions of the central legislature which we meet with in other federal constitutions, there is also a normative jurisdiction which enables the central legislature to pass what is called normative legislation, i.e., laying down principles simply, leaving the details to be enacted and carried out by the legislatures of the states.<sup>1</sup> By way of illustration, we may refer to the provisions of articles 10 and 11 of the new republican constitution of Germany. Under article 10, the Commonwealth may prescribe by law fundamental principles concerning :—

1. the rights and duties of religious associations,
2. education including higher education and libraries for scientific use,
3. the law of officers of all public bodies,
4. the land law, the distribution of land, settlements and homesteads, restrictions on landed property, housing and the distribution of population,
5. the disposal of the dead.

Under article 11, the Commonwealth may prescribe by law fundamental principles concerning the validity and mode of collection of state taxes, in order to prevent : (1) injury to the revenues or to the trade relations of the Commonwealth, (2) double taxation, (3) the imposition of excessive burdens in restraint of trade on the use of the means and agencies of public communication, (4) tax discriminations against the products of other states in

<sup>1</sup> *The German Constitution* by René Brunet, p. 65.



favour of domestic products in interstate and local commerce, or (5) export bounties, or in order to protect important social interests.

Here is a principle of great value which deserves serious consideration and, in my opinion, is worthy of adoption in the constitution of India. The germ of this principle may be noticed in section 238 of the Montagu-Chelmsford Report, where the authors observe that, even in respect of matters which are primarily provincial, some statutory restrictions upon the discretion of provincial governments may be necessary. While it would be inconsistent with our idea of Indian home rule to permit any dictation or interference by the Imperial Government, there would be nothing wrong and, on the other hand, great advantage in allowing a responsible central government in India to exercise a normative jurisdiction. The exercise of such a jurisdiction would enable the central government to prevent any serious departures from correct policy by the local governments in the exercise of their powers. It is a jurisdiction which should only be exercised in matters of real importance and in the interests of the Commonwealth as a whole. The introduction of this principle will in no way affect the principle of responsibility of the provincial government to the local legislature and to the people of the province within the orbit prescribed for it by the constitution. We must remember that responsible government may connote various degrees of independence of external authority. Taking the British Empire, while the United Kingdom enjoys responsible government in the fullest sense, the

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governments of the self-governing dominions cannot yet be described as having responsible government in exactly the same measure. Whether the restriction of independence is imposed by convention or treaty or by a statute, it is equally a subtraction from sovereignty and independence ; but the government which exercises its functions within the ambit prescribed by such restrictions may be fully responsible to the legislatures and the people.

## CHAPTER II

### PROVINCIAL AUTONOMY

In the last chapter I referred to the practical difficulties in drawing a logical and scientific line of demarcation between the powers of the central government and of the provincial governments.

While it is possible to lay down with regard to certain matters that they fall clearly and exclusively within the jurisdiction of the central government or of the provincial government, there are other matters in regard to which it is far from easy to decide whether they should be assigned to the jurisdiction of the one government or the other, and there are others with regard to which it is desirable that both the central and the provincial governments should have the power and authority to act. The determination of the spheres of jurisdiction is a matter of expediency rather than logic. Taking the case of the United States, we find that, besides the powers vested in the national government alone and the powers vested in the states alone, there are powers exercisable by either the national government or the states. A similar overlapping of jurisdiction is noticeable in the demarcation of powers between the central and provincial governments in Canada and between the government of the Commonwealth and the governments of the states in Australia.

The general principles on which subjects should be classed as central or provincial were discussed at

length by the Functions Committee and by the Government of India, before the devolution rules for the classification of subjects were framed.<sup>1</sup> There were various tests suggested during the course of this discussion. The important test is whether the matter concerns only a particular province, or India as a whole or more provinces than one. Where a subject is of concern only to a particular province, it would naturally fall under the category of provincial subjects. Where, on the other hand, it is of concern either to the whole of India or more provinces than one, it would clearly be treated as an all-India subject. There are other matters with regard to which, though they are primarily of provincial concern, it is desirable to impose some statutory restrictions upon the discretion of provincial governments. We find accordingly that in the statutory rules for the classification of subjects, there are some provincial subjects with regard to which it is laid down that they are subject to Indian legislation. Subjects which have not been specially assigned under the devolution rules to the schedule of provincial subjects, as well as all matters expressly excluded by the terms of the provincial schedule, are treated as central subjects. On examining the subjects assigned to the sphere of the central government, it will be found that they are all subjects which are obviously of common interest to the whole of India, or in regard to which uniformity of legislation is desirable, or a central machinery of administration is likely to be more efficient and economical.

<sup>1</sup> Report of the Committee on Division of Functions, 1919.

Comparing the list of central subjects under the Indian devolution rules with the similar lists in the federal constitutions of the Dominions, there is little substantial difference as regards their contents and character. It is unnecessary to refer to these lists in detail. Suffice it to observe that there is abundant justification for the assignment of these subjects to the central government. I should be disposed to assign the law of status or personal law to the provincial schedule, so as to facilitate amendments in accordance with local sentiments and needs through the provincial legislature.

Excluding the subjects which were selected for transfer to the ministry, the division between the other provincial subjects and the central subjects was not a matter which required a definite and final decision at the first stage of constitutional reforms. Whether the subject was central, or provincial and reserved, the administration of it was subject alike to the control of the Government of India and the Secretary of State. The authority exercised by the provincial governments in the administration of the central subjects was by virtue of the delegation of authority by the Government of India and the Secretary of State and was not the result of a recognition of any right, or acknowledged authority, as it has been called, of the provincial governments to deal with those subjects. The Functions Committee and the Government of India were careful to point out that, when a question should arise of transferring any reserved subject to the ministry, the question of definition between the central government and the provincial government would assume a different

aspect and they were anxious to guard against the supposition that they had prejudged the question as to the limitations necessary for the purpose of protecting the interests of the central government, if and when the question of transfer arose. As the question of provincial autonomy is bound to be raised before the statutory commission, it becomes necessary to consider whether any and what changes would be necessary in the existing list of provincial subjects.

Before proceeding further, it is desirable to explain in what sense the term "provincial autonomy" is intended to be used in this discussion. I propose to use it in the same sense in which it is commonly used in Indian political parlance. It means not merely the right of a province to make its own laws and administer its own affairs, but also responsibility to the provincial legislature and freedom within defined limits from the control of the central power. To put it in another way, it means the government of a province by the people freed, as far as practicable, from the control of the central power. The word "autonomy" implies self-government and self-government is not really complete, unless there is not merely freedom from external control, but also the government is carried on by representatives of the people who are responsible to them. It has been generally recognized that release from responsibility to a central authority must be accompanied by the creation of responsibility to the people of the province. There is no confusion of ideas in the minds of Indian publicists and the charge of loose thinking or misuse

of language brought against them is the result of an unduly narrow interpretation of the word and of verbal pedantry. No publicist who has advocated provincial autonomy has ignored the limitations inherent in the relations of a provincial and a central authority, or overlooked the existence of the problems arising out of these relations. The question of provincial autonomy requires us to consider what further subjects in the list of provincial subjects should be transferred to popular control. The greater the importance of the subject, the greater will be the reluctance of the authorities to its transfer.

If we examine the list of provincial subjects, we shall find that the subjects which are likely to be considered more vital than the others are land revenue, administration of justice, police and prisons. The Government of India naturally attach great importance to the subject of law and order and to the subject of land revenue, and it is very likely that they may consider that public interests would suffer by the transfer of these subjects. We must therefore see what safeguards, if any, are necessary to allay any reasonable apprehensions in regard to these subjects. In the report of the Joint Select Committee of Parliament on the Government of India Bill, they endorse the popular complaint that the system of assessment and enhancement of land revenue, resting as it does upon purely executive action without giving any voice to the legislature and without any statutory check upon the rate of enhancement, is open to serious criticism. The Joint Select Committee recorded their opinion in favour of condensation of the principles of settlement, the pitch of assessment and

the graduation of enhancement.<sup>1</sup> This recommendation must meet with general approval ; and it is a matter for regret that it has not been found possible yet to give effect to it. On the other hand, the views held by many public men on the question of revenue settlement and periodical revision are equally open to criticism ; and there is some danger of these views gaining acceptance in the legislative councils to the serious detriment of the most important source of revenue of the provincial governments. In a ryotwari province, there is no question which excites greater interest in the minds of the rural population than the subject of land revenue. The demand for permanent settlement which has often been made from the public platform may be advocated in the legislature in response to the clamour of the electorate. It is hardly necessary to point out that any move in this direction is not merely opposed to the whole trend of modern economic thought, which has been in the direction of the nationalization of land, but is bound to be disastrous to provincial finance. It will be impossible to find any substitute for this staple item of revenue which has held a place in the financial system of India for ages.

Apart from this clamour for permanent settlement, we cannot shut our eyes to the demand which has been put forward by some public men that the land tax should be levied only after making allowance for a margin of subsistence to the ryot. This demand proceeds upon a misconception of the nature of the land revenue and upon a desire to assimilate this

<sup>1</sup> Joint Select Committee's Report, para II.



impost to the income-tax. It is forgotten that the holdings of the ryots in the vast majority of cases are, owing to various causes, of an extremely small size and are seldom so large as to furnish an adequate margin of subsistence to the cultivator even in the absence of a land tax. The result according to this demand will be the encouragement of the creation of small holdings in a country where the excessively small size of holdings is injurious to agricultural improvement, the growth of *benami* transactions with regard to the ownership of land, the adoption of various methods of evading the revenue assessment and demand and the disappearance of the greater part of this revenue. There is no real analogy between the income derived from land and the income derived from other sources. I do not wish to enter into the vexed question whether the land revenue is really in the nature of a tax or of rent. I am more inclined to accept the view that the land revenue is in the nature of a tax charged on the land, that as a charge on the land it is recoverable from every bit of it and that it is not really analogous to the case of a tax on income. I wonder if those who advocate the exemption from land revenue of so much of the income as is required for the cultivators' subsistence will be prepared to apply their doctrine in favour of lessees from ryots and against the ryot's demand for rent. I must not, however, be understood as opposed to any modification or improvement of the system of land revenue administration, or as opposed even to a radical alteration of the system, provided it is possible to devise some generally acceptable system after a careful and

thorough examination of the whole scheme of taxation in the country. The subject is, however, too large and complicated to be gone into in the course of this work. Apart from the soundness or otherwise of the theory on which these novel claims are rested, it cannot be said to be an unreasonable apprehension on the part of the government that the transfer of land revenue to popular control is likely to be attended with grave risks. It is, however, quite easy and practicable to provide safeguards against any menace to the security of this source of revenue. Just as in the case of a number of other subjects there is a provision that it is subject to Indian legislation, it can be provided in this case also that the administration of the head of land revenue should be subject to Indian legislation, or be in accordance with the principles to be laid down by a statute by the central government. I am aware that my views may be open to the criticism that they imply a distrust of the sense of responsibility of the provincial legislature. But, whether such a feeling would be justifiable or not, it would be prudent to provide against the danger of a violent disturbance of the financial system, especially during the early stages of provincial autonomy. One possible safeguard and compromise would be to stabilize the existing assessment and to substitute for the system of periodical increase of the revenue at the will and pleasure of the executive a system of legislative sanction for future enhancements. Owing to the complexity and provincial varieties of the system of administration of land revenue (including irrigation) and the numerous points of its contact with the

life of the people, it is a subject which cannot and should not be assigned to the central government.

Another group of reserved subjects to which great importance is naturally attached by the Government of India is that relating to law and order which comprises the administration of justice, civil and criminal, and police and prisons. While the provincial governments are not likely to neglect the administration of subjects of such vital importance, it may be conceded as essential that there should be no lowering in the standards of administration which have been slowly and laboriously built up by the British Government. The question we have to consider is whether there is any reason for apprehending that there may be a risk of deterioration of such standards. Such deterioration can arise only from two causes, either from bad laws or from the unsuitability of the personnel employed in the administration. As regards the more important laws with which the administration of law and order is connected, they are included in the schedule of laws with regard to which the restriction of previous sanction of the Government of India is imposed by the statutory rules. If any bill for the amendment of any of the laws included in the schedule is proposed to be introduced in a provincial legislative council, the central government will have an opportunity of considering the wisdom of the measure and according or refusing sanction, as may seem best in the circumstances of the case. This should be a sufficient safeguard against the risk of a provincial legislature passing any laws likely to injure the administration of law and order. It may perhaps be suggested that this requirement

of previous sanction of the Government of India to legislation by the provincial legislative councils is a feature of the present transitional stage and that it ought not to be continued when responsible government is introduced in the whole sphere of provincial government. This objection may probably be urged with reference to similar provisions in regard to other matters and it is best to deal with it at once.

I have already observed that the autonomy of the provincial governments does not imply complete freedom from all legislative control or restrictions and that provincial autonomy can mean nothing more than independence of any superior external authority within the limits laid down by constitutional legislation. Provincial autonomy is necessarily correlated with a central government and wherever there are two governments working in contact with each other, there must necessarily be a subtraction from the independence which would be enjoyed by an absolutely independent and isolated state. As between the central government and a provincial government, it stands to reason that the central government should be in a position to exercise ~~some~~ measure of authority over the provincial government. I have also indicated my view that, in view of the special history and the present circumstances of India, the constitution of this country should follow the Canadian rather than the American or the Australian model and that the central government should be the repository of all residuary powers. Even in cases where the constitution follows the American or the Australian model, there are restrictions imposed upon the legislatures

of the states by the provisions of the constitutional laws. Again, in every case in which the constitution is of the rigid type, the fundamental law of the constitution imposes certain fetters upon the activities of the legislatures. The objection that restrictions upon the sphere of operations of the provincial government would be inconsistent with the principle of provincial autonomy is thus not entitled to weight. What is essential and what the country desires is that, instead of a responsibility limited to certain fields of action only of the provincial government, the responsibility should be extended over the whole sphere of it. It must also be pointed out that these questions of constitutional limitation are not governed by abstract logic, but by practical considerations of expediency.

The other factor which may contribute to a deterioration of the standards of administration with regard to law and order is improper selection of the personnel which may be employed in the services connected with the administration of these items. This is not an imaginary danger, but a real one against which it is necessary to provide safeguards. Experience of the working of democracy in other countries shows that the vicious system of spoils too often finds a favourable lodgment in democratic countries. The existence and growth of communalism in this country, the demand for communal representation in the public services and the methods which have been resorted to by the champions of communalism for carrying out their views offer a warning and dictate the necessity of the timely adoption of suitable safeguards. If recruitment and control of at least the higher (i.e., the all-India and

the provincial) services are regulated by statute to be enacted by the Indian legislature and if the recruitment is effected through the machinery of a public service commission the members of which are appointed by the Governor instead of the ministry and free from control by any regulations framed in a communal spirit, there is every reason for the expectation that the standards of efficiency and integrity of the services can, without difficulty, be maintained at the proper level. The responsibility of seeing that the requirements of the statute are observed and of preventing any injury to the public interests should be specially laid upon the Governor of the province in the instrument of instructions. In making these suggestions, I have not overlooked the fact that according to constitutional practice in countries subject to a responsible government the patronage of the highest offices is really vested in the ministry and that it is not possible for a Governor, especially one imported from England, to possess that personal knowledge which is essential to a selection of suitable individuals for offices. While I would not prevent the Governor from consulting his ministers, it is desirable to place the responsibility solely upon his shoulders. If it is urged that this suggestion is at variance with the spirit of responsible government, I should point out that this is just the sort of case in which the special circumstances of this country call for a departure from the constitutional practice of the West. I do not also overlook the fact that in the opinion of some of my countrymen for whose judgment I have respect the patronage of the Governor has been

of deterioration of the efficiency or integrity of the services can be easily averted. If necessary, a right of re-entry may also be reserved to the Government of India in the event of gross inefficiency or mal-administration. Safeguards against the baneful intrusion of communalism into the services should be enacted in the constitution itself.

It may be urged that if the subjects of land revenue (including irrigation), law and justice, police and prisons are all transferred to popular control, the change may affect the position of the all-India services and that if regard is had to the principle enunciated by the Lee Commission that the authority which employs a service should also have the power of organizing it and of recruitment and control, the very existence of the all-India services so far as they serve in the provinces may be seriously imperilled. This question is also one the discussion of which may be deferred to a later stage.

The introduction of full responsibility in the provincial governments requires not merely the separation of the provincial from the central subjects, but also the separation of their revenues, their fields of taxation and their accounts and balances. The separation of the revenues has been effected by the devolution rules. Provincial contributions to the central government are in course of abolition and the controversies to which the system of provincial contribution gave rise will die out.<sup>1</sup> But the principle of allocation of the revenues between the central and provincial governments has given rise to dissatisfaction

<sup>1</sup> They have been abolished from the beginning of 1928-9.

on the part of some provinces, especially Bengal and Bombay. Whether it will be possible to substitute for the present system a different method of allocation is a question of great complexity and difficulty and it is not possible for a non-official to explore this question without the necessary information, which can be supplied only by the finance department of the Government of India. The subject is dealt with in the Montagu-Chelmsford Report and very good reasons have been adduced in favour of treating income-tax as a source of central revenue, and land revenue and irrigation as sources of provincial revenue. The question was raised again before the Joint Select Committee, and they were definitely opposed to the provincialization of the income-tax. Whether the hardship complained of by the Bombay presidency could be alleviated by some means, it is not possible for me to say. The incidence and the administration of the revenue from land and irrigation are of a local character and the two heads are much more suitable for administration by the provincial authorities than by the central government. It would be impossible to treat these items as heads of central revenue and agricultural provinces like Madras would resist any attempt to centralize these sources of revenue. It is also desirable that the principles upon which the allocation is made should, as far as possible, be applied uniformly throughout the country. The want of uniformity in this matter would be uneconomical and involve the maintenance by the Government of India of a number of departments of a diverse character according to the items of revenue



which might be selected for centralization from particular provinces.

The financial restrictions now placed upon the provincial governments will have to disappear to a very large extent ; but even after the introduction of provincial autonomy, it would probably be necessary to retain a few of the existing restrictions. For instance, with regard to the powers of taxation conferred upon local governments, it would be necessary to retain provisions for the purpose of securing that a provincial government does not encroach upon any source of revenue reserved for the exclusive benefit of the central government. The requirement of previous sanction of the Governor-General in Council with regard to any proposals of this character will therefore have still to be retained. Similarly, with regard to the power of local governments for borrowing in the open market, it might be necessary to retain the existing restrictions for the purpose of avoiding competition in the open market between the central and the provincial governments, or between the provincial governments themselves. It is also desirable and necessary that the audit of accounts should remain a central subject and carried out by a staff entirely independent of the provincial authorities.

Under the devolution rules, the powers of superintendence, direction and control vested in the Governor-General in Council can be exercised, so far as transferred subjects are concerned, only for the following purposes :—

1. to safeguard the administration of central subjects ;

2. to decide questions arising between two provinces in cases where the provinces concerned fail to arrive at 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 certain sections of the Act relating to the High Commissioner for India, the raising of loans by the local governments and the civil services in India, or for the purpose of any rules made by or with the sanction of the Secretary of State in Council.

The powers of superintendence vested in the Secretary of State and the Secretary of State in Council are also limited in regard to transferred subjects. In addition to the grounds of interference permitted to the Governor-General in Council, the Secretary of State can also interfere for the purpose of safeguarding Imperial interests or determining the position of the Government of India in respect of questions arising between India and other parts of the British Empire. In relation to reserved provincial subjects, the powers of both the Secretary of State and the Government of India are of course much wider, but, even here, the Joint Select Committee were of opinion that in purely provincial matters which are reserved, where the provincial government and the legislature were in agreement, their view should ordinarily be allowed to prevail. This recommendation was the outcome of the desire of the Secretary of State to give the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India

which was compatible with the due discharge by the latter of their own responsibilities. The powers of interference of the Secretary of State must be abolished and the Government of India must have the power of calling for information and returns from the provincial governments.

While the principle of responsibility was introduced in regard to transferred subjects only in a limited field of provincial administration, the competency of the provincial legislatures was not restricted to transferred subjects, but extended to the whole sphere of provincial administration. The local legislature is empowered to make laws for the peace and good government of the province, but certain restrictions are imposed upon it by the provisions of section 80 A of the Government of India Act which require previous sanction to the introduction of bills of various kinds. The control of the Government of India and the Secretary of State over provincial legislation is mainly exercised through the requirement of previous sanction of the Governor-General or the process of certification or resort to the power of veto. On an examination of the provisions of section 80 A, it will be seen that the requirement of previous sanction is calculated to avoid any conflict between the enactments of the local legislature and those of the Indian legislature and to prevent any trespass by any provincial legislature upon the area which strictly appertains to the Indian legislature. If provincial autonomy is introduced, the checks placed by section 80 A in the hands of the Government of India over provincial legislation may be more sparingly used, but the maintenance of the

sanction of the Governor-General as a pre-requisite will still be found to be necessary. It would be a more satisfactory means of avoiding conflicts than the subsequent exercise of the veto. There are undoubtedly disadvantages attached to this requirement of previous sanction. It often gives rise to a complaint that the work of the provincial legislatures is delayed and impeded. It has also the disadvantage pointed out by the Functions Committee of inviting the Government of India to pronounce an opinion upon a provincial bill before they have had the advantage of considering the debates upon the bill. The disadvantages, however, are not such as to outweigh the advantages to be derived from the procedure of previous sanction.

Considerable control is exercised by the government over the provincial legislature in connection with the budget which is annually placed before that body. Under section 72 (d), the local government is invested with the power to over-rule the legislature with regard to the demands for grants and to authorize such expenditure as may be, in its opinion, necessary for the safety or tranquillity of the province or for the carrying on of any department. Under section 72 (e), the Governor has the power to certify the passage of a bill as essential for the due discharge of his responsibility for any subject. This power of over-riding the legislative council is one which is inconsistent with the principle of full provincial autonomy. The result then of an examination of these sections is that, while sections 72 (d) and (e) will have to disappear upon the introduction of full responsibility, section 80 A should still retain its place in the statute.

## CHAPTER III

### THE PROVINCIAL LEGISLATURES

In almost all the unitary constitutions which have been adopted in European countries the legislature consists of two chambers. And in the federal constitutions of the world, the federal legislature is similarly composed of two chambers. The practically universal adoption of the bi-cameral system shows that it must be due not merely to the tendency to imitation of the English model, but also to a perception of the advantages to be derived from the system. In the case of federal constitutions, the second chamber of the central legislature is intended to give effect to the federal principle of equality among the constituent states. Both in the case of a federal government and of a unitary government, one of the main functions intended to be performed by a second chamber is the function of revision of the legislation which may be passed by the popular branch of the legislature. Another important function which a second chamber is intended to fulfil is to secure time for deliberation and for cool reflection. Owing to the difference in their methods of constitution, the popular branch of the legislature is more liable to be swayed by sudden gusts of feeling and by popular clamour than the upper house, which is generally recruited to a larger extent from persons of status, experience and mature judgment. It has also been feared that in the absence of a second chamber the rule of the majority

in a unicameral legislature would probably lead to the tyranny of the majority and to a disregard of the rights of minorities. The interests of minorities are likely to receive a more patient hearing from a second chamber.

A second chamber whose powers are exactly co-ordinate with those of the lower house is capable of giving rise to deadlocks and would also be inconsistent with the democratic principle. But, a second chamber with the more limited functions of securing deliberation and revision is in no way inconsistent with the democratic principle and is, on the other hand, calculated to correct or mitigate some of its faults. Under the Government of India Act, the bi-cameral system has been introduced in the Indian legislature, but not in the legislatures of the provinces. In the Montagu-Chelmsford Report, the Council of State was designed as an instrument for securing legislation in matters which the Government of India considered essential. A different view, however, was taken by the Joint Select Committee of Parliament who held that the true function of the Council of State was that of a revising chamber.

As regards the provinces, the Montagu-Chelmsford Report considered it impracticable and unnecessary to constitute a second chamber. Several reasons were adduced against the creation of a second chamber in the provinces. While the distinguished authors of the report were fully alive to the advantages of an upper house in securing more effective representation of the interests of minorities and in the inclusion among its members of men of ripe judgment whose presence would be valuable and

desirable, they felt that it would not be possible to secure a sufficient number of suitable members for two houses. The other arguments advanced against the creation of a second chamber in the provinces were that it might cause delay in provincial legislation, that it might prove over-conservative in its tendencies and might obstruct any legislation threatening the interests which might be represented in the upper house. These defects are to some extent inherent in the constitution of second chambers. But if the constitution provides a solution for conflicts between the two houses and does not vest the second chamber with equal power and authority, there is no ground for apprehending that the will of the people as finally expressed in the lower house will not ultimately prevail. The difficulty of securing an adequate number of suitable men for both houses is the main argument which under present conditions is entitled to weight. Another argument against the creation of a second chamber in the provinces may be drawn from the example of other countries. Taking the case of Canada, while the provinces of Quebec and Nova Scotia have a bi-cameral legislature, the legislatures of the other provinces have only got a single chamber. In Australia, Queensland has a unicameral constitution, while that of the other states is bi-cameral. In the case of Australia and the constituent states of the United States, the bi-cameral system which had been adopted by them before the federation is still retained. The authors of the Montagu-Chelmsford Report did not, however, express themselves definitely as to the ultimate form of the provincial legislative councils. Under section

84 A of the Act, the question whether the establishment of second chambers in the local legislatures is or is not desirable is one of the points for enquiry. If it is considered desirable to establish a second chamber, it would be necessary that it should be constituted on principles different from those determining the composition of a single house. A mere replica of the lower house would be a superfluity and an encumbrance. The electorate should be constituted on different principles; the franchises should be higher; and the term of office of the members should be longer. The considerations applicable to these matters may be more properly and fully dealt with when we come to the constitution of the second chamber in the central government. All that need be pointed out at this stage is that there is a misconception in several quarters that a second chamber is not quite consistent with the democratic principle and is neither necessary nor desirable. The argument of Abbe Sieyès that if a second chamber dissented from the first, it was mischievous, and that if it agreed with the first, it was superfluous has not found favour with the framers of modern political constitutions.

Under the existing statute, the life of a legislative council is three years. This period is too short for the efficient working of the legislature. The principle which should be applied in determining the life of the popular branch of the legislature is that, while it should not be so long that the house ceases to be representative of public opinion, it should not be too short for the members to do useful work. The cost incurred by the country in holding general



elections and the cost to candidates at the elections are also factors to be borne in mind, and the normal term of the legislature should be so fixed as not to impose a heavy pecuniary liability upon the country or upon the candidates by elections at short intervals. Judging from our experience of the work of the members of the legislature, it may be fairly stated that a good part of the first year of the term is generally spent by the new members of the house in acquiring a knowledge of the rules of procedure and familiarizing themselves with the atmosphere and the environments of the house. The second year is the period of most useful work. A considerable part of the third year of office is devoted to wooing their constituencies for the next election and in shaping and carrying out their plans of campaign. If the period is too short for private members to turn out any large volume of useful work, it is much more so in the case of ministers, who require time to frame their policies and carry them to completion. The duration of the English House of Commons is five years. The same is the length of the House of Commons in the Dominion of Canada. A term of four years is the life of the state legislatures in Canada, of the Chamber of Deputies in France and of the Reichstag in Germany. In view of the experience of these countries and our own experience, I have no hesitation in saying that the period of three years is much too short and that it is necessary and desirable to extend the term to a period of four years, if not five.

The total strength of the legislative council varies from province to province and must necessarily do so in view of the diversity of conditions in the different

provinces. The strength of the Bengal council which is the largest is 139, that of Madras 132, of the United Provinces 123 and of Bombay 111. It is not possible to go into the details of the considerations which have led to the allotment of these varying figures of seats. It is, however, desirable to refer to a few important principles to which regard must be had in fixing the strength. The subject is discussed in the Montagu-Chelmsford Report, in the report of the Franchise Committee, in the despatch of the Government of India on this subject and in the report of the Joint Select Committee of Parliament.<sup>1</sup>

The matter is not one which can be determined merely by reference to *a priori* considerations as to total population. The question is closely connected with the size of the electorates as affected by the franchise, the area of the constituency, the number and variety of interests to which it may be found necessary to give special representation, the necessity for the representation of minorities and of particular classes, the administrative facilities for the conduct of the elections, the facilities available to the candidates for the work of canvassing voters in the electoral districts and the cost which would be entailed on the candidates in doing the legitimate work of electioneering campaigns. Taking the case of the Madras presidency, the total number of seats in the provincial legislature is only 132, but deducting the seats

<sup>1</sup> Montagu-Chelmsford Report, Section 225; Report of the Southborough Committee on Franchises; Fifth Despatch of the Government of India on Indian Constitutional Reforms (Franchises) dated April 23, 1919; Report of the Joint Select Committee on the Government of India Bill, remarks under Clause 7 of Part I; Report of the Joint Select Committee on the Draft Rules made under the Government of India Act, Part II.

allotted *ex officio* and the seats filled up by the nomination of officials and non-officials, the remaining seats filled up by election amount to 98. As the population of the Madras presidency is 42 millions, each seat represents about 428,000 people. It cannot be said that the representation of the people in the legislature errs on the side of excess. On the other hand, comparing the proportions between the representation and the population in western countries, it must be pronounced to be very inadequate. One very important consideration to which the attention of the authorities was not directed when the rules were framed is the difficulty experienced by candidates in dealing with electorates of the size fixed under the rules. For the purpose of illustrating my argument, I will take the case of the presidency of Madras with which I am more familiar than with the others.<sup>1</sup> In the communal and special constituencies the number of voters in the electorates cannot be said to be excessive. The only constituency of this kind which has an electorate exceeding 10,000 is Malabar. Among the urban constituencies, the city of Madras is the only one which has an electorate exceeding 10,000. The difficulty of canvassing a heavy electorate is not so large in an urban constituency, where the electors reside in a compact area, as it is in the rural constituencies. When we turn to the Non-Mahomedan rural constituencies, an electorate exceeding 50,000 voters is by no means uncommon. In 13 out of the 25 districts, the strength of the

<sup>1</sup> Parliamentary Return showing the results of elections in India, 1926.

electorate exceeds 50,000 and in some cases exceeds 70,000. Remembering that these large electorates are spread over districts covering a few thousand square miles each, the difficulties experienced by candidates in approaching the electorates and canvassing can easily be imagined. It would not be possible for any candidate to reach all or even the majority of the electors in his district. It may be urged that this difficulty may be overcome by the growth of widespread party organizations with numerous centres of work, but any such growth is the work of time and cannot be expected for many years. In the absence of any such party organizations it will be necessary for candidates to employ a large number of agents and this is bound to increase the cost of an election.

Looking at the question from the point of view of the expenses incurred by the candidates, the cost of sending two letters at least to each voter in a constituency of 50,000 voters will be over Rs. 6,000. We do not know whether the returns of election expenses by candidates in the last three general elections have been published by the Government of India. There is strong reason to believe that in some cases the expenses have gone up to Rs. 50,000 and more. There would be nothing surprising, if the strictly legitimate expenses of a candidate in one of the large electorates amounted to Rs. 10,000. Though candidates are bound to furnish returns of their election expenses to the Government, it may be safely taken that in several cases the true returns are not furnished. Making allowance for all inaccuracies of information and exceptional cases, we shall not

be far wrong, if we assume that the cost of an average-contested election in which no improper methods are resorted to may be something in the neighbourhood of Rs. 10,000, an amount which must be considered unduly heavy, if not ruinous, in the circumstances of this country. The high cost of elections is bound to keep many persons from the field, who would otherwise be most desirable candidates. It is an additional ground for prolonging the life of the councils that it will to some extent diminish the frequency of general elections. The lack or deficiency of communications in several of the districts is another factor which is bound not merely to add to the cost of elections, but also to the difficulty of keeping in touch with and educating the electorates. A reduction in the area of the electoral units necessarily involves an increase in the number of seats. Even if the strength of the elective element in the legislature were doubled, it could not be said that the legislature would become one of unwieldy dimensions. An increase in the total number of seats will allow of the reduction of the electorates to manageable dimensions, diminish the cost of the elections to candidates, promote closer touch between the candidates and the electors and facilitate the creation of plural constituencies in cases where they may be found to be necessary for securing the representation of minorities by reservation of seats or otherwise. We must not overlook the fact that plural constituencies mean electorates of larger size; but instead of forming a plural constituency by grouping together two or more districts, it should

be possible to form such constituencies by the grouping together of smaller electoral units than entire districts. Though it would be inexpedient to resort to plural constituencies on any large scale, they may have to be resorted to as a matter of strict necessity; but the number of such constituencies must be kept within the lowest possible limits. The decision of the Functions Committee to introduce single constituencies as a general rule is therefore justified, though not necessarily on the ground which they put forward, viz., that the inexperience of the electorates requires the adoption of the simplest possible system of election. While the objection of want of simplicity may apply to the system of proportional representation or of cumulative vote, there is no want of simplicity in plural constituencies.

Under the statutory rules, the qualifications for franchise are fixed differently in the various provinces. The qualifications for franchise fixed by the rules in force in Madras are probably lower than the qualifications fixed in most of the other provinces. In the Madras city constituency, the pecuniary qualification for the franchise is assessment to property tax or profession tax or occupation of a house of the annual value of Rs. 60, i.e. four pounds and ten shillings. In urban constituencies outside Madras, assessment in the previous year to an aggregate amount of not less than Rs. 3, i.e. four shillings and six pence, in respect of one or more of the following taxes, viz., property tax, profession tax or tax on companies would entitle a person to a vote. In the rural constituencies, the holding of land of an annual rental value of Rs. 10 or assessment in a municipality

included in the rural constituency to an aggregate amount of not less than Rs. 3 in respect of one or more of the following taxes, viz., property tax, profession tax or tax on companies entitles a person to the franchise. I doubt very much if it can be said that payment of an annual rent of Rs. 10, i.e. fifteen shillings, or payment of the taxes amounting in the aggregate to Rs. 3 per annum could be at all described as a high franchise. Low as these franchises are, the total number of registered voters in this presidency for the legislative council is only 1,377,000 odd out of a population of 42 millions. The percentage of the male electorate in the Madras Presidency to the total male population of twenty years of age and over is stated to be 10·7. This is certainly a small percentage of the population; but it cannot be said that the franchise now in force is too high. In view of the general poverty of the country and the fact that, even under such a low franchise, we have only a very small percentage of the population qualified as voters, it may perhaps be considered deserving of examination whether it is desirable to lower the qualification still further. But the poverty and illiteracy of large masses of the people justify a serious doubt as to their fitness to exercise the franchise. Recent experience of elections is said to show that the illiterate voter is often more appreciative of the pecuniary value of a vote than of its political significance. It is a subject on which it is not possible to express a definite opinion without a detailed examination of the economic and educational conditions of each province. We can only lay down the general principle

that the franchise should be as broad as circumstances in each province may permit, and that it is generally desirable to base the franchise upon the ground of ownership or occupation of property liable to tax or rent, or the exercise of some calling and the receipt of an income liable to taxation in some form or other. Those who criticize the electoral system of this country as not being sufficiently democratic will do well to bear in mind the stages through which democratic government has passed in European countries. It may be pointed out here that at the time when the Reform Act of 1832 came into operation in the United Kingdom the proportion of voters to the population was less than 3 per cent, that it rose to about 9 per cent when the reform of 1867-8 took effect and to 16 per cent when the reform of 1884 came into operation.<sup>1</sup> It is not intended to suggest that the progress of democracy in India should follow the same pace of growth as in England, but in view of the illiteracy and poverty of the people, it is not possible to introduce democracy at once on as broad a basis as has been now adopted in England after eighty years of political training and economic and educational progress.

However desirable it may be to secure representation of the depressed and the working classes, it is not possible to reduce the franchise so low as to give them an opportunity for representation by means of election. Short of universal suffrage, it would be difficult to devise any scheme of franchise qualifications which would secure the representation of these

<sup>1</sup> Whitaker's *Almanac for 1925*, pp. 187 and 490.



classes by election. It has been suggested that special constituencies might be formed for them and that it might be possible to secure their representation by election from these special constituencies. The creation and multiplication of special constituencies is an evil to be deprecated. The want of uniformity in the franchise in the same electoral unit is open to objection not merely on the ground of invidiousness, but also on the ground that it increases the burden on the provincial governments of preparing electoral rolls. If a low qualification is considered sufficient for the depressed classes, it should be equally so for the other classes who are superior to them in worldly position, status and education. The best method of securing representation of the depressed classes would therefore seem to be nomination by the executive government out of a panel containing the names of persons recommended by associations recognized as the organs and mouth-pieces of these classes. Where there are a number of such organizations, the question might arise as to which of them should be recognized and entrusted with voting power. Rules may be framed by the government, prescribing the conditions to be fulfilled by such organizations as to strength of membership, registration, past duration of association, objects of association, etcetera.<sup>1</sup> This course may mitigate the evils of class constituencies on the

<sup>1</sup> On the subject of representation of minorities and the depressed classes in particular, the very interesting report of the Seal Committee on the constitutional developments in Mysore may be consulted with advantage (*vide* paras 121 et. seq. of the report). See also *The Proceedings of the Government of Mysore* (order No. 1357-1426—C.B. 100—23—1, dated 27th October, 1923, paras 21 to 23 and 38).

one hand and of direct nomination by the government on the other. Nomination directly by the government has not merely the disadvantage of encouraging sycophancy and favouritism, but is strictly inconsistent with the principle of responsible government.

We now turn to the question of the representation of minorities. The principle of representation of minorities does not necessarily mean representation in proportion to the numerical strength of the minorities in the general population or electorate. The representation granted may be either above or below the numerical proportion. In the case of the European community, the representation granted to them is in excess of their numerical proportion. It is claimed that their representation should be proportionate to their political strength and to the importance of their vested interests in commerce, trade, wealth, etc. If, however, the political training, superior knowledge and economic superiority of the Europeans are allowed to justify their claim to a larger number of seats, the same plea may be put forward on behalf of the Hindu community as against the Mahomedan community in those provinces in which they are in a minority as compared with the Mahomedans. The principles of representation of minorities should be applied to all communities in the same manner and a departure in the case of one community is sure to give rise to a demand for similar departure in favour of others. The creation of communal electorates has been recognized as an evil, though in some cases it has been considered a necessary evil. Recognized at first in the case of the

Mahomedans and Europeans, it has been extended to the Indian Christians, the Sikhs and the Anglo-Indians. So far as the Indian Christian community is concerned, some leading members of it now feel that it is unnecessary for them to claim a communal electorate for the protection of their interests. The question remains whether it is necessary to retain such separate communal electorates in favour of the other communities. In the case of the Mahomedans, they strongly cling to the system of communal electorates and, though some of the more enlightened members of that community recognize the evils arising from the system and are prepared to adopt the system of a joint electorate with reservation of seats, the majority of the community are apparently unwilling to make any change. It would be a great step towards national progress and unification, if the Mahomedans could be persuaded by their leaders to abandon the system of communal electorates and be content with a reservation of seats. In the absence of an agreement on the part of that community, it may not be possible for the Government to make any change against their wishes and we can only trust to the growth in course of time of better feelings and relations between the two communities. The number of seats assigned to the Mahomedans in the various legislatures has been based upon the Lucknow pact which was arrived at in 1916 and has been loyally adhered to ever since by the Hindu community. Some of the members of the Mahomedan community now seem to be dissatisfied with that pact and they have put forward demands for representation at variance with it. If, however,

that pact is to be scrapped, the matter must be treated as an open question in favour of both communities and in all the provinces. If the question is to be treated as *res integra*, it has to be considered whether the scheme of representation should be based upon the basis of proportion of the population, or the electorate, or upon that basis in combination with other factors as in the case of the European community. It would of course be conducive to harmony and friendliness between the two communities, if the dispute could be settled by friendly negotiations between the leaders of the communities. But, should such negotiations prove abortive, the claim of the Hindus in Bengal and the Punjab that a proper scheme of representation should have regard not merely to numerical strength but to other factors like wealth, voting strength, education, etc., cannot be dismissed as entitled to no consideration. On a problem which has hitherto defied all attempts at solution, it is impossible to offer any cut and dried suggestion with any hope of acceptance.

If a minority community is to be allowed to claim representation in excess of its proportion in the general population or electorate, it must be considered (1) whether every minority should be allowed this advantage, (2) if not, what should be the minimum and the maximum proportion of the population or electorate which a community should bear to entitle it to special provision for representation and (3) whether the excess number of seats should be sliced out of the share of some one community or more communities than one. The application of this principle of excess representation

do not enjoy the same privileges as the European community, but even in their case, the abandonment of the attitude of exclusiveness as advocated by enlightened leaders like Col. Gidney will be conducive to the growth of friendly relations between them and the Indian community and they may be sure that, if they give up their exclusiveness, there will be no prejudice against them in the minds of Indians. To allay any misgivings in the minds of these communities and only as a half-way house towards the system of general electorates, the method of reservation of seats may, if practicable in the areas where they are to be found in strength, be adopted as a guarantee of just representation.

Similarly, in the case of the Sikh community, the wisest course for them would be to merge themselves in the non-communal electorate with a guarantee, if necessary, in the shape of reservation of seats.

The non-Brahmin community in the Madras province and the Mahratta community in the Bombay Presidency entertained at one time apprehensions of their failure to secure adequate representation in the absence of reservation of seats. It was pointed out at the time that if these large and influential communities would only organize themselves efficiently, they would have no difficulty in securing an adequate number of seats in the legislature. Events have shown that their apprehensions were ill-founded. While the number of reserved seats in Madras is only 28, the non-Brahmins were able to secure 54 seats in the election of 1920, 63 seats in the election of 1923 and 56 seats in the election of 1926. In the light of this experience, there is no necessity for continuing

the system of reserving seats for the purpose of protecting the representation of non-Brahmins who form an overwhelming majority.

With reference to my recommendation of joint or general electorates with guaranteed seats, it only remains to point out that it is only a *pis aller* and that the creation of plural constituencies involved in the proposal would have to be carried out with due regard to the avoidance of unwieldy electoral areas and unwieldy legislative councils. The system of *scrutin de liste* would be mischievous, unsuitable and impracticable.

## CHAPTER IV

### THE PROVINCIAL EXECUTIVE

We may now turn to consider the constitution of the executive government in the provinces under a system of provincial autonomy. The system of dyarchy which was introduced by the Montagu-Chelmsford Reforms was put forward only as a transitional measure and as a half-way house in the progress towards responsible government. That the system of dyarchy was a novel one and had many imperfections was fully recognized by the framers of the scheme. But it was considered that, while it would be a bold experiment to introduce full responsible government, it was necessary that opportunities should be provided for training in responsible government and that there was no other way of doing so, except by transferring a substantial portion of the functions of the government to the control of ministers responsible to the legislature. Dyarchy was thus considered an unavoidable, though defective, measure of interim advance. Three general elections have been held since the introduction of the reforms and experience has been acquired both by the legislators and by the electorates in the working of the reforms. In the terms of reference to the Reforms Enquiry Committee of 1924, the Government clearly recognized the existence of defects inherent in the working of the Government of India Act. It would be strange if a system of government, admittedly defective, were

continued even after the period of nine years fixed by the Act as necessary for the trial of the experiment. It is not too sanguine to expect that, as the result of the enquiry by the Statutory Commission, the subjects which are now treated as reserved will also be transferred to popular control.

The necessary result of the transfer of full responsibility in the sphere of the local government would be the abolition of the executive council and an increase in the number of ministers. The abolition of the executive council is likely to be resisted by the members of the Indian civil service as an interference with their privileges. The claims of the services to particular appointments cannot be allowed to stand in the way of the further development of the constitution. The policy of Parliament to provide for the increasing association of Indians in every branch of the Indian administration is declared in the preamble to the Government of India Act and it necessarily involves a diminution in the number of posts filled up by recruitment in England. The proviso to section 96 (b) (2) of the Act also gives clear notice to all persons entering the civil services of the Crown after the commencement of the Act that administrative changes involving a curtailment in the prospects of promotion could not be regarded as a ground for compensation. The proviso allows the compensation only in the case of those persons who entered the civil service before the date of the commencement of the Act, and, even in their case the opinion of the law officers of the Crown was that the protection accorded to existing or accruing rights by that proviso could not apply to



the loss of prospects of promotion to the higher administrative appointments which are filled up not as a matter of course, but as a matter of selection.

As regards the strength of the future ministry, it is hardly likely that in the major provinces it will be less than seven, which is the strength of the executive council and the ministry combined at the present moment. It is no doubt true that the whole work of government was carried on before the Reforms of 1919 by three members of the executive council. It is supposed in many quarters that the number of ministers can be reduced, when the reserved subjects are also transferred. Whatever might have been the reasons for fixing the number of ministers at three and the number of executive councillors at four in the major provinces, it is believed that these reasons would cease to operate on the introduction of provincial autonomy. I am, however, very sceptical about this result for a variety of reasons. Partly on account of their unfamiliarity with official business and still more on account of the demands of political propaganda and the necessity of explaining and justifying their policy and measures to the country at large and partly on account of the great increase in work entailed by the activities of the legislative council with its frequent sessions, its numerous resolutions and interpellations, it cannot be expected that the work could be done by a ministry no larger than the old executive council. Another consideration which will strongly operate in favour of an increase in the number of ministers is that it will not be otherwise possible to satisfy the hopes and claims of the several leaders among the

politicians. I have heard of claims being put forward by the leaders of several communal groups, or of the representatives of the several linguistic areas to a share in the government. I am no advocate of communalism or sectionalism ; nor do I believe in the principle of creating appointments to satisfy the ambitions of all leading politicians. But in view of my proposals to take away all patronage from the ministers and to entrust the recruitment of the services to a public services commission, it would be expedient to maintain the strength of the ministry at the number which now represents the executive council and the ministry combined. It is an open secret that the inability of the government to gratify the wishes of ambitious leaders very often leads the latter into the ranks of the opposition. It would be easier for the government to maintain its position, if it were possible for them to offer places in the ministry to the leaders of some of the more important groups or sections. When communal differences disappear and a two-party system is evolved, this consideration will tend to lose its force. But even under a fully developed party system, there will always be a certain number of leaders in the council ambitious of a place in the ministry and it is both desirable and expedient not to fix the strength of the ministry so low that it is impossible to avoid giving rise to the discontent and intrigue which spring from baulked ambitions. It is needless to add that my remarks are not intended to be applied to the minor provinces.

Apart from these reasons which may appear to some to be based upon a somewhat unelevated view of the matter, it would, I think, be conducive to the

progress of the country, if the work of administration could be divided and distributed in such a manner as to leave sufficient leisure for the ministers to think out policies and keep themselves in touch with the public. The work of the government may be conveniently divided into the following portfolios : (1) finance ; (2) revenue ; (3) home department including law and order ; (4) education and public health ; (5) local self-government ; (6) public works and communications ; and (7) agriculture, commerce, industries and development. In any scheme of division of the portfolios, it is essential that the minister in charge of finance should be in charge of no other subject, so that there may be no temptation to, or suspicion of, partiality to any department of expenditure.

The salaries of the ministers should be fixed at such a sum as would attract men of ability and standing and enable the ministers to maintain their status and a position of slight superiority to the officers who will serve under them. These considerations indicate a salary of about Rs. 4,000 a month, the same as that fixed for the High Court judges. Many of the advocates of retrenchment believe that it will be possible to cut down the salaries of ministers still further, and they are in the habit of making comparisons between the salaries drawn by ministers in this country and in the self-governing dominions and arguing that in a poor country like India the salaries should be lower or, at any rate, not higher than those granted in richer countries. Rightly or wrongly, the standards of living and the scales of salaries in force in this country have been influenced by the scale of

salaries fixed for the Indian Civil Service and it would be a very foolish and harmful policy of economy to reduce the scale of salaries which has been in force for a very considerable length of time.

Turning now to the appointment of ministers, the best course is to follow the English practice and leave the Governor of the province to appoint the prime minister and the appointment of the other ministers to the choice of the prime minister. The system of joint responsibility and cabinet government should be strictly enforced. A failure to enforce the principle of joint responsibility among the ministers was one of the matters about which complaints were made before the Indian Constitutional Reforms Enquiry Committee. The absence of joint responsibility is bound to affect the strength and solidarity of the government and is likely to encourage disunion, faction and intrigue. The cabinet system as evolved in England includes five principles: contact and harmony between the legislature and the executive, the collective responsibility of the members of the cabinet, the subordination of its members to the leadership of a prime minister, the political homogeneity of the executive and the exclusion of the sovereign from its meetings.<sup>1</sup> The first principle has been recognized in section 52 (2) of the Government of India Act and the second and third principles can also be easily enforced. The political homogeneity of the executive is sure to be promoted, even if not fully attained, by the adoption of the cabinet system. It

<sup>1</sup> *The Mechanism of the Modern State*, by Sir John A. R. Marriott, vol. ii, p. 58.

is possible that in the beginning there may not be any one party with a sufficiently strong majority to form a stable government and it may have to combine with some other party or group in order to form a government. The principle of collective responsibility will ensure that the members who form the ministry are in general agreement over the more important questions of policy and the habit of concerted action will result in the sinking of personal and sectional differences. As regards the last principle of the exclusion of the sovereign or his representatives from the meetings, it is the course which accords best with the theory of a constitutional Governor. The presence of the Governor at cabinet meetings may be considered desirable, as his political experience may be of valuable assistance to the ministry. On the other hand, his presence is likely to weaken the position of the prime minister and affect the loyalty and subordination of the other ministers to the chief minister by encouraging them to look to the Governor for support as against the prime minister. Should the Governor's advice be rejected by the ministry, it would place him in a somewhat unpleasant position, especially when he is personally present at the meeting of the cabinet. In the interests of constitutional progress, it would, on the whole, be best for the Governor not to attend the meetings of the cabinet. It is quite possible that mistakes may sometimes be committed by the ministry, but there is nothing to prevent a consultation or discussion between the Governor and the prime minister and the best way of training in responsibility is to allow the ministers to bear the consequences of

their mistakes. This question was raised in connection with the instructions intended to be issued to Lord Dufferin as Governor-General of Canada.<sup>1</sup> Clause 5 of the proposed instructions contained a provision directing and enjoining the Governor-General to attend and preside at the meetings of the council, except when prevented by some necessary or reasonable cause. This clause was among others criticized by Mr. Blake, the Minister of Justice. He pointed out that the practice for a very great number of years had been that the business of the council was done in the absence of the Governor. On very exceptional occasions, the Governor might preside, but this would occur only at intervals of years and would probably be for the purpose of taking a formal decision on some extraordinary occasion and not for deliberation. The mode in which the business was done was by a report to the Governor of the recommendations of the council, sitting as a committee, sent to the Governor for his consideration, discussed whenever necessary between the Governor and the first minister and becoming operative upon being marked "approved" by the Governor. This system was in accordance with constitutional principle and was found very convenient in practice. It would be a violation of such principle and extremely embarrassing to all parties in practice that the Governor should attend and preside at the deliberations of the council and it would be inexpedient to lay down such a rule unless it was intended to be observed.

The subject of provincial autonomy necessarily

<sup>1</sup> Keith's *Responsible Government in the Dominions* (first edition), p. 160.

involves the question of the relations of the provincial government to the public services. Ordinarily, a fully responsible government would have full authority as regards the recruitment and control of the public services. Under the statutory rules framed by the Secretary of State, the services under the administration and control of the local governments are divided into four classes, the all-India services, the provincial services, the subordinate services and officers holding special posts. With regard to the all-India services, all first appointments except certain specified appointments are made by the Secretary of State in Council. An officer of the all-India service cannot be removed or dismissed by the local government, but he is amenable to other forms of disciplinary punishment like censure, reduction, suspension or the withholding of promotion. An officer of the all-India service, against whom a disciplinary order of punishment is passed, has the ultimate right of appeal to the Secretary of State in Council. In the case of an officer of the provincial service, an appeal to the Secretary of State is permitted only in cases in which his salary is not less than Rs. 500 a month. The services were classified by the Lee Commission into services operating in the reserved fields of administration, services operating in the transferred fields and the central services under the Government of India and they recommended that the all-India services employed in the reserved fields of administration should continue to be appointed and controlled by the Secretary of State in Council. As to the services operating

transferred fields, they recommended that no further recruitment should be made to these all-India services and that the personnel required in future should be recruited by the local government. As regards the central services, they proposed that appointments to some of the services should be made by the Secretary of State and to the others by the Government of India. The all-India services employed in the reserved fields are the Indian civil service, the Indian police service, the irrigation branch of the Indian service of engineers in all provinces and the roads and buildings branch of the engineers service in those provinces in which there has been no bifurcation of the service into irrigation and roads and buildings and, except in Burma and Bombay, the Indian forest service. Appointments in the central services to which recruitment was recommended to be made by the Secretary of State were appointments to the political department and the ecclesiastical department. So far as the provincial services are concerned, they will be under the control of the local governments and no troublesome questions are likely to arise with regard to these services. The position of the all-India services is different. The Secretary of State claims the power of appointment and control with regard to several of the services mentioned above. We are at present concerned with this claim in regard to all-India services operating in the reserved fields. The questions to be considered are how far the existence of these all-India services, which operate in the fields, can be continued after transfer and with a system of provincial autonomy and



what safeguards are necessary in the interests of these services.

For the purpose of the present argument, I am prepared to grant that the existence of the all-India services in the now reserved fields of the provincial administration will continue to be necessary for some period of time. There was a feeling of considerable uneasiness in the minds of the members of the all-India services shortly after the introduction of the reforms. This feeling was partly ascribed to an impression that the reformed legislative councils were actuated by a spirit of hostility to these services and would be inclined to reduce or abolish the posts practically reserved for them hitherto and transfer the posts to the cadre of the provincial services. That the contentment of the members of these services is necessary to their efficiency is recognized by Indian politicians. They have no objection to any safeguards being provided for the protection of their just claims. What the Indian public is keen about is the transfer of the power of recruitment and ultimate control from the hands of the Secretary of State to the Government of India. Such feeling of hostility as there may be to the all-India services is due to the following causes. It is believed that the all-India services will use their vested interests as an argument openly or otherwise for opposing the development of self-government and for the retention of the control of their services in the hands of the Secretary of State. It is supposed that where they are employed under a provincial administration, they will not be fully or sufficiently amenable to the control of the provincial governments. Moreover,

the fear is entertained that so long as the all-India services are recruited by the Secretary of State, he may avail himself of the power to import English recruits to a larger extent, or for a much longer period, than may be necessary. There is also the feeling on the part of many that the services are costly and may be replaced without loss of efficiency by Indian personnel on a provincial basis. Lastly, the members of the provincial services, who naturally desire the enlargement of their own opportunities and prospects, are interested in influencing public opinion against the maintenance of the all-India services. The most weighty of these reasons is the one which is based upon the apprehension that the interests of the services are irreconcilable with the emancipation of the Government of India from the control of the Secretary of State. If means could be found for allaying this apprehension, the claims of the all-India services would meet with more friendliness from the Indian public. The Lee Commission based their recommendations upon the principle that the authority which is responsible for the administration of a particular subject should have the power of organizing the services employed in the administration of that subject in such manner as it thinks best, and that the recruitment and ultimate control of that service should be vested in the hands of that authority. While they were prepared to transfer these powers of recruitment and ultimate control over the services operating in the transferred fields to local governments, they recommended that in the case of the services operating in the reserved fields for which the Secretary of State was responsible to

Parliament, these powers should be vested in the Secretary of State. The Lee Commission did not address themselves to the question whether the all-India services should continue to be maintained on the existing basis, when full provincial autonomy was granted. Having regard to the unfortunate speech of Mr. Lloyd George about the steel framework of the Indian administration and the views expressed by many authorities as to the necessity for the continuance of a considerable British element in the all-India services, it is probable that the all-India services will continue to be retained for a considerable length of time. Some British politicians even go to the length of declaring that they cannot possibly imagine a time when British recruitment can be altogether dispensed with. So long as the recruitment to the all-India services is made by the Secretary of State, the necessity for the protection of the interests of these services will continue to be urged as an argument for retaining the ultimate control in his hands and it will continue to be urged that full provincial autonomy cannot be granted. The most important of the reserved subjects is law and order and land revenue. Refusal to transfer these subjects is really tantamount to a refusal of further constitutional advance. The champions of the all-India services must be prepared to take up one of two alternative positions ; either that the Secretary of State must cease to recruit and control these services, or that there should be no further transfer of any important subjects to popular control. If the services are willing to accept the former position, it would not bar the way to further political advance. If, on the

other hand, they take up the latter position, their claims cannot possibly be reconciled with the demand for full provincial autonomy. The adoption of the latter position by the all-India services must intensify the feeling of hostility which now exists in a mild form against the services. Speaking for myself, strongly inclined as I am to the retention of the all-India services for a considerable time, if the choice lay between the abolition of the all-India services and the indefinite postponement of the transfer of recruitment and control from the Secretary of State to the Government of India, I should prefer the former alternative.

It is not, however, necessary, nor in my opinion wise and desirable, to push the principle laid down by the Lee Commission to its logical length. The all-India services working under the provincial governments may be recruited by the Government of India and the proportion of English recruits which may be necessary may be obtained through the agency of the High Commissioner for India instead of the Secretary of State. Where they are employed under the provincial administration, they should be subject to the control of the ministry with a right of appeal to the Government of India and no further. So far as the provincial governments are concerned, the absence of the power of removal or dismissal of the members of the all-India services has not hitherto created any difficulty in the management of these services. The Reforms Enquiry Committee examined the question whether there was any refusal or failure to co-operate with the ministers on the part of the public services and the conclusion unani-

mously arrived at was that the attitude of the members of these services was, generally speaking, one of loyal co-operation and that the relations between them and the ministers were generally of a friendly character. If the rights and interests of the services are safeguarded by legislation, they should have no reason for feeling any discontent in employment under the ministry. Section 96 B of the Government of India Act contemplates the delegation of the power of making rules for the recruitment, conditions of service and discipline of the civil services to the Governor-General in Council, or to the local governments, or the local legislatures. But, mere delegation of the powers will not satisfy Indian public opinion; what is required is the statutory devolution of the necessary authority to the Government of India. It may be urged that the principle of full provincial autonomy requires not merely the withdrawal of the control of the Secretary of State, but the withdrawal of the control of the Government of India also; but I am not prepared to accept this view, as the action of the Government of India will be influenced, if not controlled, by the opinion of the Indian legislature. If the subjects now reserved are transferred to the control of the ministry, I should have no objection to the services operating in these fields being placed under the immediate control of the Government of India. Whatever appearance of anomaly there may be in the position, it would be attended with certain unquestionable advantages. A superior service recruited from the best talents in the whole of India, liable to service in any province or under the Government of India and with the advantage of a

period of probationary training in England, would have a broader outlook than a purely provincial service and would check the tendency to a spirit of narrow provincialism. It would also supply the central government with a reservoir of highly qualified personnel from which the central services could be staffed. It would thus avoid the necessity for the creation of a separate service for employment in the sphere of central administration.

The next question to which I now turn is how the constitution of the provincial government may be amended or modified. This is not a question which need detain us long. In the case of federal constitutions which are the result of an agreement between the constituent states and are embodied in rigid constitutions, the procedure provided for amending the constitution is generally of a very elaborate character. But the Government of India is not of the federal type and I have expressed my preference for the Canadian model in preference to the constitutions of the other dominions. In Canada, the constitution can be amended by an act of the Imperial Parliament just as the existing constitution was passed by the British North America Act. The constitutions of the provinces may be amended from time to time by enactments of the provincial legislatures. In the South Africa Act, power is given to the Parliament of the Union to repeal or alter any of the provisions of the Act. The simplest method of effecting a change in the constitution of any province in India would be to empower the central government to pass with or without modification any amendment or alteration of the constitution

which may have been resolved upon by the legislature of the province concerned, and which may be approved by the central government. It may be desirable to impose certain restrictions as to the extent of the majority by which a constitutional amendment or alteration should be approved in the provincial legislature. With regard to the constitution of a new Governor's province under the administration of a Deputy Governor, section 52 of the Act provides that the Governor-General in Council may, after obtaining an expression of opinion from the local government and the local legislature and after the necessary notification, with the sanction of His Majesty, constitute a new Governor's province or place part of a Governor's province under the administration of a Deputy Governor. Some similar procedure ought to be sufficient in the case of other constitutional amendments affecting the provinces.

I may here refer to a question which has been the subject of public discussion from time to time and which has often been brought forward before the Indian legislature. I refer to the question of the linguistic redistribution of the provinces. Some of our politicians are very keen about the redistribution of the provinces according to languages. Whether such a redistribution is practicable or not, it would be a great tactical blunder to raise the question at the time of the revision of the constitution. It would be a red herring across the path of constitutional advance and would divert attention from the main constitutional issues to inter-provincial and intra-provincial controversies. The attention of the Reforms Enquiry Committee was drawn to this question among others.

While the majority were of opinion that the redistribution of provincial areas would probably have to be considered in connection with constitutional advance, the minority thought that the consideration of the general distribution of territories should not precede any constitutional advance and that no redistribution should be effected except with the consent of the populations concerned. The Montagu-Chelmsford Report also takes the same view and the authors point out that it would be very unwise to attempt to unite the sufficiently difficult task of revising the constitution of India with the highly controversial labour of simultaneously revising the political geography of the entire country. They added that the process ought in any case to follow and ought not to precede ~~any~~ accompany constitutional reform. The problem is a complicated one and a variety of considerations have to be taken into account in arriving at a decision. In the first place, identity of language does not necessarily imply an ethnical affinity. The same language is often spoken by members of different races and members of the same race are often divided into different linguistic groups. In the next place, it must not be forgotten that the paraphernalia of constitutional reforms has greatly added to the expenditure of provincial governments and that the multiplication of provincial administrations necessarily involves the reduplication of the higher administrative machinery and increases the total cost of administration in the country. Again, a province must have a certain area and population large enough to demand and justify a separate administration, but not too large to be a strain upon the machinery of



government. No province should be formed which is not capable of paying its own way and which may prove to be a burden upon the central revenues. Moreover, populations speaking different languages might have lived under the same administrative conditions and it might be more convenient for them to continue to be members of the same province than undergo regrouping with populations speaking the same language but living under different administrative conditions. It also happens that within the limits of a single district populations speaking different languages are so closely mixed up that it is not possible to draw any convenient line of demarcation which would separate people speaking ~~one~~ language from those speaking another. Lastly, the linguistic grouping of provinces is likely to be attended with the disadvantage of producing a narrowness of outlook and sympathy among the members. The inclusion in the same province of communities with different tongues and creeds will make for the cultivation of a greater spirit of mutual toleration and more broad-based sense of brotherhood. The proper rearrangement of provinces with due regard to all these considerations is a matter of great intricacy and difficulty and should therefore be left to be tackled after the revision of the present constitution.

## CHAPTER V

### REFORMS IN CENTRAL GOVERNMENT

Having dealt with some of the main problems involved in provincial autonomy, we may now proceed to consider the questions which are bound to arise, if the principle of responsible government is extended to the sphere of the central government. As already pointed out, the popular demand for further advance in this direction is not for the immediate introduction of responsibility to the legislature throughout the entire sphere of the central government. It is recognized that, for some time to come, a reservation will have to be made of the two important subjects of foreign and political relations and national defence. A few preliminary remarks regarding these questions may be made before discussing them in detail. The difficulties which have been put forward by way of objection to the introduction of full responsible government relate to these two important subjects and to the problem of minorities. Of this group of questions, the problems arising in connection with the protection of minorities are the most urgent and call for a speedy and satisfactory settlement. The principle that minorities are entitled to protection is recognized on all hands and there is no advocate of reforms who is not prepared to concede it. The protection of minorities is not a question which will arise only on the introduction of responsible government, but has to be faced here and now even under the present

constitution. It may be suggested that though minorities receive adequate protection under a system of government which is responsible to the British Parliament, they may cease to receive such protection, when the government becomes responsible to the legislature and to the people and that the confidence which minorities now repose in the central government may not be extended to a responsible government. What exactly are the rights of minorities which require to be specially protected against encroachment, we shall consider later on. Meanwhile, it may be pointed out that the grave differences between the Hindu and Mahomedan communities, which have led to so many deplorable outbreaks of lawlessness, raise questions regarding the respective rights of those two communities which can by no means be considered to have been satisfactorily settled. Whether any further reforms are contemplated or not, this group of questions which produce friction between the two communities must be taken in hand by the Government and a satisfactory solution will have to be devised. If such a solution is reached either by agreement between the communities or by the intervention of the Government, the same solution may be adopted in any scheme of constitutional reform. If, on the other hand, it is not possible for the present Government to devise a satisfactory solution, the problem may be capable of solution at the hands of a responsible government. At any rate, a Government which has been unable to effect a reconciliation of conflicting parties cannot with good grace urge the circumstance as an argument against further advance. We may, however,

entertain the hope that it is not beyond the capacity of the Government assisted by the good sense of the leaders of the two communities to find an acceptable solution of this problem. I postpone to a later stage my suggestions with regard to the method of dealing with the religious disputes which have led to communal disturbances between the Hindus and the Mahomedans.

The problem of the defence of the country against external danger and internal disorder does not fall within the category of insoluble problems. But, it may be admitted that as a temporary measure it may be expedient to exclude this subject from transfer to a responsible ministry. The problems arising in connection with the Indian states and their relations to the British Indian legislature are of a far more complicated character than any of the others and will take a far longer period of time for any permanent solution. The subject of foreign and political affairs must be excluded for some time from the control of the British Indian Legislature. The problem is an extremely intricate one and a detailed discussion of it will be deferred to a later chapter. A discussion of these questions may perhaps wear the appearance of unreality in the eyes of some critics, but they have all to be tackled sooner or later, and unless the ultimate goal of India and the ultimate shape of her government are considered and steadily kept in view, there is a danger of our losing our path and taking a wrong turn on the road. Consideration of the various questions involved in the attainment of responsible government is neither useless, nor untimely. It is a task which cannot be shirked,

though it may not appeal to the English temperament, which refuses to consider any questions which will not arise to-morrow or the day after. One question which I should like to put to our critics is this. Let us grant that all the difficulties which have been pointed out in the way of advance towards responsible government are real difficulties which call for a solution. Do they consider them capable of solution, or do they put them forward as eternal posers? Do they accept the statement in the preamble to the Government of India Act that the progressive realization of responsible government in British India as an integral part of the Empire is the declared policy of the Imperial Government? If responsible government is to be realized some day, the difficulties enumerated must admit of solution. If, on the other hand, it is contended that they can be never solved, it would be entirely inconsistent with the assurance given by the Parliament. It is, of course, quite possible to suggest that the progressive realization promised in the preamble to the Act may be spread over a century or more and that they are not called upon to worry themselves with these problems. But such an attitude of refusal to look forward can hardly be considered to be consistent with statesmanship, however much it may be characteristic of the British temperament.

I will now deal with a preliminary criticism which may be brought forward against the proposal to exclude certain subjects from transfer to the administration of responsible ministers. It may be urged that any such proposal will have the effect of introducing into the central government a system of dyarchy

which has been condemned by the Indian public as well as many English critics as unsound in theory and unworkable in practice. We are all familiar with the objections to the system of dyarchy as introduced in the first instalment of reforms. One objection is that the excluded or reserved subjects and the transferred subjects are so inter-related that the administration of one class of subjects is bound to impinge upon the administration of the other and that, in the matter of finance as well as actual administration, the system will give rise to friction. It is an interesting phenomenon of Indian politics that most of the responsible officials who once objected to the introduction of responsibility in a limited portion of the field of provincial government have now become so enamoured of the system or, at any rate, so tolerant of its defects, that they are unwilling to make any change in the direction of provincial autonomy. But just as dyarchy had to be adopted by the Government as a transitional stage in the sphere of provincial government, it will equally have to be accepted in the sphere of the central government. No objection need be taken to the system, so long as it is recognized that it is a temporary expedient and is intended as a stepping-stone to complete responsible government. The only question to be considered by the practical statesman is, whether it is a reasonably workable system of government. If the introduction of responsibility in a limited area of the sphere of the central government is objectionable, the only two alternatives will be either the introduction of complete responsibility over the whole sphere, or the refusal to introduce any element of responsibility in any part of this sphere.

The first alternative will be even more unpalatable to our critics than the scheme demanded by Indian public opinion, while the second will increase the discontent in the country. As a matter of theory, the conception of a government lacking some of the attributes of sovereignty is quite familiar to us. Taking the case of the Indian states, they are not allowed to have any external relations with other states, though they enjoy internal sovereignty in varying degrees. Like the Governors of the provinces under the present system of dyarchy, the Viceroy would have a dual capacity. The existence of such a dual capacity in the Governor-General is not unknown even in the self-governing dominions. In the South African Union, the Governor-General in the capacity of High Commissioner controls the protectorates of Bechuanaland and Swaziland and the colony of Basutoland and is charged with the conduct of colonial relations with foreign possessions in South Africa. The new constitution of Malta which came into force in 1921 is based upon the principle of dyarchy, and the control of the naval, military and air forces, wireless, territorial waters, Imperial property and interests, external trade, coinage, immigration, naturalization and relations with foreign states is excluded from the purview of the legislature.<sup>1</sup> The Home Rule Bill introduced by Mr. Asquith in 1912 proposed to set up a single parliament for Ireland with full authority over everything except the Crown, the army and navy, peace and war and certain reserved services.

<sup>1</sup> Keith's *Responsible Government in the Dominions* (second edition), pp. 50, 62.

We may now proceed to consider the subject of protection of minorities. The question has been already dealt with to some extent, but it requires a fuller exposition. The first point to be considered in this connection is, what are the rights which may be legitimately claimed by minorities in any state and how far has protection been accorded to them in modern European states. Minorities may be of different kinds; first, racial, religious and linguistic minorities, secondly social and other class minorities and thirdly, political minorities. After the conclusion of the Great War, various treaties were concluded between the principal allied and associated powers on the one side and the central powers and other states which had newly come into existence or obtained enlargements of territory on the other. In these treaties there are special provisions for the protection of minorities. It is unnecessary to go into the details of these treaties, but their effect may be shortly stated.<sup>1</sup> The minorities' treaties recognize in principle the equality of all the citizens of the state concerned irrespective of their race, language or religion. In addition, the treaties guarantee to the linguistic minorities facilities for the use of their own language in commerce, in religion, in court and in their own private schools. In towns and districts in which a considerable proportion of citizens speaking other than the official language of the state are resident, adequate facilities should be given for ensuring that in the primary schools instruction takes place through the medium of their own language. This,

<sup>1</sup> See the pamphlet on 'The League of Nations and Minorities' published by the League of Nations Secretariat, Geneva.



provision, however, will not prevent the teaching of the official language in the said schools. The minorities receive an equitable share of the sums which may be provided out of public funds for educational, religious or charitable purposes. These stipulations of the minorities' treaties have been placed under the special protection of the League of Nations. Only persons belonging to racial, religious or linguistic minorities are protected by these treaties. The provisions embodied in them may be taken as embodying the views of civilized powers with regard to the claims of minorities. Apart from these safeguards, no member of any minority community would be entitled to any special privileges over and above the rights enjoyed by all citizens alike. What these rights are will have to be gathered from the laws of each state. There is no right recognized by these treaties to strictly proportionate representation in the legislature or in the public services. The equality of all citizens implied in these treaties only means that there should be no impediments in the way of their admission.

The second class of minorities referred to above is the one which, if not peculiar to this country, has, at any rate, asserted itself very obtrusively since the reforms and has claimed special treatment. When Catholics in Europe claim equality of treatment in a country predominantly Protestant, what they ask for is that they should have the same opportunity for voting or standing for election to the legislature or admission to offices, as the members of the other community. They do not ask for representation in the legislature or the services in proportion to their numerical

strength or any guarantee of a certain number of seats or posts. But what is meant by the protection of minorities in this country is not a claim to equality of rights, but a claim to privileged treatment. The claims put forward are generally claims either to representation in the legislature or in the public services, over and above the rights claimed by citizens, generally. The claim takes the shape of a demand of a guarantee for a certain number of seats in the legislature without facing a competition with the generality of citizens, or a demand for a proportion of seats in excess of the ratio borne by the strength of the community to the total population, or for a proportion of appointments in the public services in accordance with the proportion of the community to the general population or in excess of it, or for a certain proportion of appointments by special avenues of admission open only to members of such communities. I am not aware that any claims of this kind have been recognized in other civilized countries. Such claims to favoured treatment have been put forward in this country not merely on behalf of minority communities, but also on behalf of communities which are in a majority. They are socially disruptive and injurious and cannot possibly be allowed as a feature of the ultimate organization of the state. The evils that flow from the recognition and encouragement of communal claims are far too serious and patent to require any elaborate argument to convince any unprejudiced outsider. One obvious evil is that any concession to the claims of one community encourages similar claims by the members of numerous other communities. The

communal representation granted to Mahomedans led to similar demands by the Sikhs, by Europeans, Anglo-Indians and Indian Christians. The claims of these communities were supported by the Southborough Committee, but there were claims by various other communities also which were rejected by the Southborough Committee. They were put forward by the Marwaris of Calcutta, the Uriyahs of Madras, the Parsis of Bombay, the Mahishyas of Bengal and Assam, the Bengali domiciled community of Bihar and Orissa, the Ahoms of Assam, the Mahars of the Central Provinces, the non-Brahmins of Madras, the Mahrattas of Bombay and various others. The necessary result of every concession to a communal claim is that it makes it logically difficult to resist similar claims by others.

A curious feature of these claims is the diversity and the often contradictory character of the grounds on which they are based. Some communities base their demands on the ground that they belong to the depressed and backward classes, while others found their claims on the ground of their superior wealth, education and vested interests, e.g., the European community and the Parsis of Bombay. Other communities like the Sikhs again base their claim upon their loyalty and services during the war and upon their potential value for recruitment to the army. There are also communities which base their claims upon the ground of their past political predominance, their martial superiority or their capacity to give trouble and disturb the peace. There is such a large number of communities and social classes in India that, if once the principle of representation of communities is

conceded, there is no knowing where it will stop, and it will be hardly possible to satisfy the claims of the numerous communities. It is urged that the members of every community have a right to representation in the legislatures and in the services, that this right cannot be secured without special treatment and that such special treatment should be continued for such length of time as may be necessary to set them on their feet and enable them to face competition with the members of the better equipped communities. But such special treatment would have the effect of discouraging the spirit of healthy emulation and self-reliance and lead the communities concerned to trust to a continuance of privileged treatment. The results would be very similar to those of a policy of protection for industries in the economic sphere. Though protection for home industries is usually asked for only as a temporary measure, it ordinarily happens that the claim to protection is seldom abandoned. The harmful results of a policy of protection in the sphere of politics are likely to be even more serious than in the economic sphere. Not merely is there greater danger of the virtue of self-reliance and the incentive to self-improvement being sapped, but the introduction of a protected and presumably backward class of persons into the legislature and the services is bound to tell upon the efficiency of the legislation and the administration, especially if it is continued for any length of time. My remark that the claim to protection gives rise to a presumption of comparative inferiority must not be understood as ignoring other causes which may lead to a failure especially,

in elections. The remark is primarily directed to the claim to special treatment in the matter of admission to the public services. Inability to face an open competition affords a stronger presumption of inferiority in ability in this case and the policy of passing over the ablest and conferring appointments on the less able is not merely unfair to the individuals whose superior claims are overlooked, but injurious to the best interests of the state. I must guard myself here against the supposition that I am ascribing to the system of competitive examination virtues which it does not possess. It is not in itself a test of the essential qualifications of character except so far as success implies the habits of application and perseverance and certain intellectual virtues. While the opponents of a system of competitive examination are entitled to lay stress upon this aspect of the system, they make the mistake of assuming that there is any satisfactory method of ascertaining and assessing the qualification of character. Membership of any particular community or family is no necessary guarantee of a good character, nor is a humble origin an unfavourable indication. The chief merit of the system of competitive examination is negative in that it excludes favouritism and jobbery and even the suspicion of it and that it shuts out the exercise of political influence in matters of patronage—a danger to which popular governments are generally exposed. The policy to be adopted by the Government is a compromise between the principle of securing the efficiency of the Government and that of promoting the contentment of the communities comprised

within the state. Any system of proportional representation in the services would be as impracticable as harmful to the efficiency of the administration and the abiding good of the state. For a full discussion of the various aspects of this question, reference may be made to the debate in the Indian Legislative Assembly on the 10th March, 1923, on a resolution on the subject of selection to appointments under the Government of India and in particular to the speech of Sir Malcolm Hailey.<sup>1</sup>

But just as a policy of protection for industries is justifiable under certain conditions, so also is it justifiable in dealing with claims to representation in the legislature and in the services. While some measure of protection for a temporary period is capable of justification, the claim to representation in proportion to the ratio of the community to the population is wholly unjustifiable and mischievous. As I have already observed, the rules laid down by the Government of India in this matter are on the whole based upon a sound view of the policy required in the present circumstances of the country. The rules now observed by the Government of India as regards the all-India services were stated by Sir Alexander Muddiman during the course of a debate in the Council of State.<sup>2</sup> In his speech in Calcutta in December 1926, Lord Irwin dealt at length with the claims of the Mahomedan community to representation in the services. He laid down that the claim of the community should be met by reservation of a certain proportion of appointments

<sup>1</sup> *Assembly Debates for 1923*, vol. iii, part iii, pp. 3205, 3212.

<sup>2</sup> *Council of State Debates, 1923*, vol. v, p. 416.

to redress communal inequalities and in the case of appointments filled by competition by the maintenance of separate lists of Hindu and Mahomedan candidates. He pointed out also that it was not possible to attempt a strictly proportionate representation of communities in the public services and that the general policy of the Government was directed not so much to securing any precise degree of representation as to avoiding the preponderance of any particular community. He laid stress also upon the obligation of the Government not to prefer communal claims to those of efficiency of the public services. The unsoundness of the claims to a proportionate representation is easily demonstrated

- by considering whether it could possibly be substantiated in the case of the depressed and backward classes who form a considerable percentage of the community in several provinces.

We may now turn for a short while to a consideration of the claim to representation of social minorities in the legislature. We must first try and understand the precise extent of the claim advanced. Is it a claim to representation strictly in proportion to the numerical strength of the community, or to representation in excess of the ratio, or merely to some representation? While it would be desirable that large and important communities should be represented in the legislature, there are various practical difficulties in devising arrangements guaranteeing such representation and serious harm to the interests of the state, even if such arrangements could be worked out. If measures for ensuring proportionate representation are objectionable, the policy of

according representation in excess of the proportion is even more open to objection. The question has to be considered whether, in dealing with the claims of communities to representation in the legislature, we should adopt the same criteria as are applied in conferring the franchise on individual citizens, or any additional or different criteria. In dealing with the claim of the individual citizen to the franchise, the qualifications required in countries which have not adopted universal suffrage are either the possession of some property or the receipt of some income or a certain standard of education or literacy. In the case of the individual, the qualifications of property or education which are usually prescribed have a bearing upon the fitness of the individual to perform his duties as an elector. It is essential that a person who claims to exercise the franchise and have a voice, however indirect, in the administration of the country should have some proprietary interest at stake which would be affected by bad or unjust legislation. Nothing is so calculated to inspire a sense of responsibility in the voter as the fact that if he assists in the passing of bad laws or the imposition of unjust taxation, he will also stand to suffer by such measures. The bearing of an educational or literacy test upon the fitness of the voter to apprehend the issues which are placed before him and express an opinion upon the policy or the measures of the Government is obvious. When we turn to the claims made by communities to favoured treatment, the grounds on which they are put forward are various and, as already pointed out, contradictory in character. Membership of a race or community which ruled



in the past, membership of a community which rules at the present time, membership of backward communities, membership of advanced communities and membership of communities from which the army has been hitherto recruited have all been advanced as justifying exceptional treatment. But have these grounds of claim any bearing upon the fitness of the individual member to discharge all the duties of a legislator? It must be confessed that most of these grounds are utterly irrelevant in determining fitness for the discharge of legislative duties. The claims of these communities can only be supported upon the assumption that, apart from the qualifications which are prescribed for citizens generally, the communities concerned have special interests as communities which require protection by representation in the legislature. But the inevitable result of according representation to communities and classes as such must be the perpetuation of existing class divisions and antagonisms and the maintenance of a narrow communal outlook opposed to that regard for the welfare of the whole country which is essential to a spirit of true citizenship and to the proper performance of their duties by the members of a legislature. As pointed out in the Montagu-Chelmsford Report, the history of self-government among the nations who developed it and spread it through the world is decisively against admission by the state of any divided allegiance and against the state arranging its members in any way which encourages them to think of themselves primarily as citizens of any smaller unit than itself. The authors observed that if the British Government unnecessarily divided

people into classes at the very moment when it professed to start them on the road to governing themselves, they would find it difficult to meet the charge of being either hypocritical or shortsighted. It was with regret and reluctance that the authors of the Montagu-Chelmsford Report felt themselves bound by the past commitments of the Government to accord communal representation to the Mahomedan community and other small but influential communities. The concession to the claims of the Mahomedans drove them by force of logic to make a similar concession to those of other communities. While any further extension of the system of communal representation to other classes and to other bodies besides the legislative councils must be resisted, the question will have to be seriously considered whether it would not be possible to curtail the application of the principle and dispense with special treatment in the case of some of the communities at least.

One important question which will have to be considered in connection with this claim for protection of minorities is whether every community which falls short of 50 per cent of the population in strength is to be regarded as a minority community entitled to special consideration. It would be a ridiculous contention on the very face of it that every such community or class should be so regarded, unless it is part of a scheme of reciprocity. Some other standard will therefore have to be adopted. One would hesitate to answer this question in the affirmative. All these difficulties are the result of the assumption that members of minorities are entitled not merely to

equality of citizenship or full rights of citizenship, but that the members of such communities are entitled to claim special advantages, as if they were numerically stronger than they really are. Once we introduce fictions and attempt to confer advantages or favours based upon fictions, it will be impossible to lay down any rules except as a matter of arbitrary decision. They cannot be rested on any definite intelligible principle capable of application to all minority communities. But, whatever difficulties there may be in laying down any rules for the protection of minorities, they would not be specially incidental to the stage of responsible government. These difficulties are in existence now and whatever solutions may be considered necessary may find a place in the scheme of further constitutional reforms. So long as the principles to be adopted are capable of application to all minorities and so long as they are based upon a just regard for the claims of the country as a whole, no objection is likely to be taken by any of the advocates of advance. No one would object to the enactment of such safeguards for the protection of the minority communities, nor need the existence of such communities be regarded as an insuperable obstacle to the introduction of responsible government.

Turning now to the third class of minorities mentioned above, i.e., political minorities or persons holding particular political views and constituting a minority, it may be observed that the protection of such minorities is not a problem peculiar to this country. The desirability of giving adequate representation to different sections of political opinion has

engaged the attention of governments and political philosophers and no satisfactory solution has yet been arrived at. The tyranny of the majority is an evil which has been considered to be incidental to democracies and is one of the evils against which writers on politics have generally declaimed. Very often, it is not even a real majority of the whole electorate that is in power, but, as observed by Lord Acton, only the majority of a party that succeeds by force or fraud in carrying elections. Various devices like proportional representation have been suggested from time to time as a solution of this problem, but none of these devices has escaped criticism, or has been found to be a satisfactory expedient unattended with greater evils than those which they were meant to cure. Whatever solution of this general problem may be adopted in other countries with richer political experience may be adopted in this country also and there is no need to consider this problem as an argument against further advance. I may also observe that when our critics refer to the question of the protection of minorities as one of the outstanding questions calling for a solution, they are rather thinking of the problems created by the existence of social and other class minorities, of the communal problems which have come to the front in very ugly forms in recent times and not of those problems which have to be faced by all countries possessing some form of responsible government. I have stated that no objection could be reasonably taken to any safeguards which it may be necessary to enact for the protection of the just claims of minorities. These safeguards, whether of a temporary or perma-

nent character, may be introduced in the shape of statutory rules by the Government of India. But it may perhaps be suggested that, if the Government of India is to have the power of making rules and if a responsible government of India would be liable to be controlled by a majority of the legislature, the safeguards provided may be liable to be tampered with. It is by no means difficult to arrange that the rules should not be altered for a certain length of time save with the approval of the British Parliament.

*See Ridges' Const. Law of England  
for the Indian Forces. pp. 372-373.*

## CHAPTER VI

### DEFENCE

The question of the defence of India is a highly complicated subject and raises many important issues of policy, both civil and military. On the civil side, it has a vital bearing on the constitutional development of India. On the military side, it involves the efficiency of her army organization for the purposes of internal and external security. It is also entangled with the general scheme of Imperial defence and the financial interests of the United Kingdom.

It is treated as a commonplace of politics that any country which claims responsible government should be able to defend itself against foreign aggression and maintain internal order and tranquillity. India is quite willing to subscribe to this proposition and she only demands that she should be allowed the opportunity of doing so and manning the Indian section of her army with Indian officers, and she is anxious to be relieved of the necessity of maintaining any British troops. The policy implied in the proposition was not rigorously enforced in the past in the case of the great self-governing dominions. India claims that she should be treated in this matter with at least the same consideration that has been shown to the dominions. There are many circumstances which entitle her to an even more favourable treatment from Britain than any of the colonies. The cost of defending the colonies was borne entirely by the Imperial Government, so far as

Imperial forces were required for the purpose. In 1858, the total cost of defence of the colonies was £4,000,000 of which £380,000 only was contributed by the colonies themselves.<sup>1</sup> A resolution was passed by the House of Commons in 1862 that, while it fully recognized the claims of all portions of the British Empire on Imperial aid against perils arising from the consequences of Imperial policy, the House was of opinion that colonies exercising the rights of self-government ought to undertake the main responsibilities of providing for their own internal order and security and ought to assist in their own external defence. According to the terms of this resolution, it is clear that the burden of defence against external attacks was primarily undertaken by the Imperial Government and that, while the self-governing colonies were required to assist in the task, they were not called upon to bear the whole burden. Notwithstanding this resolution, Imperial troops were kept in the colonies for some years after they obtained responsible government for the purpose of helping them to maintain internal security, and when the Imperial Government wished to withdraw their troops, they gave adequate notice of their intention to do so. As against attacks by sea, the obligation of defence of the self-governing colonies has always been borne by the Imperial Government. The position of India as regards military defence has been entirely different from that of the colonies. From the commencement of the British connection, India has raised and maintained her own

<sup>1</sup> Keith's *Responsible Government in the Dominions* (second edition), p. 965.

army and found the men and money for the purpose. The military expenditure incurred in maintaining internal order or in defending herself against foreign aggression or in carrying on wars against the Indian states has always been met by the Indian exchequer and never by the British treasury. The Imperial Government does not pay an iota of the cost of the Indian army and from this point of view, the Indian army is not an Imperial force at all. But it is Imperial in every other sense, for it is controlled by the Imperial Government and can be used for any Imperial purpose and despatched to any part of the world without the consent of the Indian Legislature. The only restriction upon the power of the Imperial Government is that they cannot defray the cost of such expeditions from the revenues of India without the consent of both Houses of Parliament.

The numerous advantages, material, moral and political, which the Imperial Government has derived from the possession of India and which have been admitted by Imperialist statesmen like the late Lord Curzon<sup>1</sup> should dictate to the British Government a more generous policy than that followed with regard to the self-governing colonies. But what India claims is justice and not generosity. What India asks is not that Britain should continue to defend her for all time, but only that Britain should make such arrangements for training her in the art of defence as may enable her to undertake the burden of her own defence at the earliest possible opportunity.

<sup>1</sup> See *The Place of India in the Empire*, by Lord Curzon.



Had the British troops in India or the British officers of the Indian troops been paid by the United Kingdom, the case would have been parallel to that of the colonies and the contention that Britain would be obliged to withdraw the British forces would be intelligible and fair. But seeing that every pie of the military expenditure is borne by India herself, the legal position of the British forces in India is that of hired troops. That British troops cannot properly be available for the suppression of unrest caused by misgovernment which British authority has not been able to prevent is an argument which cannot possibly hold good, when Britain insists upon keeping the troops and receives payment for the services rendered. But whatever force the objection to the continuance of British forces after the grant of full responsible government may be, it is impossible to understand the objection to the continuance of British officers in the Indian units, till Indian officers can be trained for the purpose. It is still more difficult to appreciate the validity of the objection, when it is understood that what India now asks for is the introduction of responsibility in the central government in the civil administration only, during a period of transition. How unfair the objection is will appear when it is realized how the present military helplessness of India has been brought about and who is responsible for it.

The policy followed by England with regard to the military organization of India has been based upon a deep-rooted distrust of the people and the princes of India and the one dominating motive has been how to maintain her hold on India in the event

of a general rising among the people. The distrust was the unavoidable result of the government by a foreign power of a vast country inhabited by many millions of people of alien races, creeds and languages. It was deepened by the great mutiny and has not been substantially affected by the lapse of seventy years of peaceful rule and the consolidation of the Empire. It is deplorable that this feeling should still continue to colour the military policy of England. The inability of English statesmen to feel secure in the loyalty of the people in spite of the abundant proofs of it during the Great War is a measure of their inability to identify themselves with the abiding interests of India and to sympathize with the growing sentiment of nationalism.

The whole subject of the organization of the army in India was reviewed by the Peel Commission in 1858-9 and by the Eden Commission in 1879. The purposes of the army in India were stated by the Eden Commission to be to prevent and repel foreign aggression, to prevent armed rebellion within British India and to watch and over-awe the armies of feudatory Native states. The two principles followed by the Government were to demartialize the people and to divide and rule. The demartialization of the people was accomplished by the wholesale disarmament of the civil population. Recruiting was confined to certain areas and classes only on the ground that they furnished comparatively the most valuable fighting material, and that, where the object was to spend money allotted for military expenditure to the best advantage, it was not desirable to recruit from the areas and classes which were supposed to

be less martial. Whatever truth there may be in this argument, it was overlooked that from the national point of view the exclusion of particular classes of the people from recruitment would extinguish the taste for a military career. Such a policy was bound to perpetuate the inferiority, if true, of the excluded classes and inflict injustice on the ground of birth upon members of such classes who might possess all the necessary qualifications for a military career. Nor was any opportunity for military training, or developing a taste for the profession of arms provided by any system of enrolment in a volunteer corps. Admission to the volunteer corps was practically restricted to Europeans and Anglo-Indians.

It was considered dangerous to allow a spirit of solidarity to grow up among the Indian troops and the expedient was resorted to of forming class companies. The Peel Commission recommended that the Native army should be composed of different nationalities and castes and, as a general rule, mixed promiscuously through each regiment. When it was found that military discipline and service in distant parts of the country tended to obliterate religious and caste differences and promote ties of fellowship, it was suggested that regiments should as far as possible be confined to the provinces in which they were raised, so that they might continue to retain their traditional prejudices and mutual antipathies. The Indian troops and officers were excluded from the artillery and all branches of the army which required scientific or technical training. The fire-arms with which the Indian troops were equipped

were till recently of a much less efficient pattern than those provided for the British troops. The Indian Princes were persuaded to reduce the strength of their armies and to turn the swords of their soldiers into ploughshares. Such of the troops as the states were permitted to retain were only provided with arms of an inferior or obsolete type. Even the military police, which could usefully perform the function of maintaining internal security in a more economical manner than regular troops, was considered a potential source of danger and no stricter military training was allowed to be given to it than was absolutely necessary for the maintenance of discipline. How to prevent the emergence of any leaders from the Indian officers and how to prevent the development of any capacity for initiative or leadership were matters of anxious concern to the military authorities. No education worth mentioning was required of the Indian officer. The Indian officer was always promoted from the ranks and there was no system of direct recruitment. The Indian officer was excluded as rigorously as the Indian private from those branches of the army like the artillery which required scientific knowledge or much technical skill. No King's commissions were granted to Indians and the highest rank which could be attained by the Indian soldier was that of Subedar-major or Risaldar-major. The number of Indian officers in each unit was cut down and the number of British officers enormously increased. No Indian officer holding a Viceroy's commission, however long or distinguished his services might be, could rise to any position of equality with a British officer

holding a King's commission, and his military rank was always one of subordination to the lowest and the youngest officer holding the King's commission. So far as the army was concerned, the Queen's proclamation was a dead letter. The studious exclusion of Indians from all but the humblest places in the army was so conspicuous that according to Sir George Chesney only one inference could be drawn from it, viz., that the government were afraid to trust them.<sup>1</sup> To this day there is no college for the training of young men of position and suitable qualifications for direct recruitment to the ranks of commissioned officers. There was an impassable gulf between the Indian soldier or officer and the British soldier or officer. No encouragement was ever given to young men of respectable families and of good educational qualifications, even in cases where they belonged to the martial classes, to enter the officers' ranks by direct recruitment. The disabilities with regard to the commissioned ranks of the army were not confined to the combatant services, but have been extended to the ancillary services also.

To crown all these various expedients, the Government and the military authorities have followed a systematic policy of propaganda of the inferiority of the Indian to the Britisher by harping in season and out of season upon his incapacity for leadership, so that the Indian soldier and the Indian officer may be hypnotized into the soul-deadening conviction of his ineradicable inferiority to

<sup>1</sup> Chesney's *Indian Polity* (third edition), p. 270.

the European soldier and of the invincible superiority of the latter. The bravery, endurance and loyalty of the Indian troops were acknowledged. But it was always alleged that the fine military qualities of the Indian soldier could be brought out only under the leadership of British officers. The necessity for maintaining the prestige of the European soldier required that Indians should never be employed in a white-man's war. It was the desperate necessities of the Great War that drove the military authorities to despatch Indian troops to the battle-fields of Flanders. How nobly the Indian soldier rose to the call of duty in the entirely unfamiliar surroundings of climate, language, people and customs and in the face of a civilized European army drilled to perfection in the art of war and equipped with the most scientific appliances of destruction has been told in the pages of *The Indian Corps in France* by Col. Merewether and Sir F. E. Smith (now Lord Birkenhead). The authors have stated that the story of the Indian soldier's deeds in Flanders was one of almost monotonous heroism. How the Indian soldier or non-commissioned officer took the place of the British officers who had fallen and how he led the Indian soldiers has been told in various contemporary accounts of the battles in which the Indian troops were engaged. The answer to the charge of incapacity of the Indian for military leadership is that the charge is not well-founded and that, if there is any truth in the accusation, it is due to the manner in which it has been sedulously fostered by the system of training to which the sepoy has been subjected. Military leadership is as much the result of training,

opportunity and education as of natural aptitude. It is not a virtue which can flourish only under the British or European skies. Speaking of the British army, President Lowell observed : "One of the chief criticisms made after the South African War related to the lack of initiative and of capacity to assume responsibility on the part of officers both in the War Office and in the field."<sup>1</sup>

As part and parcel of the same policy of distrust of the people, it was considered that the British troops in India should be maintained at a strength which would bear a definite ratio to the Indian troops. The ratio of British to Indian troops was fixed by the Peel Commission at 1 to 2 in the Bengal army and 1 to 3 in the Madras and Bombay armies. This was subsequently changed to the general ratio of 1 to 2.5 for the regular army. According to the military estimates for the year 1928-29, the ratio of British troops to Indian is about 1 to 2.26. The real object of the maintenance of the British troops is to counteract the Indian element in the army in the event of a possible rising of the Indian troops against the Government. But this object is now discreetly veiled and the plea now generally put forward is that, as the result of experience in the Great War, it has been ascertained that the relative efficiency of the British and the Indian soldier may be expressed by the formula that the military value of one British

<sup>1</sup> Lowell's *Government of England*, vol. i, p. 100. The Committee on Military Education remarked that the junior officers of the army were lamentably wanting in military knowledge and in the desire to study the science and master the art of their profession; while the examination for promotion encouraged the customs of idleness, with a brief period of cram. (Command Papers, 1902, x, 193).

soldier is equivalent to that of 2·26 Indian soldiers. This formula has been arrived at upon the basis of that combination of British and Indian units in a brigade which is said to have given the most satisfactory results in the Great War. Whatever may be the necessity for such stiffening as against the highly trained troops of a first-class European power, it does not follow that any such proportion of admixture of British troops is necessary in any war against Asiatic enemies. That stiffening in this high proportion is really not necessary for the defence of India's frontiers is also clear from the fact that in the covering forces, which have to deal with frontier tribes, the proportion between the British and the Indian soldiers is 1 to 6·7 and in the field army the proportion between the British and the Indian soldiers is fixed at 1 to 2·7. But in the internal security troops, the ratio between the British and the Indian soldiers is 1·24 British to 1 Indian. *Prima facie*, one would imagine that the necessity for an admixture of British element in the internal security troops would be much less than in the field army, but the explanation usually given is that though under the re-organization scheme the army is divided into the covering forces, the field army and the internal security troops, they are not water-tight compartments and that the internal security troops may have to be utilized for the purpose of replacing the wastage during the first few months of a war, until fresh drafts could be trained and despatched from England. In this connection, it is necessary to remember that while the danger of invasion through the north-western frontier is always present, the danger of



invasion by any European power through that frontier is remote. There is no other European power in western or central Asia except Soviet Russia, but Soviet Russia is not likely to embark upon a policy of forcible aggression, until the ground has been prepared by suitable propaganda and the country is prepared for a rising. The surest way of checkmating the Bolshevik propaganda would be to remove all causes of discontent in India and to alter the methods of government so that there may be a complete identification of the interests of the people and the government. The passage of the Soviet army through the adjoining country of Afghanistan is not likely to be accomplished so suddenly that the British Government is likely to be caught napping. There is good reason for questioning the correctness of the assertion that the strength of the British troops in India is dictated solely by a regard to the interests of the defence of India.

The military policy of the British Government in India is really composed of two strands. One is concerned with the legitimate requirements of the defence of India which may be called the domestic requirements of India. The other strand is concerned with the requirements of British Imperial policy. This latter element in the military policy is not now exhibited to the public gaze so freely as it used to be in the past. In his evidence before the Welby Commission, the late Marquis of Lansdowne, who was then Secretary of State for War and had been Viceroy of India, stated that if India were isolated from the United Kingdom, it would be certainly not necessary to maintain a force

such as is borrowed from the United Kingdom and in the same degree of efficiency. He said that the Indian army was organized with a view to the possibility of its employment upon operations which have nothing to do either with the internal policy of the country, or with the mere repression of tribal disorders upon the frontier. In his answers to further questions, His Lordship remarked that the present system was really in a great measure contrived to serve the two-fold requirements of Britain on the one hand and India on the other and that millions of money had been spent on increasing the army in India to provide for the security of India not against domestic enemies or to prevent the incursions of the war-like peoples of adjoining countries, but to maintain the supremacy of the British power in the east.<sup>1</sup>

In his introduction to *The Indian Corps in France*, another Viceroy, Lord Curzon, observed that "The Indian army in fact has always possessed and has been proud of possessing a triple function; the preservation of internal peace in India itself; the defence of the Indian frontiers; and preparedness to embark at a moment's notice for Imperial service in other parts of the globe. In this third aspect, India has for long been one of the most important units in the scheme of British Imperial defence, providing the British Government with a striking force always ready, of admirable efficiency and assured valour."<sup>2</sup>

<sup>1</sup> See answers to questions 15,996, 16,009 and 16,020 in the *Report of the Welby Commission on Indian Expenditure*.

<sup>2</sup> *The Indian Corps in France*, Introduction, p. viii.

In the report of the Esher Committee of 1919, it is stated that the committee could not consider the administration of the army in India otherwise than as part of the total armed forces of the Empire. The committee were requested in considering their recommendations to avoid, if possible, framing them in such a manner as might hereafter prove inconsistent with the gradual approach of India towards dominion status. But the committee stated that for the purpose of the report they accepted the relations of India to Great Britain and to the Empire as they stood on the date of the report in November 1919. The objects which they placed before themselves as essential to the foundations of a sound Imperial military system were (1) the control by the Government of India of Indian military affairs, (2) giving to the Government of India a voice in questions of Imperial defence and (3) allowing the Imperial General Staff through its Chief to exercise a considered influence on the military policy of the Government of India. The main, if not the only, object which the scheme of the committee was successful in accomplishing was the third. They recommended that the Commander-in-Chief in India should have the established right to communicate in peace with the Chief of the Imperial General Staff in London with regard to strategical plans, war organization, training and selection for commands and senior staff appointments. The committee claimed that their proposals would establish a complete chain of military responsibility over questions of an Imperial character. "On the one hand, the Commander-in-Chief will look to the Chief of the Imperial General Staff for supreme protection

in all questions of Imperial military policy in which India is concerned; and on the other hand, the Governor-General will look to the Commander-in-Chief for military advice upon questions in which India only is concerned and also upon questions of a wider military character, with confidence that the Commander-in-Chief will be in a position to express upon the latter the considered views of the Chief of the Imperial General Staff. We believe that under the plan thus proposed, the Government of India will retain its statutory (nominal?) control over the army in India, that the Governor-General will be assured of undivided counsel upon military questions and that uniformity of military policy will at last be established between Great Britain and India."<sup>1</sup> Never was a scheme better contrived to rivet the chains of dependence of the Government of India upon the British War Office.

In the very first session of the Indian Legislative Assembly, the house emphatically repudiated the assumptions underlying the report of the Esher Committee that the army in India could not be considered otherwise than as part of the armed forces of the Empire and that the military resources of India should be developed in a manner suited to Imperial necessities. The Assembly passed a resolution that the army in India should be entirely under the control, real as well as nominal, of the Government of India and should be free from any domination or interference by the War Office on

<sup>1</sup> *Report of the Esher Committee*, letter to the Secretary of State, September 3, 1919, Report part i, section i, paras 5 and 6 and sec. iii, para 17.

matters of military policy, organization or administration and that such co-ordination as may be desirable between the military policies or organizations of different parts of the Empire should be secured by discussion and agreement at conferences at which India is adequately represented. During the course of the debate on this resolution, the army secretary, speaking on behalf of the Government of India and the Esher Committee, said that there was not one of the members representing India on that committee who would not rather have had his right hand cut off than sign a report which would place the army in India under the control of the War Office, and he said that the Government of India were fully alive to the paramount necessity of securing that all matters of Indian military policy should be retained in the hands of the Government of India. A very interesting light is thrown upon the real attitude of the military authorities in India by the correspondence between Lord Rawlinson, the then Commander-in-Chief of India, and Field-Marshal Sir Henry Wilson, then Chief of the Imperial General Staff in the United Kingdom. The following passage shows that in spite of a decision arrived at by the Governor-General in Council to reduce the British troops by four battalions and two cavalry regiments, Lord Rawlinson thought it fit to appeal direct to the Chief of the General Staff against the decision. This is what Sir Henry Wilson entered in his diary.

“At five o'clock, I got a S.O.S. from Philip Chetwode, who reported a wire just received to me from Rawly, which said that, in spite of his most

strenuous opposition, the Viceroy in Council had ordered a reduction of British troops by four battalions and two cavalry regiments. Rawly says this is 'madness' and asks for my help. I have wired to Philip to go to Montagu and to find out whether I am, or am not, his military adviser; and I told Philip not to be put off by being told that this was a matter of internal economy to be decided by the Viceroy in Council, because the internal security in India, the protection of her frontiers, the power to send troops to countries outside her frontiers such as Mesopotamia, Burma, Singapore and Hongkong, and finally the obligation on Home Government to reinforce India in case of necessity were all matters interwoven in Imperial strategy and therefore come under me.

I wonder what Philip will get as an answer. As I said a week ago when writing to Rawly, Montagu and Chelmsford have set up a council with a lot of natives on it and have lost control, and now they dare not impose the extra taxation necessary. This same council will before long refuse to allow Indian native troops to serve outside of India! And then!"<sup>1</sup>

The change in the angle of vision of which we heard so much during the stress of the Great War has been very slight and the actual concessions made to the claims of Indians in military matters have been made in the most niggardly spirit and evidence no disposition on the part of the Imperial Government to envisage the problem of defence in the light

<sup>1</sup> Wilson's Life and Diaries, vol. ii, pp. 276-77.

of their promise of responsible government. The unwillingness of the Government to accept the main recommendations of the Indian Sandhurst Committee affords a striking proof of their disinclination to make any real advance in the Indianization of the army, or to accelerate the time when India will be able to have an army of her own officered by her own sons and will thus be able to fulfil the condition of responsible government. The reasons given for rejecting the main recommendations of the committee will not bear examination. The refusal to lay down a time table for the Indianization of the army and to establish an Indian Sandhurst are ostensibly based upon the paucity of suitable candidates for filling the King's commissions thrown open to Indians and the necessity for proof of the aptitude of Indians for military leadership. That among the 300 millions of India suitable candidates cannot be found for commissions in the army is a statement which cannot possibly be accepted by any Indian or, for the matter of that, by any impartial outsider. The paucity of candidates is one of the questions which have been closely investigated by the Skeen Committee and the conclusion arrived at by them is that the difficulty is due to the past policy and the present mistakes of procedure of the Government and can be readily overcome by the adoption of the measures suggested by the committee. The statement that the capacity of Indians for military leadership is still an unknown quantity and has to be proved by a process of slow experiment and trial is an insult to the people of India. Even if we exclude the provinces which are alleged to be non-martial, there is a sufficiently large

martial population in the United Provinces, Punjab, Rajputana and the Deccan which could easily supply cadets of the right stamp. But apparently, according to the Government, the whole population of India falls into two groups, (1) the classes which are virile and martial but cannot become intellectual, and (2) the classes which are intellectual but cannot become virile or martial.

The ostensible reason given for the adamant insistence upon maintaining the 8 Units' Scheme in spite of its condemnation by the Sandhurst Committee cannot possibly deceive anyone. The real reason is that it is intended to obviate the possibility of any British officer having to serve under an Indian officer. This reason was not given out at first, but it now appears sufficiently clearly from the speech of the Army Secretary in the Assembly in March 1928. It was all along suspected from the beginning by the Indian critics of the scheme. The inwardness of the attitude of the British military authorities was revealed in the lecture delivered at Sandhurst and extracted in appendix iii to the Report of the Indian Sandhurst Committee. The feeling of racial arrogance and caste exclusiveness of the British officers which has inspired the 8 Units' Scheme, forbids all hope of real co-operation between the English and Indian officers. Though this scheme for the segregation of Indian officers was hatched only recently, the idea was adumbrated long ago in a passage in Chesney's *Indian Polity* (page 272). The difficulty apprehended from the contingency of the British officer having to serve under an Indian officer will not, however, be permanently averted by



this scheme, but will only be shelved, until the time arrives when the Indian officers attain sufficient seniority to take command of a brigade containing units commanded by British officers. But that evil day will not arrive for at least twenty-five years and there is plenty of time to devise further contrivances. Another reason for the unwillingness of the British Government to abandon the 8 Units' Scheme lies in the fear of experienced British officers that the Englishmen's prestige with the native troops will be gone, if they are ever placed under other than British command.<sup>1</sup> This fear is not unnatural. As admitted by Lord Birkenhead, "The most intuitive and sympathetic British officer of an Indian battalion can never be quite sure whether his outlook upon events, where those events have transcended their experience and his, retains any contact with that of his men. East is still East; West is still West."<sup>2</sup> Whatever class differences or jealousies there may be among Indians, it goes without saying that it is far easier for an Indian to understand his countrymen and to get into his skin than for any foreigner. But the success of the Indian officer in acquiring the confidence of his rank and file is regarded by the British officers as fatal to their own prestige and to the supremacy of British rule.

The Auxiliary and Territorial Forces Committee, which was presided over by Sir John Shea, the Adjutant-General, made many important recommendations the objects of which were (1) to create a national desire for patriotic military service and

<sup>1</sup> Chirol's *India*, p. 279.

<sup>2</sup> *The Indian Corps in France*, p. 472.

afford opportunities for military training to a wide range of the manhood of India and so lay surely and solidly the foundation of a national army and (2) to provide a second line of defence to support the regular army in time of war. Their main recommendations were the expansion of the University Training Corps to its full natural limits subject only to financial considerations, the formation of urban battalions of the Indian Territorial Force, the improvement of the efficiency of the Territorial Force and the formation of units of the Territorial Force in other branches of the army besides the infantry. Though the Government of India have announced their acceptance of these recommendations, they have failed to implement them by the provision of adequate funds. It is clear from the military estimates of 1928-29, that the margin provided for the expansion of the Territorial Force inclusive of the University Training Corps allows of an increase of strength only by less than a thousand men for the whole of India. Contrast the provision of sixty-one lakhs of rupees for the Auxiliary Force with a sanctioned strength of 31,600 excluding cadets, with the provision of twenty-five lakhs of rupees for the Territorial Force with a strength of 19,000 including the University Training Corps. The maximum strength of the Territorial Force is 20,000 and the increase in the allotment of funds over that for 1927-28 is only nine lakhs. What other inference is it possible to draw than that the Government are not really anxious to improve the Territorial Force?

It will be abundantly clear from what has been

stated above that though several commissions have been appointed to consider the question of the military organization and administration of India, it has never been approached to this day from the point of view of Indian nationalism, or with reference to the strictly legitimate interests of India, or to the promise of responsible government as the goal of India. There is nothing to show that the bearings of the constitutional development of India upon the organization of the army or its administration have ever been appreciated at all. The Imperial Government with all their professions of trusteeship or guardianship for the people of India have not cared to contemplate an epoch when India will be able to rely upon herself solely for the purpose of defence, or to train people for an early assumption of their responsibility under a regime of self-government. The Imperial Government is unfortunately not a disinterested guardian. As the greatest power in the world, the British Empire with its colonies and other possessions scattered over the whole world is obliged to maintain an army of 200,000 soldiers so that she may be able to despatch an expeditionary force of sufficient strength to any quarter of the world where her interests are at stake. Apart from any special requirements of India, the army of England is none too large for the defence of her possessions. Under the Cardwell scheme of linked battalions, half the army serves at home and half is stationed abroad, the forces at home being charged with the function of replenishing the forces abroad. Out of an army of 209,000 of all ranks according to the British Army Estimates for 1924-25 (of which

I have a copy) 109,000 were kept at home, about 62,000 in India and about 38,000 in other parts of the world. The strength of the British forces in India and Burma for 1928-29 is 66,000 odd excluding the Air Force. The reasons why proposals for reduction of the British troops in India are resisted by the Imperial Government are that the British units dispensed with by India would have to be either disbanded in which case the reserves in Britain would be affected, or stationed in Britain or elsewhere abroad, in both of which cases the cost of such units would fall on the British treasury. Thanks to the voicelessness and impotence of the bureaucratic Government of India, Britain can billet any number of British troops on India, a liberty which she dare not take with any of the self-governing dominions. When the Government of India made certain proposals for reductions in the number of British units in 1922-23, the War Office refused to agree and the explanation reported to have been given by Col. Guinness in the House of Commons was ; "It must be remembered that the British regiments in India embrace part of the reserve and any reductions must necessarily affect their power of mobilization. If the War Office agreed to the Government of India's making excessive decreases, it would eventually mean further cost being thrown on the British Budget for making up the reserve in other ways." Whether in the particular instance the proposed reduction was finally sanctioned or not, Col. Guinness was quite correct in his statement of ~~the~~ financial interest of the Imperial Government.

The explanation usually given for the stationing

of over 60,000 British troops in British India is that it is all required for the defence of India's frontiers and for her internal security. How far this is reconcilable with the extracts I have given above from the statement of ex-Viceroy is for the reader to judge. I would only add two observations. As against the danger of aggression by Asiatic powers, it is open to doubt whether British troops are absolutely necessary. In the next place, it is equally open to doubt whether the number of British units set apart for this purpose is really needed. Internal tranquillity may be disturbed either by communal disturbances, or by a general rising of the people against the government. Even assuming that British troops on account of the popular faith in their neutrality are necessary for dealing with the former, one may venture to doubt whether so many units are required. To deal with the latter contingency alone, British troops would be necessary. But surely a different remedy is indicated. Would it not be the part of true statesmanship to avert any such calamity, highly remote, if not altogether out of the question, by the redress of grievances and by broad-minded sympathy in the administration?

A new orientation of military policy is required and as recommended by the Assembly in 1921 it is necessary and expedient to appoint a committee or commission adequately representative of non-official Indian opinion to report upon the best method of giving effect to the natural rights and aspirations of the people of India to take an active part in the defence of their country, preparing India for the attainment of full responsible government and

securing to India the same autonomy in military organization and administration as is enjoyed by the self-governing dominions. The foregoing review of British policy in the military organization and administration of India affords convincing demonstration not merely of the powerlessness of the Government of India and their absolute dependence upon the British Committee of Imperial Defence, but also of the manner in which India has been thwarted and hampered in learning to defend herself. It does not lie in the mouth of the Imperial Government to contend that India should be prepared to undertake her own defence, before any element of responsibility can be introduced in the central government. England is debarred by every consideration of justice, fair-play and decency from urging the state of things which she has herself brought about as an answer to India's claim to responsible government. But as a matter of fact, the Indian nationalists are willing that the subject of defence should continue to be reserved for some time longer, but with such modifications in the administrative arrangements as may ensure a speedy preparation for undertaking the responsibility for defence. To an outsider the contention that India cannot claim self-government because of her inability to defend herself may have an air of plausibility. But it is very doubtful whether England will ever care to train India to do so. The cardinal fact in the relations of India to England according to the Imperialist school is that the rule of India is still and must, for as long as they can foresee, remain in British hands. The Imperialist deplures the policy

of western education introduced in India as the result of Lord Macaulay's powerful advocacy and he observes with regret the process of national unification going on in the country. To quote the words of Lord Curzon; "We have not rendered the task of the rulers more easy by consolidating the ruled and feeding their minds on a Western diet. But at least, we have raised entire sections of the community from torpor to life and lifted India on to a higher moral plane. It is too early to say whether the eagle will, one day be transfixed by the dart that is feathered with its own wing."<sup>1</sup> If the Imperialist is prepared to make the theoretical concession that India has a right to learn to defend herself, he generally couples it with the mental reservation that, God willing, he will take good care that she does not.

I have discussed the question of defence so far in its constitutional aspect. It may be asked whether, from the point of view of India's own safety, there is no danger to be apprehended from the changes advocated by the nationalists. No sane Indian politician would venture to imperil the safety of the country, or reduce the strength of the army. It would certainly be part of his programme to raise and to train Indian officers and steadily Indianize the ranks of commissioned officers. He would probably be disposed to gradually replace the British units by Indian units, maintaining the present strength of the army. He would establish an Indian military college where cadets may be trained for all

<sup>1</sup> Curzon's *The Place of India in the Empire*, p. 38.

arms of defence, and at least two or three preparatory public schools like the Royal Military College at Dehra Dun in at least two more places, one for Bombay and Madras at Bangalore or Poona, and another for Bengal, Behar and the Central Provinces. He would increase the military reserves to something like 75,000 or about double its present strength by a proper working of the short service system. He would lay the foundations of an efficient second line force and help the cultivation of a taste for military service in the nation generally by carrying out in the spirit all the recommendations of the Indian Territorial Forces Committee. He would aim at the improvement of the efficiency of the police force by the introduction of armed police battalions in the provinces. The attitude of the sensible Indian politician towards the army and military expenditure may be judged from the resolutions which were passed by the Indian Legislative Assembly in its first session in 1921.

It may be asked whether India would be willing to contribute to the burden of the defence of the Empire, if she obtains autonomy in the matter of her military organization and administration. To this question also the answer may be given in the terms of the resolution passed by the Assembly ;

“That the purpose of the army in India must be held to be the defence of India against external aggression and the maintenance of internal peace and tranquillity. To the extent to which it is necessary for India to maintain an army for these purposes, its organization, equipment, and administration should be thoroughly up-to-date, and, with due regard to Indian conditions, in accordance with the present-day standards of efficiency in the British army so



that when the army in India has to co-operate with the British army on any occasion, there may be no dissimilarities of organization, etc., which would render such co-operation difficult. For any purpose other than those mentioned in the first sentence, the obligations resting on India should be no more onerous than those resting on the self-governing dominions, and should be undertaken subject to the same conditions as are applicable to those dominions."

What is essential above all is that India should have the same freedom to organize and administer her military forces as is enjoyed by the self-governing dominions. The utilization of the army of India for purposes extraneous to her defence must be conditional upon the assent of the Indian Legislature. The same considerations, which led the Joint Select Committee of Parliament to recommend the fiscal freedom of India, dictate the recognition of the right of India to autonomy in the sphere of military organization and administration. For the purpose of carrying out a military policy framed with due regard to the national interests of India, it is necessary that the portfolio of defence in the central government should be entrusted to a non-official Indian member of the council. During the transitional period of dyarchy in the central government, it is desirable and expedient that the subject of defence should continue to be treated as a reserved subject. It should be administered as reserved subjects are now administered in the provincial governments by the members of the executive council. Other consequential changes in the central government and with regard to the military budget will be referred to in the proper place.

## CHAPTER VII

### THE CENTRAL LEGISLATURE

Political constitutions have been classified in different ways for different purposes. One principle of classification turns upon the question whether the sovereignty is exercised by a central government and the governments of the provinces included in the state are subordinate thereto, or whether the sovereignty is shared between the central government and the governments of the constituent provinces. This principle is at the basis of the division of governments into unitary and federal. This distinction has been already dealt with, and I have expressed my preference for the unitary type of government as the one best suited to this country in the present circumstances. Another principle of classification depends upon the question whether the authority by which the constitution may be altered is the same as the legislature which passes the ordinary laws for the government of the country, or a different body or authority superior to the ordinary legislature. This principle of classification has given rise to the distinction between rigid and flexible constitutions.<sup>1</sup> A flexible constitution is one which can be altered from time to time just in the same way as any other laws and by the same legislature. A rigid constitution, on the other hand, is one which is passed not

<sup>1</sup> Bryce's *Studies in History and Jurisprudence*, vol. i, pp. 150-5; Dicey's *Law of the Constitution* (eighth edition), pp. 122, 143; Marriott's *Mechanism of the Modern State*, vol. i, p. 41.

by the ordinary legislature, but by some higher authority like the people at large, or by some specially empowered person or body and cannot be altered in the same way as other laws. A rigid constitution controls the actions of the ordinary legislature and any enactments of the ordinary legislature which conflict with the provisions of the constitution would to that extent be *ultra vires* and void. The relative advantages and drawbacks of the rigid and the flexible types of constitutions have been discussed at length by text-writers on politics.

It is unnecessary for our purpose to enter into the discussion in any detail, for, whatever may be the relative merits of these forms of constitution, the one by which the Government of India is organized and regulated is, and has been, a rigid constitution. It is the Imperial Parliament that has from time to time passed the enactments relating to the constitution of the Government of India, and it is inevitable that at any rate the next constitutional change should also be enacted by the Imperial Parliament. If India were not a dependency of the British Government and if the people of India had to consider whether they should adopt a rigid or flexible type of constitution, the question would possess some practical interest. But, having regard to our history, to our relations with the Imperial Government and to the growth of our constitution, our next constitutional advance must also be regulated by the Imperial Parliament. Whatever further powers and responsibilities the Government of India might be entrusted with, it would be a creation of the British Parliament and the activities of the Indian Government and legislature

would have to conform to the prescriptions of the constitutional enactments. Though it would be open to the British Parliament to provide that future amendments to the constitution might be effected by the Indian legislature itself by following a prescribed procedure, it is not absolutely necessary that such a power of altering the constitution should be conferred upon the Indian legislature. While such a power is conferred by the Australian Commonwealth Act and by the South African Union Act, there is no such power conferred on Canada. If responsible government is conferred on India and the Indian legislature becomes fully responsible to the people, it is hardly likely that the Imperial Parliament will raise any objection to the enactment of such modifications in the constitution as may be required by the wishes of the people of India. The process of carrying an amendment in the constitution through the machinery of the British Parliament may possibly prove an easier method of carrying through such changes. The question whether the constitution should be of a flexible or a rigid type need not therefore trouble us for the present. But, if it be necessary to express an opinion upon the point, the rigid form of constitution is the one best suited to India. It is unnecessary to indicate the precise machinery or procedure by which amendments to the constitution should be carried out in the future. One may, however, indicate a few important principles bearing upon the question. The process of amending the constitution should not be made too difficult to bring about any changes in accordance with a change in the public opinion. The system of

amendment by recourse to a referendum or to a special convention is cumbrous, unsuitable and impracticable. The best plan would be to empower the Indian legislature itself to revise the constitution, but under conditions ensuring ample time for consideration and discussion of the proposed changes by the public and for the ascertainment of public opinion and requiring a larger measure of support in the legislature than is required for the passing of ordinary laws. It is observed by Lord Bryce that the constitution which has most influenced others in Europe and become a type for them in this respect is that of Holland, because it was the earliest one established after the revolutionary period.<sup>1</sup> According to the Dutch constitution, constitutional amendments are required to be passed by a two-thirds majority of the legislature in two successive sessions with an intervening general election. It would be desirable to prescribe in addition that there shall be an interval of not less than six months between the dates on which the amendments may be passed by the legislatures.

One question which has been discussed in connection with rigid constitutions relates to the authority by which the constitution should be interpreted.<sup>2</sup> Occasions will often arise when it will be necessary to determine whether an enactment of the ordinary legislature is in excess of the powers possessed by it under the constitution. The view which seems to prevail in the European continent is that the legislature should be the sole judge of the

<sup>1</sup> Bryce, *Studies in History and Jurisprudence*, vol. i, p. 214.

<sup>2</sup> *Ibid.*, pp. 228-34.

legality of its measures and that the authority of a statute should not be questioned by the ordinary courts. This, however, is a view which has never commended itself to English constitutionalists and does not find favour in the countries which have adopted the English system of jurisprudence. It is hardly necessary to labour the point that the only satisfactory method of testing the validity of the laws passed by a legislature is by a judicial proceeding before the courts. We in India who have been brought up in the notions of the English law cannot possibly reconcile ourselves to any other course for determining the validity of legal enactments. There is, of course, a danger which has often arisen in the United States of encouraging a too frequent resort to the courts for the purpose of determining the legality of statutes. This, however, is largely ascribed to the vicious practice of putting into the constitutional law many provisions which relate not to anything connected really with the constitution, but to other matters.

The question what matters should be embodied in a constitutional law is one which has been answered in practice differently by different peoples. That a constitutional law should deal with the structure and functions of the principal organs of government is obvious. But, even here, it is necessary to discriminate between what are essential and important and what are comparatively matters of detail and of secondary importance. Even a law relating to the constitution alone should confine itself to important principles and leave other matters to be dealt with by subsidiary legislation by subordinate bodies,

either by rules made under the statute by some authority specifically empowered to do so, or by legislation by the ordinary legislature. For instance, details with regard to the conduct of elections, the publication of notifications, the dates of the elections, etc., should be regulated not by the fundamental law, but by rules. The necessary result of including such details in a constitutional enactment is, first, that the enactment will be loaded with a mass of details and become cumbersome and suffer in intelligibility, and secondly, that any alteration required from time to time in these matters will have to be carried out in accordance with the formalities required for constitutional changes and involve great delay.

As regards the policy of leaving the determination of the validity of the statutes to the courts, it has been suggested that the courts may adopt a too narrow interpretation and set aside as invalid every law which goes against the letter of the constitution. The reply is given by Lord Bryce that, where public opinion sets strongly in favour of the line of conduct which the legislature has followed in stretching the constitution, the courts are themselves affected by that opinion and go as far as their legal conscience and the general sense of the legal profession permit—possibly sometimes a little further—in holding valid what the legislature has done.<sup>1</sup> And, as an instance of the elasticity of judicial interpretation, he cites the case of the decision of the Supreme Court of the United States regarding the applicability

<sup>1</sup> Bryce's *Studies in History and Jurisprudence*, vol i, p. 233.

of the federal constitution to the island of Porto Rico ceded by Spain to the United States, in which the Supreme Court by a majority expanded the constitution. The Supreme Court of the United States looks upon itself as a pure organ of the law commissioned to do justice between man and man but to do nothing more, and it has steadily refused to decide abstract questions or give opinions in advance by way of advice to the executive. This is undoubtedly the correct attitude and will be adopted by the courts in all countries governed by English jurisprudence. It has been sometimes felt that instead of leaving a doubt as to the validity of a statute to be removed by a judicial decision in some future litigation, it would be an advantage both to private citizens and to the organs of government to settle the disputed points at once and for ever. Some of the states of the American Commonwealth have by their constitutions empowered the governor or legislature to require written opinions of the judges of the highest state court on all points submitted to them. A similar provision has been introduced in Canada by a statute of 1875 authorizing questions either of law or of fact to be put to the Supreme Court and requiring the judges of that court to answer them at the request of the Dominion Parliament.<sup>1</sup>

Objectionable as would be the practice of introducing unessential details relating to constitutional matters, the practice of introducing regulations on

<sup>1</sup> Egerton, *Federations and Unions within the British Empire* (second edition), p. 156, f. n.; Attorney-General for Ontario *vs.* Attorney-General for Canada, A.C. 1912, p. 581.



matters of ordinary legislation into a constitution is much more pernicious. In the United States of America, this practice is often due to a distrust of the state legislatures and the poor esteem in which they are held by the public.

The fear of oppression by the executive has led constitution-makers in several countries to include in the constitution declarations as to the fundamental rights of citizens. These declarations of rights in constitutions are the product of the political philosophy which was current at the time of the revolutionary epoch towards the close of the eighteenth century. Theories about the rights of man and about natural rights were in the air. They filled men's minds and supplied them with a moral and philosophical basis for movements for the overthrow of despotism. Whether the ideas were true or false, men's minds were swayed by them and they thought it necessary to embody many an abstract doctrine as to the rights of man in the political constitutions which were framed at the time.

Let us examine carefully the nature and purpose of a constitutional instrument. *Prima facie*, a constitutional document is one which is, and should be, concerned with the description and definition of the structure and functions of the various organs of government. In this sense nothing that does not relate to the constitution is relevant to a constitutional document. The object of the framers of constitutions and especially of rigid constitutions is to prevent them from being changed in the same manner and with the same facility as ordinary laws. A constitutional law is one which controls and

restrains the actions of the legislature. Impressed with the importance of certain rights of citizens and the necessity for guarding them, constitution-framers have often thought that by embodying these rights in a fundamental constitutional document they would be investing them with a higher sanctity and preventing any encroachments upon them. But, many of the declarations of rights are very inappropriately included in constitutional documents. In the first place, it is hardly necessary at this time of day to think of conferring protection against the arbitrary acts of the executive government. The rule of law is so firmly established in the system of English jurisprudence by which we are governed that the danger of any encroachments by the executive authority on the rights of individual citizens otherwise than under colour of law hardly exists at the present moment. Secondly, the rights included in these declarations are not placed above the reach of the ordinary legislature; for most of them are expressed in language which recognizes and permits interference by the legislature. Thirdly, the language in which the so-called rights are declared clearly shows that they are not legally enforceable rights at all. They are expressed in far too loose and vague a manner to be regarded as a statement of legal rights. Most of these statements are expressed in a very crude form without any of the qualifications and limitations which would be necessary to make them accurate legal propositions. Each one of these declarations would require an essay to explain and define it in accurate terms. The declarations are in the nature of mere moral or politico-ethical

or legislative maxims which have no claim to be treated as rules of positive law. This characteristic of the declarations is being more and more recognized by the framers of constitutions in Europe. Moreover, if these declarations are treated, as they should be, as devoid of any legal content, they are merely illusory safeguards of rights. If, on the other hand, they are treated as having the force of law and as not liable to change by the ordinary legislature, they are sure to interfere with the working of the ordinary legislature and to hamper the passing of legislative measures, which may be found to be called for in the interests of the safety of the state. The delay involved in carrying through constitutional amendments may prevent the timely enactment of a remedy urgently called for. Measures like the suspension of the Habeas Corpus Act or the Defence of the Realm Act may be imperatively called for, but the legislature will be powerless to put them through. When the government of this country becomes responsible to the people, we shall ourselves realize the wisdom of not crippling the efficiency of the legislature and preventing it from acting with vigour and promptitude on occasions of emergency. These are the reasons why the inclusion of a declaration of rights in a constitution must be held to be unnecessary, unscientific, misleading and either legally ineffective or harmful.

To illustrate my remarks in the preceding paragraph, I will examine the provisions of clause 8 of Dr. Besant's Commonwealth of India Bill which declares certain rights to be fundamental. Sub-clause (a) of this clause provides that "no person

shall be deprived of his liberty, nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law and by duly constituted courts of law." This clause cannot prevent any legislation authorizing officers of government to arrest or to intern persons under certain conditions. Even a layman knows that under certain circumstances a police officer may arrest without any warrant and may, if necessary and under certain conditions, enter a dwelling for this purpose. Even a private person may without any order by a court of law arrest a person who in his view commits a non-bailable and cognizable offence. It requires no order of a court to destroy an unlicensed dog belonging to a private owner and straying within notified limits in a municipality. Similarly, it requires no authority from a court to enable a toll-collector to seize and detain under certain conditions a vehicle or animal upon which toll has not been paid. By another sub-clause, it is declared that "all persons in the Commonwealth of India have a right to free elementary education and such right shall be enforceable, as soon as due arrangements shall have been made by the competent authority." What is the value of this right, if public funds are not available for providing free elementary education? It is not necessary to discuss in detail the other cases of fundamental rights included in this clause.

The English constitution which has not been embodied in any formal instrument and contains no declaration of rights is the one under which citizens enjoy the greatest amount of liberty and security for

their rights.<sup>1</sup> There is no declaration of rights in the constitution of Canada, Australia, or South Africa. The present republican constitution of France contains no declaration of rights. As against this may be cited the practice of other countries and the fact that in the constitutions adopted only the other day for the Republic of Germany and for the Free State of Ireland declarations of rights find a place. The fact, however, does not obviate the criticisms to which the inclusion of such declarations is open. If, nevertheless, they have been included in these constitutions and various others, it may be asked what the reasons are for such inclusion. The only substantial reason urged in favour of the practice is that it has an educational value for the ordinary citizen and for the legislator, and that it serves to remind the legislator of the importance of these maxims, whenever he feels tempted to initiate any legislation inconsistent with these maxims. But, if this is the only object which is really served—and I will not deny that it may have some value in this direction—the best method would be to put them into a separate book or into a separate part of the constitution and call them politico-ethical or legislative maxims. One of the best illustrations of the fondness of people for declarations of rights is furnished by the new German constitution. Part 2 of the constitution deals with the fundamental rights and duties of Germans. These provisions of part 2 did

<sup>1</sup> For the difference between the Petition of Right and the Bill of Rights on the one hand and the declarations of rights common in the European constitutions, see Dicey's *Law of the Constitution* (eighth edition), p. 195, f. n.

not escape criticism and opposition in the Constitution Committee and in the National Assembly which discussed the constitution. Some members of the Committee wanted to suppress drastically all declarations of rights in the constitution of the Reich. They saw in these principles no stable system, but only a collection of declarations and declamations to which were joined some legal maxims figuring already in other laws. The National Assembly decided not to inscribe in the constitution, in political sentences and aphorisms, without any legal content, a complete and solemn recognition of the directing ideas of the present and the future. Nevertheless, there was inserted in the constitution a certain number of political maxims and of "programme thoughts". The Assembly hoped that the articles would exercise a certain educational function and would constitute the basis of the civic and political education of the people. There is no reason why the articles could not be published as a separate politico-ethical work in the shape of a scholastic manual or citizen's handbook. It is pointed out with great force by Professor René Brunet that the constitution nowhere specifies to what extent the fundamental rights have or have not legal force, and that it is extremely difficult, if not impossible, to know what authority and what meaning should be attached to declarations of fundamental rights.<sup>1</sup>

We may now proceed to consider the question of the structure of the central legislature. Under

<sup>1</sup> *The German Constitution* by René Brunet, p. 199.

the existing Act, the Indian legislature consists of two chambers, the Council of State and the Legislative Assembly. Ordinarily a bill is not 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. The language of section 84A, which provides for the appointment of a statutory commission, imposes upon it the obligation to report whether the establishment of second chambers of the local legislatures is or is not desirable. The legitimate inference from this section is that, so far as the central legislature is concerned, the policy of a bi-cameral legislature which has been adopted in the existing scheme is to stand part of the constitution. It is therefore needless to enter into a discussion of the worn-out question whether the establishment of a second chamber is or is not desirable, so far as the central government is concerned. Most countries in the world have adopted the bi-cameral system and done so for very good reasons. There is a fairly general agreement among political thinkers as to the need for a second chamber, a need which is becoming more and more pronounced in proportion to the growth of democracy. The democratic form of constitution is not calculated to attract the best and most desirable men into the legislature; nor is the system, as it is now worked, calculated to secure the representation of the views of all important sections of public opinion. It is suggested by Sir Sidney Low that various important orders and interests, which are not represented in the lower house, might suitably find

a place in the upper house.<sup>1</sup> For the purpose of enabling the upper house to perform its functions as a revising chamber and enabling it to secure full consideration of measures from various points of view and interposing a check on hasty legislation, it is necessary that the house should be composed of men who would be able to command respect by their personal abilities, merits, experience and prestige.

Great difficulty has been felt in devising suitable methods for the construction of a good upper chamber. Before referring to some of these methods, it is necessary to point out that a second chamber constructed on the same plan and constituted at the same time as the lower house would fail to yield the advantages derivable from the bi-cameral system. There must be a certain amount of dissimilarity in the composition in order to ensure the consideration of proposed measures from different points of view. A hereditary second chamber may be dismissed at once from consideration. It is a system which has given rise to serious dissatisfaction in England and is only endured there as being part of the heritage of the English constitution and on account of the inability of the people to agree upon a thoroughly satisfactory and generally acceptable substitute. We may also dismiss from consideration the system of a second chamber consisting only of members nominated by the government. An upper house consisting solely of the nominees of the government will fail to command any respect in the country. There are only two other courses open

<sup>1</sup> Sidney Low's *The Governance of England* (revised edition), p. 245.



to us for consideration—either election of all the members, or election of a portion and nomination of the rest. The system of election of the whole body is not likely to bring the best men into the house. Several of them who might be willing to serve, if nominated, would be unwilling to undergo the worries, risks and unpleasantness of an election. I should, therefore, advocate a mixed system of election and nomination. Nomination must not, however, be for life, for it would tend to diminish the incentives to active interest and is likely to bring about a loss of touch between the member and the currents of public opinion. A fairly long term of office, long enough for the upper house to benefit by the experience of its members, but not so long as to render the members irresponsible to public opinion, is what is necessary. In view of these considerations, the tenure of office of a member of the upper house should be not less than six years and may be nine years. It would also be an advantage if, instead of the whole body of the house coming into existence at one time and dissolving simultaneously, there could be a partial renewal of the house once every two or three years. If the term of office is six years, one-third of the number of members in the house may be caused to retire every two years. If the duration of office extends to nine years, there may be renewals at the end of every three years. The result of a system of partial renewal would be that the house would never be entirely new and raw, nor would it be without fresh blood. There would always be a body of members with experience available in the house. Continuity in the life and traditions of the

house would be one of the important advantages to be gained by this arrangement. There is no objection to this principle of periodical rotation being made applicable to the nominated as well as the elected members. It would also be necessary and desirable to introduce other differences in the structure of the chamber. For many reasons it would be desirable to have a smaller number of members for the upper house than for the lower and to choose them from larger districts or constituencies. The qualifications for electors and the age of the candidates for election should also be different.

Higher educational and property qualifications should be prescribed for the upper house than for the lower. The property qualifications now fixed in the Madras presidency for electors to the Council of State seem to be sufficient. To be an elector, a person has to hold in this presidency an estate of which the annual income is not less than Rs. 3,000 (£225) or to be the holder of land on which the revenue assessment is not less than Rs. 1,500, or must be assessed to income-tax on an income of not less than Rs. 20,000 (£1,500). There are various other qualifications of an alternative character prescribed by the rules. The qualifications seem to be fairly satisfactory, so far as they go. The other qualifications prescribed are past or present membership of a legislative body, past or present tenure of office under a local authority, past or present university officerships, the tenure of office in a co-operative banking society or the holding of a title conferred for literary merit. The qualifications for the candidates are the same as those for electors.

The qualifications for election as a member may be amended in the light of the provisions of Article 56A of the Belgian constitution. A differential age qualification may also be prescribed. As the upper house is intended to represent experience and maturity of judgment, attainment of the age of forty may be suitably prescribed as an additional requirement.

As a remedy for the defects of popular chambers, Lord Bryce suggests the creation of a second chamber in which men might be gathered who are eminent by their ability and the services which they have rendered to the nation or to the district in which they reside, men who have gained experience in various forms of public work such as local government, and the permanent civil service at home and abroad, or who possess special knowledge of important branches of national life, as, for instance, agriculture, commerce, manufacturing industry, finance, or education, or who have by travel and study acquired a grasp of foreign affairs and the general movements of the world.<sup>1</sup>

As regards the members to be nominated by the government, I should not be disposed to leave it entirely to the sweet will and pleasure of the executive to nominate any person they choose irrespective of any qualifications or with reference only to the qualification that he would be a person upon whose steady support of government measures reliance might be safely placed. As the system of election is not calculated to assure the return of the best qualified persons, it is desirable that the government

<sup>1</sup> Bryce, *Modern Democracies*, vol. ii, p. 453.

at least should, in making their nominations, aim at securing the presence of distinguished men of the type mentioned by Lord Bryce. A much higher standard of merit should be prescribed for nominations by the government. It may, for instance, be provided that persons nominated by the government to the upper house should belong to some one or other of the following classes : persons who have retired after holding for not less than two years substantive appointments of the following description, viz., judges of the high court, judicial commissioners, district judges, members of the executive council, ministers, secretaries to government, members of the revenue board, divisional commissioners, district collectors, deputy commissioners, heads of departments, vice-chancellors of universities, dewans of Indian states with a population of one million or more, presidents of legislative councils, advocate-generals or the highest law officers in the provinces, presidents of chambers of commerce, commissioners of metropolitan corporations, men who have distinguished themselves by research work, eminent men in letters and arts, heads or managers of commercial, industrial or trading enterprises with a capital of ten lakhs or more, chairmen of important trade unions with a membership of not less than ten thousand members.

I have not considered it necessary to discuss the system of indirect election of the members of the upper house for the reason that though it was recommended by the Southborough Committee, it was rejected by the Government of India and the Joint Select Committee of Parliament and the

Government of India Act proceeded upon the principle of direct election. Apart from the objection that such a system of indirect election would vest the franchise in a comparatively small body, there are various other objections to all methods of indirect elections and these have been pointed out by text-writers. The system of indirect election to the senate was tried in the United States and has been recently abandoned. Election by local bodies has had the tendency to introduce the politics of national parties into the elections to these local bodies. Election in the second degree by electoral colleges has resulted in converting them into mandatories and puppets in the hands of the primary bodies manipulated by the party machine. 'After an examination of the various methods of constructing a second chamber, Lord Bryce declares in despair that every method of choice has proved to have its own defects and nowhere have the results given complete satisfaction—a conclusion which does not in the least condemn the bi-cameral system in principle for, if no second chamber is perfect, neither is any first chamber perfect.<sup>1</sup> For each country the question is not whether it has got the perfection it desires, but whether it would not fare worse without some such addition to, or check upon, its popular house as a second chamber provides.

The next question to be considered relates to the representation of the different provinces in the upper house. In almost all constitutions of a truly federal type, the principle of equality between the

<sup>1</sup> Bryce, *Modern Democracies*, vol. ii, p. 443.

constituent states or provinces is observed in the constitution of the upper chamber. I have already expressed my view that such a constitution is not suited to the circumstances of India. The principle of equality between one province and another has therefore no place in our scheme of a second chamber. The extent of the representation granted to the different provinces must therefore be proportionate to their population.

We may now proceed to consider the question of the numerical strength of the Council of State. The strength of this body must be fixed partly with reference to the strength of the Assembly, partly with reference to the various elements for which it is necessary to provide for representation by election or nomination and partly with reference to the population. I have already stated my view that for many reasons it is necessary to increase the strength of the Indian Legislative Assembly to something like double the present size. In view of the fact that the population of British India is 247 millions, the strength of the Indian Legislative Assembly should not be less than 250 and may go up to 300 or a little more. The strength of the Council of State may be fixed at half the strength of the Legislative Assembly, so that there may be one representative in this house for every two millions of the population. A body of 120 or even 150, which is more than double the present strength of 60, cannot possibly be viewed as unmanageable. It is essential that the strength of the upper house should be less than that of the popular chamber. In the Government of India Act, there is a pro-

vision that in case of a conflict between the two houses the Governor-General may refer the matter for decision to a joint sitting of both chambers. The strength of the upper house should not be fixed so high as to enable it to override the view of the more popular house. At the same time, the strength of the upper house should not be relatively so small as to make it an utterly insignificant body whose opinions need not be taken into account in any joint sitting. Moreover, it is desirable to secure the representation of all the various interests which, on account of their importance to the country, deserve representation in the legislature, but may not be able to secure any or adequate representation in the lower house. It has been observed<sup>1</sup> by Sir Sidney Low that the English House of Commons takes no account of the interests which have grown up irrespective of locality and that in these days the interests of persons living in local juxtaposition are not necessarily identical. Whatever might have been the case when difficulties of communication made men everywhere dependent on their immediate neighbours, conditions have now changed, local ties have weakened and intercourse between persons of the same profession and the same class can be pursued easily enough on a national scale. A stock-broker of South Kensington may have much more in common with another stock-broker living at Brighton than with a green-grocer in the next street. The members of a profession, the adherents of a sect, may be scattered all over the kingdom and form

<sup>1</sup> Sidney Low, *Governance of England* (revised edition), p. 244.

a numerous body in the aggregate and yet be not strong enough in any one district to send their own candidate to the Parliament or to turn votes. The strength of the upper house which I have suggested above is thus not in excess of the requirements of representation of varied interests. Nor can it be pronounced to be too large or unwieldy, if compared with the strength of upper houses in other countries. The French Senate consists of 300 members, three-fourths elected by the departments and colonies and one-fourth by the National Assembly. The upper house of Sweden consists of 150 members. The strength of the Italian Senate is about 400 and that of the Spanish 360. In countries which have adopted the federal constitution, the strength of the senate is no doubt lower, but it is due to the fact that the principle aimed at in the constitution of the senate is the representation of the states on a basis of equality and not the representation of the population. The composition of the upper house on a partly elected and on a partly nominated basis is not an unfamiliar feature of constitutions. The proportion of the elected and nominated elements may respectively be fixed at 60 and 40 per cent of the total strength.



## CHAPTER VIII

### THE CENTRAL LEGISLATURE—(continued)

We may now proceed to consider the powers and functions of the upper chamber. As pointed out by Lord Bryce,<sup>1</sup> there are three different theories as to the powers of a second chamber—(1) that it should have exactly co-ordinate powers with the first or popular house, (2) that the upper house should be subordinate in financial legislation to the popular house, but should have the same powers for other kinds of legislation and (3) that the upper house should only exercise the function of revising bills passed by the lower house, i.e., suggesting amendments and recommending modifications of detail in financial proposals but without power to reject or substantially alter a measure when returned to it by the popular house in the form approved by the latter.

The theory which assigns exactly co-ordinate powers to the upper house is incompatible with the system of parliamentary government. The essence of a system of parliamentary government is that there should be a correspondence or harmony between the executive and the legislature. If there is a conflict of views between the two houses of the legislature and if they are to have exactly equal powers, which is the body to whose decision the government should conform? Either the government must regard itself as at

<sup>1</sup> Bryce, *Modern Democracies*, vol. ii, p. 448.

liberty to disregard the wishes of both, or to conform to the wishes of one body alone. The former course strikes at the very root of the system of parliamentary or cabinet government. The latter course strikes at the theory of co-ordinate powers. The house to whose decisions the government conforms itself will acquire a predominant influence. According to the general practice under almost all constitutions which have adopted the system of parliamentary government, it is the house elected on a broader franchise and for a shorter term that is held to reflect the wishes of the people and is therefore invested with the power of refusing supplies. The power to grant or withhold supplies carries with it the power to make, maintain or turn out the ministry. The popular house has therefore acquired a position of predominance in all countries where the parliamentary system of government prevails.

On the footing of unequal powers, the second chamber is generally inferior to the popular house in the matter of supplies and money bills or financial legislation. But as regards other matters and other legislation, the powers of the upper house may be equal and co-ordinate. This is the second of the theories mentioned by Lord Bryce. But even under this theory the question would still arise whether in practice the second chamber should push the exercise of its powers to the point of creating a deadlock in the event of its differing in opinion from the lower house, or should give way to the lower house.

The third theory reduces the utility of the second chamber within very narrow limits and, at a time when the growing influence of democracy calls for the

existence of a body competent to put a check upon hasty, unwise or unjust legislation, it would be undesirable to curtail the powers of the second chamber. The reduction of the second chamber to a position of impotence will deter men of ability, experience and status from seeking membership of the chamber. If the second chamber is to justify its existence by putting a brake upon ill-considered or unjust legislation and securing ample time to rouse and ascertain public opinion in the country, it must be allowed the power of alteration and rejection of measures passed by the lower house. The second theory mentioned above has the merit of being reconcilable with parliamentary government, but still leaves room for deadlocks, and provision will have to be made for the settlement of differences.

Under the Government of India Act, though the annual budget is laid before both the houses, it is the Assembly alone that has the power of voting grants for expenditure. But as regards financial legislation or what is popularly known as money bills, the Act makes no distinction between the powers of the two houses any more than in general legislation. In Canada, bills for appropriating any part of the public revenue or for imposing any tax or impost have by law to originate in the House of Commons and according to convention they may not be amended by the senate. There is no other provision limiting the power of the senate in financial or general legislation. Under the Australian Commonwealth Act, proposed bills appropriating revenue or moneys or imposing taxation cannot originate in the senate, and the senate may not amend proposed laws imposing

taxation or proposed bills appropriating revenue or moneys for the ordinary annual services of the government. The senate is also incompetent to amend any proposed bill so as to increase any proposed charge or burden on the people. But it may return any bill which it cannot amend, suggesting the omission or amendment of any items or provisions, and the lower house may, if it thinks fit, make any such omissions or amendments with or without modifications. There is also a provision prohibiting the tacking of other legislation to money bills. A bill which appropriates revenue or money for the ordinary annual services of the government can deal only with such appropriation. Bills imposing taxation must deal only with the imposition of taxation, and any provision therein dealing with any other matter is of no effect. Bills imposing taxation, except bills imposing duties of customs or of excise, must deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only. In other matters the senate has equal power with the lower house. In the South Africa Act, very similar provisions are to be found regarding money bills. By the Parliament Act of 1911, if a money bill, having been passed by the British House of Commons and sent up to the House of Lords at least one month before the session, is not passed by the House of Lords without amendment within one month after it is so sent up, the bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the

royal assent being signified, notwithstanding that the House of Lords has not consented to the bill. With regard to other bills, the House of Lords has only a suspensive veto for a period of two years. The Federal Senate in the United States of America has the power to amend or reject money bills ; but as the system of government adopted there is the presidential as opposed to the parliamentary type, the practice of that country has no bearing for our purposes. The case of the French Senate is more in point, as France has adopted the system of parliamentary government. Except in regard to the introduction of money bills, the French Senate has co-ordinate powers with the Chamber of Deputies. It has claimed and exercised the right not merely to reject, but also to amend money bills and is said to possess the right of reviewing, controlling and examining the budget. The question to whom the ministry is responsible is stated by text-writers to be in doubt, though Article 6 of the constitutional law declares that the ministry shall be responsible to the chambers. Lord Bryce is of opinion that the powers of the senate "are weaker in fact than they seem on paper. Subordination in the realm of finance debars it from controlling the executive, though it has twice caused the fall of ministries, in one instance, however, because the ministry wished to fall, as the chamber did not rally to its support. Since it is only in the second degree the creation of universal suffrage, its claim to express the will of the people is less strong. Thus while feeling the natural and inevitable jealousy of a second chamber towards a first chamber, it recognizes its own inferiority and seldom challenges its rival to

a duel."<sup>1</sup> In view of the fact that a second chamber with full co-ordinate powers is not reconcilable with the system of parliamentary government as worked in the British Empire both by the Mother of Parliaments and by her emancipated daughters, it would be safer to adopt the provisions of the Australian Commonwealth Act according to which the upper house has no power of originating or amending a money bill, but can only reject a bill, or return it with suggestions for reconsideration and for the omission or amendment of any particular items.

There are various methods of adjustment of differences between the two houses of a bi-cameral legislature. Under the British Parliament Act of 1911, if any public bill other than a money bill is passed by the House of Commons in three successive sessions, whether of the same parliament or not, and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that bill may, on its rejection for the third time by the House of Lords, be presented to His Majesty and become an Act of Parliament on the royal assent; provided that two years have elapsed between the date of the second reading of the bill in the first of those sessions in the House of Commons and the date on which it passes the House of Commons on the third of those sessions. There is no provision in the British North America Act for the settlement of differences between the two houses. Under the Australian Commonwealth Act, elaborate provision is made for

<sup>1</sup> Bryce, *Modern Democracies*, vol. i, p. 264.

meeting the cases of disagreement between the two houses in matters of legislation. If the upper house rejects or fails to pass a bill passed by the House of Representatives, or passes it with amendments to which the lower house will not agree and if, after an interval of three months, the lower house in the same or next session again passes the bill without or with any amendments suggested by the upper house, and the latter fails to pass it, or rejects it, or passes it with amendments which are not acceptable to the lower house, the Governor-General may dissolve the two houses simultaneously. If, after such dissolution, a fresh lower house passes the bill and the Senate again rejects or fails to pass it, the Governor-General may convene a joint sitting of the two houses. Under the South African Act, the procedure prescribed is somewhat simpler. If the upper house rejects or fails to pass a bill which has been passed by the lower house and, if the lower house in the next session again passes the bill and the upper house again rejects or fails to pass it, the Governor-General may during that session convene a joint sitting of the two houses; provided that in the case of a bill dealing with the appropriation of revenue or moneys for the public service, the joint sitting may be convened during the same session.

Under Rule 36 of the Indian legislative rules, if the two chambers are unable to come to an agreement, the originating chamber may either report the fact of the disagreement to the Governor-General or allow the bill to lapse. Under section 67, it is open to the Governor-General to refer the matter for decision to a joint sitting of both

chambers, but such joint sitting can only be convened, if a bill passed by one chamber is not passed by the other chamber in a form acceptable to the originating chamber within six months after the passage of the bill in the originating chamber. The intention of the section seems to be that a joint sitting cannot be convened before the lapse of six months from the passage of the bill in the originating chamber ; nor is the Governor-General bound to convene a joint sitting for the purpose of settling the difference. It is left entirely to his discretion. The expedient of a joint sitting is one of the methods resorted to for the purpose of settling differences of opinion. But, if the joint sitting should be convened in the same session in which the disagreement has taken place, the remedy is attended with disadvantages. The object with which a second chamber is created is to interpose a period of delay sufficient for the education and expression of public opinion. If the joint sitting should be convened immediately after the disagreement has arisen, there may not be sufficient time for the discussion of the subject matter of difference, or for the ascertainment of public opinion. In view of the difference in the strength of the two houses, the result of the joint sitting will in all probability be to confirm the decision arrived at by the first house originally. Any provision therefore requiring a joint sitting, as soon as, or shortly after, a disagreement has taken place, will defeat the object of the bi-cameral system. Either there must be a prescription of a definite interval of time between the date of the passing of the measure in the originating chamber



and the date of the joint sitting, or there must be a dissolution and a general election, or there must at least be a provision that the joint sitting shall not take place in the same session. The provision in the South African Act that the joint session must be in a subsequent session seems to be better suited to achieve the purpose. Money-bills being of an urgent character, the joint sitting for the settlement of differences regarding them may be convened in the same session. The requirement in the Government of India Act, that there should be an interval of six months between the date of the passage of the bill by an originating chamber and the joint sitting is also apparently calculated to achieve the same object of delay. It would be a proper exercise of the discretion of the Governor-General if, in the case of a dispute raising issues of an important but not very urgent character and not relating to financial legislation, he put off a joint meeting for a longer period than six months, say for a year.

Another solution which has been suggested for the settlement of differences is a referendum on the particular question at issue between the two houses to the votes of the people. But the device of the referendum as a method of ascertaining public opinion is, apart from its intrinsic defects, altogether unsuited to the conditions of this country.

The strength of the Indian Legislative Assembly under the present scheme is fixed at 144 of whom 103 are elected members, 26 are nominated officials and 15 are nominated non-officials. The number of elective seats must *prima facie* be regarded as utterly inadequate for the representation of a

population of 247 millions for the whole of British India. Roughly speaking, there is one member to represent every two millions and a half of the population. I wonder whether there is any parallel to this state of things in any other country in the world. If, however, representation were desired on anything like the scale obtaining in European countries or in the United States of America, the strength of the Assembly would become impossibly unwieldy. On the basis of the census of 1910, there is one representative to every 210,000 inhabitants in the House of Representatives and the total strength of the House of Representatives is 433. The standard unit of population for each member of the House of Commons in Great Britain was fixed at 70,000 by the Speakers' Conference of 1916 whose recommendations were carried out in the Reform Act of 1918. This comparison shows that it is utterly impossible to aim at anything like a similar scale of representation for this country. It would, however, be by no means extravagant to suggest that there should be one representative in the Assembly for every million of the population. This would raise the strength of the elective element in the Assembly to about 250. Even if it were necessary to provide for a certain number of nominated seats, the total strength would not be likely to go much above 300, a number which cannot possibly be regarded as unmanageable. I am not however suggesting an increase in the number of seats merely on theoretical grounds. In considering the strength of the provincial legislative councils, I adverted to the various factors which have to be taken into

account in fixing the size and number of the constituencies. Having regard not merely to the population of British India, but to its enormous area of one million square miles and more and the impossibility of securing any contact, not to speak of a close touch, between electors and members, it is absolutely necessary to increase the strength of the Assembly in the manner suggested. I do not overlook the fact that though the population of India is 247 millions, the strength of the electorate for the Assembly according to the latest figures available is only 1,125,000.<sup>1</sup> But this circumstance is neutralized by the fact that the electorate does not consist of compact bodies resident in small areas, but of persons scattered over the wide spaces of the numerous districts of British India. An increase in the strength is thus imperatively called for in the interests of reasonable representation and political progress.

In a system of responsible government, there is hardly any instance of the inclusion of a nominated element in the composition of the lower house. When I speak of responsible government, I have in view a responsible government of the kind known as parliamentary or cabinet government. If the legislature consists of two chambers, it is the lower house which makes and unmakes ministries and which is itself responsible to the electorate. The authority of the lower house is derived from the fact that it represents the people at large or, to be more accurate, the electorate. The introduction of a

<sup>1</sup> Parliamentary Return showing the results of elections in India (1925 and 1926 Cmd. 2923).

nominated element, which does not owe its membership to the suffrages of the people, but to the choice of the executive, will interfere with the working of the system of responsible government. Its presence is likely to cause confusion and obscurity as to the significance of the votes of the house. Confidence in the government or the want of it cannot be inferred merely from the fact of a favourable or hostile vote by the house. It is the opinion of the elective element alone that should determine this question and the fate of the government. It would be altogether inconsistent with any scheme of constitutional government to ignore the votes of any of the members of a house, whoever they may be, for any purpose. In spite of these objections we shall have to tolerate for a certain space of time the system of nomination out of a panel of names recommended by registered associations for the purpose of securing the representation of the depressed and the working classes in the Assembly. As the question has been already discussed in connection with the provincial council, it is needless to expatiate further on this point.

For reasons similar to those given above, there is no room for officials other than the ministers under a scheme of responsible government. The argument that officials would form very useful members of the legislature by reason of their experience and knowledge may be allowed as a valid reason in the transition stage, when the government is only representative and not responsible. But when responsible government comes into existence, government officials other than the members of the ministry

should have no place in the legislature. Whatever stock of knowledge the officials may possess must be made available to the legislature through the ministers who are heads of the departments.

Turning now to the representation of classes and communities in the Assembly, the remarks already made in a previous chapter regarding the separate representation of communities in the provincial legislative councils apply to such representation in the Assembly also. As regards the representation of special interests, as distinguished from communities, we find that the interests represented in the Assembly are those of landholders, commerce and the millowners' association. The representation of important special interests raises issues of a different character from those involved in the question of representation of communities. But even here it is unfortunate that there should be a division of commercial interests into European and Indian. If it were possible, one would like to suggest a joint electorate with guaranteed seats for European and Indian merchants instead of separate representation for the European and Indian chambers of commerce. A joint electorate will promote closer friendly intercourse between the two commercial communities than the present system and will oblige the commercial men of each community to cultivate the good-will and friendship of the commercial men of the other community. But the benefits expected would not accrue, if the European and Indian merchants separately resolved among themselves to put forward just the number of candidates required to fill the guaranteed seats. The

candidates put forward by each community will be able to get in on the strength of the votes of their own community without caring for the votes of merchants belonging to the other community. Moreover, there are other practical difficulties which may thwart the trial of this experiment. In the first place, we do not know the numerical strength of the commercial men in each community and whether it will or will not be possible for the members of one community to swamp the other. In the next place, it might be difficult to frame a satisfactory legal definition of who are to be regarded as commercial men and to prepare an accurate and satisfactory register of such persons. In any scheme for the representation of special interests, it would probably be found to be practicable and expedient that the seats should be rather assigned to the nominees of organized voluntary associations than to the individuals elected by the members of a statutorily created class who may be scattered over a large area. Lastly, the interests of the European chambers of commerce and the Indian chambers of commerce may lie in different directions and their respective points of view may be radically different. For these reasons I am afraid we must give up with regret the idea of a common representation for the chambers of commerce as being impracticable for the present. An amalgamation of the European and Indian chambers of commerce would be an excellent ideal, but it seems too utopian to be realized.

The separate representation of the interests of large landowners has been a feature of our legislative bodies almost from the time that they assumed

a representative character. The importance of the interests of the class of large landowners, their great influence in the country and the fact that their vested interests can always be expected to enlist them on the side of order and stability have weighed with the government in according separate representation to them. Though the interests of the large landowners may induce them to come forward as candidates at elections, and though their influence may be expected to secure them success, they are reluctant to stand as candidates at an election by a general electorate and the Government also would be unwilling to withdraw the privilege of special representation from a class which they have hitherto favoured. Otherwise the question would be worth considering whether the time has not come for giving up the system of special representation of this class.

I will here glance for a moment at a question which has been attracting the attention of theorists and some constitution-makers, viz., whether the system of territorial representation or the representation of vocations and interests is better calculated to secure a system of real representation of the people in the legislature. This question attracted attention at the time of the amendment of the Government of India Act in the time of Lord Lansdowne and also when the Minto-Morley Reforms were introduced. The question was also considered in the Montagu-Chelmsford Report and, after considering the schemes of representation embodied in the previous reforms, the authors of the Joint Report recorded their unhesitating conclusion in favour of the acceptance of the principle of territorial representation.

The grounds upon which they rejected the principle of representation of communities and interests still remain as valid as ever. Whether a system of territorial representation secures the representation of all the wide and varied interests in a nation or not—there is no reason to suppose that any important interests fail to secure due representation—the system has the merit of promoting the subordination of sectional interests to those of the country at large. Even under a system of territorial representation or, in other words, representation of local areas, it must be admitted that the representatives may be swayed by the interests of their own constituencies and may exhibit a zeal for favouring the claims of their own localities to preference in the distribution of public expenditure and in other ways. But, the claims of local constituencies are ordinarily not exclusively identified with the interests of particular classes or occupations and the antagonism of conflicting local claims does not produce such serious evils as a system which is based upon a vocational classification.<sup>1</sup> There is no local constituency of any considerable size which would not contain members of a number of different economic groups or vocations and in which the conditions of living within the same area would not promote some regard for the claims of other sections, groups and classes than the one to which the representative belongs. However much the old system

<sup>1</sup> The tie of common occupation which bound the burgesses of the old municipal corporations of England is said to have bred a spirit of exclusiveness and of callous indifference to the interests of others and to have been their greatest vice. Gilbert Slater's *Making of Modern England*, p. 144.



of small village communities might have declined, the conditions even of the comparatively artificial and larger units of local self-government have a tendency to promote a regard for the claims of more interests and sections than one and a broader outlook in political matters. The interests of the state forbid the organization of constituencies in any manner which is calculated to divide the allegiance of the citizen or lead him to think of himself primarily as a member of any competing organization. Unsuitable as the system of representation of vocations would be in any country, it would be far more harmful in this country where the need for the consolidation of the different classes of the people is strongest.

There is a difference in the methods of voting respectively adopted for the Council of State and the Indian Legislative Assembly. In elections to the Indian Legislative Assembly and the Council of State, the general rule with regard to plural member constituencies is that every elector has as many votes, as there are members to be elected; but there are special provisions for certain constituencies. In the presidency of Bombay, the system of the cumulative vote is followed, under which any elector may accumulate his votes upon one candidate, or distribute them amongst the candidates as he pleases. In the Bengal European constituency for the Assembly, the principle of proportional representation by means of the single transferable vote is allowed. In elections to the Council of State, the system of the cumulative vote is followed in the Bombay non-Mahomedan constituency; in the Madras non-Mahomedan constituency the election is

made according to the principle of proportional representation by means of the single transferable vote.

It is desirable to make some remarks upon the principle of cumulative voting and proportional representation, upon the objects which these principles are intended to serve and the results which have attended, or are bound to attend, the application of these principles. Both these methods of voting have been put forward with the object of remedying some of the defects of the system of election to the legislature and securing the protection of minorities. The object aimed at by many political reformers is that the representative body should adequately reflect the opinions of the electorate and be a mirror of the national life. It must be confessed with regret that the ingenuity and inventiveness of political philosophers and practical politicians have not yet succeeded in devising any method of voting which is not open to serious criticism. The system of voting which now obtains in England is the system of single member constituencies and this is the system which has been adopted as a rule under the Indian reforms scheme, subject to the exceptions just referred to, and to the plural constituencies which have been provided for the purpose of guaranteeing a number of reserved seats to certain classes. The difficulties in the way of obtaining a fair representation of the electorates are due to various causes. In the first place, it is not practicable, however desirable it may be, to arrange for exactly equal electoral districts, i.e. equal in the number of electors. The result of this unequal distribution of electors in the

constituencies is that the members returned at a general election to the legislature do not fairly reflect the balance of the parties in the country. It is quite possible that the minority party in the country may obtain a majority of representatives in the Assembly or, at any rate, that a substantial minority may obtain an absurdly small representation. This is not a mere theoretical possibility, but has often been realized both in America and in England. The cumulative vote and the system of proportional representation are two of the devices which have been suggested for obviating such results. The whole question of the method of voting underwent very careful examination at the hands of the Royal Commission of 1910 on electoral systems. The defect of the principle of the cumulative vote is that it works in a very capricious manner and is commonly defeated by skilful party organization. Moreover it lends itself to misrepresentation to voters and deception of them by the candidates. It often happens that a scheming candidate requests fair-minded voters to give a vote for each of several candidates and induces other voters who are less fair-minded and more partisan to give all their votes to himself. It proves a trap for the fair-minded voter and candidate and gives an advantage to the more scheming candidate.

The merits claimed for the system of proportional representation are that it yields a more accurate representation of the wishes of the electors than the single member system, that it enables every considerable minority of opinion to secure adequate representation, that the relative strength of the parties in the legislature more accurately reflects the

balance of opinion in the country and that votes which under the present system are lost or wasted could be utilized. On the other hand, the system has also been the subject of trenchant criticism at the hands of eminent constitutionalists. If the system of proportional representation is applied to large electoral districts returning a large number of members, the number of candidates for the seats is also likely to be correspondingly increased and the ordinary elector is bound to be perplexed by the appeals by different sections in favour of their respective candidates and will be at a loss to make up his mind between the merits of the different candidates. He will therefore fall under the influence of the party machines and wirepullers. While each minority party or group may be able to secure representation, the system of proportional representation is calculated to increase rather than diminish the power and influence of the party machines and it is likely to diminish the scope for the exercise of the individual judgment of the voters. In the next place, it will have the effect of introducing into the legislature a large number of faddists and cranks, each keen about the promotion of his particular hobby rather than the general interests of the state. To use the language of one writer, "We shall have faddists and fanatics of all sorts representative of the concentrated eccentricity of the elector."<sup>1</sup> The system has a tendency to encourage the formation of groups and destroy the two-party system. The enormous size in local area of our electoral districts

<sup>1</sup> Hearnshaw's *Democracy at the Cross-ways*, p. 334.

must enhance the evils of the system of proportional representation and render it peculiarly unsuitable to this country. The smallest constituency to which the principle of proportional representation can be usefully applied is one returning not less than three members. Even for a three-member constituency the local areas would have to be very much larger than they are for single member constituencies. Otherwise, the number of constituencies and the size of the legislature must be very largely increased. The principle of proportional representation has not been adopted in the English Reform Act of 1918 and the main reasons which weighed with the House of Commons in rejecting the system were the loss of touch between members and constituencies involved in the creation of the very large constituencies necessitated by the system, the great expense to which the candidates would be put and the difficulty attached to the conduct of by-elections. But incompatible as the system of proportional representation is with the system of cabinet government, there is no harm in applying it to the second chamber of a bi-cameral legislature. For, as a rule, a second chamber has no influence on the formation or the maintenance of a ministry, and one of the objects of a second chamber is to provide representation for various minorities and sections of public opinion. The adoption of the principle in this country in the case of the Council of State is thus not open to objection, but its application to elections to the Assembly and to the provincial legislative councils is inconsistent with the development of cabinet government and with the maintenance of a strong

executive. Nevertheless, it may be found necessary to adopt a system of proportional representation by the single transferable vote, where and so long as it is considered necessary to create plural constituencies for the representation of minorities with, or without, a system of reservation of seats.

Closely connected with the subject we are discussing is the question of the size of the constituencies for the Indian Legislative Assembly. I have already dwelt upon the factors by which the number and size of the constituencies should be determined. The constituencies which have been formed for elections to the Legislative Assembly generally include two, three or even more districts and cover thousands of square miles each. Though the number of voters for the Assembly constituencies may not be so large as those for the provincial legislative councils, they are spread over a much larger area and it is impossible for candidates to come into contact with, or to educate, their constituents. In the Madras presidency, the constituency which comprises the Ceded Districts and Chittoor is 31,000 square miles. The constituency of Madura, Ramnad and Tinnevely comprises 14,000 square miles and that of Salem, Coimbatore and N. Arcot is over 18,000 square miles. The central division of Bombay is 38,000 square miles in extent and the southern division 25,000 square miles. It is needless to multiply figures to show how unmanageably large the sizes of constituencies are. Whether we take the population of British India or its area, the strength of the Assembly must be regarded as absurdly inadequate not merely on *a priori* grounds but from actual

experience of the conduct of elections. The total number of districts in British India is well over 250 and as the population is also about 247 millions, the strength of the Assembly on the basis of territorial representation should not be less than 250. To this number must be added such number of seats as may be necessary for the purpose of representation of minorities or special interests. The strength of the Assembly will therefore have to be fixed at some figure between 300 and 350. In the United States of America, which is the only country with a large area and population with which any useful comparison can be made, the number of members of the House of Representatives is 435, while the population of the United States is only 110 millions.

The pecuniary qualifications for a rural constituency in Madras for elections to the Assembly are the holding of land of an annual rental value of not less than Rs. 50 (i.e. £3-15-0) or the payment of taxes to the extent of Rs. 20 (i.e. £1-10-0). So far as this presidency is concerned, the qualification fixed cannot be considered to be too high. The other qualifications do not seem to call for any remarks beyond those already made in connection with the provincial legislative councils.

The duration of the Legislative Assembly is the same as that of the provincial legislative councils and, for the reasons I have already given in dealing with the duration of the provincial legislative councils, the life of the Legislative Assembly should also be extended to a period of five or, at least, four years.

Under the existing scheme there are two sessions

of the Indian legislature held every year, one during the winter lasting about two months or a little more, and the other for a month in the autumn in August or September. In view of the fact that the attendance at the legislature involves very long journeys of over a thousand miles in the case of many of the members and a dislocation of their business, it would be undesirable to increase the frequency of the sessions and their duration, unless it is absolutely unavoidable. But the experience of the working of the central legislature during the last seven years has clearly demonstrated the necessity for a greater frequency of the sessions, or for a longer duration of the two sessions. There is a large mass of non-official business in the shape of bills and resolutions which cannot possibly be disposed of and is therefore left in arrears every session. Even in the case of the House of Commons in England, which sits for a much longer period than the Indian legislature, the time available for private business has been very largely curtailed by the pressure of public business and the demands of the government. There is therefore nothing surprising in the fact that the restricted opportunity for the transaction of non-official business in the Indian legislature has given rise to much dissatisfaction. The remedy therefore lies in the adoption of one of the two alternatives mentioned, either more sessions than two, or longer sessions than at present. As between the two alternatives, the extension of the autumn session to two months seems to be preferable. The sessions may be held in the months of August and September and the time available for non-official business may



be increased. Instead of being called away from their homes and business several times in the year, the members would find it more convenient to undertake only two trips to the capital. This arrangement will also be less expensive to the state than the holding of a third session which would involve a greater expenditure of public money in the payment of travelling allowances.

In connection with this subject the question of payment of members has to be considered. This question first came to the front in the United States where members had to leave their business and undertake long journeys from their homes and live in the capital. The practice has since been adopted in many other countries and the extension of the suffrage and the desire of the working classes to be represented by members of their own classes have led to the adoption of the system in European countries also, and it may not be possible to resist the claim based upon the practice of other countries. The existing rules provide for the payment of travelling, halting and carriage allowances and enable the ordinary middle class member to avoid any expenditure out of his own pocket on account of his attendance at the sessions. The payment of members throughout the year will not merely involve a considerable addition to the public expenditure, but will have the effect of encouraging the growth of a class of politicians who would look to a seat in the legislature as a means of livelihood. I would therefore prefer the continuance of the existing arrangement to the system of payment in force elsewhere.

## CHAPTER IX

### THE CENTRAL EXECUTIVE

The next step in the evolution of the central government must be the introduction of a system of dyarchy. If this step is taken, the ministers in charge of the portfolios to be transferred to the control of the legislature will necessarily have to be non-officials. The argument that the non-official members of the legislature would be men without administrative or official experience and that the efficiency of the administration must suffer by the substitution of amateurs for expert officials is an old one, and, whatever force there may be in the argument, it has nowhere been allowed to prevail against the adoption of a system of parliamentary government which means everywhere government by politicians who are administrative amateurs assisted by an expert bureaucracy.

The method of appointment of the ministry under a system of responsibility even in a limited sphere must follow the lines of the cabinet system which has been adopted in England. This would imply the appointment of the Prime Minister by the Viceroy himself and of the other ministers by the Viceroy in accordance with the advice of the Prime Minister, the subordination of the other ministers to the Prime Minister and the principle of joint responsibility of the ministry to the legislature. These remarks must be taken subject to certain important

qualifications during the transitional stage regarding the subjects of defence and foreign and political affairs. Two alternative courses are open with regard to the management of these two portfolios during the transition period of dyarchy. One is to leave them, as they are, in the hands of the Commander-in-Chief and the Viceroy respectively. The other and the better course which would pave the way for complete responsible government is to entrust the portfolios to non-official Indian members of the executive council to be appointed by the Viceroy and responsible to him, in the same way as the members of the executive council in charge of reserved subjects in the provincial governments are now appointed and responsible. These two important subjects may continue to be reserved, but should be held by other hands. There is abundant need and justification for this interim reform. The Viceroy's work is so heavy and multifarious that it is not possible for him to pay the same attention to any particular portfolio that a member in charge of it can give. The result must be, as very widely believed, that the secretaries in charge of the foreign and political affairs are practically all in all in their respective departments. It is not suggested that the papers do not ultimately go to the Viceroy for his perusal and approval of the action proposed. But it would be more satisfactory if non-official members, preferably Indians, were appointed to be in charge of political and foreign affairs, so that the papers might be examined not merely from the point of view of the departmental secretariat, but also from that of a fresh and less hide-bound mind. While this system would

undoubtedly be preferable and in the true line of constitutional development, it would probably be not acceptable to the Indian Princes who cherish the belief (or the delusion) that the Viceroy has the time to bring an independent mind to bear upon a study of their cases.

Even apart from the development of constitutional reforms in the direction of responsible government, a strong case can be made out for entrusting the portfolio of defence in the executive council to a non-official Indian member. The question has in fact been considered irrespectively of the constitutional reforms.

The Indian Army Commission of 1879 which was presided over by Sir Ashley Eden examined among other things the position of the Commander-in-Chief as a member of the Government of India. In the opinion of the majority of the Commission, the position of the Commander-in-Chief as a member of the executive council was one without precedent in the organization of any European government or army. It was contrary to one of the most essential and salutary principles of sound administration, and the common instinct and experience of all administrations, whether representative or despotic, had everywhere rejected it. They said that the evidence of Indian experience was from the positive point of view opposed to the Indian anomaly, even more strongly than the accepted principles and practice of European countries were opposed to it from the negative point of view. The Commission were in favour of removing the Commander-in-Chief from the executive council. They pointed out among

other evils the inability of the Commander-in-Chief to maintain continuous personal contact with the whole army and be in his place in the council at the same time. They relied upon the opinions of Lord Sandhurst, Sir Charles Trevelyan, Sir Henry Durand and Sir Charles Napier. They recommended that the relative positions of the Government of India and the Commander-in-Chief should be the same as those of the Secretary of State for War and the Commander-in-Chief in England. Lord Lytton, when Governor-General, took the same view as the Eden Commission as to the undesirability of the Commander-in-Chief being a member of the council. The Esher Committee, which reported on the army in India, disapproved of the proposal to establish in India a civilian member of the executive council responsible for the army and an army council with collective responsibility as unsuited to Indian requirements at the time of their report. The reasons given by the committee for their opinion were both meagre and feeble. Though their attention was drawn to the importance of framing their proposals with reference to the gradual approach of the Government of India to a Dominion status, they felt themselves obliged to base their recommendations upon existing facts and held that the army administration in India must conform to the principles laid down by the statutes upon which the Government of India is based. The only other reason given by the Committee is that there is no close resemblance between the principles which are applied to army administration in England, governed as it is under democratic parliamentary institutions, and the conditions that obtain in India

where the government remains of a bureaucratic character with such parliamentary checks as are found to be possible. They went further and said that there was no analogy between the Government of India and that of any European country. The fallacy of this reasoning is obvious. While it is necessary under a system of responsible government to have at the head of the army administration a minister who is responsible to parliament, the absence of responsible government furnishes no argument against the adoption of the same system. The system of army administration now obtaining in England has been reached after numerous experiments as the result of a long process of muddling and evolution. The final voice in the army administration in any civilized government must rest with the civil power. The substitution of a civilian member of the council, assisted by an army council, for the Commander-in-Chief in the executive government is the symbol of the supremacy of the civil power and is the only system compatible with responsible government. My proposal for the introduction of this system would have an immense advantage over the present system, even though the portfolio of defence may continue to be reserved. The change proposed would be the best method of training the civilian legislator for responsibility for defence. It would give him an insight into the problems of defence and the methods of army administration in a manner that the existing system can never hope to accomplish, for however long a period it might be continued. It might perhaps be urged that the civilian Indian in this country has no knowledge of military adminis-

tration and that it would be disastrous to remove the expert Commander-in-Chief from the council ; but this argument can only impose upon those who have no acquaintance with actual conditions in England. As observed by Sir William Anson ; "The Secretary of State for War is certainly not selected for that office by the Prime Minister because of his military experience or scientific attainment. Aptitude for debate and a reputation for business capacity are the essentials. Anything more than this must be a matter of chance. Nor has the minister thus burdened with novel duties the power of giving his exclusive attention to them. He is a member of parliament, generally of the House of Commons, and then he has a constituency to please. As a member of the Cabinet he must attend to the political questions of the day, and may be called upon to support his colleagues in debate."<sup>1</sup>

Another great advantage of the proposal to entrust the portfolio to a civilian member is that it will be much easier for him to obtain the necessary grants for military expenditure from the Assembly than for a military expert. As regards the English House of Commons, Sir William Anson observed that there could be no doubt that the House was more ready to grant the sums demanded when the demand was made by a civilian after passing the criticism of the Treasury and the Cabinet, than it would be if the demand were made by a military expert who might be supposed to think no money

<sup>1</sup> Anson's *Law and Custom of the Constitution* (third edition), vol. ii, part ii, p. 201. See also Ramsay Muir's *Peers and Bureaucrats*, pp. 12 to 14.

ill-spent which was spent on his department.<sup>1</sup> The report of the Esher Committee admits that the Commander-in-Chief has an intolerable burden of work in the way of inspection, in the way of organization and in the way of supervision and, notwithstanding all their pious dicta upon the merits of concentration of authority in the hands of a single individual, they say that he must be largely relieved, in military matters by delegation and in civil matters altogether. They say that there is no sound and valid reason why his signature should be obtained to despatches from the Government of India upon questions which have no military significance or importance, or why he should be required to study and record his opinions on cases which relate exclusively to the civil administration. They recommended that the Commander-in-Chief should be excused attendance at the executive and legislative councils, except when the business under discussion affected military interests. Then again, it may be urged that the constitution of an army council on the same basis as in England would involve the abolition of the post of Commander-in-Chief. Whether it should or should not, and whether the General Staff could take his place or not are matters of comparative detail which could be investigated after the principle is decided upon and which must be decided with the help of expert knowledge.

Whether the portfolio of defence is entrusted to a non-official Indian member as advocated above or not, it is desirable to introduce certain changes in

<sup>1</sup> Anson's *Law and Custom of the Constitution* (third edition), vol. ii, part ii, p. 209.



the budget procedure of the central government. Under section 67 (a), the proposals of the Governor-General in Council with regard to the expenditure under the political or the defence head are not submitted to the vote of the Legislative Assembly. It seems to me that, subject to a power of restoration to be vested in the Governor-General in Council, the proposals for expenditure under these heads should also be submitted to the votes of the Assembly. The procedure suggested is analogous to that which is prescribed by the statute with regard to the proposals for expenditure on reserved subjects in the provincial legislatures. This change in the procedure need not give rise to any apprehension of danger in the shape of refusal or reduction of grants, more especially as a safeguard is provided against any unreasonable exercise of discretion by the Assembly. If there is any attitude of hostility to military expenditure, it is partly due to the failure of the Government to enunciate and carry out a liberal policy of Indianization of the army with a view to enable India to fulfil the condition of self-government. It is also due in part to ignorance or misconception regarding the conditions and requirements of the problem of defence which again must be attributed to the omission of the Government and the military authorities to familiarize the members of the legislature and the public with these matters. Neither the Government nor the military authorities would have any incentive to enlighten the public on these subjects and enable them to form correct opinions, unless and until the army estimates are placed on the votes of the Assembly. No

difficulty has been experienced by the finance ministers of the Government of India in persuading the standing finance committee of the Assembly to agree to proposals for expenditure when they are properly explained to the members. This experience justifies the belief that the Government may look with confidence to the support of the Assembly for all reasonable proposals for expenditure on reserved subjects. The advantage of this change of procedure is that it would be of great educative value to the members of the Assembly and would pave the way for the eventual transfer of responsibility to the legislature.

An alternative course which has been suggested is that a certain minimum of annual expenditure which should be non-votable should be fixed for a term of years by statute and that any demand in excess of such amount should be placed upon the votes. I do not believe that this device will work satisfactorily. There will always be a temptation to stretch the expenditure to the minimum limit and no incentive to economy below the limit. Moreover, unless the details of the expenditure up to the minimum were put into a separate non-votable compartment, it would not prevent the Assembly from cutting out what the executive might consider an essential item, so long as the Assembly took care not to reduce the total grant below the fixed minimum. It would therefore be still necessary from the point of view of the Government to provide for a power of restoration by the Governor-General in Council. On the other hand, the inclusion of certain items in a non-votable compartment will prevent the

Assembly from excising any objectionable items. So long as the subject of military expenditure is not placed upon the votes, there will be no opportunity for the cultivation of a sense of responsibility by the Assembly. The submission of military expenditure to the scrutiny and votes of the legislature will have the further advantage of ensuring a more careful preparation of their proposals by the military authorities with due regard to economy.

The salaries of the ministers and members should be equal *inter se* as in England and should be higher than those of the ministers in the provincial governments. For the purpose of attracting the best talents in the country and also enabling the ministers to maintain their social position, it would not be right to reduce the salary of the ministers below Rs. 6,000 per mensem, which is the salary of the Chief Justice of Bengal, and is somewhat higher than the present salary of the members of the executive council in the provinces.

Another question which may give rise to difficulties in the introduction of responsibility in the central legislature is the treatment to be accorded to the backward provinces. By backward provinces I mean those which are not yet fit for any form of provincial autonomy. It was considered by the authors of the Montagu-Chelmsford Report that typically backward tracts should be excluded from the jurisdiction of the reformed provincial governments and administered by the head of the province. This course seems to me on the whole to be the best to take with reference to them. The ultimate responsibility

for the administration of these provinces should be entrusted to the Viceroy in his capacity as the representative of the Imperial Parliament. A similar course has been adopted in South Africa, where the Governor-General in his capacity as High Commissioner looks after the interests of the native inhabitants of backward areas.

A problem of considerable importance in connection with the proposals for the introduction of responsibility in the central government is the position of the all-India services to which recruitment is made by the Secretary of State for India in Council. Two questions will arise in connection with these services, (1) in regard to the protection of the vested interests of the existing members of these services and (2) in regard to the future recruitment to these services. There will be no difference of opinion regarding the necessity for the protection of the rights of the members of the services who are in employment at the time when responsibility is introduced. The provisions for this purpose can be easily inserted in any statute which may be passed for the revision of the constitution. The more difficult question will be whether during the transition period recruitment for these services should be partly made in England and, if so, by whom and under whose authority. The extent to which recruitment should be made from England must be left to the determination of the Government of India. If, however, it is considered necessary that for some time to come there should be an assured percentage of recruitment from England, it may be laid down by rules under the statute for the revision

of the Government of India Act. Though such a provision may look anomalous, it is a necessary result of the present transition stage and is one of several anomalies which will have to be endured for some time as incidental to the dyarchy stage of the central government. The High Commissioner for India in England should be the agent of the Government of India for recruiting in England and the covenants of the recruits should be entered into with the Government of India and not with the Secretary of State.

## CHAPTER X

### JUDICIAL APPEALS AND THE COUNCIL OF INDIA

Another question of importance relates to the necessity or otherwise of the establishment of a central supreme court for India. This question has been raised in the Indian Legislative Assembly from time to time by Sir Hari Singh Gour. There was a full debate in the Assembly in 1925 upon his resolution for the establishment of a supreme court for all India and his proposal was rejected by a very large majority. The Assembly was not convinced of the urgency for the institution of a supreme court for the whole of India or for any change in the existing practice, under which appeals from the High Courts in India lie to the Judicial Committee of the Privy Council. One argument in support of the resolution was that every self-governing colony had established a supreme court and that India as an aspirant to the self-governing status should also be equipped with a supreme court for the whole country.

- It may be stated in answer to this argument that, as India has not yet acquired the status of a self-governing dominion, it is not at present necessary to provide her with a part of the paraphernalia of responsible government. This reply, however, is not a satisfactory disposal of the issue. As we are now considering the changes which would be necessary on the introduction of responsible government, it is pertinent to enquire whether a supreme court in the country is a necessary part of the

machinery of responsible government. The mere fact that such a court has been established in the self-governing dominions is no conclusive proof of the necessity for such an institution under a self-governing regime. If it were necessary to bring about a severance of India's political connection with the British Empire, the establishment of a supreme court for the whole country would be indispensable. In any country in which there are a number of High Courts in existence for different provinces, a central supreme court would be necessary for the purpose of settling conflicts between the decisions of the courts and securing uniformity of laws. The case of the United States of America, which is an absolutely independent country without any organic connection with any other government, is not in point. The practice of the self-governing colonies of the British Empire is more pertinent, but not conclusive. If Canada and Australia had not established a Supreme Court or a High Court, the Judicial Committee of the Privy Council would have had full jurisdiction to entertain appeals from the decisions of the High Court or the Supreme Court and, even after the establishment of a supreme court of appeal in these colonies, the jurisdiction of the Judicial Committee of the Privy Council can still be exercised in certain classes of cases. Whatever need may have been felt in these colonies for the establishment of a supreme court, it is not a necessary or unavoidable consequence of the adoption of the federal system of government. But the system of government in this country is of the unitary type and there is no strong reason for changing

it, at any rate, until the problem of co-ordination of the Indian states is shown to require a federal constitution. The real issue therefore is whether there is any immediate need for the abandonment of the existing machinery and for the creation of a central supreme court in this country. It may be admitted that there might be a sentimental satisfaction in having a supreme court in India itself. But is there any more solid ground for a change in the machinery of judicial appeals? If the need should be felt at any time after the introduction of responsible government, there would be no impediment in the way of the creation of such a court and no serious opposition is likely to be offered by the Imperial Government. The British North America Act of 1867 provided in section 101 that "the Parliament of Canada may from time to time provide for the constitution, maintenance and organization of a General Court of Appeal for Canada". But the Supreme Court of Canada was constituted only in 1878. Power should be similarly taken under the revised constitution to establish a supreme court in the country, as and when necessary.

Let us now proceed to consider the other arguments which have been brought forward in support of the proposal for the establishment of a supreme court. It was urged by Sir Hari Singh Gour that under the present constitution a number of questions relating to the constitution are decided by the executive government which should be disposed of by the courts. As instances, he mentions questions like the following : what subjects should be regarded as provincial, transferred or reserved, what demands are votable or not votable and what power



the Assembly has over the military budget. These questions are reserved by the very terms of our constitution for decision by the central government itself, and there can therefore be no appeal against such decision to the courts. There is no principle of legislative policy that the settlement of all questions of doubt with regard to the scope of the rules should be invariably left to the courts. It would often be more advantageous to the public interest to prevent litigation by a decision of the executive government. In the cases mentioned by Dr. Gour the legislature has deliberately and, in my opinion rightly, decided to vest the power of resolving doubts in the executive. The example of America is a warning to profit by, rather than a model to be followed. It appears to me far more expedient that the doubt should be settled by the central government rather than by the courts. I am strongly of opinion that all disputes as to their constitutional powers between the central and the local governments and between one local government and another should, as far as possible, be settled by the central government, rather than by the courts. I am supported in this view by the opinion of the minority of the Reforms Enquiry Committee of 1924.<sup>1</sup> It is however quite possible to take the view that in a dispute between the central government and a provincial government, the central government would not be really impartial, and that such disputes should be referred to a judicial tribunal.

One argument brought forward by Dr. Gour is

<sup>1</sup> *Report of the Reforms Enquiry Committee (1924)*, p. 170.

that the Judicial Committee is not disposed to countenance appeals in criminal cases from the decisions of the high courts and that it is necessary to establish a supreme court in India for the purpose of allowing appeals in criminal cases from the high courts. The principle which underlies the administration of criminal justice is that it should be speedy, if it is to have any moral effect upon society. There is therefore a necessity to place a limitation upon the right of appeal and one appeal is generally allowed by the Criminal Procedure Code in all important cases. To allow a further unrestricted appeal to the Privy Council would lead to an intolerable delay in the administration of criminal justice. The Judicial Committee of the Privy Council have therefore laid down for themselves the rule that they ought not to interfere, except when there has been such a disregard or violation of fundamental rules of procedure that the accused must have been prejudiced. The delays in the administration of criminal justice in America are a blot upon the judicial system of the United States and the case of Sacco and Vanzetti is one of the most recent illustrations of this • unfortunate defect in the American system.

Another argument advanced by Dr. Gour is that the decisions of the Privy Council are not so sound as they used to be, and that the confidence of the public and the profession has been shaken. That there has been a certain amount of deterioration in the quality of the judgments of the Privy Council in recent years may be admitted. But, we may very well ask whether there has not been an even greater deterioration in the quality of the judgments of the

high courts in India. One may go even further and observe that there has been an equally perceptible and marked deterioration in the bar. I do not wish to indulge in any laudation of times past, but I am only expressing the opinion of many competent and impartial observers, when I say that there has been a marked falling off for the time being in the number of great lawyers as well as judges in this country. Without in any way questioning the judicial capacity or legal acumen of our countrymen, one may remark that we do not at present possess in the bar or on the bench, lawyers of the same outstanding ability, learning, culture and breadth of outlook as the best of the English judges who have risen to membership of the Judicial Committee. The fact that members of the Judicial Committee have to deal with numerous and varied systems of law obtaining in the different possessions of the British Empire is bound to give them a much wider outlook than the conditions under which our judges have to work. The arguments in favour of the constitution of a supreme court based on delay or expense are not entitled to much weight. The Judicial Committee is not responsible for the delay; it is rather the preparation of the record in this country that is responsible for it. There is nearly as much delay in the disposal of heavy cases by the courts in India. In view of the enormous rise in the scale of fees charged by eminent members of the legal profession in India, it is idle to hope that the cost of carrying an appeal to a supreme court in India will be much less than that of an appeal to the Judicial Committee. It may, of course, be said that

though the expenditure incurred on appeals in this country may be equally heavy, the money goes into the pockets of Indians and is so far a gain. But this is no consolation to the unfortunate suitor who has to find the money and his point of view is the one which is entitled to primary consideration.

The cost to the state involved in the establishment of a supreme court of appeal in this country is not altogether a negligible factor. The conclusion to which one is led upon a consideration of all the arguments which have been advanced is that there is no necessity just at present for a change in the machinery of judicial appeals and that responsible government does not necessarily involve the establishment of a supreme court in the country.

I shall now proceed to consider the relations of the Secretary of State in Council to the Government of India. The institution of the Council of India is a vestige of the days when the affairs of the East India Company were managed by the Court of Directors. The functions of the Board of Control were really exercised by the President of the Board and the Secretary of State for India now exercises the powers which used to be exercised by the President. The duties of the Council of India are laid down in the Government of India Act. They have to conduct the business transacted in the United Kingdom in relation to the Government of India under the direction of the Secretary of State. In one or two respects, the Council of India have certain independent powers which may be, but are never, used to thwart the wishes of the Secretary of State. They have a right of financial veto which is preserved in the Act of

1919. No grant or appropriation of any part of the revenues or of any property coming into the possession of the Secretary of State can be made without the concurrence of a majority of votes at a meeting of the India Council. The concurrence of a majority of votes of the Council is also required to sell, mortgage, or buy property. In actual practice, however, the independence of the Council is practically nil. They are said to have always acknowledged the supremacy of the Imperial Cabinet by accepting proposals communicated to them as decisions of the ministry, in so far as these proposals raised issues which they are by law entitled to decide.<sup>1</sup> The members of the Council are in truth only an advisory body whose services may be utilized by the Secretary of State, when and to such extent as he thinks fit. In urgent cases of a non-secret character, the Secretary of State may issue orders without consulting his Council and he is only required to communicate them subsequently to the Council. In secret matters such as those relating to questions of peace and war and negotiations with Indian States or foreign powers and answers to the despatches of the Government of India, which the Indian authorities have marked secret, the Secretary of State is not required either to consult or even to inform his Council. The members are intended by the Act to supply the Secretary of State with expert advice or assist him with their knowledge and experience of Indian administration. The extent to which the Council is able to exercise any beneficial

<sup>1</sup> Report of the Crewe Committee on the Home Administration of Indian Affairs (1919), para 12.

influence on the Secretary of State is a matter which must be left to conjecture, and the popular impression confirmed by what one hears from former members of the India Council is that their influence for good is nil. It is no wonder that there has been a long-standing demand by the Indian public for the abolition of the Council of India, due to the belief that their influence is reactionary and is generally exercised against all proposals for liberal measures.

The abolition of the India Council will do no harm to any interests except those of the high European officials who after retirement from service in India look forward to membership of the council as a pleasant sinecure with *otium cum dignitate*. The verses of Thomas Love Peacock about the India Office quoted by Sir Malcolm Seton<sup>1</sup> are not too gross a caricature of the day's task of the members of the council at the present time :—

“Eleven to noon, think you have come too soon.  
 Twelve to one, wonder what's to be done.  
 One to two, find nothing to do.  
 Two to three, begin to see.  
 'T will be a great bore to stay till four !”

- The Government of India have also felt themselves hampered by the interference of the India Office. In matters even of detail, as observed by Sir Malcolm Seton in his recent book on the India Office, the Government of India might often find it difficult to be sure which is really the strangling strand in the triple cord of the India Office, the Secretary of State, the Council or the permanent officials. At the time when the Montagu-Chelms-

<sup>1</sup> *The India Office* by Sir Malcolm Seton, p. 278.

ford proposals were under the consideration of the Imperial Government, a committee was appointed under the chairmanship of the Marquess of Crewe to advise what changes should be made in the Home administration of Indian affairs and in the relations between the Secretary of State or the Secretary of State in Council and the Government of India. The majority of the Committee were of opinion that in so far as the new co-operation between the Government of India and the representatives of the people found effective representation and in so far as obstacles to further expansion of reforms were removed by a wide delegation of powers from home, the case for expert control broke down. They recommended that, to mark the disappearance of official control from the expert standpoint at home and to establish the undivided responsibility to Parliament of the Secretary of State, the powers vested in the Secretary of State in Council should be transferred to the Secretary of State. But the Crewe Committee went on to recommend the creation of a merely advisory body in place of the India Council. Sir James Brunyate, who was a member of the Council of India, and a member of the Crewe Committee, dissented from this view. He thought that the demand for the abolition of the Council derived its real strength from those who saw in it a pledge of the Secretary of State's early withdrawal from the exercise of his statutory function of control. He was of opinion that, at least as long as the Government of India remained on a bureaucratic basis, the continued influence of the Secretary of State as a corrective and educative

factor was required during the period of probation and political education. Professor Keith, another member of the Committee, was opposed to the continuance of the Council of India and also to the substitution of a permanent statutory advisory committee. He pointed out that it was not the duty of the Secretary of State to do over again the work of the Government of India and that such expert advice as might be necessary could be obtained from the permanent staff of the India Office and the disappearance of the Council would put an end to the tendency of the Council to move the Secretary of State to over-rule the Government of India in minor matters. In the absence of a permanent body like the Council of India naturally anxious to prove its utility by suggesting improvements on the proposals of the Government of India, it would become the rule for the Secretary of State to refrain from interference, except when he was satisfied that some real principle was involved. As regards the duty of safeguarding Indian interests in financial matters, he thought that it should be laid upon the Government of India and the Legislative Assembly and not upon persons owing their appointments to the Secretary of State, and sitting in London and debating in strict secrecy. When the report came up for consideration before the Joint Select Committee on the Government of India Bill, they decided against the abolition of the Council of India. They were of opinion that, at any rate, for some time to come, it would be absolutely necessary that the Secretary of State should be advised by persons of Indian experience. The divergence between the



theory and the working of the India Office has been well described by the Esher Committee. "The relations between the India Office and the Government of India are presumably based upon the importance of keeping the control of Parliament, as far as possible, intact over Indian expenditure. The theory, sound in itself in view of the bureaucratic form of government in India, has proved to be illusory in practice. The business of Parliament is too great and too complex to enable any effective control to be exercised by the House of Commons over Indian expenditure. In practice, therefore, the control of the India Office has been merely the control of one bureaucracy over another."<sup>1</sup> Nine years have elapsed since the Joint Select Committee made its report and experience of the manner in which the Secretary of State has interfered in Indian affairs does not support the case for the retention of the India Council. This would be our conclusion, even if no further steps were taken in the direction of constitutional advance. But, if responsibility is to be introduced in the sphere of the central government also, the case for the retention of the India Council loses whatever force it might be supposed to have had. It is true that no demand has been made for the complete transfer of responsibility over the whole field of the central government and that the advocates of reform admit the necessity for the reservation of certain subjects for a strictly limited period of time. But the occasions for the interference of the Secretary of State are bound to grow

<sup>1</sup> *Report of the Esher Committee on the Army in India (1919)*, p. 5.

less and less and the necessity for stiffening the reactionary attitude of the Secretary of State must disappear. As pointed out by Professor Keith, any expert advice which may be required in the matter of defence or in foreign affairs can be procured by the Secretary of State either from his own permanent staff, or from other sources like the Foreign Office or the War Office. The Secretary of State must acquire the habit of considering himself the champion of the interests of India and must look primarily to the Government of India for his brief.

## CHAPTER XI

### THE INDIAN STATES

The problem of the relations of British India with the Indian States is one of those which have been pointed out as requiring a considered solution, before we can aspire to the status of the self-governing dominions. It is undoubtedly one of great complexity and difficulty and is one of the most interesting, if not *the* most interesting, of the problems which we shall have seriously to face. From the point of view of the British Indian advocates for reform, the problem is not one of immediate urgency. The demands that have been so far made for a transfer of responsibility in the central government to popular control do not include the management of political and foreign affairs. It is safe to predict that no such transfer will take place at the next revision of the constitution and that it is likely to take not less than a decade before any such transfer will take place.

But though the problem can afford to wait for some time from our point of view, it has evidently been deeply stirring the minds of the Indian Princes. They seem to have been greatly perturbed by the prospect of responsibility in the central government of British India, and they have been pressing for an examination by a Royal Commission or other expert body of their position under the existing constitution and for the protection of their rights and privileges against encroachment by a responsible government in British India. They have

also been asking for the provision of some machinery by means of which they can be brought into closer association with the Government of India and they may have some voice in the determination of questions of an all-India character, likely to affect their own interests. It has been recently announced that the Government of India intend to appoint an expert committee for the purpose of investigating the relations between the Government of India and the Indian States.<sup>1</sup> It is therefore necessary that the people of British India should also address themselves to this problem without loss of time, so that no decision may be taken which will affect or prejudice the interests of British India. I approach this problem with due diffidence and a full sense of the responsibility involved in dealing with a subject of such gravity and complexity.

That the Princes should have felt some amount of uneasiness as to the way in which their rights under the treaties have been dealt with by the Government of India acting under the British Crown is natural and intelligible; but their apprehension that their rights and privileges would be less secure under a responsible government in British India is not so well-founded or easy to understand. Whatever encroachments on their rights and privileges there may have been in the past have been made not by the people of British India or any government responsible to them, but by the irresponsible and bureaucratic Government of India. If their rights have been ground down and become attenuated, it

<sup>1</sup> The Committee has since been appointed with Sir Harcourt Butler as Chairman.

is due to the British steam-roller driven by the Political Department of the Government of India under the orders of successive Viceroys. There is no reason why the Ruling Princes should be more distrustful of their own countrymen, than of the British bureaucracy, or why a self-governing British India should be less scrupulous in the observance of engagements or less sympathetic towards the Indian States than the British Government. The people of British India belong to the same race as the Ruling Princes and do not look down upon the Princes with that feeling of racial superiority and arrogance with which many a Resident or Political Secretary treats the Indian Princes. I would invite their attention to the following passage from Chailley's *Problems of British India* about the political officers :—

“The political officers who reside at their courts are in truth (I reproduce here native opinion which contains a material part but only a part of the truth) their masters. This may not be true in the case of the Nizam who has eleven million subjects, nor perhaps in the State of Mysore with its five millions ; the opposition of rulers of this calibre might be inconvenient and they consequently escape from the annoying control of the political despot. But elsewhere the attitude of the political officer while ordinarily deferential in form (though even that is sometimes lacking) is the attitude of a servant who directs his nominal master, haughty, polite, impertinent and ironical. And what, say the observers I am quoting, are these political officers save spies whose words will be believed by the English in the face of

all outside denial. Once they have pronounced judgment on any matter, how can the Chief appeal against it, save by the difficult and exceptional method of a letter to the Viceroy or a complaint to the Government? And the peoples of the states are not deceived. They know their rulers are thus subject to masters and their attitude takes colour from this."<sup>1</sup>

Speaking of the Amir of Afghanistan, a more powerful and independent potentate than any of the Princes in India, Sir James Stephen, who was a member of the Viceroy's Cabinet, wrote that Chiefs like the Amir of Afghanistan must be dealt with on the understanding that they occupy a distinctly inferior position. I would also refer them to a passage in Syke's *Life of Sir Mortimer Durand* which shows that between the Foreign Secretary and Lord Dufferin the Amir was spoken of as "a strange strong creature." The people of India are proud of the achievements of the Ruling Princes whenever they have distinguished themselves by good administration, and they feel sorrow and humiliation when the misrule of a Chief is such as to call for the intervention of the paramount power. Which Indian has not felt a pride in the successful administration of Mysore which, under the rule of its sagacious and level-headed Maharaja, has fully maintained the standards of British administration and demonstrated the fitness and capacity of Indians to uphold efficiency of administration? Which Indian again has not felt a glow of pride in the performances of the Maharajah of Bikaner

<sup>1</sup> Chailley's *Problems of British India*, p. 259.

at the Imperial Conferences during and after the war when he came to the notice of the general public throughout India? India was fortunate in having as her spokesman such a distinguished statesman and orator as the Maharajah of Bikaner. The apprehensions of the Indian Princes will perhaps become intelligible, if we remember the attitude of the members of the Holy Alliance in the last century towards the nascent democracy of Europe.

None of us would venture to say that the day of the Indian States is past. They have still a great purpose to serve and a high destiny to fulfil in the polity of India. They have served in the past as nurseries of Indian statesmen when Indian talent could find no scope for high employment in British India. The Princes have opportunities for introducing measures of social, economic and political reform which are not open to a foreign government, so long as it is irresponsible. It would be idle to pretend that there have not been cases where the Indian Princes have failed to come up to the expectations of their countrymen; but we should be generous in our judgment of them, for it is largely due to their training, surroundings and conditions of treatment. Enemies of political reform in British India like Lord Sydenham exploit the differences of view between the Indian politicians and the Indian Princes in the interests, of course, of the India which they love better than any Indian.

There are two classes of questions which arise out of the relations between the Indian States and the British Government. One class relates to matters which may be called the domestic or personal

concerns of the states or their rulers. Another class relates to matters of common concern between British India and the Indian States in which the states may be indirectly affected by action taken by the Government or the legislature of British India. What precise schemes or proposals have been put forward by the Princes we have no definite means of knowing. We can only make a conjecture from the discussions in the press and especially the press in the Indian States.

Before discussing the various devices which have been put forward in different quarters for dealing with the two classes of questions referred to, it is desirable to form a clear idea of the existing position of the Indian States and their present relations to the paramount power. The Indian States are about 600 in number and their area and population are about one-third and one-fourth respectively of that of the whole of India. They comprise states of varying degrees of internal sovereignty descending from the premier state of Hyderabad to the petty principalities of Kathiawar. They include states with which the Government entered into treaties as allies on a footing of equality. They include states who owe their status, if not existence, to ~~sanads~~ grants granted by the paramount power. They include also the petty states of Kathiawar, the rulers of which do not possess even full powers of administration of justice and some of which are said to be only fifty acres in extent. There are also many diversities in the social and economic conditions of these states and varying degrees of administrative efficiency, educational progress and political develop-



ment. As pointed out in the Montagu-Chelmsford Report, they are in all stages of development, patriarchal, feudal, or more advanced, while in a few states are found the beginnings of representative institutions. The characteristic feature of nearly all of them, however, including many advanced states is the personal rule of the Prince and his control over legislation and the administration of justice. There are also certain other features which are common to all the Indian States. They have all parted with their external sovereignty. The paramount power exercises exclusive control over the relations of the states not merely with foreign powers, but also with other states in India. They are all required to co-operate in the task of resisting foreign aggression and maintaining internal order. . . Whether the duty of co-operation in matters of defence could in accordance with treaties and engagements be legally imposed upon a few of the more important states like Hyderabad or Indore, may admit of considerable doubt. In many of the treaties which have been entered into by the British Government with the states, there is an obligation not to interfere with their rights of internal sovereignty. But, owing to a variety of causes, owing to the changes of conditions brought about in the course of time by the necessity for the adaptation of the old relations to new circumstances and by the process of logical deductions from the treaties and interpretations thereof, a tradition has been established of interfering in the internal affairs of the states in certain classes of cases. Whether such interference is right or wrong in particular instances, the policy has become

well established, and it cannot be said that the interference is not justifiable in certain classes of cases in the interests of the subjects of the states or of the country at large. It was observed by Lord Chelmsford :—

“There is no doubt that with the growth of new conditions and the unification of India under the British power, political doctrines have constantly developed. In the case of extra-territorial jurisdiction, railway and telegraph construction, limitation of armaments, coinage, currency and opium policy and the administration of cantonments—to give some of the more salient instances—the relations between the states and the Home Government have been changed. The change however has come about in the interests of India as a whole. We cannot deny however that the treaty position has been affected and that a body of usages, in some cases arbitrary but always benevolent, has come into being.”<sup>1</sup>

Though the princes contend with considerable force of logic that their treaties should be enforced in the letter, and not in the light of subsequent practice, precedent or usage, it is too late in the day to go back upon the relations which have been now established and revert to the conditions existing at the time of the treaties. The relations now established between the paramount power and the protected states have been laid down clearly and authoritatively by Lord Reading in his final reply to the ruler of the Hyderabad state, on the contro-

<sup>1</sup> *Lord Chelmsford's Speeches*, vol. ii, p. 278.

versy about the retrocession of the Berars.<sup>1</sup> The principles laid down by Lord Reading must command general approval with the exception of the corollary "that no succession to a musnud is valid, unless it is recognized by the King-Emperor". That in cases of disputed succession the British Government is the arbiter must be conceded. But the proposition that the recognition of the paramount power is necessary to a valid title is quite different. The principles laid down are :—

1. The sovereignty of the British Crown is supreme in India and therefore no ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. The supremacy is not based only upon treaties and engagements, but exists independently of them and quite apart from its prerogative in matters relating to foreign powers and policies.

2. It is the right and duty of the British Government while scrupulously respecting all treaties and engagements with the Indian States to preserve peace and good order throughout India.

The corollaries from this principle are :—

(a) No succession to the musnud is valid, unless it is recognized by the King-Emperor, and the British Government is the only arbiter in cases of disputed succession.

(b) The right of the British Government to intervene in the internal affairs of Indian States, though it is not exercised without grave reason. The internal and external security of the ruling

<sup>1</sup> *Gazette of India* (Extraordinary), April 5, 1926.

princes is due to the protecting power of the British Government, and where Imperial interests are concerned, or the general welfare of the people of a state is seriously and grievously affected by the action of its government, the paramount power has the ultimate responsibility of taking remedial action, if necessary.

Our approval of the principle of intervention in limited cases must not blind us to the justice of the demands of the Indian princes for a re-examination of their position. The Government of India are, however, ready to examine the subject and codify the existing practice. Whether any such codification would be acceptable to the Indian princes, we do not know. They have a well-grounded fear that the codification may have the effect of merely stereotyping the existing practice.

Whether the codification is attempted or not, one thing which the princes should press for is the publication of that body of case-law to which reference is made in the Montagu-Chelmsford Report and by the Government of India from time to time in disposing of particular cases. Unfortunately this body of case-law has to be explored in the Government archives which are accessible only to the Political Department. It is a wonder why such a request has not been made by the princes and why the Government have not chosen to make this body of case-law accessible to the princes and the public. It is possible that such a publication may throw light upon some of the dark and ugly corners of the political department or into many ugly cupboards of the princes themselves. But unless there is some

overwhelming objection to such a publication, it is one of the things which the princes would do well to press for.

I have referred to the existing relations as laid down in authoritative terms by Lord Reading. I will now pass on to certain other features of the present position. The Chamber of Princes has been established as a consultative body for the purpose of providing an opportunity to the princes to express their views on subjects either affecting their order as a class, or affecting the states and British India. The princes are apparently not satisfied with the functions assigned to this body ; but let us see what the attitude of the more important princes themselves is towards any common organization for the protection of their rights.

Some of the more important ruling princes have hitherto kept aloof from attendance at the sessions of the Chamber of Princes. So far as we are aware, the rulers of Hyderabad, Mysore and Indore, not to speak of others, have never taken part in any of the sessions of that body. Their abstention may be due to a variety of causes. In the first place, the princes are so jealous of their status that they are afraid of being treated as equals among themselves. Some of them are not prepared to meet each other in the chamber on terms of apparent equality ; nor are they prepared to concede the principle of decision by a majority, which is at the basis not merely of democratic rule, but also of every corporate organization. They are afraid of the levelling tendency of any organization of this sort and object to the process of levelling up, as much as to the course of levelling

down. They are anxious that no decision which may be arrived at in the Chamber of Princes should be binding upon those who do not attend the sessions of the Chamber, nor even upon the members who attend the sessions, without subsequent ratification. Even in matters of common interest, some of them are anxious that they should be individually consulted by the Government of India and that they should have the right of access to the Viceroy directly for the purpose of making any representation. I have dwelt upon the attitude of the Indian princes towards the Chamber for the purpose of pointing out that, if the members are so anxious to preserve their individuality, that they refuse to be bound by the decisions even of a body composed of themselves only, the idea of anything like a federal organization in the real sense of the term is impossible. It will be seen later on from an examination of the proposals put forward by those interested in the Indian states that they really wish to get certain advantages out of British India without submitting themselves to anything like a common federal government.

Before proceeding to an examination of the various schemes which have been put forward for the purpose of giving the states a voice in the determination of questions of common concern, it is desirable to advert briefly to the important question of constitutional law which has been raised in this connection. The issue raised is whether the Indian states are in direct relation with the Government of India or with His Majesty's Government. It is contended that though the Indian princes now deal with the Governor-General in Council, it is only because he is the agent

and representative of His Majesty the King-Emperor, and not because he is the executive head of the Government of India. The theory of a *vinculum juris* between the Indian states or princes and the British sovereign otherwise than in his capacity of sovereign of British India has no basis in constitutional law. It is of course quite possible to distinguish between the Viceroy as the representative of the British Crown and of the Imperial Government and the Governor-General as the executive head of the Government of British India. The two capacities are at present merged in the same individual, and as the Government of India is now responsible to the Secretary of State and to Parliament, it is unnecessary to differentiate between the two capacities. But when responsible government is introduced, the distinction between the two capacities will emerge into notice. Such a distinction is not unknown to constitutional law, but as regards the question with whom the Indian princes have entered into treaties, it is not correct to say that the treaties were entered into with the Crown irrespective of the sovereignty of British India. The power of making treaties is a prerogative of the Crown. The treaties were entered into either with the East India Company in their sovereign capacity acting on behalf of the Crown, or the Governor-General in Council acting on behalf of the Crown. In either case the Crown acted not in a personal capacity or in the capacity of sovereign of England, but in the capacity of ruler of British India. The result is exactly what would have been the case, if the treaties had been entered into with the Moghul

Emperor of Delhi. It could not be urged that it was not competent to the Emperor to introduce a constitutional form of government in the territories directly under his rule. It is with reference to their many points of contact with the Government of India and their relations with the Government of India that the treaties with the states were concluded and they were entered into not with the Crown as representing the administration of some other part of the Empire like Jamaica or Canada or even England. If analogous conceptions may be suggested from the sphere of private law, the rights and obligations under the treaties are in the nature of covenants running with the land or predial servitudes. The treaties do not create a mere personal right or obligation, but impose obligations on the rulers for the time being of the Indian states in favour of the authorities for the time being in charge of the Government of India. Under the Government of India Act, the Indian Legislature has no right to legislate for the territories outside British India. But the Act contemplates the existence of political relations between the executive Government of India and the Indian states. The executive government of British India is fully empowered to transact business with the Indian states. One provision which clinches the matter beyond doubt is the provision in section 20, clause 2, according to which the revenues of India include all tributes in respect of any territories which would have been receivable by, or in the name of, the East India Company, if the Government of India Act of 1858 had not been passed. There is surely no



clearer proof of subordination to, or of the nexus with, the Government of India than the payment of tribute to the credit of the revenues of India.

Turning to the provisions of section 67 (2), clause (d), it will be seen that though it is not lawful without the previous sanction of the Governor-General to introduce at any meeting of the legislature any measure affecting the relations of the Government with foreign princes or states, such a measure would be competent, if the introduction was previously sanctioned by the Governor-General. The question may perhaps be raised whether Indian princes and Indian states can be brought under the term "Foreign Princes or states". Obviously they must be included within this expression, for they are foreign to British India. Otherwise, it would follow that while legislation affecting the relations of the Government of India with foreign princes or states is forbidden, the relations of the Government of India with Indian prince or states could be affected by measures introduced in the Indian legislature without the sanction of the Governor-General.

Turning to the section dealing with the budget, the provisions of section 67 A (3), sub-clause 5 show that the Government of India are empowered to incur political expenditure and that such expenditure is open to discussion by the legislature except at the time when the annual statement is under consideration. Similar remarks apply to the provisions of section 80 A (3), (d).

The contention that the sovereign of a country who enters into a treaty does so in his personal capacity and not as the sovereign of that country is too absurd

to be maintained in the twentieth century. Supposing the people of England chose to set up a republic in place of the constitutional monarchy, it cannot be contended that the treaties with the monarch would cease to be enforceable. Or again, let us suppose that the Queen of England was a despotic sovereign at the time of the treaties and she subsequently granted a parliamentary constitution to her people. Could it be said that the treaties would become unenforceable, because they were entered into with the Queen, or that she had no power to change the constitution of the country except at the risk of forfeiture of the benefits of treaties? Could it be said again that the treaties of Indian princes were entered into with the British Sovereign in his capacity as the sovereign of the United Kingdom divorced from his sovereignty over his Indian territories? The matters governed by the treaty relate to persons and things in India and arise out of the relations of the Princes with the sovereign of British India, and it would be an unthinkable constitutional absurdity that the right to enforce the treaties should vest not in the authorities for the time being charged with the administration of India, but in some other authority.<sup>1</sup>

<sup>1</sup> The view that I have taken here differs from that expressed by Professor A. B. Keith in his *Constitution, Administration and Laws of the British Empire*, pp. 259-61 and in his *Responsible Government in the Dominions* (revised edition), p. 807, footnote 2. I regret I am obliged to differ with such an eminent constitutionalist. But it seems to me that his view is based on a fundamental misconception of the nature of the treaties entered into between the Indian states and the Government of India. The crucial question is with whom were the treaties entered into by the Indian states. Was it with the British Crown as representing the paramount power in India or otherwise? If it was with the British Government, was there any undertaking, express or implied, not to introduce such

While the desirability of co-ordination between the Indian states and British India has often been talked about in the press and has often been referred to by publicists and high officials as one of the complicated problems calling for a solution, very few definite schemes have been publicly put forward, and beyond the loose talk of some form of federation, it is not possible to gather any clear ideas of the organization wanted by the princes or people of the states.<sup>1</sup> It is probably because their ideas are still in a very nebulous condition and have not yet assumed any shape or consistency. I must however admit a few exceptions to my remarks. Mr. Gundappa, the editor of *The Karnataka* of Bangalore, is one of the few publicists who have devoted attention to this subject and he has put forward and discussed in the pages of his journal<sup>2</sup> various proposals for co-ordination from the point of view of a patriotic subject of an Indian state.

One of the proposals discussed by him is that representatives of Indian states may be included in one or other of the chambers of the Indian legislature. This proposal is rejected by Mr. Gundappa

changes in the administration or constitution as might be required from time to time? It is not a case of transfer of rights or obligations by a party to a treaty but the case of a party to a treaty developing a constitutional government in the place of a bureaucratic system. There is no analogy between the present case and the hypothetical case of transferring the coloured races in Basutoland to the control of the South African Union which is suggested in the footnote on p. 807 of *Responsible Government in the Dominions*. Whatever may be the rights of the Indian states, it cannot be a legal impediment to the development of responsible government in British India.

<sup>1</sup> It is understood that some scheme has been submitted on behalf of the princes by Sir Leslie Scott to the Butler Committee. No authentic version has been published. Nor does it appear whether the scheme has received a final shape.

<sup>2</sup> A Draft Scheme of Federation published in *The Karnataka* for June 1926 (vol. xi, p. 279).

himself as impossible. Whatever may be the scheme of representation adopted, British India is bound to have an overwhelming majority of members and the states would be afraid of being swamped. At the most, the representatives of the Indian states should not exceed one-third of the strength of the chamber, if area were taken as the basis, and one-fourth if the population were taken. Moreover, if the principle of non-interference in the domestic affairs of British India is to be observed, the representatives of the states who may sit in either of the chambers must refrain from taking part in its deliberations, whenever they relate to subjects in which the states have no concern.

As pointed out by Mr. Gundappa, the representatives of the Indian states would be members of either chamber of the legislature not on the same footing as the British Indian members who are representatives of the people, but on the footing of representation of the different states as separate political entities. It would be anomalous to constitute any representative body on two such distinct principles, one set of members representing the people at large and another set of members representing particular states.

Another suggestion made by him is the expansion or the adaptation of the existing Chamber of Princes. This also is rejected by him on grounds not perhaps very satisfactory, but very illuminating. He points out that many a ruling prince would not be able to participate personally in the Chamber owing to the impropriety of his committing himself on his own individual responsibility to views and policies which

may not command the general approval of his subjects. He dwells also upon the inexpediency of a prince speaking and acting except upon the advice and through the instrumentality of his ministers and the insufficiency of his own information and experience as well as of his powers of debate. He thinks that the constitution of the Chamber of Princes is defective, inasmuch as a large number of ruling princes hold aloof from the Chamber.

Another proposal put forward is that of a zollverein. But this deals only with the question of tolls or transit duties and cannot possibly serve the purposes for which the princes are in quest of suitable machinery.

The next proposal which is put forward by Mr. Gundappa and which he favours is more elaborate, but even more objectionable than anything else from a constitutional point of view. He puts forward the idea of a separate assembly or chamber consisting of the representatives of the different states. He wants representation of the different states as political entities rather than of the princes. Evidently he approaches the question from the point of view of the people of the states rather than of the ruling princes. The scheme by which he seeks to co-ordinate this Assembly of Indian States with the Indian Legislature is this. The Governor-General in Council is to prepare a list of all-India subjects which are of interest to Indian states as well as to British India. The Assembly of States' representatives is to have powers of legislation, interpellation and resolution. The Governor-General in Council is also to prepare a schedule of

matters common to the Indian states only and in regard to these subjects, it will be competent to the members to put questions or pass resolutions. He proposes that the Governor-General may in his discretion permit either house of the central legislature in British India to consider resolutions requesting him to refer to the States Assembly any specific public grievance of a state or any general question pertaining to all the states for an expression of its opinion. This provision runs counter to the essential principle of mutual non-interference between the states and British India. With regard to subjects in the all-India list, Mr. Gundappa's proposals are that either the States Assembly or either house of the Indian Legislature may originate any bill, but after it has passed the committee stages in the originating chamber, it should be placed before the other body. It is unnecessary to enter into the details of Mr. Gundappa's proposals. It is sufficient to point out that, in leaving it to the Governor-General in Council to remove deadlocks by the interposition of his own certificate and by giving him various other powers, he is contravening the principle of responsible government. Moreover, he assumes that British India would be willing to have its legislation delayed, hindered or impeded by reference to this new body of state representatives.

One curious provision in Mr. Gundappa's scheme deserves notice as illustrating the evident disinclination of the ruling princes to conform the conduct of their administration to the decisions of any outside body, even if it be one composed of representatives of the states. The provisions I wish to refer to

are : "that notwithstanding the provision for a States Assembly, it should be competent to a state or ruling prince to make representation to the Government of India on any matter whatsoever separately and independently and that the Governor-General in Council should have power to take such action thereon as might seem to him fit and that the validity of such action should not be affected by any decision of the states institution." I do not know whether he realizes that on the introduction of responsible government, the Governor-General in Council would mean the responsible ministry. And, inconsistently enough, he suggests that, where the two bodies are unable to come to an agreement, the superior authority of the British Parliament should be available to settle the difficulty. This is a provision utterly incompatible with the principle of responsible government.

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## CHAPTER XII

### THE INDIAN STATES—(continued)

Apart from the specific proposals which have been discussed by the editor of *The Karnataka* and which I have already adverted to, let us now proceed to consider whether it is possible to bring the Indian states into some form of organic association with British India. It is in this connection necessary to bear in mind that the present form of the Indian constitution is that of a unitary government, and that in the interests of British India the form of government should remain essentially unitary, though there must be a large measure of devolution to the provincial governments. The underlying principle of any such scheme of devolution should be the maintenance of a supreme central government with adequate powers not merely to defend the country against external aggressions or internal disorder, but also to enforce its decision in the matters left to its jurisdiction, whether exclusive, concurrent, normative, or residuary and also powers to deal with all emergencies and extraordinary occasions. The ultimate responsibility for the welfare of the country, which now vests in the British Parliament, must be shifted to the Government of India, when full control is transferred to the Indian Legislature. The criterion to be applied in marking out the sphere of the provincial governments is : what is the largest measure of independence, legislative, administrative and financial, which can be granted to them consist-



ently with the due discharge by the Government of India of its functions and responsibilities as indicated in the statement of the basic principle. The test is not what authority for the discharge of its responsibilities should be assigned to the Central Government consistently with the principle of preserving the separate entity of the different provinces. As the conditions out of which federal governments have arisen do not now exist in British India, it would be the height of political unwisdom especially in the circumstances of this country to change the unitary form of government for the federal. There is a vast amount of loose and confused thinking upon the subject of federalism in this country and the word "federalism" is indiscriminately applied not merely to organizations which are truly federal, but to every form of political organization in which there is a formal demarcation between a Central Government and the constituent provinces. I have already explained the sense in which I use the term *federal government*.

If the Indian states are to be organically associated with British India, it can only be in one of two ways ; either by becoming part of the unitary government of India on the same footing and with the same powers as the British provinces, or by a federal union with British India. The first alternative would imply absorption in British India and whether it can be realized in some distant future or not, it is for the present outside the range of practical politics. Taking the second alternative of the possibility of federation with British India, there are two conceivable forms of federation. One form is a

federation between British India as one entire entity and the various Indian states as separate entities. It is obvious that this form of federation is beset with numerous difficulties.

1. In the first place, the number of Indian states recognized by the political department of India is said to be 561, a preposterously large number for the provision of separate representation for each state. But even assuming that the states which are not entitled to a salute of guns are not enfranchised, the number of states entitled to a salute would be 119. Even this would be far too large a number. If, however, the states which are not entitled to guns and which number about 442 are clubbed together in some such form as that suggested by the editor of *The Karnataka*, the number would be still very large and would come to about 150. The size of the federal assembly would be so large that the ruling princes themselves would find it too unwieldy and promiscuous a body to rub shoulders with. This, however, is only a minor difficulty compared with the more formidable ones to be mentioned below.

2. A federation of states like what has been suggested cannot possibly be formed on the principle of equality between the constituent states, which is the essential or general characteristic of all genuine federations in the strict sense of the term. British India as a political unit cannot possibly agree to the principle of equality, or grant to even all the states put together the same weight as she is entitled to. Taking the criterion of population as the true basis, British India should be entitled to about 75 per cent

of the voting strength of the federation. It cannot be too strongly or clearly affirmed that on no other basis than that of a decisive majority against all the other states could or would British India enter into any such federation. Nor would the ruling princes themselves be prepared to recognize or even tolerate a position of equality *inter se* without reference to their population and importance. The result then would be that the federation would be constituted on the analogy of the Bundesrath of the defunct German Empire, but with a more decided preponderance in favour of British India, than Prussia had, to make the representation conformable to the relative importance of the constituent states.

In passing, it may be observed that the members of the Germanic confederation were only 39 and the number of seats in the Bundesrath was about 58. I have referred to the case of the Bundesrath merely for the purpose of pointing out that the principle of inequality must be at the basis of any so-called federation between the Indian states and British India. We cannot commit ourselves to the position that, like Prussia, British India should be content with anything less than a decisive majority of the voting strength of the Assembly. One result of the peculiar constitution of the Bundesrath was that while it was difficult to carry anything against the will of Prussia, it was not always possible for Prussia to secure what she wanted, even though she represented a majority of the population. Apart from the principle of inequality in the composition of the Bundesrath, it can furnish no principles for our guidance in regard to the powers and functions to be

exercised by the federation of India. The Bundesrath enjoyed very extensive powers, and the Reichstag had powers of an extremely limited character and could not exercise any real influence on the Government. As pointed out by Mr. Lowell,<sup>1</sup> the powers and functions of the Bundesrath were unique. It had not merely legislative, but also executive powers. The Reichstag could not be summoned to meet without the Bundesrath, while the latter could sit alone and must, in fact, be called together at any time on the request of one-third of its members. The Reichstag could be dissolved at any time by the Bundesrath with the consent of the Emperor. It is useless to enter into any description in detail of this extraordinary institution which cannot possibly throw any helpful light on the problems that we have to face. The fact that British India will insist upon claiming a majority of the voting strength in proportion to her actual importance and her population is sure to take the glamour off the analogy in the eyes of the ruling princes.

3. The creation of a federal body composed of the various states as separate entities must necessarily remove some of the subjects now assigned to the all-India Legislature from the purview of that body. The present Indian Legislature has been formed on the principle of representation of the people of India and on the basis of a division of powers and jurisdiction between the provincial and the central legislatures or governments. The assignment of some of the powers of the central legislature to a separate federal assembly represent-

<sup>1</sup> Lowell's *Governments and Parties in Continental Europe*, vol. i, p. 259 *et. seq.*

ing the states would be an encroachment upon, and a curtailment of, the authority of the Indian Legislature. It would also involve delay and hindrance in legislation and the transfer of the decision of some of the most important matters to the new federal body.

It may be urged that every federal constitution must necessarily involve the sacrifice of some rights and advantages by each of the constituent members. But the force of this argument depends upon the answers to the following questions :—

(a) What is the compensating advantage or *quid pro quo* for the sacrifice ; and (b) are the Indian states on their part prepared to be bound by the decisions of the federal assembly ?

The answer to both questions must be in the negative.

4. The goal of British India's aspirations is responsible government, and the attainment of the goal means the responsibility of the government to her legislature and of the legislature to a popular electorate. While a genuine federal assembly, representative, at least in the lower house, of the people at large, might be compatible with the principle of responsible government, a so-called federal assembly, representative of the states only and not directly of the people, is utterly incompatible with the principle of responsible government.

5. The Indian Legislature is a bi-cameral body and the addition of a third body will make the political machinery cumbrous, slow and inefficient. This third body will be like the fifth wheel of a coach which can only impede its progress and cannot contribute to speed or smoothness of working.

6. Even if the existing British Indian legislature were converted into a uni-cameral body, the proposed house of representatives of British India and the states would still interfere with the principle of responsible government. Moreover, in the event of a difference of opinion between the popular house of the British Indian legislature and the body consisting of the representatives of the states, the deadlock must be solved either by allowing the views of the popular house to prevail, which would be unacceptable to the Indian princes, or by referring the matter to a joint sitting of the two chambers in which the states are bound to be swamped by the representatives of British India, or by referring the matter to the decision of an external authority like the Viceroy, a course which would be a violation of the principle of responsible government. A self-governing British India enjoying the dominion status cannot agree to the creation of any central government or authority superior to her own legislature and not responsible to her.

Having shown that a federal organization on the principle of representation of states as separate entities would be anomalous, unworkable and unacceptable, I will now consider whether a federal constitution of the genuine type would be suitable.

A genuine federal constitution for the whole of India is not merely inconsistent with the best interests of the country in the light of her past history and future progress, both of which demand a strong curb on centrifugal tendencies, but is also not desired by the princes themselves. What they seek is not the representation of all the people of India in a common

legislature, but representation of the Government of India and the ruling princes as distinct political entities in a hierarchy arranged with due regard to their status and rank as princes, potentates and powers. It would be impossible to constitute a single body or house on the two radically distinct principles of representation of states and representation of peoples.

In his recent work on the relations of Indian states with the Government of India, Mr. K. M. Panikkar has perceived in the relations between the Indian princes and the Government of India the outlines or semblance of a federal government of India. He does not, however, overlook the fact that the federalism that has developed in the Imperial polity of India is of a weak and to some extent inchoate character. He is aware that the Government of India, which is the central government, has practically no legislative, executive or fiscal authority over the states. He quotes with approval the sentiment of the Maharajah of Alwar that his goal is the United States of India where every province, every state, working out its own destiny in accordance with its own environment, its tradition, history and religion will combine together for higher and Imperial purposes.

That, apart from our own predilections, a federal government of the genuine type will not be acceptable to the princes at large will be further apparent from an examination of the conditions essential to such a form of government. Let us now analyse these conditions.

1. In the first place, a genuine federal govern-

ment is responsible to the people of all the states or the whole country at large.

2. There is a division of sovereignty between the authorities consisting of the central government on the one hand and the governments of the provinces or states on the other standing on an equal footing among themselves.

3. There is no body outside the central government or the provincial or state governments exercising control over the people.<sup>1</sup>

4. There is a constitution which is supreme and which binds both the central and provincial governments.

5. There is an allocation of revenues for central purposes which are collected by the agents of the central governments directly from the people of the states. The main sources of revenue which are usually appropriated by the central government are customs, income-tax, excise (in India salt and opium are sources of central revenue). In the event of the revenues from these sources proving insufficient for the expenditure of the central government, the provinces have all to contribute to make up the deficit, or the central government has the power of raising the necessary funds by supplementary taxation of the people directly.

The central government should have the power to carry out its own decisions and act directly upon the citizens and not merely through the machinery of the constituent states.

7. There is a central judiciary with appellate

<sup>1</sup> The Imperial control which theoretically exists over the self-governing dominions is very shadowy and need not be considered.



jurisdiction over the judicial tribunals of the states at least in all matters involving federal questions.

8. In cases of conflict between the enactments of the central legislature and the state legislatures, where they have both concurrent jurisdiction, the enactment of the central legislature prevails.

9. The central legislature has the power to authorize borrowing on the credit of the commonwealth and to provide for the payment of the public debt.

10. Under a federal constitution, there is no appeal from the decision of the central executive in matters within its jurisdiction, except to the central legislature or to the electorate for the purpose of getting the constitution amended.

11. The federal type of government ordinarily involves a bi-cameral legislature in which the lower house is chosen by the people at large on the basis of population and ordinarily this is the more influential chamber in all countries which have adopted the parliamentary form of government. The second chamber is intended for the representation of the states or provinces on a footing of equality.

12. It is not possible for any state to retain its individuality apart from and outside the federal constitution and its position as a constituent member thereof and to claim to deal separately with any third power.

13. In bodies like the League of Nations or the Imperial Conference, it is only the central or federal government that can be represented and not the governments of the constituent states.

It will be seen from the above analysis of the

conditions of a government of the real federal type that they will not be acceptable to the Indian princes who do not wish to submerge their individuality. The pious aspiration of the Maharajah of Alwar is no proof of any inclination on the part of the princes to accept that curtailment of the liberty of action of constituent states which is essential to a federal government. It is very doubtful whether their ideas stretch beyond a loose confederacy of states.

The princes' love of punctilios in matters of precedence, their unwillingness to recognize anything like an equality among themselves and their dislike of decisions by a majority, must all operate to intensify their aversion to any genuine federal constitution on the lines familiar to us in the federal constitutions of the world. It may perhaps be asked, why we should be bound down by existing models and why some form of federation could not be suggested which would sit more lightly on the shoulders of the princes. As observed by Lord Bryce, one of the most eminent constitutional authorities, mankind has shown very little inventiveness in the field of politics. The princes may perhaps be able to suggest to the expert committee about to be appointed some form of organic association, and publicists indifferent to the need for accuracy of thought and clearness of language may dub it as an experiment in federalism. It may be federalism in some new-fangled sense, but the people of India should be slow in making up their minds to embark in a novel craft hitherto untried.

## CHAPTER XIII

### THE INDIAN STATES—(continued)

It has been so far assumed in the discussion that there are subjects of joint interest to the Indian states and British India in which the states are entitled to a voice. How far this assumption is correct is the topic which we must now examine. It is observed in the Montagu-Chelmsford Report, that the Indian states are also interested in some matters which are common to the British provinces and the authors enumerate the subjects of defence, tariffs, exchange, opium, salt, railways and posts and telegraphs. To this list the subjects of currency, coinage and mints are added by the exponents of the claims of Indian states. It is stated in the joint report that it has occasionally happened in the past that decisions have been taken with regard to these subjects by which the Indian states have been vitally affected, but that no machinery for collective consultation with them has hitherto existed. The authors of the joint report suggested that the Chamber of Princes should be utilized for the purpose of ascertaining the views of the durbars and that opportunities might be provided for joint deliberation and discussion between the Chamber of Princes or its representatives and the Council of State or its representatives. The enunciation of this policy of giving an opportunity for discussion of proposals relating to these subjects to their representatives has led the durbars to put forward novel claims to a share of the central

revenues of British India. As the expert committee which is intended to be appointed to enquire into the relations of the Indian states and British India is to be charged *inter alia* with the duty of examining the financial and economic relations between British India and the states, it would be not merely pertinent but necessary to examine these claims with some attention. The people of British India have apparently not noticed this claim or realized the gravity of it and its bearings upon the revenues of British India. It is only after years of financial stringency and hardship and by the patient constructive policy of finance ministers, that we have been able to attain financial equilibrium between revenue and expenditure in British India and to relieve the provinces of the heavy burden of contribution to the Imperial revenue. The claims of the Indian states to a share of various important heads of our central revenues will make a serious inroad upon the central exchequer and will again land the whole of British India in financial embarrassment and cripple both the central and provincial governments in carrying on the administration and discharging their duties to the people. So far as I am aware, this claim has been put forward on behalf of the Indian states only within the last ten years. It was first put forward at the time of the Montagu-Chelmsford enquiry. It was brought up for discussion in some of the annual economic conferences and especially in a paper read at the Allahabad conference by Professor Jevons and it was again put forward before the Indian Fiscal Commission by the representatives of a number of Indian states. The ablest and

strongest representation of the claims of the Indian states is that contained in the memorandum of the committee of ministers which was submitted by the Baroda minister to the Indian Fiscal Commission.<sup>1</sup> As the princes have been urging an examination of their fiscal relations with the Government of India, we may take it that they will again press the claim which they made before the Indian Fiscal Commission in 1922. The chief head of central revenue which is attacked by the states is the revenue derived by the Government of India from customs. It is desirable to formulate clearly the grounds upon which the claim is based and see how far they are valid.

The claim of the states to a share of this head of revenue is rested on the following contentions :—

1. The Government of India are not entitled to levy any customs duties upon goods not consumed in British India but in the Indian states. Import duties are essentially duties on consumption, and taxes should be levied only by the authority which alone can utilize the proceeds for public expenditure in the territory within which the incidence falls.

2. The British Government, having succeeded in securing the abolition of transit duties in India, is not entitled to levy a customs duty which operates as a transit duty on through goods passing from a foreign country through British India to Indian states.

3. According to the practice of foreign countries as well as of those within the British Empire and in

<sup>1</sup> *Minutes of the Evidence before the Indian Fiscal Commission*, vol. iii, p. 1037.

extension of the policy of concessions made to some of the Indian states, the Government of British India is bound to exempt from customs duties all goods passing from foreign countries to the Indian states through British ports.

4. Either the principle of exemption of goods destined for the Indian states from customs duties should be recognized, or the yield from the customs duties should be shared with the Indian states on some basis or other such as, e.g., division of the customs revenue on the basis of population, or gross revenue or the net public expenditure.

5. The levy of the customs duty on goods imported by the Indian states through British India diminishes the taxable capacity of the subjects of Indian states and prevents the ruling princes from raising by means of their own customs duties the full amount of the revenue which they could otherwise raise and it is therefore unjust and unfair to the population of the Indian states.

The question of freedom of transit for traffic was recently dealt with by the Barcelona Convention of 1921. Before discussing the bearing of this convention on the present controversy, it is desirable to know how the matter stands in international law apart from this convention.

It cannot be assumed as a matter of course that every inland or land-locked state has a legal right to have its goods passed without duty by adjoining maritime states, or that the right of the latter to levy duties is limited to articles consumed within their own territories. The practice of foreign countries or of the British colonies or of the Government of India

itself in making certain concessions to particular states does not prove this contention. On the other hand, every state is entitled in the exercise of its sovereignty to levy customs duties on goods entering, crossing, or leaving the state. No person has a right to claim that he can land goods within the territory of a particular state, or pass goods through the territory of a state except with the consent of the state or upon conditions permitted by the state. If one state is land-locked and the adjoining state is a maritime state with portal facilities, it is a geographical misfortune for the former and a geographical advantage for the latter. The ordinary principle of private as well as public law is that every person or state is entitled to derive the fullest possible advantage from its natural situation or resources. It is no argument against the existence of this right to condemn the use of it by question—begging terms like “exploitation”. If it is to be regarded as exploitation of its natural advantages by a state, it is a perfectly legitimate exploitation. Nor can it be said that apart from convention maritime states should pass goods free of duty to states in the hinterland. If it were so, one would expect some reference to such a principle in the books on international law, but no reference to any such principle is to be found, so far as I am aware, in any modern treatise on international law.

The very fact that the League of Nations felt it necessary to lay down in the covenant that the members of the League should make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce

of all members of the League proves the absence of any general rule of international law on the subject.

The subject of the right of a state to passage over the territory of another state whether by land or water is discussed at length in Hall's *Treatise on International Law* (8th edition, pages 164-175). The claim to the use of a navigable river passing through several states may be supported on a stronger ground than the claim to the passage of goods by road or by railway. A controversy arose between the United States and Great Britain in 1824 over the claim of the United States to navigate the St. Lawrence on the ground that the republic was a riparian state in respect of the upper waters of the river and of the lakes which feed it. The States contended that the right of the upper inhabitants to the full use of a stream rests upon the same imperious want as that of the lower, upon the same inherent necessity of participating in the benefit of the flowing element. It was said to be a right of nature and when it was disregarded, the interdiction of a stream to the upper inhabitants was an act of force of a stronger against a weaker party. Hall discusses the question whether the right of co-riparian states stands on a higher footing than the right of other states. In his opinion, the fact of the use of a section of a river belonging to a particular community being highly advantageous to the inhabitants of lands traversed by another portion of the stream does not confer upon the latter any special right of use. He inclines to the view that the rights of property in navigable rivers have not as a matter of right been modified with a view to the general good and that they are independent of the



wants of individuals other than the owners. But he apparently seems to recognize that it has become usual as a matter of comity to permit navigation by co-riparian states and that it would be a vexatious act to refuse the privilege without good cause. Down to the commencement of the twentieth century, there can be no doubt that the paramount character of the rights of property was both recognized and acted upon. Although none of the European rivers running through more than one state seem at any part of their course to have been entirely closed to the riparian states, except the Scheldt which was closed by treaty, their navigation by foreign vessels was burdened with passage tolls and dues levied in commutation of the right of compulsory shipment of cargo. The navigation of the Rhine was made free to all the world by the Treaty of Paris in 1814. By the arrangements now existing, river traffic has been assimilated to that upon land. A vessel is obliged to present itself at the custom house on each frontier that it passes and the qualified extritoriality of the rivers is totally destroyed. England always steadily refused to concede navigation of the St. Lawrence to the United States as of right, and the controversy was terminated by a treaty which granted its navigation as a revocable privilege and as part of a bargain in which other things were given and obtained on both sides. The conclusion arrived at by Hall is that, so far as international law is concerned, a state may close or open its rivers at will, that it may tax or regulate transit over them as it chooses and that though it would be as wrong in a moral sense, as it would be generally foolish, to use

these powers needlessly or in an arbitrary manner, it is morally as well as legally permissible to retain them, so as to be able when necessary to exercise pressure by their means, or so as to have something to exchange against concessions by another power. •

If the inland state wishes to secure passage of its goods free of duty by the adjoining maritime state, it should enter into negotiations with the latter and conclude an agreement for that purpose. The existence of commercial agreements of this sort shows that the basis of the exemption is not a legal or natural right known to international law, but a contract or treaty. Commercial advantages may also be secured as a result of conquest. Germany was obliged to provide various facilities and grant various exemptions under the terms of the Treaty of Versailles (*vide* articles 321, 328, 330 and 363). Commercial treaties and conventions are of course more common. But commercial treaties are not entered into from philanthropic motives, or as a matter of generosity. It is only where two states consider it to be mutually advantageous that they enter into an agreement for the exemption from customs and an examination of the circumstances under which agreements have been concluded will show that there has always been a *quid pro quo* for each of the contracting parties.

Let us now see how far this position has been affected by the Barcelona Convention and Statute of 1921 on Freedom of Transit. The preamble to the statute refers to the purpose of article 23 (e) of the Covenant of the League of Nations and is wider than the articles of the statute, which alone have a

binding effect upon the parties. While the preamble affirms the general principle of freedom of transit, the commission excluded road transport from the enacting clauses, as it would entail special difficulties in connection with customs administration. Air transport was also excluded on the ground that it was more appropriately the subject of the international convention on aerial navigation. The important clause of the statute is article 2 which says: "The measures taken by the contracting states for regulating and forwarding traffic across their territory shall facilitate free transit by rail or waterway." Article 3 lays down that traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit).

In spite of the very elaborate examination which the draft statute underwent at the hands of the commission, the language of the statute leaves room for doubt as to whether the levy of uniform rates of customs duties for all imports and through traffic was intended to be prohibited. The question turns upon the interpretation to be placed upon the term "free transit" in this article. Does it mean that traffic shall be allowed to pass without objection, or on terms of equality or that traffic should be exempt from all charges? It certainly means that no objection should be raised to the passage of traffic. But does the article go further and mean also that through traffic shall not be subject to any charges? The article no doubt lays down that no distinction shall be made on the ground of nationality or the place of destination. Supposing that the state through which the traffic passes levies customs duties on all goods

entering the territory of the state whether destined for consumption within the state or consumption in an adjacent state, is such a levy contrary to the intention of the statute? Article 3 provides that traffic in transit shall not be subject to any *special dues* in respect of transit. Here again, there is a doubt as to the meaning of the term *special dues*. Does it mean dues over and above those leviable on articles consumed in the state, or charges over and above the rate necessary to defray the expenses of supervision and administration, or dues levied for the bare privilege of transit? If customs duties are levied impartially on all goods entering or leaving the state, whether belonging to the subjects of the states or to others without any discrimination, can they be regarded as special dues in respect of transit? This leads us to inquire what is the nature and rationale of a customs duty. Obviously a customs duty is not a charge for services rendered, but a tax. Does the right of sovereignty of a state enable it to levy customs on goods which are in transit and intended for consumption in an adjacent state? It may be contended that, while the statute prohibited the levy of transit duties, it does not prohibit the levy of customs duties, as it could have done in express terms. The distinction between a customs duty and a transit duty is not sharply defined. The two are not mutually exclusive. A customs duty may in some cases partake of the nature of a transit duty and a transit duty may partake of the nature of a customs duty. Inasmuch as transit duties in excess of the actual cost of supervision and administration or conveyance of the goods operate

as a tax, is it reasonable to infer that customs duties on through traffic are also intended to be prohibited? The construction of the statute cannot be said to be free of ambiguity and doubt.

Turning to the report of the proceedings of the conference, the Vice-President M. Loudon, pointed out that one of the questions debated before the commission of enquiry on freedom of communications and transit held at Paris in 1920 was whether, to protect its own commerce, a state might apply customs duties, but not special transport rates. He stated that it was found impossible to reach an agreement and that the commission compromised upon a text which sanctioned commercial differentiation, but excluded distinctions of a political nature. The Roumanian delegate pointed out that the right of transit only implied equal treatment for all and must not be mixed up with the question of protection and free trade. He further asked, what constituted equal treatment with respect to transit traffic, whether equal treatment should be accorded for transit traffic, imports, exports and local traffic. He put the pertinent question why a country should not make use of its patrimony, i.e. geographical situation, climate, soil, mines, etc., and said that Roumania could not accept the principle of equal treatment for internal traffic and export and import traffic also and that Roumania would have to make a bargain with any power to which it accorded special advantages and that transit was an economic weapon. On the other hand, the delegate for Czecho-Slovakia said that he understood by freedom of transit that there were to be no customs duties on transit traffic and no special

dues to burden the transit of goods either at the point of entry or exit. Thus it will be seen that the proceedings do not remove the uncertainty which hangs about the interpretation of the statute.

Apart from the construction of the statute, it is necessary to point out that it cannot govern through traffic between the Indian states and the Government of British India for the simple reason that by the terms of article 15, the applicability of the statute to the Indian states was deliberately excluded. This article states : "It is understood that this statute must not be interpreted as regulating in any way the rights and obligations *inter se* of territories forming part, or placed under the protection of, the same sovereign state whether or not these territories are individually members of the League of Nations." The provisions of the convention were intended to regulate only the relations between independent states and not between the constituent members of a single sovereign state.

Can it be said then that though the terms of the convention may not be invoked by the Indian states, they are entitled to rely upon the principles underlying it? The states in India have lost their external independence and cannot claim to occupy the same position as Afghanistan or Switzerland in relation to adjacent states. The majority of the states no doubt possess many of the attributes of internal sovereignty. In deciding upon the claim of the Indian states to exemption from customs duty for goods imported through British ports, we have to realize that the states are all subordinate to the Government of India and are therefore liable to

contribute to the burdens of the central government with regard to defence and other important matters. If the states were members of a federal commonwealth, they could not possibly quarrel with this position and would be bound to assign certain revenues to the central government. In almost all federal governments, the revenue from customs has usually been allocated to the central government. It may be said that some of the states have already compounded for their obligations by the assignment of tracts of territory. These assignments were made in commutation of the liability to pay for the subsidiary troops or to maintain the contingent troops of the states. Whether the assignments could be regarded as a complete acquittance of all pecuniary obligations towards defence for all time, or whether the assignments were only made on the assumption of the continuance of a certain scale of military expenditure, whether the increase in the revenues now derived by the Government of India from the assigned tracts leaves a sufficient margin over and above the expenses of provincial administration and whether such surplus should be taken into account in adjustment of the liabilities of the states to contribute towards defence are all questions which would have to be gone into in disposing of the claims of the Indian states to a share of this head of central revenue.

Of one thing we may be fairly certain, viz. that the position of the states was not viewed at the time of the territorial assignments from the standpoint of the relations between the central and provincial authorities in a federal commonwealth. Apart from any contract, the central

government would from the very necessities of the situation be entitled to call upon the constituent states to contribute to its increased expenditure. The cases in which the Government of India have entered into agreements for exemption from customs duty will be found on examination to fall within the principles above stated. Agreements with maritime states like Travancore, Cochin and Baroda who have ports of their own are based upon the principle of mutual advantage. There is no doubt that similar reasons can be discovered for the agreements with Kashmir and Afghanistan. There is nothing to prevent any state which claims passage of its goods through British India free of duty from entering into an agreement with the Government of British India and making it worth the while of the latter to grant such exemption. In the next place, though internal transit duties are stated to have been abolished by agreement in India, there is no evidence of any agreement requiring or obliging the Government of British India to abolish its customs duties. If customs duties were objectionable as being transit duties, the Indian states should also not levy them. What the Indian states are anxious to do is to prevent the Government of India from levying customs duties on goods destined for the states, so that the Governments of the states may themselves levy as much customs duties as their subjects can bear.

There is no warrant for the contention that a state is not entitled to levy an import duty, if the ultimate incidence of it will fall not upon its own subjects, but upon the subjects of a neighbouring state. As to



what exactly the character of an import duty is, it is a matter upon which economists are not agreed. While Professor Bastable, who, as a rigid advocate of free trade, hates all import duties considers any such duty as a tax on consumption, Professor Adams considers it a tax on business. Whatever may be the correct scientific classification of the tax, a state has the legal right, unless parted with by agreement, to levy a tax on commodities whether entering or leaving or passing through its territories. Whether some form of Zollverein would be feasible without injury to the fiscal interests of British India requires separate and careful investigation.

Turning now to the connected question of tariffs, while there could be no objection to the 'Princes' Chamber being consulted on any general question of tariff policy, it would not be practicable to consult them beforehand with regard to such changes in the tariffs as might be introduced by the finance minister in his annual proposals for taxation. Such changes have to be kept strictly confidential till the last moment, and it would be impracticable to take a public body into confidence before the finance bill is introduced in the Assembly.

As regards the subject of currency, coinage and mints, most of the states have by virtue of special agreements or otherwise abandoned the right to issue their own coinage and mint their own coins. It must be admitted that uniformity of currency and coinage confers great advantages upon the trade and business of every country in which such uniformity obtains. The regulation of coinage and currency is one of the matters which would be reserved to a central

government in any federal union, but the Government of India have not asserted any general right to establish uniform coinage. It is rather to be wished that all separate rights of coinage were abolished.

The relations between the Government of India and the Indian states in the matter of opium and salt are generally regulated by agreements and so long as the agreements are there, the Indian states which are bound by the agreements have no claims to share in the revenues accruing from these sources. Similarly in the case of railways and posts and telegraphs. Moreover, railways, posts and telegraphs are public utility services in which the Government of India have invested their capital and by which the Indian states are benefited. The payments made by the subjects of the Indian states under these heads are payments for services rendered and are not in the nature of taxes. No claim to any share of profits under these heads can therefore legitimately arise. Whether the states have the right to repudiate their agreements is a matter which they can submit to the expert committee of enquiry for investigation. The interests of the country as a whole demand a uniformity of control in the system of communications, as far as it may be possible.

Though the Indian states may have no claim to any share of the central revenues derived by the Government of India under the various heads referred to, we are not concerned to deny that they are indirectly affected by our policy in these matters. The people of British India need not therefore raise any objection to the policy of consulting the states as

a matter of concession and courtesy, wherever there is no reason for an urgent decision. But a self-governing India cannot, any more than the bureaucratic Government of India, consent to any arrangement likely to countenance claims to a share of the revenue, or to an equal voice in the decisions of policy.

What then is the proper machinery for ascertaining the views and the wishes of the Indian states in matters of common interest? The most suitable machinery is that suggested by the Montagu-Chelmsford Report and subsequently brought into existence in the shape of the Chamber of Princes. If the Chamber of Princes is sufficiently representative and if there is sufficient cohesion between the princes, it will be the authoritative exponent of their views. The Government of India is the connecting link between this body and the Indian legislature and, if, on any occasion, it is desired to bring about an informal discussion between the representatives of the Chamber of Princes and the representatives of the Indian legislature, the Government of India could arrange for an equal number of representatives from the Princes' Chamber and from each of the two houses of the Indian legislature. Such informal discussions, however, will, or should have, no binding effect either upon the ruling princes or upon the British Indian Government or the legislature. Our examination of the possible forms of organic association between the princes of India and the people of British India has led us to the conclusion that it is not possible to provide for any workable scheme except upon terms

and conditions which are not now likely to find favour with the princes. If, however, the Indian states are anxious that they should have an opportunity of placing their views on questions of common concern before the Indian Legislative Assembly, the experiment may be tried of allowing the states to nominate a few representatives to the Assembly on two conditions, viz. (1) that the number of such representatives should not exceed 5 per cent of the strength of the Assembly and (2) that the representatives are not allowed to attend or take part in sittings at which matters not of common concern are discussed.

## CHAPTER XIV

### THE INDIAN STATES—(continued)

We now pass on to the question of what should be the relations of a self-governing British India towards the Indian states. For the purpose of answering this question, it is necessary to classify the topics which now form the subject of relations between the Government of British India and the ruling princes. We have in the first place topics relating to the external affairs of Indian states which comprise subjects of common interest to the states and British India. These are matters of an impersonal nature and concern the states as such. They are now disposed of, not in the political department of the Government of India, but in the other departments concerned with the general administration of British India. There is therefore no reason why they should not continue to be dealt with as at present by responsible ministers even during the transition stage. It may perhaps be asked by the opponents of progress whether the Indian princes will have the same confidence in the responsible Indian ministers as they have in the bureaucratic political department. Possibly some colour may be lent to this doubt by the reply of some of the states to the question referred to them a few years ago by the Government of India as to whether they would have any objection to the employment of Indians on the staff of the political department of the secretariat. It was said that some of the states did raise an

objection to the admission of Indians to the staff of the political department of the secretariat. This was probably due to their objection to the defects of their administration and their personal frailties becoming known to their countrymen. All that we can say is that the princes ought to have no such objection and, on the other hand, they have every reason to expect a more sympathetic handling of their affairs by their countrymen than by the members of the alien bureaucracy at whose hands they have suffered so much in the past and by whom their rights have been whittled down in course of time. The second class of topics relates to matters of internal administration of the states and concerns the subjects of the states. The third class of topics relates to questions of dynastic or personal concern and to the privileges, dignities and ceremonials of the princes. In practice, these two classes of questions may often be mixed up. They do not directly concern the population of British India, or directly impinge upon the administration of British India. On the other hand, they are questions in

- which the rulers are personally and deeply interested and are therefore of a delicate character. During the transition period of responsible government, both these classes of topics may, if so desired by the princes, be left in the hands of the Governor-General as distinguished from the Governor-General in Council. The Governor-General may be assisted by two members of the Executive Council to be in charge of the political department. These members
- should be both non-official Indians, one being chosen by the Governor-General from among retired dewans

of Indian states and the other from among retired members of the executive councils or retired ministers. This arrangement will secure for the Governor-General the advice and assistance of men of experience with a due sense of responsibility and able to appreciate the points of view of the princes and the interests and requirements of political progress of the country. These two members should both see all the papers relating to the second and third categories above referred to and advise the Governor-General. During the transition period, they would be responsible not to the legislature, but to the Governor-General. It would be a great mistake to imagine that men without any previous knowledge of Indian conditions or with experience of the ways of foreign diplomacy could possibly supply the sympathetic insight and the patriotic and national outlook required for the discharge of this delicate office. The virtues cultivated by a diplomatic career are tactfulness, skilful and zealous pursuit of the interests of the employing state and a watchful capacity for scenting intrigue, if not for practising it. High-minded statesmanship is not one of the virtues looked for in a diplomat. These two members in charge of the political department may occupy in the cabinet the same position as is now occupied by the members of the Executive Councils in charge of the reserved half. When full responsibility is introduced, the second class of questions should also be dealt with by the responsible government of British India which must be the heir to the powers now exercised by the Parliament. If, out of regard for the susceptibilities

of the princes, it is considered desirable to entrust the third class of topics to the Governor-General in his capacity as representative of the British Crown, arrangements may be made to that effect. When British India obtains full self-government, she can have no better guide to follow than the policy of the British Government and the British nation who have been the greatest builders of empire in the modern world.

It is stated in the Montagu-Chelmsford Report that some of the more enlightened and thoughtful of the princes have themselves raised the question of their own share in any scheme of reform. They want a place in the sun, and they are anxious to have their place in the political scheme defined. We may be asked how this demand of the ruling princes should be met. Here it is necessary to point out a distinction between the personal interests of the rulers and the interests of their subjects. The princes may protest that there is no such distinction and that they are all one. We also wish that they were all one ; but we know that they are not. When the people of British India ask for reforms, they are asking for popular control over the Government ; but when the ruling princes ask for reforms, they do not think of their people or internal reforms, but of their own powers and privileges and of the removal of all restrictions upon their independence by the Government of India. They may say : "I am the state, and the state and I are one ;" but that one is the ruler and not the people. They think of their states in terms of their own rights and powers and not of their responsibilities



or of the rights of the people. When the English press and the Tory politicians of England talk of the states, they also think of the rulers rather than of the peoples. Identity of interests between the rulers and the ruled is seldom complete anywhere. Such identification ought certainly to be closer in an Indian state where the ruler and the subjects are generally members of the same race and creed, but it is not ordinarily as close as we should desire. The complaints which we often hear from the subjects of the Indian states and the known defects of administration in many of them make it clear that many of the rulers have not yet begun to realize that the princes exist for the people and not the people for the princes. Now, what are the essentials of a progressive and civilized administration? They are :

1. The separation of the privy purse of the ruler from the revenues of the state and the fixing of a civil list.

2. A regular annual budget and an audit by an officer of guaranteed independence.

3. The recruitment of the civil service by a system of competitive examinations or otherwise so as to exclude favouritism and inefficiency and ensure the selection of candidates best qualified by ability and merit.

4. The absolute independence of the judiciary.

5. The introduction of the reign of law and the elimination of arbitrary personal rule.

6. Freedom of the press and freedom of movement to its subjects. (I have seen in the regulations of some of the Indian states of Central India, e.g., Gwalior, that Jagirdars are not entitled

to leave the state except with the permission of the ruling chiefs.)

7. The training of their subjects for co-operation in the work of government and legislation by the introduction of representative institutions for legislation with adequate powers of interpellation and with a promise of responsible government as the goal.

8. Restriction of the practice of absenteeism of the princes from their states and from India.

If the princes introduced the minimum reforms enumerated above and set their houses in order, they will receive far more sympathy than they now do from the people of British India. The principle by which the power of interference of the Government of India is restricted in exercise to cases of gross or intolerable misrule is hardly an adequate safeguard for the protection of the rights of their subjects. The subjects have no remedy for any grievance in the administration, unless it reaches the standard of gross misrule. The right of intervention claimed by the Government of India in case of gross misconduct or misrule is a sore point with nearly all the princes who contend that it is inconsistent with their internal sovereignty. But in the absence of constitutional government and in view of the life-tenure of the autocratic princes, there are only two safeguards for the subjects against the oppression and misconduct of their rulers, viz. the right to overthrow and depose the despot by force, or the right of the paramount power to deal with misconduct after a judicial investigation. No sensible autocrat will prefer the former alternative and no wise suzerain

will deny both remedies to the subjects. It is therefore all the more obligatory upon the princes to introduce of their own accord all measures calculated to promote the well-being and progress of their subjects.

The princes on their part have a long tale of woes and grievances. In some respects, the position of an Indian prince is particularly unfortunate and deserving of sympathy. He is by virtue of his position disentitled to some of the privileges which even the meanest of the British subjects enjoy under municipal law. He cannot, for instance, ventilate his grievances in the press and appeal to public opinion for support. He has not got the same right of access to the ordinary judicial courts for the vindication of his rights or his character. At the same time, it has been authoritatively decided that he is not entitled to the privileges of international law. That the princes have often had reason to be dissatisfied with the manner in which their rights, privileges and claims have been dealt with by the Government of India and that there has been in several cases an infraction of the letter, if not the spirit, of the treaties, must be admitted. It has been largely due to a failure to discriminate between states of different degrees of importance. But whether the interference of the Government of India was justifiable or not in particular cases, there can be no doubt that the decisions of the Government of India have generally been guided by the policy of promoting the welfare of the country as a whole and by bringing about changes in the material and social conditions of the states favourable to the

growth of a spirit of unity among the peoples. The changes introduced by the policy of the Government have been at work for many years past and it would be impossible to set back the hand of the clock, even if it were wished to do so. The doctrine of prescription which obtains in the sphere of private law must find a place in the sphere of public law also. It does not rest upon the ground of might. It rests upon the higher ground of not disturbing settled conditions and not committing new wrongs by ignoring altered conditions which have come into existence subsequent to the date of the original wrong. It might look mean and odious for a person in a position of advantage to set up the plea of prescription, if such a plea were set up only on behalf of the original wrong-doer. But numerous other interests grow up on the faith of a state of things which has lasted for some time and it is regard for these interests only that can justify a plea of prescription by a paramount power. It is not therefore possible to expect that the relations embodied in the old treaties which have been overlaid by a mass of tradition, usage and precedents will now be exhumed and resuscitated.

It has been stated by Lee-Warner that the obligations of the princes in internal affairs, so far as they are not expressed in written engagements, must be regarded as resting upon slippery ground.<sup>1</sup> The full extent of the British rights of intervention in the home departments of the state has never been, and never can be, defined. The theory of it is well

<sup>1</sup> Sir William Lee-Warner, *The Native States of India*, p. 313.

understood, but it has never been published. When one leaves the safe ground of military and international obligations in respect of which the paramount power has received full authority to act, one enters on the debatable ground of policy and approaches "the mysteries". He has clearly explained how the obligations are constantly liable to be reinforced by the action of Parliament, by the exercise of the prerogative and by the accretions of interpretation and usage. Professor Westlake is even more brutally frank. He observes<sup>1</sup> that the British Government preferred to adopt on its own responsibility the principle that it was not only preponderant in India, but paramount, not merely the strongest power, but the rightful superior, and that all treaties and grants of whatever date were to be construed as reserving the exercise of that superiority when needed for certain beneficent purposes. He has also observed that "The constitutional relations between the Indian states and the Government of India have been gradually changed. Their relations have been imperceptibly shifted from an international to an Imperial basis, the process has been veiled by the prudence of statesmen, the conservatism of lawyers and the prevalence of certain theories about sovereignty. Veiled, but neither prevented, nor retarded." We are not, however, concerned with the past history or with the task of allocating praise or blame. One thing I may point out with regard to the action of the political department even at the present time is that it is often a subject of complaint.

<sup>1</sup> Westlake's *Chapters on the Principles of International Law*, pp. 225 and 227

that the political department is capricious in its action. It is stated that as between two rulers who are guilty of high-handed misrule, one ruler is sacked, while another goes scot-free, or is allowed a longer tether, either because he contrives to keep the powers that be in good humour, or because of some other reason best known to themselves. The standards of judgment which we have to apply to the dealings between states are not exactly the same as those applicable to the dealings of private individuals. Let us not therefore be harsh in our judgment either of the princes of the Government of India.

Time is a great healer of wrongs and the princes of India have to reconcile themselves, as best they may, to the position in which they now find themselves as the result of a long course of usage in the decision of questions which have arisen between themselves and the paramount power. It was a saying of Hindu lawyers that facts could not be altered by a hundred texts. The hard facts of the present situation, which the princes have to recognize and adapt themselves to, are (1) the paramountcy of the British power and the growth of Imperial authority, (2) the overwhelming preponderance in population of the provinces of British India by which they are encompassed, (3) the comparative political progress of British India and the pledge of responsible government given to British India by the Parliament with all its implications and (4) the progress of the democratic idea and the spirit of rationalism which have followed in the wake of western education and intercourse with the West. Several of our ruling princes have travelled widely

and frequently in the countries of Europe and have had opportunities of enlarging their experience and political outlook. Autocracy has disappeared in the west and all Europe is now under the sway of nationalism and constitutional rule. It generally takes some time for the spread of ideas from one part of the world to another; but the increased facilities of the modern world for the rapid diffusion of ideas have had their influence upon this country also. It is hard for princes who have wielded autocratic power to part with it or share it with their subjects. Many of the rulers of our Indian states are, like the Stuarts, firm believers in personal rule and the divine right of kings to govern wrong. One wonders, if some of them who claim to be descended from the sun and the moon still believe it or expect their subjects to believe it. At any rate, it is clear that several of them believe that the maintenance of dynastic rights and privileges is a matter of far greater moment to the world than the welfare and progress of the peoples committed to their charge. They are haunted by the grim spectre of the forces of nationalism and democracy, which have ruthlessly devoured monarchs in the West and which have begun to invade even the sacred land of Aryavarta with its docile spirit of submission to the divinely ordained institution of kings. We must not forget that even in the middle of the nineteenth century, crowned heads in Europe were entering into alliances for the purpose of keeping out democracy from their gates. Queen Victoria herself vehemently objected to being the monarch of a democratic state. Probably some of our princes cherish the faith of our

British critics that western political institutions are unsuited to Asiatic climes. It is no wonder then that our Indian princes are anxious to discover safeguards against the surge of democracy and are seeking to build a constitutional Noah's Ark to save themselves and their dynasties from the deluge of democratic ideas which might sweep in full force, if perchance British India became a self-governing country.

Every patriotic citizen of British India cherishes the hope of a strong and united Indian nation enjoying the same kind of self-governing status as the great dominions of the British Empire. India is a geographical whole and, thanks to the *pax Britannica*, is growing into a political whole throbbing with the spirit of nationality. The needs of self-preservation and defence against foreign invasions demand political unity and solidarity. In the League of Nations and in the councils of the world, India must speak with one voice and without a discordant note, if she is to command the consideration which is her due. It is the responsible government of a united India that can and ought to speak for India and she cannot be a united nation, unless and until the peoples of British India and the states are welded together by a bond of common political organization.

What is the aspiration of our ruling princes? Do they as true patriots desire to see a strong and united nation? Or, do they desire only a loose confederacy of states sharing the soul-paralyzing belief of our opponents that India never has been and never will be a united nation? Do they fear the loss of their



autocratic privileges and desire in their heart of hearts to put off till doomsday the time when India will attain responsible government, or do they desire to co-operate with us and strive for the attainment of a common goal? Are they moved by the same patriotic ambition that fills the heart of every educated citizen of British India? If the princes envisage the future as we do, they will see things in their true perspective and many things like dynastic and personal rights and dignities which now loom large in their eyes will fall into their proper place and assume a secondary importance. Their well-being and the preservation of their dynasties depends upon the part they will play in shaping the political destiny of India. The tide of democracy which has swept away the Hapsburgs and the Hohenzollerns, the Oothmans and the Romanoffs has spared the constitutional monarchs of Europe. Our princes must certainly be aware of each other's imperfections and failings and if they are wise in their generation, they will by mutual counsel and example address themselves to the task of setting their houses in order. It is foolish to imagine that the rulers of states in such varying stages of development will be able to start immediately on the same level as British India ; but they have to set before their eyes the same goal as was announced by Parliament in the famous declaration of August 1917. They must guide the steps of their people along the path of political evolution more or less on the lines on which we have been guided. They will then find that the strongest support of a ruler is that of his own subjects based, not upon the antiquated ideas of divine right, but upon

a rational conviction of the important part played by sovereigns in any constitutional polity and upon gratitude for their self-denying labours for the welfare of the people.

One more question remains to be considered in connection with the subject of the Indian states. What should be the attitude of the citizens of British India towards the states? I am firmly convinced that the policy of *laissez faire* and of non-interference in the affairs of the states is the wisest one to be followed. Any attempt to force the pace will cause revulsion and provoke interference and opposition on the part of the ruling princes. The social and commercial intercourse of peoples, the interchange of ideas and the working of political institutions in British India are all forces which cannot fail to influence the minds of the rulers and the peoples of Indian states. The one thing that is necessary on the part of all is to keep a clear eye on the goal and take no steps that will encourage centrifugal forces or discourage the action of centripetal forces. As stated in the Montagu-Chelmsford Report, the Government of India will take no steps to accelerate the pace of political development. But it is open to them to manifest in some suitable manner their appreciation of the work of princes who are prepared to act as constitutional rulers.

## CHAPTER XV

### OBJECTIONS TO ADVANCE

I have dealt with several of the topics which would ordinarily have to be considered in the framing of any constitution which adopts responsible government as its basis. I shall now proceed to refer to some of the conditions necessary for the successful working of the system of responsible government and the objections which have been urged to any large advance on the ground of the absence of those conditions.

One important condition necessary for the working of a system of responsible government is the existence of party organizations both in the legislatures and in the electorates. Not merely is it necessary to have strong party organizations, but it is necessary that the party system should comprise two and only two parties for the successful working of parliamentary government. It is desirable that the lines of cleavage between the parties should not proceed on racial, religious or communal grounds, or on the ground of class interests or social distinctions, and that they should be formed on what may be called the basis of political differences. What do we mean by political differences or principles? It is easier to understand it than define it accurately. Politics is the science and art of government and political activities have for their object the attainment, by and through the action of the government, of the ideals or ends desired in the laws governing the lives of the citizens, their

actions, or mutual relations, or in the material, economic, social, or moral conditions of the people. Legitimate political activity excludes direct action and any method of bringing about changes except in the manner and by the methods allowed by the law of the constitution and the laws of the land. If political activities are to be conducive to the welfare and ordered progress of society and efficiency of administration, it is necessary that parties should not be formed on lines of division which coincide with other deeply-rooted tendencies to cleavage and exacerbate class antipathies, or induce men to prefer the interests of particular sections, classes or communities to those of the country at large. Many of the questions which occupy the attention of Parliament in these times are of an economic or social character and questions like those relating to revision of land tenures or disputes between labour and capital give rise to disputes between classes. It would be idle to pretend that questions of this character do not create bitterness of feeling, or that the parties involved in these disputes are guided solely by a regard for the interests of the nation and not by a regard for sectional interests. Racial and religious differences also of a bitter character have often prevailed in European countries; witness, for instance, the antagonism between the Catholics and the Protestants, the Christians and the Jews and the numerous disabilities and persecutions to which members of the minority communities have been exposed at the hands of the majorities.

The differences between parties may relate to the ends to be attained, but more often they turn upon

the means to be adopted for attaining the same ends. The determination of the appropriate courses of action is more largely dependent upon opinion and forecast than upon the mere ascertainment of existing facts. The weight that different men attach to the different factors of a problem varies with their personal training, predilections and habits of judgment. In order to constitute two permanent political parties, it is necessary that there should be a number of vital issues on which two opinions only are possible, or some one question of overwhelming importance on which there is a two-fold division of opinion and party and for the sake of which the members of the party are prepared to subordinate their views on other matters. Each party must profess allegiance to some definite principle or set of principles by which their views on particular questions must be moulded and their action on particular issues tried and tested. Unless there is some common general principle of this description, it will be difficult to form permanent political combinations based upon rational principles. For instance, the question of free trade or protection may assume great importance under certain conditions and parties may be divided according to their opinions on this issue. On the other issues, the members of each of these parties may not hold identical views, but for the purpose of gaining the object which is for the time being considered to be of supreme importance, the members of a party may be willing to submerge their differences on other issues. It is also possible that the differences of opinion on a number of important issues may run in concurrent channels. But this is a state of things which

is not generally realized. It is extremely difficult to bring all questions to the test of any one supreme principle. There are a few principles like individualism and collectivism which may determine men's attitude on a number of issues in the same manner. There are also the differences of temperament which incline men to adopt an attitude of venturesome experiment or of cautious conservatism. The difference between the cautious temperament and the venturesome temperament is one of the deep-rooted differences of mankind and is a far more abiding principle in the division of parties than any other. The difference between the Liberal and the Conservative is mainly the outcome of this difference of temperament. Apart from these differences based upon temperament and adherence to the principle of individual liberty or collective action, there are few principles which can divide opinions on a number of topics in the same way. Any attempt to form permanent parties on any other basis must be lacking in permanency and savour of unreality. It must not, however, be supposed that, important as it is, temperament is the only determining factor in the formation of opinions. Opinions are formed on political issues not purely from a judicial standpoint as to which particular course of action would be most conducive to the welfare of the nation. On almost every topic of practical importance, there is sure to be a conflict of vested interests and the opinions of men are largely coloured by the manner in which particular interests may be affected by any course of action.

It follows from these observations that the permanent organization of parties on a consistent principle or body of principles is an extremely difficult task and that, at the best, permanent party organizations are among the most highly artificial products of modern political societies. It is observed by Sir Sidney Low; "It is a difficult, perhaps an impossible task to draw a dividing line from age to age between two parties on the basis of doctrine. But the fact is that Englishmen in their public as well as private life have no great regard for abstract generalizations. They are careless about measures and much more particular about men. Attachment to persons rather than fidelity to principles is the spirit of our party life."<sup>1</sup> Speaking of the period from 1832 to 1885, Sir John Marriott says that the differences between the two historic parties lessened almost to the vanishing point.<sup>2</sup> It has been said of the same two parties by Professor Hearnshaw that "They constantly changed their shapes, altered their programmes, modified their constitutions, transmuted their modes of operation and shifted their ground. . . . Widely as the two parties have differed from one another in attitude and policy, they have always had much in common and they have recognized the validity of the same political axioms and postulates and have held congruous opinions on matters of vital importance. . . . Their differences relate rather to ways and means than to ends, rather to accidents than to essences."<sup>3</sup>

<sup>1</sup> *The Governance of England* by Sidney Low (revised edition), p. 127.

<sup>2</sup> Marriott's *Mechanism of the Modern State*, vol. ii, p. 443.

<sup>3</sup> Hearnshaw's *Democracy at the Crossways*, p. 164.

The hollowness and insincerity of party programmes and promises, the ascendancy of party spirit to the prejudice of a national outlook, the suppression of private convictions, the tyranny of party discipline and the debasement of moral standards have been the well-deserved theme of many a diatribe against the party system. Speaking of the two great American parties, Lord Bryce says that "They have been compared to empty bottles into which any liquor might be poured, so long as the labels were retained."<sup>1</sup> The party system prevents the members of the parties from judging of the proposals of the other parties on their merits and induces them to seek every occasion for opposing and defeating the party in power and to be on the alert for the discovery of differences of opinion rather than points of agreement and methods of conciliation. M. Ostrogorski's remarks with regard to the present system of permanent parties burdened with omnibus programmes are interesting. He observes:— "Under the present system of permanent parties burdened with omnibus programmes, a candidate or a member is, in the very great majority of cases, necessarily a humbug. It is to him that John Bright's sally in the debate on the 'minorities clause' applies; he it is who produces like a conjurer, port, champagne, milk and water out of the same bottle. Not only has he to be in political matters a sort of doctor *de omni re scibili et quibusdam aliis* to possess a ready-made solution for all possible problems, but he has to pledge himself to solve these problems,

<sup>1</sup> Bryce's *Modern Democracies*, vol. i, p. 141.



however varied and numerous they may be, at the earliest date. He has to make promises right and left, and, as it is impossible for him to keep them, he becomes a professional liar, although at bottom he is not perhaps more dishonest than other men. 'Necessity has no law' impels him, in spite of himself, to disregard truth, sincerity, uprightness. This will be always the case as long as the object is to muster under a common standard and for all time the greatest number of electors, without taking into consideration their divergences on many questions; under this system the candidate will always be obliged to hedge continually, to discourage nobody, and to carry on a regular flirtation with every one, with whoever is likely to join the 'party'.<sup>1</sup>

Speaking of the evils incidental to the permanent organization of parties, Ostrogorski remarks: "This cannot be formed and kept up without the help of professionals. As the latter have to be rewarded in some mode or other, the party is induced to lay hands for this purpose on public offices, of which it makes an electoral coin, and to traffic in the influence procured by power in yet other ways, from the apparently harmless bestowal of honorary titles down to the concession of public works, of contracts, of 'franchises'; and extending even to the stay of criminal proceedings, to the remission of fines and penalties, to the passing of laws for the benefit of private interests. To prevent the great mass of adherents on whom rests the power of the party from escaping it, their minds and their wills must be

<sup>1</sup> Ostrogorski, *Democracy and the Organization of Political Parties*, vol. ii, p. 668.

inveigled by every kind of device. As the parties are no longer cemented by principles and ideas, once the question or questions which had divided them are settled, they have recourse to mechanical cohesion; they unite their contingents in a superstitious respect for pure forms, in a fetish-like worship of the 'party', inculcate a loyalty to its name and style, and thus establish a moral mortmain over men's minds. The right of private judgment and the independence of the conscience are a perpetual menace to their ascendancy, just as under the regime of a despot, and the parties try to stifle them as a despot would—they only adopt other means. They stereotype opinion in creeds which enforce on it a rigid discipline, they conceal the divergences of views that arise, by composite programmes in which the most varied problems are jumbled together, which promise everything to everybody, which reconcile contradiction by rhetorical artifices, masterpieces of shuffling and humbug. Those electors who are in agreement with the party on a single point of its programme only are obliged, in order to get that point carried, to vote for all the rest in spite of their convictions. The national verdict is perverted, the aim of representative government is missed: but the party cannot capture its position or keep them otherwise. To the moral tyranny of political prejudice, to subterfuge, to deception, it is also obliged too often, not to say always, to add the weapons of corruption. Success is obtainable on no other terms. And as it is the supreme end, it justifies everything even in the eyes of honest people. In order not to jeopardize the party, they consent to throw over

received morality, agree to all kinds of discreditable transactions, and accept co-operators and associates of every description.”<sup>1</sup>

I have so far dwelt upon the highly artificial character and the defects and evils of the party system of politics in Britain and other western countries for the purpose of showing that the system is far from being an unmixed good and that its many evils and defects have led some thinkers to doubt the wisdom of the system as a permanent feature of the political organization of society.

But it must be conceded that artificial as it is and with all its faults, the party system is inevitable and that it is the only means of co-ordinating the activities of the loose atoms of the electorate and mobilising their energies for any constructive purposes and that no means have yet been discovered of working a system of responsible government except by recourse to party organization. According to the definition of Burke, party is a body of men united for promoting by their joint endeavours the national interest upon some particular principle in which they are all agreed. The party system affords the only means by which order can be brought out of chaos by a multitude of voters. The promotion of their principles of propaganda, the winning of elections and the holding together of the members of the party in the legislature are the main objects of every party organization. The see-saw of political parties which is essential to the working of a system of responsible government is hardly possible without a strict

<sup>1</sup> Ostrogorski's *Democracy and the Organization of Political Parties*, vol. ii, p. 656.

discipline over the members of the parties and their tactful management by whips and leaders.

These various objects of a party cannot possibly be achieved without an efficient organization. The greater the number of electors, the larger the size of the electorate, the more costly is the work of organization and the larger its requirements in the shape of workers. The political organizations have to collect funds for carrying on their work of different kinds, for propaganda, for running elections, for the payment of their agents and other staff, for publicity and various other purposes. As observed by Lord Bryce ; "The smaller parties or groups which appear in representative assemblies suffer from want of funds, having few adherents over the country at large ; nor are they aided by contributions from capitalists, though the latter readily support a strong body capable of serving their commercial or financial interests. Poverty shortens the life of many groups or drives them into confusion, for 'publicity', i.e., the advertising, in a direct or indirect form, now deemed essential to success is so costly that money tends to become the sinews of politics as well as of war."<sup>1</sup> Few people in this country or for the matter of that few of our critics in this country have any idea of the effort and expense involved in building up and maintaining a party organization.

It is pointed out by Professor Lees-Smith that the "creation of a party is an extraordinarily difficult achievement. An effective party needs a central organization with funds running into hundreds of

<sup>1</sup> Bryce's *Modern Democracies*, vol. i, p. 142.

thousands or even millions of pounds. It requires a local organization in almost every constituency which, as it must fight municipal as well as national elections, must extend to most of the wards of the constituency. These local organizations raise funds which altogether amount to a sum equivalent to those controlled by headquarters. The party maintains an army of officials, speakers, headquarter officers and special women organizers who constitute a profession sufficiently compact to have begun forming trade unions of their own. It subsidizes newspapers and publishes a series of special weekly or monthly papers for circulation among the members of the party including journals devoted exclusively to technical questions of political organization. It must be prepared, when a general election comes, to flood the country with millions of leaflets, pamphlets, posters, special newspaper articles and appeals. But the foundation upon which all this elaborate organization rests in each constituency is the group of voluntary workers. No expenditure of money or work of paid agents can keep the party organization in health, unless life is breathed into it by a band of devoted adherents who retain their zeal during listless intervals between elections, attend dreary committee meetings and do the unobtrusive work of organization without an expectation of personal reward. . . . A party machine therefore is a result of such prolonged labour and persistence that it cannot be created under normal political conditions in less than a generation. The latest machine—the only one that has been built up from wholly new foundations in modern British politics—is that of the

Labour Party. The history of its creation stretches over fifty years and shows the nature of the task that such an attempt demands."<sup>1</sup> This passage shows the difficulties which attend, and the time it takes for, the establishment of a regular party organization.

To induce people to incur all the huge expenditure required for the organization of parties and to induce the cohesion of members of parties, adequate motives must be supplied. The chief motive at present for the formation of any party is the wresting of control of the government from the bureaucracy and transferring it to the legislature. The fight of any popular party against a bureaucratic government in power armed with inexhaustible resources is a fight against great odds and attended with so much uncertainty as to results that it does not furnish a sufficiently strong motive for bringing into existence a large political organization. It is the chance of securing power and office and the attractions of power and responsibility that supply the needed motive power for organizing a party and for maintaining the cohesion of the party by the exercise of discipline.

The history of the development of parties in England shows that it was after the introduction of responsible government that the party system became well-established and its origin and growth were largely influenced by the system of patronage with regard to offices. As observed by Sir John Marriott, "If the development of parliamentary government has carried with it the corollary of party

<sup>1</sup> Lees-Smith's *Second Chambers in Theory and Practice*, pp. 14-16.

organization in Parliament, the extension of the suffrage has necessitated similar organizations in the constituencies."<sup>1</sup> Until the passing of the first Reform Act of 1832 there was little extra parliamentary organization in English politics. Party organizations whether within the walls of the legislature or in the country have generally followed the introduction of responsibility and not preceded it. It is no wonder therefore that the system of party organization on truly political lines has not yet grown up in this country. The conditions have been hitherto unfavourable to such a growth. The one question which overshadows everything else in the legislature is how to obtain further constitutional reforms and secure the transfer of control from the hands of the bureaucracy to the people. If the object of the opposition in all constitutional countries is to turn out the existing ministry and secure the places held by the ministers, the one effort of all the non-official parties in the existing legislatures has been in conformity with this tendency and they have been endeavouring to secure greater powers for the legislature and greater control over the government. The political parties within the legislatures have therefore had no inducement or occasion to form any division among themselves. Such differences as there have been among the different parties relate only to the method of attaining responsible government and not as to the desirability of the end in itself. Critics of the existing condition of party organization in the country forget the peculiar

<sup>1</sup> Marriott's *Mechanism of the Modern State*, vol. ii, pp. 448, 449.

conditions under which politicians have had to work under the existing constitution. They forget that in the nature of things it is impossible for any body of persons to rally round the existing regime and say that they do not desire any further constitutional reforms, or the extension of the principle of responsible government or that they are prepared to await indefinitely the sweet will and pleasure of the government, till of its own grace and mere motion it chooses to enlarge the sphere of responsibility. The politicians who belong to the moderate school have often been criticized for not forming a sufficiently strong party in opposition to the extremist party. But the critics do not realize the futility of expecting any party claiming to be national to take up an attitude of satisfaction with the existing order of things and to ally itself with a policy of stagnation. But even under existing conditions, it must be admitted that the organization of the Congress party has attained a considerable measure of efficiency.

By way of objection to the introduction of responsibility in the central government, it may be urged that, owing to the want of well-established party organizations and to the existence of communal and sectional differences, it would not be possible to form a strong and stable ministry and that the conditions which are necessary to the success of the parliamentary system of government cannot be realized. It may be conceded that the system of parliamentary government as it is worked in England has depended for its success upon the existence of two parties and only two parties in the legislature. The fact that there is no well-established two-fold



organization of parties at the present moment does not necessarily warrant the inference that there will be no definite organization of parties hereafter, or that the two-party system cannot possibly be evolved on Indian soil. The formation of parties must follow the introduction of responsibility and cannot precede it. It is only after the transfer of power and responsibility to the legislature that one can expect important cleavages of principle to develop themselves and a struggle for power and office between two rival sets of members of the legislature. The enforcement of the principle of joint responsibility will promote the formation of the two-party system. If the members of the cabinet stand by each other and act upon the principle of collective responsibility and a defeat of the government involves a change of the entire ministry with a possible dissolution of the house, it will be feasible to create a stronger sense of party fidelity in the followers of the government. To the extent that the party in support of the government becomes a compact and well-disciplined body, the party in opposition will also be compelled to adopt a similar organization and discipline. While the formation of the cabinet system is favoured by the existence of the two-party system, the working of the cabinet on the principle of joint responsibility is also bound to react upon the parties in the legislature and promote the evolution of the two-party system. It may be urged that this is a too sanguine view which is not warranted either by the conditions now prevailing in this country, or by the experience of the European countries, which have copied the

parliamentary system from the English model. But there are various answers to this criticism. In the first place, the formation of a two-party system under the conditions of Indian life and politics is not inconceivable and is not an impossible aspiration. This does not carry us far and there is undoubtedly a gap between aspiration and achievement. But we may go further and point out that, while it is true that the condition of a two-party organization has not been realized in most of the countries which have adopted the parliamentary system, the fact that the governments of those countries have continued to function shows that though the greatest measure of success of the parliamentary system can only be achieved with two parties, the working of the cabinet system is not necessarily doomed to be a failure. *Prima facie*, the division of the members into several groups is bound to lead to the formation of coalition ministries which have been shown by experience as well as *a priori* reasoning to be weak and short-lived. The group system has led not only to the instability and shortness of life of coalition governments, but also to the other evils of bargaining, log-rolling and intrigue.

The tendency to multiplicity of parties has been noticed in countries like France where the people have no English blood in their veins, or inherited English political experience and traditions. It has been noticed also in the recently formed Irish Free State the people of which have had the advantage of participation in the working of the cabinet system in the United Kingdom. Here also it may be possible to attribute the failure of the parliamentary system to the defects of the Celtic

race. But the evils have been also observed in the case of the great self-governing dominions which have been mostly built up by members of the Anglo-Saxon race, who are heirs to the political culture and traditions of England. In the Commonwealth of Australia there were twelve ministries during the period from the formation of the Commonwealth in 1901 to 1918. Speaking of the cabinet system in the Dominions, Professor Keith observes,<sup>1</sup> "For the greater part, colonial ministries are not of prolonged duration; and indeed in some cases, the instability has been almost ludicrous. Ministry after ministry comes into office and disappears in the course of a few weeks or months. In Canada, things have been very different in this regard from the state of affairs in the Commonwealth of Australia. In the provinces things have been different, and ministries have been less clearly divided on political grounds and so less stable. But even there in recent years matters have changed. In the case of the Commonwealth changes have been incessant from 1901." . . . "In the case of the States there has been the same lack of political continuity and the average life of a government has been extremely short."<sup>1</sup> Professor Keith attributes these changes to the lack

<sup>1</sup> Keith's *Responsible Government in the Dominions* (first edition), vol. i, p. 322; *ibid.* (second edition), vol. i, p. 250. The change in the provinces of Canada is attributed by him to the adoption of Dominion party lines as the basis of distinction. This was due to two reasons firstly the fact that provincial affairs do not give rise to clear issues of principle on which to base party organization and secondly the obvious convenience of using the local organizations for federal purposes and for provincial purposes also. For a further explanation of the instability of ministries in the Dominions, see the remarks of Prof. Keith at p. 259, of his *Responsible Government in the Dominions* (second edition).

of questions on which parties could divide on party lines. The remedy suggested by Professor Keith is to refrain from changes in the administration except on substantial grounds and when changes are made, to appoint new members to the vacated posts rather than transfer existing members to them, thereby upsetting the whole scheme of the government. The number of parties in the Free State of Ireland is six, and in the new Republic of Germany it is about ten. I have no intention of suggesting that the absence of the two-party system and the existence of a number of groups are not defects to be deprecated. They undoubtedly detract from the efficiency, strength and continuity of the executive. But the presence of these features in a large number of modern governments of the parliamentary type is suggestive of a natural or general tendency to the formation of groups or more parties than two. None of the countries which have adopted this form of government have any desire to change their constitutions or give up the cabinet system. Signs of the tendency to multiplicity of parties are observable even in England. The working of the two-party system has been interfered with by the evolution and activities of the Irish party during a period of thirty years from 1885 to 1914 and later on by the evolution of the Labour Party since the beginning of this century. If the Liberal Party is extinguished by absorption in the other two parties, the normal two-party system may be re-established. If, on the other hand, the Liberal Party has any vitality and succeeds in regaining its lost position, England will be faced with the problem of three parties. Very strong

language has been used by Professor Hearnshaw with reference to the group system. He considers it the "devil's own device" for the destruction of democracy. "It opens the flood gates for the entrance of log-rolling, intrigue, bribery, self-seeking, debased bargaining, falsehood, treason; it eliminates responsibility, puts an end to all continuity or calculability of policy and persons and brings to the front in politics the crank, the charlatan and the knave."<sup>1</sup> While the group system may be admitted to have certain patent evils and defects which interfere with the full success of the cabinet system, the unmeasured denunciation of Professor Hearnshaw does not seem to be justified.

Let us now turn to the other side of the picture as presented by M. Ostrogorski who has made a special study of party organization and whose opinions are entitled to great weight on account of his detachment, fairness, wide study and shrewd observation. The writer I have referred to is of opinion that "the more the regime of liberty is firmly established in a country, the more the divergences of opinion that arise spontaneously and the more it is necessary in order to give them a solution that the citizens should form combinations and groups and do battle with all the weapons which liberty places at their disposal."<sup>2</sup> Speaking of the tendency to the multiplication of parties, he remarks: "The old parties are breaking up with daily increasing rapidity. They can no longer contain the incongruous

<sup>1</sup> Hearnshaw, *Democracy at the Crossways*, p. 410.

<sup>2</sup> Ostrogorski's *Democracy and the Organization of Political Parties*, p. 555.

elements brought together under the common flag. It is all very well for them to go on bearing the old names, to wrap themselves in the ancient traditions. These names and these traditions do not succeed even in disguising the absence of common ideas and aspirations which is too obvious to admit of concealment. Compact and stable majorities are only a historical reminiscence; the crumbling of parties is the rule; intestine strife, schisms, artifices and manoeuvres intended to conceal them are the very essence of their existence. Some, like the parties that go by the name of Liberal, live, not to say vegetate, on the credit of their past which is becoming visibly exhausted; others carry on their business by appealing to the vulgar instincts of the multitude, by exploiting their ignorance and their credulity, by flattering their passions and their prejudices; others, again, live from hand to mouth by means of expedients, or haggings, of unprincipled coalitions which are formed for sharing power, as rogues combine to commit robbery. The gravity of this state of affairs varies in different countries with the political manners and the more or less deep roots of the parties; but no country is free from the evil; England itself is already attacked."<sup>1</sup> I have quoted this passage not because I am in agreement with the conclusions or the remedies of the author, but simply for the purpose of showing that, while the emergence of groups is to be deprecated, it is not such a serious calamity as it has been depicted by some writers and is not so fatal to national welfare

<sup>1</sup> Ostrogorski's *Democracy and the Organization of Political Parties*, vol. ii, p. 687.

as to be accepted as a conclusive argument against constitutional advance. On the other side, the evils inherent in the party system when it consists of two parties alone are well known and have been equally the subject of scathing criticism in many quarters. Though it must be admitted that the balance of advantage lies with the two-party system and that it furnishes the most favourable environment for the working of the cabinet system, it is desirable not to ignore its many defects and harmful features.

The necessity for working the system of cabinet government with the principle of collective responsibility will tend to bring about a reduction in the number of parties and groups and a spirit of greater cohesion among the members of the party. The chances of getting into office and of remaining in office will certainly be strengthened under a two-party system and one may therefore expect the growth of a tendency to diminution in the number of parties.

Another objection which may be brought forward against demands for an extension of the reforms and of the powers of the legislature is the backwardness of the electorate. The successful working of parliamentary institutions presupposes an electorate capable of taking an interest in the proceedings of the legislature and exercising control over its representatives. The extent to which the electorates will be able to perform these functions would depend upon the interest taken by them in public affairs and upon their political training. If the electors are illiterate or uneducated, it is the fault of the Government and the powers that be, as it is they who have been responsible for the good

government of this country. Whatever plea might be set up in extenuation of this charge prior to the assumption of the management of India by the Crown, the British Government have been controlling the administration of the country for the last seventy years, and even if we leave out the first ten years of this period as required for the consolidation of their rule after the mutiny, they have at least had a period of sixty years for the education of the country. Unfortunately the idea of the education of the masses as one of the primary concerns of the state dawned upon the English mind very late and it was only the Education Act of 1870 that could be said to have laid the foundations of universal primary education in England. The steps taken by the government in England in the direction of mass education were the result of the impetus of the movement for electoral reform since 1832. Even so late as 1910 the Government of India opposed the Compulsory Elementary Education Bill of Mr. Gokhale. The consequences of the government's own remissness of duty cannot be urged with any good grace as an answer to the demand for extension of reforms. The seven years during which education has been a transferred subject in the provinces have not been financially favourable to any large effort by the ministers, and the legislatures cannot be blamed, if they are unable to show any great improvement upon the achievement of the bureaucracy during a period of half a century and more.

• Apart from any question of allocation of blame, the history of responsible government in the British



Commonwealth of Nations shows that backwardness of education has not acted as an impediment to the introduction of responsible government. On the other hand, it has been found by experience that the best means of remedying this backward condition is the extension of the privilege of self-government. Responsible government in England began in the time of Walpole. It was during the second quarter of the nineteenth century that the first seeds of state aid in education were sown. The attitude of Parliament towards elementary education underwent a change after the Reform Act of 1832. Bills introduced in the House of Commons for a national system of education, passed in that House, but were rejected by the Lords who strongly opposed the measures from a vague fear that the spread of education would in the long run end the class monopoly in education.<sup>1</sup> In the report of the Education Committee of 1845, it was said that only 16 per cent of the school-going children were able to read the Bible, while the rest could not even spell

<sup>1</sup> The hostility of the upper classes to the education of the poor was reflected in the speeches of Windham and Giddy in the House of Commons. The latter said: "However specious in theory the project might be, of giving education to the labouring classes of the poor, it would in effect be found to be prejudicial to their morals and happiness; it would teach them to despise their lot in life, instead of making them good servants in agriculture and other laborious employments to which their rank in society had destined them; instead of teaching them subordination, it would render them factious and refractory, as was evident in the manufacturing counties; it would enable them to read seditious pamphlets, vicious books and publications against Christianity; it would render them insolent to their superiors; and in a few years the result would be that the legislature would find it necessary to direct the strong arm of power towards them, and to furnish the executive magistrate with much more vigorous laws than were now in force." Hammond, *The Town Labourer*, p. 57. See also Trevelyan's *British History in the Nineteenth Century*, p. 162; Gilbert Slater's *The Making of Modern England*, Chap. XV.

their names. The percentage that could be said to have acquired the art of writing was twenty, while only two per cent could be said to know something of arithmetic. Though the English Elementary Education Act was passed only in 1870, the Reform Act of 1867 added one million voters, mostly urban labourers, to the electorates.

Let us see whether educational backwardness has prevented the introduction of responsible government in other parts of the British Empire. When Britain offered responsible government to the Cape Colony, the chief officers of the government of that colony submitted a memorandum deprecating the introduction of responsible government and they dwelt upon the backwardness of education even among the Europeans.<sup>1</sup> In the Durham Report, referring to the state of education in Lower Canada, it is said: "It is impossible to exaggerate the want of education among the habitants (yeomanry of the country districts); no means of instruction have ever been provided for them and they are almost universally destitute of the qualifications even of reading and writing."<sup>2</sup>

Moreover, in most countries enjoying a democratic system of government, the main functions of the voters are to choose the right men as their representatives and to express their opinions on the main issues of policy placed before them by the representatives of rival parties. For these limited functions, what is required is common sense,

<sup>1</sup> Keith's *Responsible Government in the Dominions* (second edition), p. 29.

<sup>2</sup> Durham's *Report on Canada*, p. 18.

a knowledge of men and a sense of civic duty. Mere elementary education by itself may not mean much with regard to the possession of these qualifications. Speaking of the manner in which the elector exercises his privilege of voting at elections in western countries, Lord Bryce remarks, "In elections the spirit of party or class and the combative ardour which such a spirit inspires, cloud the minds of many voters, making them think of party triumph rather than either of a candidate's merits or of his principles. A large percentage of the votes are given with little reference to the main issues involved. It is the business of the managers to 'froth up' party feelings and make excitement do the work of reason."<sup>1</sup>

In their choice of representatives at the elections to the councils, the electors have to exercise their judgment and select suitable candidates with reference to their character, ability and opinions on important questions of policy and must not be influenced by improper motives, or be led away by appeals to the passions. Even in countries where education is widespread, it is found that the electors do not choose the best persons and that they are too often influenced by irrelevant considerations and improper motives. Experience of elections in this country shows that the state of things in India is not much worse, if at all, than in western countries. It only shows that the sense of civic duty is a plant of slow growth and does not keep pace with the general growth of education. The best means of cultivating

<sup>1</sup> Bryce's *Modern Democracies*, vol. i, pp. 179, 180.

a sense of the duties of citizenship is to afford opportunities for civic and political training under conditions which would ensure the right discharge of these duties. A free, vigorous and healthy press, a high standard in the current notions of public morality, strong public opinion and the light of publicity are the conditions under which the civic spirit can take root and flourish. That in spite of the wide diffusion of education there has not been a sufficient sense of civic duty to overcome the sinister influences of personal profit or party interests is unfortunately the experience of many democratically governed countries. It would, however, be nowhere accepted as a justification for the restriction or abolition of responsible government. For the purpose of determining the fitness of the electorate for the introduction of responsible government, it would be proper to compare the state of things here with that in England at the time when responsible government came into existence in the eighteenth century. We shall however take the period of the first English Reform Act and see what the standard of political morality was among the voters to Parliament and the members of Parliament at that time. Lord Bryce states ; "In England bribery was rife in Parliament under Walpole and in parliamentary constituencies till the middle of the last century. It was for the briber a matter of jest, not of social stigma, the habit being an old one."<sup>1</sup> "Gross corruption alike in the constituencies and among the elected and nominated representatives

<sup>1</sup> Bryce, *Modern Democracies*, vol. i, p. 157.

was the inevitable corollary of such a system (pre-reform system). To the sale or purchase of seats the term cannot in fairness be applied. The seat is as much a marketable commodity in the eighteenth century as an advowson in the nineteenth century and the legitimacy of the transaction was, as we have seen, recognized alike in Pitt's Reform Bill of 1785 and in the Act of Union of 1800. In each case the value of a seat was estimated at over £7,000. Nor was this excessive, for sums far in excess of this amount were frequently spent on a parliamentary contest. Thus in 1768 the Bentincks and Lowthers spent 40,000 pounds apiece in contesting the counties of Cumberland and Westmoreland, while at York in 1807 the joint expenses of Lord Milton and Mr. Lascelles are said to have amounted to the astounding sum of £200,000."<sup>1</sup>

"The abuse of patronage for personal or party purposes flourished in England till late in the nineteenth century. Though the spoils system did not develop in England as in America, such vacancies as occurred in the natural course of events were freely used in former times to confer favours on political and personal friends or to reward party services."<sup>2</sup>

<sup>1</sup> Marriott, *The Mechanism of the Modern State*, vol. i, p. 478.

<sup>2</sup> Lowell's *Government of England*, vol. i, p. 154.

Sir Erskine May, speaking of the effects of parliamentary reform upon the state of parties, observed that "throughout these changes patronage has been the mainspring of the organization of parties." Erskine May's *Constitutional History of England*, vol. ii, p. 99.

It was said of Sir Robert Peel that in making public appointments he never took any circumstances into consideration except the profit of the party; he scorned to make personal profit out of appointments. (Gilbert Stater's *Making of Modern England*, p. 175).

"The use of civil service posts, great and small, as a means of buying the support of the electors and establishing party influence in

“The reason that the spoils system, i.e., the wholesale discharge of officials on a change of party, obtained no foot-hold in England is not to be found in any peculiarly exalted sense inherent in the British character that every public office is a sacred trust. It is rather to be sought in quite a different sentiment, the sentiment that a man has a vested interest in the office that he holds.”<sup>1</sup>

As regards the civil service in the dominions, it is stated by Professor Keith that Canada shows a somewhat unhappy record in the matter of the civil service system and that the appointment of public officers was always a matter in which political influence had a good deal to do in the first place. . . . It appeared from a report of a commission appointed in 1908 that nominations to office were political jobs and that after appointment success depended upon political influence.<sup>2</sup> According to Lord Bryce, there have

the constituencies continued unchecked, whichever party was in power.” (Ramsay Muir’s *Peers and Bureaucrats*, p. 34.)

What is regularly termed jobbing was declared by a prominent politician in 1853 to be the ineradicable vice of constitutional governments. (Ramsay Muir’s *Peers and Bureaucrats*, p. 35.)

Ramsay Muir states that in the middle of the nineteenth century it was estimated that 16,000 public offices were used for political purposes and filled by men selected, not because they could do the work required, but because they were the relatives of electors. (*Peers and Bureaucrats*, p. 41.)

“As regards colonial patronage, it is stated that at one time a deaf and dumb peer governed Barbadoes and a public official in England drew a salary for being Secretary to the Council of Jamaica in which island he had never set foot. . . .” “Patronage of the colonial office,” said Charles Buller, “is the prey of every department of our government. To it the Horse Guards quarters its worn-out general officers as governors; the Admiralty cribs its share, and jobs which even parliamentary rapacity would blush to ask from the Treasury are perpetrated with impunity in the silent realm of ‘Mr. Mother Country’.” (C. R. Fay, *Life and Labour in the Nineteenth Century*, p. 20.)

<sup>1</sup> Lowell, *Government of England*, vol. i, p. 153.

<sup>2</sup> Keith’s *Responsible Government in the Dominions* (first edition), pp. 345-6.

been voters in Canada who allow their willingness to vote to be stimulated by the receipt of pecuniary inducements at elections, glossing over this lapse from civic virtue by the argument that they ought to be compensated for the time lost in going to the polling place. This habit not infrequent in Ontario, is quite as prevalent in the state of Ohio, on the other side of Lake Erie.<sup>1</sup> Personation and repeating are not unknown in elections and bribery is not rare. "The laws enacted on lines found effective in England failed to restrain these malpractices usually managed by underlings and apparently by both parties alike. Happening to hear a politician complain bitterly of the heavy expenditure by the opposite party which had caused the defeat of his own, I enquired why objections had not been more largely presented by the losing side and was answered that things might have come out which were better left in darkness. Each side had bribed, because it believed the other to be bribing, and the wealthier party got the best of it; for money counts here as in most countries and campaign funds are thought indispensable."<sup>2</sup> Jobbery and log-rolling especially in connection with public expenditure are said to be prevalent and though no legislature sinks so low as the assemblies of New York or Pennsylvania, the atmosphere of two or three is said to be unwholesome and nowhere can absolute soundness be found.<sup>3</sup>

The introduction of responsibility in the government is bound to be followed not merely by the extension of popular education, but also by

<sup>1</sup> Bryce, *Modern Democracies*, vol. i, p. 520.

<sup>2</sup> *Ibid.*, p. 533.

<sup>3</sup> *Ibid.*, p. 535.

political training. In their attempts to capture the electorate, rival parties will find it to their interest to carry the campaign into all localities and carry on propaganda work in season and out of season. There are many influences now at work for the political training of the electorate. The newspapers conducted in English by Indians are acquiring a large increase in their circulation and influence and the ability and standard of journalistic etiquette of the best among them are not inferior to those of the great English journals which, after publishing appreciative reviews of libels on India, refuse to publish protests against the libels. The vernacular press, the platform and the increased facilities of travelling and communication have been instrumental in awakening the people even in rural areas from their intellectual torpor, in widening their outlook, in creating an interest in the proceedings of the legislature and in stimulating a demand for the spread of education. These results have been already observed in several provinces.

As an indication of the appreciation of the franchise and the interest taken by the electorates in the elections to the legislative councils, it may be useful to furnish a few figures regarding the electorates and the polling in the contested constituencies. Taking the elections in India to the various legislative bodies in 1926, we find that the strength of the electorate for the legislative councils for the whole of British India excluding Burma was 6,473,568 out of a population of 235 millions. This works out to a little over 2.77 per cent which is about the same percentage as that of the electorate of the United



Kingdom immediately after the introduction of the Reform Act of 1832. The percentage of votes polled in the contested constituencies for the legislative councils in British India excluding Burma is 49.39. It may be pointed out in passing that though the percentage of the electorate to the population may appear small at first sight, the aggregate strength of nearly six and a half millions is larger than the whole population of the Australian Commonwealth which is about five and a half millions. The total electorate for the Indian Legislative Assembly was 1,125,000 and the percentage of votes polled in the contested constituencies was 48.8. Considering that the general election of 1926, though nominally the third election under the reforms was really the second, owing to the influence of the non-co-operation movement at the time of the first election, the attendance at the polling must be held to be satisfactory. The numerous political conferences which are held every year in different parts of the country, the elections to the various self-governing bodies, the visits of politicians to different places and their addresses or talks to the people, the circulation of the vernacular newspapers which are read or listened to with great avidity have all combined to enlarge the mental horizon of the man in the street and his interest in the doings of the various representative bodies and the prominent figures therein. In the year 1925-26, the number of village panchayats in the Madras Presidency was 933 and it is stated in the report of their working that several of them have submitted proposals for the introduction of compulsory elementary education, though only two of these

proposals have been sanctioned and the rest are under the consideration of the government. It is stated that several villages are willing to tax themselves for this purpose. Nor is the interest of the common run of people confined to affairs in India. The wave of interest spread among the labouring classes of the towns in western countries by the execution of Sacco and Vanzetti in America found a reflex among the labouring classes of the principal towns in India who held meetings in demonstration of their sympathy with the accused.

The criticisms on the working of the reforms contained in the reports of the Provincial Governments submitted to the Government of India and placed before the Reforms Enquiry Committee of 1924 refer to the electorates being influenced by personalities rather than principles, to the absence of any differential features in party manifestoes, the lack of party cohesion, the instability of political combinations and various other shortcomings. It may be readily conceded that party organization is still in its infancy in India. But as already pointed out, the development of party organization follows

- the grant of responsible government and does not precede it. The criticisms are open to the charge of putting the cart before the horse. They are marked by that lack of breadth of outlook which is a trait of the bureaucratic mind. The English bureaucrat in India who is imported into this
- country at a very early age suffers from the defects of his class. It is his merit that he aims at a high level of efficiency and integrity in the services and labours hard to reach or maintain it. But it is his

weak point that he forgets his knowledge of English political history and has no knowledge of the actual working of political institutions in the west. Most of these criticisms of the Provincial Governments have been met in the observations already made on the party system. Party programmes and shibboleths are no doubt essential to the development of the highly artificial organization of political parties. Personalities can never furnish a permanent rallying point for parties. But there is a great deal to be said for the voter who puts his trust in the character and respectability of a candidate rather than in specious election promises which cannot be, or are not intended to be, fulfilled.

The development of local self-governing institutions is one of the matters into which an enquiry is to be made by the statutory commission. The period of seven years which has elapsed since the introduction of the constitutional reforms and the transfer of the subject of local self-government to popular ministers is too short to pronounce any definite opinion upon the results of the change in the administration. Experience of the change in a few of the provinces has been rather unhappy. It is believed that ministerial influence can be traced behind the appointment of several of the members and chairmen to these bodies, and that there has been a perceptible increase of corruption in their administration. Here again, we may compare the state of things here with the administration of local self-governing bodies in England at the time of the Reform Act and with the administration even at the present time in other countries like the

United States, Canada, etc., which have long enjoyed the system of responsible government. The English Municipal Corporations Act of 1835 was the result of an investigation by a Royal Commission on the administration of municipal institutions. They reported that the revenues derived from local taxation, which ought to be applied to the public advantage, were sometimes wastefully bestowed upon individuals, sometimes squandered for objects injurious to the character and morals of the people. They found: "It is not even that much of the corporate property is expended on police or public improvements. . . . The principle that the property of the corporation should be turned to the profit of the individual members has been undisguisedly adopted in few corporations compared with the number of those in which it is indirectly acted upon. . . . The direct appropriation of the capital, instead of the income of the corporation, is generally regarded as a fraud upon the public."<sup>1</sup> Speaking of the municipal system that was abolished in 1835, Mr. G. M. Trevelyan observes that its administrative aspect was incompetence that refused to undertake the new duties called for by new conditions of urban life.<sup>2</sup> "The office of municipal freeman was in many places coveted solely for the bribe which could be extracted from a candidate at parliamentary elections. The Royal Commission found an erroneous but strongly rooted opinion that the property of the corporations was held in trust for the corporate body only, and not for the local community as a whole. This easily led

<sup>1</sup> Gilbert Slater's *Making of Modern England*, p. 112.

<sup>2</sup> Trevelyan's *British History in the Nineteenth Century*, p. 244.

to the view that individual corporators may justifiably derive a personal benefit from the property. During the election of 1826, the corporation of Leicester expended £10,000 to secure the success of a political partisan and mortgaged some of their property to discharge the liabilities incurred. Few corporations admitted any positive obligation to expend surplus revenues upon public bodies. Such expenditure was regarded as a spontaneous act of private generosity rather than a well-considered application of the public revenue.<sup>1</sup>

It is necessary to add here that in referring to the corruption in national politics or in local self-government in England my object has not been to defend or palliate lapses from rectitude which must be objects of severe condemnation in any country. My sole purpose in making these comparisons has been to point out that these shortcomings have not operated as barriers to self-government in other countries.

The advantages of municipal administration are largely dependent upon the financial resources of the municipalities, though its efficiency depends upon the amount of public spirit and integrity brought to bear upon the discharge of their duties by the municipal councillors. The resources of the municipalities in India have been comparatively very slender, while those of the English municipalities had a tendency to expand owing to the great increase in wealth brought about by the industrial revolution. It is not therefore unfair to institute a comparison between municipal administration in India at the present time with the

<sup>1</sup> Redlich and Hirst's *Local Government in England*, vol. i, pp. 122, 123.

administration in England in the first half of the nineteenth century.

The first Public Health Act was passed in 1848 as a result of the agitation set up by Chadwick. The remarks of Mr. G. M. Trevelyan with reference to the sanitary movement may be usefully quoted; "The absence of sanitary control which had been characteristic of the nation's remoter past, had been continued during the first seventy years of the industrial revolution, with appalling results; which have been by no means altogether removed in our own day. The jerry-builder and the thrifty manufacturer in a hurry had covered England with slums; trout streams had become sewers; rubbish-heaps festered unregarded till cholera or some milder epidemic threatened the well-to-do. The cottages of the rural labour were no less disgraceful."<sup>1</sup> "The report of the Royal Sanitary Commission of 1868-71 showed how local authorities had remained inactive, however insanitary the conditions which prevailed in their districts, and how the machinery of local government had proved insufficient to translate the scientific laws of public health into actual administration. Foul water and unscientific systems of drainage, unhealthy houses and over-crowding produced and propagated all kinds of endemic and epidemic disease."<sup>2</sup> "It was only in 1888 that the establishment of county councils following the enfranchisement of the rural labourer in 1884 did for the country what had been done in 1835 for the town."<sup>3</sup>

<sup>1</sup> Trevelyan's *British History in the Nineteenth Century*, p. 279.

<sup>2</sup> Redlich and Hirst's *Local Government in England*, pp. 150, 151.

<sup>3</sup> Trevelyan's *British History in the Nineteenth Century*, p. 246.

It is a sign of the democratic tendency of the times that the shop-keeper class has practically captured the municipal councils in this country and that there has been a distinct lowering in the status, ability and character of the councillors. The same phenomenon has been noticed even in England.<sup>1</sup> Another regrettable change is the intrusion of national politics into municipal elections. We have not been slow to develop even the undesirable features of English municipal life. The reasons for this development are of course the same everywhere. One is the convenience and economy of uniting municipal with political organizations for the work both of registration and of elections. The other is the advantage of keeping the party organization in good fettle. The municipal elections have been compared to the yearly manoeuvres of an army. They exercise and improve the party organization and serve as a test of the strength of the political parties.<sup>2</sup>

Another matter which would form the subject of enquiry by the statutory commission is the co-operation received from those on whom new opportunities for service were conferred by the Government of India Act and the extent to which confidence can be reposed in their sense of responsibility. It is stated in the preamble to the Government of India Act that the action of Parliament in deciding upon further advance must be guided by the result of such enquiry. That there has been a spirit of non-co-operation in some of the

<sup>1</sup> *Lowell's Government of England*, vol. ii, p. 199.

<sup>2</sup> Redlich and Hirst's *Local Government in England*, vol. i, pp. 265-73.

provincial legislative councils must be conceded. We have to consider the object with which this requirement was inserted in the preamble, the significance of the non-co-operation movement and the inferences to be drawn from it. The object of this requirement evidently was to ascertain the capacity and willingness of the people to co-operate with the government in the working of the reforms and the existence of a sense of responsibility on the part of the members of the legislature. From the very moment of the introduction of the reforms, there has been a cleavage of political opinion in the country, as to whether the reforms should be worked or not, for what they were worth. The Congress was at first opposed to any entry into the councils, but the moderates were in favour of seeking election to the councils and making the fullest possible use of them for the good of the people. At the first elections, the councils were all filled by men who were determined in the face of great opposition and popular odium to serve the country by making every possible use of the opportunities provided by the reforms. That both in the provinces and in the central government they acquitted themselves creditably cannot be denied. It was their demonstration of the possibilities for service afforded by the new councils that induced the members of the extremist party to change their tactics and resolve to enter the councils with the professed object of wrecking them from within. It was only in the province of Bengal and the Central Provinces that the new members of the legislative councils carried their obstructive tactics to the length of making it impossible for the



ministry to function and driving the government to resume the transferred subjects for a while. In all the other councils and in the central legislature, the members of the Congress party after a few futile gestures for the purpose of saving their faces practically co-operated with the other parties and the government in working the reforms. What is the inference to be drawn from the conduct of the non-co-operating members of the legislatures? Their refusal to vote supplies in certain cases was due to their desire to give expression to their dissatisfaction with the reforms in the only way, or perhaps the strongest way, they conceived it was possible for them to do so. A token cut from the demand for grant would have been sufficient and would have helped to establish a convention of non-interference for restoration by the Governor-General. But they thought that the strength of their dissatisfaction should find expression in a substantial cut. The power of restoration of the Governor-General, necessary as it may be in certain cases, is one of the circumstances which hinder the growth of a sense of responsibility. The extremist wins cheap credit for his defeat of the government, but the administration does not suffer and the public does not realize the folly. It would not be right to infer from their conduct any inability or unwillingness to work the reforms or the lack of any sense of responsibility, and it would be still less right to attribute such deficiencies to the people at large. Speaking recently before a meeting of the committee of the Empire Parliamentary Association in London, Sir Frederick Whyte, the distinguished first President of the Indian Legislative Assembly, remarked

that the Assembly satisfied both the tests of co-operation and responsibility during its first three years. He said he certainly observed a progressive increase in the sense of responsibility in which the Legislative Assembly approached questions of public utility. On other issues, such as the executive action of the government, he remarked that there were no doubt "very hot disputes regarding the control of agitation which might eventually lead to crime, but that must always be a bone of contention between a nationalist party and a government owing its source of responsibility to an alien spring." He testified in favour of the Indian constitutional parties in respect both to co-operation and to responsibility. In support of the opinion expressed by Sir Frederick Whyte, I may refer to the work of the legislatures and their general attitude towards questions affecting the welfare of the people. It may be safely affirmed that our legislatures have passed no measures of legislation for the benefit of particular classes, or against the interests of the country at large. On the other hand, they have been ready to pass measures for the amelioration of the conditions of labour and for the promotion of social welfare. No difficulty has been experienced in getting through the legislatures bills for the protection of trade unions and for the regulation of the conditions of labour in mines and factories. The legislatures in India have been characterized by a breadth of outlook and sympathy and a spirit of progressiveness which compare favourably with the mentality of the English parliament in the nineteenth century and even at the present time. Women's suffrage was won in

England after an agitation prolonged over half a century and carried on towards the end in a spirit of fierce militancy. In the self-governing colonies of the British Empire and in the United States it was granted only after the war. Even now the franchise has not been extended to women in the South African Union, in France and in Belgium. On the other hand, in India the franchise has been conferred upon women as the result of resolutions passed without any serious opposition by the legislative councils in six provinces. The amendment of the Special Marriage Act legalizing marriages between a Hindu of any caste with a Hindu of any other caste or with a Buddhist, Sikh or Jain and the raising of the age of consent in the criminal law are achievements to the credit of the Legislative Assembly. A measure is now before the Legislative Assembly for raising the age of marriage in the case of Hindu girls and boys. Contrast with this the protracted struggle which had to be encountered by the Deceased Wife's Sister's Marriage Bill in England. Trade unions in England had to undergo severe persecution at the hands of the ruling classes in England in the beginning of the nineteenth century. Attempts were made to suppress them by penal laws against combinations. How they had to fight for freedom of association is described at length in Mr. Sidney Webb's *History of Trade Unionism*. Legislation for the limitation of the hours of labour of women and youths in factories to ten hours a day was opposed by men like Bright and Cobden. Lord John Russell's proposals for compulsory rates in aid of education were opposed by Gladstone and Disraeli. Lord

Macaulay said that he appealed with confidence to a future age which, while enjoying all the blessings of a just and efficient system of state education, would look back with astonishment to the opposition encountered by the introduction of that system and would be still more astonished that such resistance was offered in the name of civil and religious freedom.<sup>1</sup> A graphic description of the miseries of the labouring classes caused by the industrial revolution, the factory system and the corn laws in England, of the attitude of the middle classes towards the poor, of the severity of the game laws enacted in the interests of the squirearchy against poaching and the scandals of the administration of the poor laws will be found in the brilliant pages of Mr. G. M. Trevelyan.<sup>2</sup> How soon a knowledge of parliamentary procedure has been acquired by the Indian legislatures is admitted even by hostile critics like Lord Meston. The Indian legislature conducts its proceedings with a sense of decorum and dignity not inferior to that of the mother of parliaments. It has even been remarked that the proceedings are decorous to the point of dulness and that lively scenes like those witnessed in the House of Commons are conspicuous by their absence.

Our knowledge of history and our experience of human nature tell us that gestures and tactics of the kind adopted by the Indian non-co-operator are often resorted to as a means, real or fancied,

<sup>1</sup> *Progress of Education in England*, by J. C. G. De Montmorency, p. 40.

<sup>2</sup> *British History in the Nineteenth Century*, pp. 142-65.

of driving the government to make concessions. I need only refer to the conduct of the members of the Canadian legislature as described in the report of Lord Durham, which is generally recognized as a classical authority on the treatment of colonies. The remedy recommended by him was the introduction of responsible government in place of the merely representative council which had been conferred upon the colonies and the adoption of the remedy has been attended with signal success. In the words of Mr. G. M. Trevelyan, "It has proved the cement of the empire. In the days of its first adoption, it seemed to some statesmen, both Liberal and Conservative, to be a step towards an inevitable friendly parting of colonies and mother country. But this error in opinion as to the future ~~did not~~ involve those who held it in mistaken action in the present. The indifference that allowed colonies to go their own way, was much less fatal to Imperial unity than any attempt to hold them to the connection by force."<sup>1</sup> It needs no excuse to extract one or two important passages from this report. As regards the diagnosis of the conduct of the Assembly, the following passage on page 57 of the report (third edition) is of abiding interest :—

"The opposition of the Assembly to the Government was the unavoidable result of a system which stunted the popular branch of the legislature of the necessary privileges of a representative body, and produced thereby a long series of attempts on the part of that body, to acquire control over the administration of the Province. I say all this without reference to the ultimate aim of the Assembly, which I

<sup>1</sup> Trevelyan's *British History in the Nineteenth Century*, pp. 261-2.

have before described as being the maintenance of a Canadian nationality against the progressive intrusion of the English race. Having no responsible ministers to deal with, it entered upon that system of long enquiries by means of its committees, which brought the whole action of the executive immediately under its purview, and transgressed our notions of the proper limits of Parliamentary interference. Having no influence in the choice of any public functionary, no power to procure the removal of such as were obnoxious to it merely on political grounds, and seeing almost every office in the Colony filled by persons in whom it had no confidence, it entered on that vicious course of assailing its prominent opponents individually, and disqualifying them for the public service, by making them the subjects of inquiries and consequent impeachments, not always conducted with even the appearance of a due regard to justice; and when nothing else could attain its end of altering the policy or the composition of the colonial government, it had recourse to that *ultima ratio* of representative power to which the more prudent forbearance of the Crown had never driven the House of Commons in England, and endeavoured to disable the whole machine of government by a general refusal of the supplies.

“It was an unhappy consequence of the system which I have been describing; that it relieved the popular leaders of all the responsibilities of opposition. A member of opposition in this country acts and speaks with the contingency of becoming a minister constantly before his eyes, and he feels, therefore, the necessity of proposing no course, and of asserting no principles, on which he would not be prepared to conduct the government, if he were immediately offered it. But the colonial demagogue bids high for popularity without the fear of future exposure. Hopelessly excluded from power, he expresses the wildest opinions, and appeals to the most mischievous passions of the people, without any apprehension of having his sincerity or prudence hereafter tested, by being placed in a position to carry his views into effect; and thus the prominent places in the ranks of opposition are occupied for the most part

by men of strong passions, and merely declamatory powers, who think but little of reforming the abuses which serve them as topics for exciting discontent.

“The collision with the executive government necessarily brought on one with the Legislative Council. The composition of this body, which has been so much the subject of discussion both here and in the Colony, must certainly be admitted to have been such as could give it no weight with the people, or with the representative body, on whom it was meant to be a check. The majority was always composed of members of the party which conducted the executive government; the clerks of each Council were members of the other; and, in fact, the Legislative Council was practically hardly anything but a veto in the hands of public functionaries on all the acts of that popular branch of the legislature in which they were always in a minority. This veto they used without much scruple. I am far from concurring in the censure which the Assembly and its advocates have attempted to cast on the acts of the Legislative Council. I have no hesitation in saying that many of the bills which it is most severely blamed for rejecting, were bills which it could not have passed without a dereliction of its duty to the constitution, the connection with Great Britain, and the whole English population of the Colony. If there is any censure to be passed on its general conduct, it is for having confined itself to the merely negative and defensive duties of a legislative body; for having too frequently contented itself with merely defeating objectionable methods of obtaining desirable ends, without completing its duty by proposing measures, which would have achieved the good in view without the mixture of evil. The national animosities which pervaded the legislation of the Assembly, and its thorough want of legislative skill, or respect for constitutional principles, rendered almost all its bills obnoxious to the objections made by the Legislative Council; and the serious evil which their enactment would have occasioned, convinces me that the Colony has reason to congratulate itself on the existence of an institution which possessed and used the power of stopping a course of

legislation, that, if successful, would have sacrificed every British interest, and overthrown every guarantee of order and national liberty. It is not difficult for us to judge thus calmly of the respective merits of these distant parties; but it must have been a great and deep-rooted respect for the constitution and composition of the Legislative Council, that could have induced the representatives of a great majority to submit with patience to the impediment thus placed in their way by a few individuals. But the Legislative Council was neither theoretically unobjectionable, nor personally esteemed by the Assembly; its opposition appeared to that body but another form of official hostility, and it was inevitable that the Assembly should, sooner or later, make those assaults on the constitution of the Legislative Council which, by the singular want of judgment and temper with which they were conducted, ended in the destruction of the Provincial Constitution.

"From the commencement, therefore, to the end of the disputes which mark the whole Parliamentary history of Lower Canada, I look on the conduct of the Assembly as a constant warfare with the executive, for the purpose of obtaining the powers inherent in a representative body by the very nature of representative government. It was to accomplish this purpose, that it used every means in its power; but it must be censured for having, in pursuit of this object, perverted its powers of legislation, and disturbed the whole working of the constitution. It made the business of legislation, and the practical improvement of the country, subordinate to its struggle for powers; and, being denied its legitimate privileges, it endeavoured to extend its authority in modes totally incompatible with the principles of constitutional liberty."

The devices which were employed by the Canadian Assembly to snatch powers which did not belong to it and to bring the executive government under its control were far more ingenious and far more obstructive than those adopted by the non-co-



operators in the Indian Legislatures. The Assembly claimed the force of law for a resolution of its own vacating the seats of members on the acceptance of office under the Crown. They resorted to the practice of passing laws in a temporary form, as a means of extorting concessions as the price of renewal, and also adopted the practice of tacking with such renewing legislation bills for measures to which the Assembly attached importance. They passed regulations for a high quorum and used to break up the quorum and disperse to their homes immediately after sending up a number of bills to the legislative council, leaving no means of considering or adopting any amendments which that body might make and leaving it no option but that of rejecting or confirming wholesale the measures of the Assembly. The surplus revenue of the provinces was swelled to as large an amount as possible by cutting down the payment of public services to as low a scale as possible, and the real duties of government were sometimes insufficiently provided for, in order that more might be left to be divided among the constituent bodies, among whom there was a scramble for getting as much of the public funds as possible for their respective localities. The funds provided for public works were not entrusted to the executive, but dispensed by commissioners named by the legislature, the remuneration of the commissioners being a means of political corruption, patronage and influence. They made grants for education in such a manner that the superintendence and patronage were vested in the members of the Assembly who represented the country in the Assembly, and without the

semblance of sufficient accountability. A great proportion of the teachers could neither read nor write.

Another evil feature of the system of government was the mystery in which the motives and actual purposes of their rulers were hid from the colonists themselves. The most important business of Government was carried on, not in open discussions or public acts, but in a secret correspondence with the Secretary of State. Whenever this mystery was dispelled, it was long after the worst efforts had been produced by doubt and misapprehension. Is there such a difference in human nature or in the political conditions of this country, that the remedy which was adopted with such beneficial results to the administration of Canada should be held incapable of application to India?

One of the really serious obstacles to the peaceful evolution of India on constitutional lines and the attainment of responsible government is the acute tension which has recently arisen between the Hindu and the Mahomedan communities and which has manifested itself in serious disturbances of the peace within the last few years. There were occasional differences between the two communities in the past and breaches of the peace also occurred now and then. But they have never in my experience been so prolonged, or so acrimonious, or so wide-spread as recently. The two communities have generally lived in much greater peace and harmony than the Catholics and Protestants in Ireland; and even at the present time the relations subsisting between the two communities in the Indian states are characterized

by feelings of good-will and friendliness. There can be no doubt that the strained relations have a causal connection with the political reforms which have been recently introduced. Political ambitions and mutual distrust have tended to produce a feeling of estrangement between the educated classes of the two communities. Representation in the administrative services and in the legislative councils as a source of power and influence are the bones of contention between the educated members of the two communities. The Mahomedan is distrustful, because he feels that any democratic constitution means the rule of the majority and that the numerical preponderance of the Hindus combined with their superiority in education and wealth might result in his getting less than his proportional share of the advantages to be expected from a system of popular government. He feels also that, as a member of a community which once ruled in several parts of India, he is entitled to a privileged position and to a more favourable treatment than the mere numerical strength of his community would justify. On the other hand, the Hindu believes that on account of his bellicose disposition and ability to give trouble to the authorities, the Mahomedan has been specially favoured by the government, and that unless he can stand up for his rights, the Mahomedan will continue to be aggressive and will claim and receive more than he is entitled to. Pan-Islamism makes a powerful appeal to large sections of the Mahomedan community and the political significance of this sentiment is viewed by the Hindus with concern. While the Hindus in Northern India do not put

forward any claim to office on communal grounds and believe that the application of the communal principle to the composition of the legislature or the services is harmful to the best interests of the state, the Mahomedan feels strongly that the principle of open competition will work to the prejudice of his community, and that preferment to office on communal grounds should be allowed, until his community is able to overtake the Hindu in education. The tension among the masses of the two communities is due to fanaticism on the one hand and superstition on the other and to the conviction in the minds of the Hindus that impartiality is not strictly observed by the government in the enforcement of the law. Though the causes of the tension are different in the case of the educated classes and the masses of the people, it is believed, not altogether without foundation, that the outbreaks of violence which take place only among the lower classes are, unfortunately, engineered by some of the scheming members of the educated sections. These breaches of the peace can be dealt with by the strong arm of law and justice and have not much bearing on the question of constitutional reforms.

I have already discussed the questions at issue between the politically minded classes of the two communities. We have now to consider how the disputes between the lower classes of the two communities can be best settled and prevented. The two matters which have given rise to communal riots are the practice of cow-killing and the practice of playing music while carrying processions in front of mosques. The feeling of tension between the two

communities is fanned and fomented by the propaganda of class hatred which has been carried on in the vernacular press and on the platform by sectarian writers and speakers. This mischievous propaganda could have been easily stamped out, if the government had only chosen to use the powers conferred upon it by the criminal law, under section 153 A of the Penal Code and section 108 of the Criminal Procedure Code. The government were long unwilling to make use of their powers under these sections for fear perhaps of incurring unpopularity and the possible reproach of taking sides with one party or another. Extremist politicians have gone the length of attributing the communal outbreaks to the machinations of the government. The accusation is unjust, for the communal differences were not created by the government. But the element of truth in the accusation is that the government may be fairly charged with inaction in not having cared to use their powers under the law to deal with poisonous communal propaganda. It is not uncharitable to suppose that so long as the propaganda is not directed against the government or Europeans, the mischief caused thereby has been a matter of indifference to the government. As Lord Curzon remarked, the consolidation of the ruled does not make the task of government easier. To this day, the unparalleled campaign of virulent vilification systematically pursued by the anti-Brahmin press in Southern India flourishes unchecked. No objection can be taken to the advocacy of communal claims. But the abuse of a community has only one object, and that is the promotion of enmity and hatred.

between classes. Since the advent of Lord Irwin a change of spirit is noticeable in the attitude of the authorities. Since the recent case in the Punjab known as the Rangila Rasul case, which gave rise to much excitement in Northern India, the government have awakened to a sense of their responsibility and the Punjab Government have set an example of prosecuting the miscreants guilty of the offence of inciting class hatred. A vigorous use of their powers under the existing law is quite sufficient to check these mischievous attempts to excite or create class hatred.

Let us now turn to consider the methods of dealing with the incidents which generally give rise to Hindu-Mahomedan riots. As regards the practice of cow-killing, though there are some Hindus who go the length of advocating complete prohibition of the slaughter of cows, the large majority of Hindus are content to adopt a more reasonable attitude. What the Hindu objects to is really not the slaughter of cows in the slaughter-house, but their slaughter in public places or in places where the slaughter would be visible to the public and to the parading of cows destined for slaughter through the public streets in a flaunting manner, so as to wound the feelings of the Hindus. That this view is correct will appear from the fact that the riots take place only on particular festival days and not on ordinary days during the year. Every one knows that hundreds of cows are slaughtered on ordinary days in the great cities of Calcutta, Bombay and Madras without giving rise to any riots. All that is necessary is to prohibit the slaughter of animals whether in public streets or

places in such a manner as to be open to the public view, even though it may be made inside a mosque, so as to offend the feelings of passers-by or the people in the neighbourhood. The municipal enactments in force in many cities provide against slaughter in places not licensed for the purpose. Exception is generally made in connection with religious festivals or places of public worship. While the general rules may be relaxed in regard to such places and occasions, it must be distinctly provided in the licence or by specific legislation that the slaughter or the flaying should not be exposed to the public view. No citizen with any feelings of humanity or delicacy could possibly object to the enactment of these measures. The practice of leading in procession cows intended for slaughter is only indulged in for the pleasure of hurting the feelings of the Hindus and will cease of itself, when the Hindus cease to complain about it and show that they do not mind it.

The other practice which generally leads to riots relates to the playing of music in front of mosques. The remedy in this case is to ascertain and enforce the law strictly without fear or favour and to maintain all just rights. If it is held in any province that there is no specific rule of law, the courts must enforce the usage which obtains in the locality. In India more than in any other country, *mamool* or usage is looked upon as a source of law and unless it is immoral or contrary to public policy, it should be given effect to by the courts. So far as Southern India is concerned, the law was laid down very clearly by the Madras High Court in what is

known as the Salem riots case.<sup>1</sup> In the Madras presidency, there has been no doubt as to the law and it is only the failure of the administration to enforce the law that has given rise to complaints. In these cases of processional music, there is a conflict between the claim of an assembly lawfully engaged in the performance of religious worship or ceremonies to protection from disturbance and the claim of persons to use a common highway for a lawful purpose by parading it with music, provided only that they do not obstruct the use of it by other persons. It was laid down by the Madras High Court that there was no justification for a rule restricting the right of procession in the neighbourhood of a recognized place of worship, except during the appointed hours of congregational worship. The contention of many Mahomedans is that, while there are certain primary hours of worship in mosques, persons who are unable to attend during the primary hours are permitted and required to attend the mosque and perform their prayers during all the remaining hours of the day. This contention was negatived by the full bench of the Madras High Court in the Salem case and their decision was approved by the Privy Council in the Aligarh case decided by them towards the end of 1924.<sup>2</sup> Another contention which was also negatived in the Salem case was that, irrespective of the question whether public worship was actually proceeding, the sanctity of a mosque as a building dedicated to public worship required that persons passing the mosque should stop

<sup>1</sup> Sundaram Chetti vs. the Queen, I.L.R. 6 Madras 203.

<sup>2</sup> Manzur Hasan vs. Muhammad Zaman, I.L.R. 47 Allahabad 151.



the playing of music. The Judicial Committee have upheld the right of persons of any sect to conduct religious processions through the public streets subject to the condition that they do not interfere with the ordinary use of such streets by the public, and subject to such directions as the magistrates may lawfully give to prevent the obstruction of the thoroughfare or breaches of the public peace. Any claim by the Mahomedan community to interdict the playing of music at times other than the periods set apart for congregational worship can only be justified on the ground of usage. How far any particular usage should be recognized is a question which can only be solved by considerations of general expediency by determining whether the restriction of right involved in the recognition of the usage is or is not reasonable under the existing conditions of society. In some cases, there has been a claim by Mahomedans in particular localities to prohibit the performance of music even in private houses during the Muharram season. The fact that the Mahomedans might have forced the Hindus to respect their religion when they were in power, or that, even when their supremacy ceased, they might have by a show or threat of force compelled a concession to their prejudices would not be a ground for recognizing such an unreasonable custom. But granting that a claim to the interdiction of music during all hours of the day would not be unreasonable, it would still have to be shown with reference to the particular mosque that such a claim satisfies the other legal requirements of a valid custom.

The procedure recommended in South India

to the authorities is to ascertain from the authorities of the mosque or the local Mahomedan community the hours of congregational worship. When they refuse to give the information, the magistrates and the police must fix certain hours for congregational worship to the best of their own lights. Once the custom has been ascertained, it lies upon the executive to protect the parties in the enjoyment of their respective rights. Unfortunately, magistrates in this country are too often in the habit of interdicting the exercise of legal rights on the ground of the likelihood of a breach of the peace, even in cases where the rights have been established by decrees of the civil courts. While we must concede the powers of the magistracy to prohibit the exercise even of a legal right, when there is danger of an infraction of the public peace, the repetition of such orders is bound, as pointed out by the Chief Justice, Sir Charles Turner, to create an impression that the authorities are powerless to protect persons in the enjoyment of their civil rights and against the class from whom violence is apprehended. When this impression takes hold of the minds of large sections of the population, graver dangers are to be apprehended from refusing than from conceding protection to the legitimate enjoyment of civil rights. As a matter of fact, the danger apprehended from the neglect of their duties by magistrates and from their adoption of the easy course of interdicting processions with music has created the very dangers pointed out by the learned Chief Justice. Both in Southern and in Northern India, cases have not infrequently occurred in which the magistrates have refused to

protect civil rights, even when they have been established before the civil courts after protracted litigation.

The usage in Northern India seems to be somewhat different from that established in Madras. I have heard from competent authorities that ten years ago no objection was ever taken or upheld to the playing of music in front of mosques even in cities like Lucknow which are the strongholds of the Mahomedan population. The reason for the magistrate's refusal to enforce civil rights is that it is much easier to restrain the Hindus from playing music than to overcome the violent opposition of the Mahomedan community to the exercise of such civil rights. It is the conviction in the minds of the Hindu population that they cannot rely upon the magistrates for protection in the enjoyment of their civil rights that has induced them during the last few years to rely upon the strength of their own arm instead of the arm of the law. It is the same feeling which is largely responsible for the Sangathan movement in Northern India. The real remedy therefore consists in the enforcement of all civil rights, save in cases where the forces available to the magistrates render it impossible for them to do so. But such cases should be of rare occurrence. A return of the cases in which the exercise of civil rights by members of one sect or another has been interdicted by orders of the magistrates and especially of the cases in which the civil rights had been established by decrees of courts will throw light upon the question whether magistrates do not too readily yield to the temptation of passing prohibitory orders. It is

a matter of common knowledge that riots between Hindus and Mahomedans are comparatively rare in the Indian states where order is much better maintained than in British India where the subject of law and order has to this day been a reserved subject administered by the bureaucracy.

The remedies I have discussed relate to existing mosques, but in the case of new places of public worship which may hereafter come into existence, the remedy to be adopted should be preventive. Every new place of public worship for any religious sect should be regarded as a potential source of communal friction and no building should be allowed to be erected for such purposes except with the previous permission of the government. Here is a case where the British Government may borrow wisdom from the practice which obtains in some of the Indian states. In the states of Mysore, Travancore, Cochin and Hyderabad, the previous sanction of the government to the construction of new buildings for public worship has been required either by legislation or by administrative order, and the enforcement of this rule has been very efficacious in the prevention of communal riots. I may take the liberty of extracting here some detailed suggestions for this kind of preventive action from an article which I contributed to the *Hindustan Review* of July 1926.

1. Where any community intends to erect any new building for public worship, or to convert any existing building into one for public worship, or to alter any entrance thereof, or to extend or alter any existing temple, mosque or church beyond the limits of the existing site, the previous

permission of the Government should be obtained, after furnishing the prescribed plans and information and after notice to the communities interested.

2. Permission should be refused :—

- (a) Where the new building is within the ambit of the customary religious procession of the worshippers of any existing temple or church;
- (b) Where the street in which the new building is proposed to be erected is wholly or mainly inhabited by the followers of a different creed or sect, and also where the position is such as will inevitably create ill-feeling or danger to the public peace;
- (c) Where any proposed extension of an existing building for public worship would bring it into such close proximity to a rival place of worship as to be likely to give rise to ill-feeling; and
- (d) Where it is proposed to alter the main entrance of a mosque, temple or church so as to make it newly face a high-road or thoroughfare.

3. A mosque erected in future with the previous sanction of the Government should be entitled to the same recognition in respect of prohibition of music as an old mosque irrespective of the question of its age.

4. To carry out this policy effectively, a register should be prepared by the district officers of the existing buildings for public worship actually in use on such suitable date anterior to the legislation as may be specified.

Before leaving this part of the subject, it is necessary to make a few observations upon the attitude of the government. It is a good thing to appeal to the two communities for a change of heart and for an amicable adjustment of differences whether political or religious. But suppose the communities are unable to come to an agreement. Have the government no duty to the country in the matter? Is it confined merely to the suppression of breaches

of the peace, to the punishment of offenders and to the issue of prohibitory orders? What should an autocratic government like the Government of India anxious to promote the unification of its subjects and the permanent interests of the country have done? In the absence of any law or usage, it would have enacted laws clearly laying down the rights and duties of the communities in political and religious matters and such laws would have been based not upon the administrative convenience of the day, but upon a just and impartial consideration of the rights of the parties and the true interests of national progress. Having framed its laws, it would have protected the rights created thereby and enforced the corresponding obligations impartially. One may well ask what proof of constructive statesmanship has been given by the government.

Yet another objection to political advance is that social reform must precede political reform and that, until radical changes take place in our social organization, and substantial progress is made towards ideals of social equality and fraternity, we can make no further progress in political development. We are prepared to admit the necessity for reforms in our social system ; but it is a fallacy to suppose that social reforms are a condition precedent to any political changes. The development of political institutions and the reform of social institutions have in no country marched fully hand in hand. Taking, for instance, the question of the equality of sexes even among members of the same social class, could it be said that there was complete equality in the matter of status, property, education, political rights and

divorce laws between the sexes even in England during the period when her political institutions were developed and the system of responsible government was evolved? It was only within the last few years that women were admitted to the franchise and the recent proposal to extend the franchise to women on the same terms as to men has encountered considerable opposition in Parliament. Women in England suffered under serious disabilities with regard to their rights to hold property independently of their husbands and did not enjoy the same facilities as men for education or for admission to professions till recently; and to this day the law of divorce is an illustration of the characteristic inequality of man-made laws. Those who have watched the changes which have taken place in social institutions and customs in India during the last half a century will be struck with the very substantial advance which has been made in various directions, though it may fall short of the ideals of the ardent Indian social reformer, or of the English critic who would like to divert the energies now expended on agitation for political reform to the channel of social reform which does not affect his interests. The objections to crossing the sea and to foreign travel have almost entirely disappeared even in Southern India which has been the stronghold of Hindu orthodoxy. The two matters in which social taboos used to operate most strongly, were inter-dining and inter-marriage. Inter-dining between different castes has come into unostentatious practice in the larger cities. Inter-marriages between sub-sections of the same caste are also of very frequent occurrence.

Eighteen years ago, a propaganda was started in Madras for the purpose of advocating post-puberty marriages among Brahmins. The objections to such marriages are losing force and the number of post-puberty marriages is yearly increasing, and the fact of the attainment of puberty by a girl before the marriage is well understood, though not avowed, in all such cases. Widow-marriages have become much more common in the Punjab than in other parts of India and the fact that they are not more common is to some extent at least due to an intelligible preference of maids to widows. What is even more significant of the spirit of change and revolt is marriage between not merely persons of differing castes, but marriage of the kind known as *pratiloma* (literally, against the grain); which means the marriage of a woman of higher caste to a man of inferior caste. Marriages of this type are still rare and looked upon with disfavour; but the occurrence even of a few cases is a strong indication of the weakening hold of caste institutions. Whether such marriages are eugenically desirable or conducive to the happiness of the individuals concerned is regarded as open to question; but all legal impediments to such marriages have been removed by the legislation passed by the Assembly in 1923 at the instance of Sir Hari Singh Gour. There is no institution which is so bound up with the stability of social organization as the family and any violent changes in the laws and customs of marriage, which are far in advance of public opinion in the society, are bound to cause a shock to the foundations of society.

• Outsiders who find fault with the slow pace of social



reforms in Hindu society will do well to remember the agitation prolonged over generations for the legalization in England of marriage with a deceased wife's sister; but such marriage has always been allowed in Hindu society. Some of our critics especially those drawn from the class of English officials would sooner see our social fabric shattered than the bureaucratic system of government altered by a hair's breadth. The Shuddhi movement which has been going on during the last five or six years for the conversion of apostates and non-Hindus to Hinduism, the conversion of a thousand Christians at Goa a few weeks ago and the sensational conversion of Miss Miller to Hinduism under the auspices of the Jagat-guru Sankaracharya, the head of an important religious foundation in the Konkan, are all signs of the working of the time-spirit and of the change that is gradually but surely coming over Hindu society and bringing about its adaptation to modern conditions.

The sacred literature of the Hindus and the ritual texts connected with the most important sacraments, which are embodied in Sanskrit and have been inaccessible to the lower castes, have been translated into the vernaculars and are no longer the exclusive preserves of the Brahmins. The announcement in the papers a few weeks ago of the intention of the Gaekwar of Baroda to introduce a law requiring the celebration of marriages by the use of vernacular translations or adaptations of the marriage texts is another indication of the spirit of reformation which has begun to permeate Hindu society and can only be compared in significance to the

Protestant movement in England and the translation of the Bible into English by Wycliffe.

The anti-nautch movement, which was initiated in Madras a generation ago by Mr. K. Natarajan, the editor of the *Indian Social Reformer*, has been crowned with success. The nautch has almost entirely disappeared in South India where it used to be an accompaniment of marriages among the richer classes, and the institution survives, strangely enough, only in some of the temples. A movement is already on foot for legislation for the abolition of this institution.

The education of girls is coming to be recognized as a duty and women's colleges have been started in some of the important centres of India and several caste women have taken to the professions of teaching and medicine and there have been a few cases of attempts to follow the legal profession.

The position of the untouchable classes has also undergone considerable amelioration in South India. The exigencies of railway travelling have brought about a relaxation of observances in the dealings of the educated classes and the town populations with the untouchable classes. Movements for the uplift of the depressed classes have been on foot for a generation and the pioneers of these movements have come from the Brahmin caste.

Even among the untouchables of the rural areas, there has been a widening of outlook and a greater sense of self-respect due partly to the influence of missionaries and partly to the habit of periodical emigration to British possessions, where the spirit of caste is displayed only by the ruling race. No civil

disabilities have at any time been imposed upon the untouchable classes. The members of the untouchable classes who have received the benefits of education or have acquired wealth have risen in status and had no difficulty in obtaining appointments in the services or nomination to the legislative councils.

The disadvantages of the depressed classes are more largely the result of economic conditions than of social disabilities. The social organization of India which was in a static condition fifty years ago is rapidly changing under the impact of western ideas and modern conditions of life. The settled order of society and the harmony between different classes have been rudely disturbed by the new forces and have given place to an era of change and movement, of restlessness and disharmony. Labour has become much more mobile than it ever was. Democratic ideas are gaining ground. The process of change which is now observable is not very different from that observed in England as the result of the social and economic revolution in rural parts brought about by the enclosure of the commons and the revolution in the towns due to the rapid growth of large industries. It was said of the political spirit of the eighteenth century in England that it was based not on equality, but on the harmony of classes.<sup>1</sup> The same remark would hold good of the political spirit of the nineteenth century in India. Speaking of the town labourer in the beginning of the nineteenth century, it is stated by the Hammonds that "none of the

<sup>1</sup> Trevelyan's *British History in the Nineteenth Century*, p. 191.

present rights attached to Englishmen possessed any reality for the working classes."<sup>1</sup> The governing classes had a strong objection to the education of the workmen. An employer who wished to engage a porter said : "I do not want one of your intellectuals ; I want a man that will work and take his glass of ale. I will think for him. . . . The upper classes would have said of this proletariat what Ireton speaking in the council of the parliamentary army in 1647 had said of tenants, labourers, tradesmen, and the members of trading corporations, that 'they had no interest in the country except the interest of breathing.' "<sup>2</sup> "For the mass of working men and working women, there was only one way of keeping body and soul together. The children were sent to the mill or the mine, the combination laws put the children as well as their parents at the disposal of the employers ; in the view of the ruling class, a child of the weaver or the miner had no claims on society ; there was no reason to educate him except with some rudiments of knowledge which might make him more useful to his employer and there was every reason to keep such education as might awaken discontent out of his reach. He was born into a serf class."<sup>3</sup> Burke said : "In all things whatever, the mind is the most valuable and the most important ; and in this scale the whole of agriculture is in a natural and just order ; the beast is as an informing principle to the plough and cart ; the labourer is as reason to the beast ; and the farmer is as a thinking

<sup>1</sup> *The Town Labourer* by J. L. and B. Hammond, p. 72.

<sup>2</sup> *Ibid.*, p. 59.

<sup>3</sup> *Ibid.*, p. 142.

and presiding principle to the labourer. Any attempt to break this chain of subordination in any part is equally absurd."<sup>1</sup> The old order hath changed. We are fast developing another symptom of democracy in the rapidly growing notion that every man is fit for any position of power or responsibility irrespective of his capacity. I have gone into this question at some length for the purpose of informing outsiders who are unfamiliar with the currents of thought and life in Indian society that there are forces at work for the amelioration of the hardships caused by the Hindu social organization and that these various movements have been in existence from a time long anterior to the publication of the venomous libel upon this land by the lady<sup>2</sup> from the land of lynching.

<sup>1</sup> Quoted in Hammond's *Town Labourer*, p. 199.

<sup>2</sup> Miss Florence Mayo, the author of *Mother India*.

## CHAPTER XVI

### EPILOGUE

I have dealt with many of the salient problems which would arise in framing any scheme of responsible government for India. I have done so on the assumption that sooner or later the promise of responsible government contained in the historical declaration of Parliament in 1917 will be fulfilled. I have pointed out that in any event a discussion of these problems is both necessary and timely for the reason that any intermediate steps for the revision of the constitution must be taken with an eye to the ultimate goal and must not take us off the right track. The defects of the present constitution have not so far been adverted to, as it has been all along recognized that the constitutional reforms of 1919 are only transitional arrangements. But it would not be amiss to give a very brief description of the defects inherent in the present constitution.

- The system of dyarchy introduced in the provinces is based upon the principle of dividing the field of activities of the government into two distinct areas and dividing the responsibility of administration between the members of the executive council in charge of the reserved subjects and the ministers in charge of the transferred subjects. But the subjects administered by the government are closely interdependent and it is far more difficult to make a clear-cut division between the reserved and the trans-

ferred subjects, than it is to make a demarcation between the jurisdiction of the central government and that of the provincial government. The expectation that it would be possible to make the electorate realize clearly the separation in responsibility between the members of the executive council and the ministers has not been fulfilled. The ministers occupy a very embarrassing position in the government. If they support the action of the government in the reserved half, they are identified with the measures of the members in charge of that half and have to share whatever unpopularity attaches to them. If, on the other hand, they do not vote with the members in charge of the reserved half and are not able to induce their followers to support them, they prevent the government from presenting a united front to the public, weaken its prestige and may even defeat its policy in the reserved half. The electorate and the members of the legislative council are naturally disposed to be more favourable to the ministers whom they can control than to the members of the executive council whom they cannot. Proposals for expenditure in the reserved half are naturally viewed with a more critical eye than proposals emanating from the ministry. The members of the legislature are also influenced by the very intelligible desire to extend their sphere of control over the government and secure the transfer of the subjects now reserved. I do not refer to the difficulties caused by the obstructive tactics of the non-co-operators, as they are in a sense less closely connected with the inherent defects of the political structure. The situation created by the

present constitution is full of possibilities of friction and obstruction. If, nevertheless, the governments of the provinces have been able to carry on their functions smoothly, it is a tribute to the moderation and sense of responsibility of the legislatures and to the tactfulness and conciliatory disposition of the members of the government in charge of the reserved subjects. It is true that the Act of 1919 has been carefully framed so as to provide safeguards against deadlocks. But the fact that the occasions for the use of the safeguards have been so few may be legitimately claimed as evidence of the sense of responsibility which has been displayed by the legislatures. Reference may in this connection be made to Chapter V of the report of the minority in the Reforms Enquiry Committee of 1924 on the work of the legislatures. To have expected more from the legislatures would have meant a far greater demand upon political human nature than could be justified not merely in India, but in any western country. As observed by the Governor in Council of the United Provinces, dyarchy is obviously a cumbrous, complex, confused system, having no logical basis, rooted in compromise and defensible only as a transitional expedient. He observed that there was no half-way house between the present constitution and full provincial autonomy.

Turning to the Central Legislature, the position created by the Act of 1919 is open to all the scathing criticism which was levelled in the Montagu-Chelmsford Report against the Congress-League scheme. The Indian Legislative Assembly is a body with a predominant elective majority confronted by



an irremovable executive. The Assembly is intended only to influence the government and not to exercise control.<sup>1</sup> The scheme is open to the charge that it is calculated to engender the habit of irresponsible criticism which is declared to have been the bane of the Minto-Morley legislative councils.<sup>1</sup> The position of the executive *vis a vis* the legislature is far from comfortable or enviable. But for the safeguards provided in the powers of certification, affirmative and negative, in regard to legislative measures and the power of restoration in regard to grants of supplies, it would be open to the Assembly to bring the government to a standstill at any moment. Safeguards are meant to be used charily and only on rare occasions of real necessity. The too frequent use of these remedies would produce a standing irritation in the mind of the legislature, embitter the relations between the legislature and the government and sap the moral authority of both. The government are therefore obliged to resort to all possible arts of conciliation, or exploitation of the differences between the different parties and sections. Opposition has to be overcome by coaxing and cajolery, or bought off by favours or concessions. From the point of view of the opposition, it may perhaps be considered desirable that the government should be kept in a dependent condition and a pliant mood. But there are limits to pliancy and the statute prevents the opposition from obtaining the mastery of the situation. From the point of view of the administration, it is a source of weakness to the

<sup>1</sup> *Montagu-Chelmsford Report*, para 217.

executive that they should be liable to be defeated at any moment by an irresponsible legislature. Uncertainty as to the decision of the legislature and the want of an assured majority therein must affect that sense of confidence which is essential to firmness of administration and continuity of policy.

The shelter of the statutory safeguards cannot be an adequate substitute for the moral strength derived by a responsible government from an assured elective majority of supporters. The relations between the legislature and the executive that have been brought about by the present constitution are pregnant with immense possibilities of friction to a much greater extent than in the case of the provincial legislatures. Apart from this risk, there is the lamentable waste of time and energy involved in the frequent intrusion of the constitutional issue into the proceedings of the legislature. The members of the legislature are constantly kicking against the pricks of the constitutional limitations on their powers and seeking ways and means of getting rid of them and paralyzing the government. That the results which are bound to follow and have usually followed a constitution of this kind in other countries have on the whole not been produced is due not merely to the safeguards contained in the constitution, but to the general spirit of co-operation and sense of responsibility of the members of the Indian legislature, to their reluctance to sacrifice the public good at the altar of non-co-operation and to the good sense and the conciliatory spirit of the executive and their tactfulness and tactics. It would however be too great a strain on the patience and

the spirit of compromise and conciliation of the legislature to prolong the period of experiment. It is a matter for gratification that the machinery has worked with so little hitch during these seven years and more, but it would not justify the retention of the machinery without the alterations and adjustments called for by public opinion in the interests of constitutional development. Whatever might have been said in favour of the scheme of dyarchy at the time of its introduction, no one has a good word to say of it now. Its sole justification was that it afforded a training and preparation for responsible government.

What is the next step to be taken? Three courses may be suggested; to go back, to stand still, or to go forward. The first course is hardly likely to be suggested by any Indian politicians. But it has been recommended as an escape from the present position in some schemes of a reactionary and fantastic character put forward by retired bureaucrats. It is hardly necessary to deal with these proposals at length, for though the provisions of the Act empower the Statutory Commission to report whether it is desirable to restrict the degree of responsible government now existing, it is difficult to imagine that Parliament will stultify itself by going back upon the policy of the declaration of 1917 and the Act of 1919. The common feature of these schemes is the assumption that British India will never be fit for responsible government and that the interests of India require that she should be under the perpetual tutelage of Britain or, at any rate, for as long a period as their imagination can con-

template. The advocates of these schemes belong to the school which holds that the policy of giving western education to an oriental people, which was embarked upon in pursuance of Lord Macaulay's minute, was a grievous blunder, inasmuch as it tended to fill the heads of the educated classes with dangerous aspirations to political freedom and constitutional government wholly unsuited to Indian conditions. They believe that the victory of Japan over Russia was a calamitous event in its reactions upon the mentality and morale of Eastern races and their future relations to the white races. The employment of Indian troops in the Great War was equally unfortunate in that it induced the Indian soldier to compare himself with the white soldier, raised his sense of self-respect and confidence and diminished the prestige of the European soldier. They consider that the declaration of 1917 by the Parliament was a solemn mistake of thoughtless generosity and that parliament should now retrace its steps. According to them, India was never more than a mere geographical expression. It was never a united country and can never hope to be one. Its only destiny in the scheme of a benevolent Providence is to be a perpetual dependency of the British Empire. They ignore the fundamental cultural and religious unity which has prevailed among the Hindus as well as the Mussalmans and they are prone to exaggerate the local and sectional diversities and differences among the people of India. They ignore the many influences which, since the establishment of British rule and as the outcome of the impact of modern ideas, have been working for the unification of India

and the growth of a sense of nationality. They forget that the sentiment of nationalism is even in Europe a product of the nineteenth century. While they may perhaps admit that the sense of political subjection to a foreign nation cannot ordinarily be a source of satisfaction to the human mind, they hold that India must learn to acquiesce cheerfully in the inevitable domination of the British Raj. It is because the Indian nationalist refuses to accept this reading of the book of Fate, that he is charged with want of touch with the realities of the situation. One fundamental assumption made by these critics of Indian reforms is that India must choose between a bureaucracy responsible to the British government and diluted, if need be, with an Indian element and unrestricted democracy with universal suffrage. A system of responsible government in British India with anything short of universal suffrage is unthinkable to them and would result in an oligarchy liable to fall under the sway of scheming lawyers or Brahmins bent upon advancing their own special interests to the prejudice of the country at large. This assumption involves a number of obvious fallacies and betrays an ignorance of the stages through which popular government has passed in England. The electorates for the new legislatures in India amount to over six millions, and it is ridiculous to apply the term oligarchy to the members of councils representing such a large number of voters of various classes and callings and responsible to them for the manner in which they discharge their functions. Relatively to the whole population of British India the electorate is no doubt a small percentage, but the

numbers are so large and the interests represented are so varied, that there is no possibility of the legislatures using their powers to the detriment of the country. Nor does the experience of the past few years furnish any justification for the assertion that the legislatures are likely to misuse their powers. The proportion of the population which had the right to vote in England immediately after the introduction of the Reform Act of 1832 was no higher than the proportion borne by the electorate in India. It is only after a period of nearly ninety years and by several successive stages that the franchise in England has been practically extended to all adults. The proposition that responsible government can only be justified under a system of complete democracy is altogether unsupported by the teaching of history. We may also refer our critics to the dictum of Lord Bryce that an assembly elected on a comparatively narrow franchise but with wide powers does more to make a government popular than one elected on a wider franchise with narrower powers.<sup>1</sup>

One argument which is frequently advanced by the advocates of a reactionary policy is that the members of the British bureaucracy understand the people and their wants far better than the educated classes of the people themselves and that they are likely to be more sympathetic towards the masses and better fitted to be the guardians of their interests. The argument is so ridiculous that it can only pass muster with the members of the bureaucracy and perhaps with some of the stay-at-home Englishmen.

<sup>1</sup> Bryce, *Modern Democracies*, vol. i, p. 44.

In no country is there an absence of conflict between the interests of different classes. If the argument were valid, it might be used to justify the assumption of control over England by a German bureaucracy. In this connection the remarks of J. S. Mill will bear quotation.

“Foreigners do not feel with the people. They cannot judge by the light in which a thing appears to their own minds or the manner in which it affects their feelings, how it will affect the minds of the subject population. What a native of the country of average practical ability knows, as it were by instinct, they have to learn slowly and, after all, imperfectly, by study and experience. The laws, the customs, the social relations for which they have to legislate instead of being familiar to them from childhood are all strange to them. For most of their detailed knowledge they must depend upon the information of natives and it is difficult for them to know whom to trust. They are feared, suspected, probably disliked by the population, seldom sought by them except for interested purposes and they are prone to think that the servilely submissive are the trustworthy.”

Referring to this same argument, it is observed by Mr. Ramsay MacDonald, “The point was not without its force, had it been used reasonably, had it not been employed as an excuse for Government maintaining its fortified citadels against the movements of Indian public opinion. There is not much in it now.”<sup>1</sup>

<sup>1</sup> Ramsay MacDonald's *Government of India*, p. 20.

A disinterested stranger is no doubt in a better position to settle a dispute than the parties, but it is essential that the judge or arbitrator should have no interest of his own in the subject-matter, and it is not possible to pretend that Britain has no interest of her own involved in the policy to be adopted for the government of India. Making full allowance for his tendency to exaggerate for the sake of impressiveness, the remarks of Bernard Shaw about the just Englishman contain an essential core of truth. "English Unionists, when asked what they have to say in defence of their rule of subject peoples, often reply that the Englishman is just, leaving us divided between our derision of so monstrously inhuman a pretension, and our impatience with so gross a confusion of the mutually exclusive functions of judge and legislator. For there is only one condition on which a man can do justice between two litigants, and that is that he shall have no interest in common with either of them, whereas it is only by having every interest in common with both of them, that he can govern them tolerably. The indispensable preliminary to democracy is the representation of every interest; the indispensable preliminary to justice is the elimination of every interest. When we want an arbitrator or an umpire, we turn to a stranger; when we want a government, a stranger is the one person we will not endure. The Englishman in India for example stands, a very statue of justice, between two natives. He says in effect, 'I am impartial in your religious disputes, because I believe in neither of your religions. I am impartial in your conflicts of custom and sentiment, because your customs



and sentiments are different from, and abysmally inferior to, my own. Finally, I am impartial as to your interests, because they are both equally opposed to mine, which is to keep you both equally powerless against me in order that I may extract money from you to pay salaries and pensions to myself and my fellow Englishmen as judges and rulers over you. In return for which you get the inestimable benefit of a government that does absolute justice as between Indian and Indian, being wholly pre-occupied with the maintenance of absolute injustice as between India and England.' ”

As observed by Mr. Ramsay MacDonald, “In the government of subject peoples by sovereign states, economic considerations influence both sides and create political movements amongst the subject as well as amongst the ruling peoples. Moreover a subject people that is being educated and that is breathing the air of liberty will be purchased by no economic price and will sacrifice advantage in order to enjoy self-government. Thus neither the sovereign, nor the subject nations can avoid the troubles and the problems of political liberty, which must always be the judge and the goal of all policy.”<sup>2</sup>

The contempt which is expressed towards the intelligentsia who are the direct product of British rule and western influence is a characteristic of despotic governments generally and has led to disastrous consequences, as for instance, in Russia under the Czarist regime. The more the opinions

<sup>1</sup> Bernard Shaw's *John Bull's Other Island*, preface, pp. xxvi and xxvii.

<sup>2</sup> Ramsay MacDonald's *Government of India* p. 34.

of the intelligentsia are flouted as expressive only of the opinions of a comparatively small section of the population, the stronger is the incentive to drive agitation down to the masses and bring them round to the views of the educated classes. An agitation which has taken hold of the masses is far more powerful and irresistible and more dangerous to the peace of the country than one confined to the educated classes. No repressive laws or measures can ever prevent the political education of the masses by agitators drawn from the educated classes. Our reactionary critics do not realize the danger of driving agitation deep among the masses or the wisdom of satisfying natural and legitimate aspirations. The idea of energizing the masses and awakening their political consciousness is one which has been carried out on a large scale by Mr. Gandhi far more successfully than by any other Indian political leader in the past. And it is perhaps his greatest achievement.

A favourite argument of the opponents of constitutional advance is that any withdrawal or relaxation of British control will result in plunging India into internecine strife and sanguinary chaos and that there is no way of preventing the followers of hostile creeds from flying at each other's throats or the more martial races from dominating the weaker. It may be readily admitted that India has been saved from the ravages of warfare between rival powers and that we owe to the pax Britannica the inestimable blessings of peace, order and security. But the Government have not done anything to invigorate and train the weaker races to defend themselves against the stronger. It would however

be doing injustice to the achievements of British rule to believe that India occupies to-day precisely the same position that she did in the eighteenth century and that the results of British administration and of the consolidation of India are of so superficial and fugacious a character that the transfer of power to a constitutional government is bound to reproduce the conditions which prevailed more than a century ago. No Indian state is in a position to rise against the central government in British India. And, thanks to the wise policy of the British Government, there is no danger of any rising even by a combination of the Indian states. The people of India have sufficiently advanced to be able to appreciate the value of external safety and internal order and the need for the maintenance of a strong army adequate to the discharge of these functions. The wish is often father to the thought. It looks as if those who use this argument would like their vaticinations to be fulfilled rather than falsified.

Communal disturbances there have been in the past and there may be in the future. But the police forces at the disposal of the provincial governments and the military forces at the disposal of the central government should be sufficient to deal with any outbreaks of this character. Though the British Government have succeeded in putting an end once for all to the possibility of any rival state or government rearing its head against the government of British India, their record in the matter of the settlement of communal differences cannot be claimed to have been a great success. As pointed out in an earlier chapter, it would be unjust and absurd

to ascribe the origin of these differences to any machinations of the officials of the government ; but it is quite a different proposition to suggest that the Government are not very keenly interested in composing their differences, so long as they do not lead to any outbursts of violence endangering the general peace or the stability of the government. It may be thought that such a statement is unfair and uncharitable. But there is undoubtedly a widespread belief that the policy of the government has been to divide and rule. Any government, eastern or western, placed in the same position as the British Government in India and having to maintain its rule over a distant country and a vast population separated from it by differences of language, creed, habits and customs, would have followed exactly the same policy. The exploitation of differences within modest limits is an easy expedient for the maintenance of the power of a ruler and especially a foreign ruler. The methods adopted for such exploitation are too well-known to need description. Sometimes one community is patted on the back and sometimes another. Differences are dilated upon ; the suggestion is made that the interests of one community are in conflict with those of another ; and under the pretext of describing the facts, ideas of discord are insidiously sown or cultivated in credulous minds. The Sikhs and Pathans are told that they will never allow themselves to be ruled by the Bengali or the Madrasi ; the Mahomedans are told that they will never entrust themselves to the rule of the Hindu majority ; and everybody is told that they feel their interests are safer in the keeping of the

British than in the hands of their own countrymen. Though the Government of India is based upon the assent and acquiescence of its subjects, it does not possess the moral authority of a responsible government and they have reason to fear the consequences of an inconvenient combination among discordant sects which may force their hands to follow a policy not in consonance with that dictated by the Imperial Government.

Another argument which has found a prominent place in the recent utterances of English statesmen is that the fifty millions of the depressed classes cannot be handed over to the tender mercies of their own countrymen in India under any system of Swaraj, that the responsibility for their welfare and uplift which the British Government have assumed cannot possibly be abandoned or delegated to Indians and that the control and authority of the British Parliament over the Government of India must continue to be maintained. It cannot be denied that the treatment of the backward classes has been in the past a slur upon the social system of India. Nor can it be denied that the British Government have professed a concern for the amelioration of their conditions. It is equally incapable of denial that there has been an awakening of the conscience of the upper classes of society with regard to their duties towards the depressed classes. Many of the movements which have been started in recent years for the improvement of the position of the depressed classes have been led by the members of the educated community and notably by the Brahmins. It is realized more and more clearly that the progress

of the nation as a whole is bound to be handicapped by the existence of such a large number of backward sections among the people. If the progress so far achieved by the efforts of voluntary organizations appears tardy, the same remark must be made of the efforts made by the Government. Want of education is at the bottom of most of the evils which affect society, and it cannot be claimed for the Government that their efforts in the field of education have been directed by any whole-hearted and strenuous determination to conquer the wilderness of ignorance on any scale commensurate with the irresistible powers enjoyed by them. There is little reason to apprehend that, exposed as they are to the cultural influences of the modern world, to the pressure of international competition and to the growing spirit of democracy the seeds of which have been already sown, the intelligentsia of the country will neglect their obligations to their fellow countrymen, or that there will be any set-back in the pace of social and educational progress. The suggestion that the political emancipation of the country must be delayed, until the fifty millions of the depressed classes are brought up to a level of equality with the rest of their countrymen, is unreasonable and reflects little credit on the political or common sense of those responsible for it. Moreover, it may be asked whether there is any country in the world which has not had its own backward classes, or the problems created by their existence. The problems are generally more acute, where the backward classes are racially distinct from the other classes in the country. The treatment of the coloured races by their fellow-

subjects of European or American extraction is a far more heinous blot on the civilization of the latter and the governments of the countries where such treatment is tolerated. How solicitous the white races are at heart for the welfare and uplift of coloured races can be judged from the manner in which the negroes are treated in the southern states of America and the negroes and the Asiatic races are treated throughout Africa and elsewhere. The world knows how, after going to war with the Boers on the pretext *inter alia* of the ill-treatment of Indian settlers in South Africa, the British Government coolly handed over the destinies of its Indian subjects to the keeping of the white settlers and how the Imperial Government proposes to confer responsible government on a handful of white settlers in East Africa in disregard of the interests of the much larger numbers of Indian settlers. No one in India can believe in this effusive solicitude of the British Government for the depressed classes as a sincere answer to the political demands of the country. It is believed, not without justice, that the various reasons put forward as arguments against any large relaxation of Imperial control are not the real reasons which weigh with the Imperial Government. The true reason is that, though the British Government admits that they hold the country as trustees for the people, they are not wholly disinterested trustees. On the other hand, they are deeply interested in the maintenance of the *status quo* and in their own domination of India.

In making the statement that England has not been a disinterested trustee, I must guard against

being understood to mean that the relationship which has been providentially brought about between England and India has not been productive of immense benefit to this country. I have no intention of underrating the advantages which this country has derived from British rule. The country has enjoyed the blessings of peace and security, of law and order, of western education and culture. The British Government has steadily endeavoured to promote the material prosperity of the country by the construction of great works of irrigation, by the improvement of the means of communication and transport, by the opening of the markets of the world to the produce of India, by the extension of facilities for trade and commerce and by the measures taken for the protection of the country against the ravages of famine, for the improvement of its sanitation and for the administration of medical relief. The increased facilities for intercourse between different parts of the country and all its various peoples which are due to the application of modern scientific inventions have had the result of promoting the growth of a spirit of union and nationality and developing a new political consciousness among the people at large. If India has derived all these great advantages from British rule, England has equally benefited by its rule over India. The enormous advantages, material, military, moral and political which England has derived by her control of India are fully set forth by Lord Curzon in his address on "The place of India in the Empire". They have also been referred to recently by Lord Birkenhead in reply to a question whether India was



worth keeping. The resources of India in raw materials are of the greatest advantage for the manufactures of England and the enormous population of India furnishes England with an unlimited market for her manufactured commodities. The ports of India are important stations on the sea route to the east and afford strategic bases for naval and military operations. The warlike races of India add enormously to the man-power of the British Army. A sub-continent so large and so undeveloped has offered excellent openings for the profitable investment of the surplus capital of England. The civil and military administration of India provides careers for English youth of talent and is an unrivalled nursery of great administrators and great generals. The possession of an empire so large and so thickly populated and so rich in natural resources confers upon England the status and prestige of the greatest power in the world. A few years ago Mr. Blatchford wrote an article under the heading "Is India worth keeping". It drew forth a vigorous reply from Lord Birkenhead who was then Lord Chancellor. In the course of his reply he said, "The winter campaign of 1914-15 would have witnessed the loss of the Channel ports but for the stubborn valour of the Indian Corps. . . . Without India, the war would have been immensely prolonged, if indeed without her help, it could have been brought to a victorious conclusion. . . . India is an incalculable asset to the mother country. . . . The loss of the Indian market would be a staggering and a completely fatal blow to the prosperity of Lancashire. . . . Almost all the manufacturing centres in

Great Britain share in the trade and find in India an outlet for their manufactures. . . . In the fabric of our Great Empire India is a vital part. Unless indeed we are content to abandon the great heritage of the past and so sink into political and commercial insignificance, the surrender of India would be an act not only of great folly, but of degenerate poltroonery. To make such a surrender is to remove the keystone of the arch. The loss of India would be the first step in the disintegration of the Empire, for strategically our eastern Empire pivots on India and surrender or withdrawal would involve others of our possessions in ruin or in isolation."

It is easy to understand how the fear of the consequences of the political emancipation of India as regards the interests of Great Britain from the commercial, military and political points of view must operate as a predominant motive in the attitude of the British Government towards Indian political aspirations and demands.

The speech made by Lord Lytton, the then Governor of Bengal in a recent St. Andrew's dinner at Calcutta is one of the most outspoken utterances of men in high authority. His Lordship remarked that there was too little faith on the part of Indians in the sincerity of British intentions and too little faith on the part of the British public in Indian friendship. He said that concessions to Indian demands would never be acceptable to British opinion, until they were shown to be compatible with the national interests of Great Britain. It is clear that the reason for requiring proof of co-operation is that England is doubtful as to the treatment that

British interests would receive from a self-governing India. The same point of view is also referred to by Sir Valentine Chirol in his latest book. He remarks that the grant of dominion self-government to an India instinct with hostility to western civilization has no analogy with the grant of self-government to the great overseas colonies, for they were created by people of their own stock with the same creed and with the same traditions and the same language. The significance of non-co-operation in India has not been correctly apprehended even by a writer of such great discernment as Sir Valentine Chirol.<sup>1</sup> The inference drawn by him from this movement and from the utterances of Mr. Gandhi and his followers is that a wave of anti-western reaction has set in over the whole of India, and produced a feeling of antipathy not merely to western domination, but also to western culture and western ideals and to the whole spirit of western civilization. The inference is not correct and is based on a misappreciation of the facts. It becomes necessary to give a true and impartial picture of the situation in India at the present moment. There has been a rapid growth of national consciousness among the people of this country and a desire on the part of the educated classes that India should acquire the same political status as the self-governing dominions and that she should be allowed to rise to the full stature of her nationhood. It is felt that the British administration can afford opportunities for the development of the faculties of Indians only up to a certain point.

<sup>1</sup> *India* by Valentine Chirol, p. 332.

The necessity for preserving British ascendancy and control, as it is now conceived by Imperialist politicians, compels them in their own interests to adopt a policy of maintaining the British steel framework for a period to which they are unwilling to assign any limits and to retain in British hands all the important positions of power and control. It is this policy which prevents the Government from admitting Indians in any large proportions to the commissioned ranks of the army and keeps India in a position of helplessness in the matter of self-defence. If the higher administrative offices and military ranks are a valuable nursery of British administrators and generals, it is at the expense of depriving Indians of the same opportunities for the development of their administrative and military capacity and stunting their growth. The denial of any such capacity among Indians is naturally resented as a libel upon the whole nation invented for the purpose of justifying the exclusion of Indians from the higher ranks of the services in their own country. It is felt that India has not made as great an advance towards national development as she could have made, if she had been governed solely in the interests of the people of India. Making all allowances for the homogeneous character of the Japanese and the national history of Japan, it is believed that, compared with the progress achieved by Japan within the last sixty years, the progress of India has been remarkably slow and will not be allowed to proceed beyond a certain point. If the Government of India with the autocratic authority which it has enjoyed had been inspired solely by the

interests of the Indian nation, India could have made far greater progress educationally, industrially and politically and could have counted for a great deal more in the Parliament of Nations. Though India has been admitted to membership of the League of Nations, it is felt that she only occupies the position of a figure-head and a hanger-on who merely adds to the glorification of the Imperial Government. India speaks not in her own voice, but in the voice of Britain. The desire of Indians to be masters of their own household cannot be branded as seditious or disloyal, or construed as an indication of a spirit of antipathy to the British connection or the British race, any more than the desire for responsible government in the case of the great overseas colonies. The Indian is often asked whether he does not wish to drive the British bag and baggage out of the country. No sane Indian has ever expressed any desire to do so. But, to the extent to which the Indian wishes to have the highest administrative posts civil or military thrown open to him, it may imply a corresponding displacement of British agency. The Englishman has only to put the question to himself how any proposal to man the highest offices with persons other than colonials would be received in Canada or Australia. There is no desire on the part of India to injure the legitimate vested interests of Europeans who have settled in the country or who reside in it for purposes of industry, commerce, planting or any other calling. There is, and would be, no indisposition on the part of India to avail itself of the superior knowledge, scientific or technical, of Europeans, or of the services

of experts in any particular line of administration or business. In a word, India aspires to the same political freedom as that enjoyed by any self-respecting nation. While she is grateful to the British Government for all that it has done for India in the past, the country feels that it would be incompatible with British interests as conceived by Imperialist statesmen to allow India ever to move free from British leading strings. What Imperialism desires is India as a dependant and not India as a partner. The Imperialist is amazed that, instead of being eternally grateful for favours received, India should kick against the traces and aspire to freedom from control with all the perils it implies. This is an attitude of mind which betrays an ignorance of ordinary human psychology. A son may have received the most affectionate treatment from his father, but he would not like to be always guarded and kept under parental control. The mentality of the British Imperialist in dealing with India can be best described by a quotation from the remarks of the People's Friend and Father Sir Joseph Bowley, a typical creation of Charles Dickens: "What man can do, I do. I do my duty as the poor man's friend and father; and I endeavour to educate his mind by inculcating on all occasions the one great lesson which that class requires. That is, entire dependence on myself. They have no business whatever with—with themselves. If wicked and designing persons tell them otherwise and they become impatient and discontented, and are guilty of insubordinate conduct and black-hearted ingratitude, which is undoubtedly the case; I am their friend and

father. It is so ordained. It is in the nature of things." Two or three sentences might have been added by Sir Joseph Bowley. He could very well have said, "I spare them the trouble of defending themselves or even of training to defend themselves against their enemies. If they are attacked by others, I allow them to rush to me for help and I am ever ready to help them on condition of their paying me for the protection. What juster arrangement or better distribution of functions in accordance with our respective natural gifts can be devised." That along with the political manifestation of the growing spirit of nationalism there has been a general renaissance which has displayed itself in other spheres of life and thought is undoubted. In Bengal and Maharashtra especially and in other parts of India in varying degrees, there has been a national revival in the sphere of religion, literature and art. Far from being a matter for wailing, it should be a matter of pride to the British nation that it has helped to create such a spirit among the peoples subject to its rule. The sentiment of nationalism must be rooted in the past history of a nation and a nation which feels no pride in its past history, in its culture, and in its destiny is hardly likely to endure. Mr. Ramsay MacDonald has shown a much greater insight into human nature in the interpretation of the phenomena now observed in India—"A Nationalist movement however can never find full expression in a political party, because its liberty relates to the mind and not merely to the law. It must return to historical traditions; it must give out its soul in happiness and devotion; it must speak as its nation

has spoken, and dance as its kindred have danced. . . . Indian nationalism proves its claim to be a national renaissance and gives a plain warning that it is much more than the agitation of political coteries. It is a revival of an historical tradition, the liberation of the soul of a people."<sup>1</sup> The national renaissance now observed in India implies no hostility to British or western influences. The bitterness of feeling against the government which prevails in various quarters is largely due to political disappointment and a feeling of distrust in the sincerity of the intentions of the government with regard to political reforms. Whether the feeling of estrangement from the government will, if long allowed to continue, be developed into hostility towards the British is another matter. No such development has yet taken place. The antipathy to Brahmins in South India has by an illogical association of ideas been extended to Sanskrit literature also. A similar development may take place equally illogically in the attitude of the people towards Englishmen. The revival of eastern culture is favoured not merely on patriotic grounds, but in the belief that it is necessary to supplement and correct the materialistic tendencies of western civilization. This is no matter for surprise, as these tendencies have been admitted and deplored even by several western thinkers. But India does not delude itself into the belief that it is possible to keep aloof from western civilization or dispense with the many agencies which have been brought into existence by

<sup>1</sup> Ramsay MacDonald's *Government of India*, pp. 23 and 27.



western science and knowledge for the improvement of the material conditions of human existence or with the political institutions which have been developed in the West. India is not isolated from the rest of the world intellectually, economically or politically. India could not keep aloof from contact with western knowledge, institutions and influences, and she would not, if she could. In the struggle for existence among the nations of the world, it is impossible for any nation to survive, if it does not avail itself to the fullest extent of all the resources of modern knowledge and civilization. It was this conviction which forced Japan in the seventies of the last century to assimilate western knowledge and adopt western institutions. The one eastern country which has evoked the greatest admiration from the people of India is Japan; and the complaint of the Indian nationalist against the British Government is that India has not been developed on similar lines and at the same pace. The desire of educated Indians is to preserve whatever is best in their own culture, while adapting themselves to modern conditions of life and assimilating everything that is good in the culture and civilization of the West. The impression among Europeans that India is hostile to western culture and civilization has been mostly gathered from the teaching of Mr. Gandhi and the crudities of some of his followers. Few of the leaders, even among those associated with Mr. Gandhi, really share his peculiar beliefs. The political repertoire of Mr. Gandhi is singularly void of any constructive ideas. How his commandment "thou shall spin, spin and spin for ever", can lead to

political salvation is not clear to the exoteric mind. But on account of the phenomenal ascendancy which his personality has acquired over the masses, the politicians find his name useful to conjure with and to exploit for their own ends. His ascetic life, saintly character and devotion to the country have no doubt won for him the admiration of all classes. But sainthood is no guarantee of sound judgment in worldly matters and the influence of the Gandhi cult has largely waned among the politicians including the Swarajists and No-changers. The one idea that Mr. Gandhi has succeeded in driving home among the people is that, except by agitation of the masses and by recourse to passive resistance on a large scale, there is no hope of wringing any concessions or reforms from the Government. The apprehension that a self-governing India will cut itself adrift from Britain or will be inimical to British interests is altogether ill-founded. The resolution of the Madras Congress in favour of independence is a superficial gesture of annoyance more than anything else. India knows the value of membership in the British Commonwealth of Nations and fully realizes that she cannot otherwise enjoy the security and freedom for development which she would have under the British flag. She is only anxious that her status in the British Empire should be that of a real and equal partner and not that of a dependant. The sentiment of gratitude is one of the most deep-rooted in the Indian mind and England may safely place her trust in the motives of gratitude and enlightened self-interest for the loyal maintenance, by India, of her partnership in the Empire.

I have been at pains to point out that the Gandhi cult has largely waned and that few of his followers believe in the articles of his creed. His prescriptions for the boycott of schools, colleges, courts, councils, mill-made cloths and foreign yarn have proved futile. His injunctions for the use of Khadder are not obeyed by all even among those who profess to follow him. But though few believe in the specific articles of his faith, the Gandhi spirit or the mentality which he created has permeated large sections of the masses. The young have lost their respect for their parents and elders; students have lost their respect for their teachers, resent discipline and claim the right to strike work; respect for the laws of the land has sensibly diminished; and the people have become familiarized with the idea that it is right and even laudable to break laws which do not commend themselves to sectional public opinion. Imprisonment has lost its terrors and the people are prepared to go to jail by breaking such laws as they disapprove of, if they think that they can attract public sympathy and obtain credit for patriotism and courage. Political offenders are greeted as patriots and heroes like Wilkes and on release from internment or incarceration are invited to preside over political conferences. The question under what conditions passive resistance can be resorted to is one of the most difficult in politics which does not admit of an easy answer. Like many other questions of casuistry in the field of ethics, it is an advantage to the public and to the state, if the occasions for raising this issue are avoided. To hold that passive resistance is justifiable under no circumstances is too broad a

proposition. It will strike at the right of the individual citizen to protest against gross tyranny in the only manner in which it is at all legally possible for him to do so. On the other hand, to allow passive resistance in every case in which an individual citizen may consider a law to be bad or an order duly passed by the executive authorities to be bad, and to set up his own private judgment in opposition to that of the community at large, would encourage the growth of a habit of law-breaking and render it impossible for any government to function. Those who encourage passive resistance to the present government forget that the same spirit would continue to flourish even under Swaraj and would strike at the root of order. The determination of the point at which it is morally permissible for a citizen to disobey the law depends upon the question whether the disapproval of the law is shared by a large section of the community, whether those who disapprove of it are so convinced of the righteousness of their contention that they feel they are bound to win in the end and whether the struggle is likely to draw public attention to the grievance in question in a prominent manner so as to attract the sympathy of the majority of reasonable men in the country and convert them to the views of the passive resisters. We cannot forget the victories won for popular freedom by the passive resistance of Hampden; on the other hand, the exuberant growth of village Hampdens is a menace as well as a nuisance to society. The difficulty in drawing the line at which passive resistance becomes justifiable is due to the uncertainty which hangs about all questions of degree. The interests of law

and order and of social stability require the discouragement, as a general rule, of the resort to passive resistance which should be strictly confined to exceptional and extreme cases. The multiplication of cases of this sort indicates a widening gulf between law and public opinion which must be bridged at the earliest possible opportunity, if it is desired to avoid the risk of sapping the moral foundations of government. Difficult and delicate as the problem is, it becomes doubly so in the case of a foreign government. Dangerous as it is to invoke the principle of passive resistance in cases where the object of the individual is to get rid of a specific law, it would become far more serious, if it were frequently invoked as a political weapon with the object of training the masses in civil disobedience and subverting the government. Mass civil disobedience is only next door to revolution and is the desperate resource of a weak nation against the government. Those who encourage it are really playing with fire and do not realize that the spirit of lawlessness and disorder once roused and made popular cannot be easily controlled. Mr. Gandhi and his followers apparently consider that it is sufficient unto the day, if the present satanic government is destroyed. This deplorable tendency to sympathy for the passive resister is not confined to this country. It is observed by Dicey, "This novel phenomenon which perplexes moralists and statesmen is that large classes of otherwise respectable persons now hold the belief and act on the conviction that it is not only allowable but even highly praiseworthy to break the law of the land, if the

law-breaker is pursuing some end which to him or to her seems to be just and desirable." The no-tax campaigns which have been started in Bardoli and other places under the influence of Mr. Gandhi's teaching bode no good to the maintenance of the moral authority of the existing system of government or to the interests of social order. They are looked upon as preliminary rehearsals of the final trial of strength between the Government and the people. The spirit of discontent which is largely due to economic causes easily lends itself to diversion into political channels. The *bona fides* and the impartiality of the government are frequently suspected and their motives questioned. The moral prestige of the government has perceptibly declined. In support of these observations, I may refer to the fact that, whenever casualties occur in the course of a disturbance, there is no disposition to accept the findings of committees appointed by the government and committees are often appointed by the public for the purpose of holding an independent investigation and arriving at the truth.

I may also refer to the utterances of sober public men like Sir Ibrahim Rahmatulla of Bombay, a gentleman who has held highly responsible offices under the Government and who, in his presidential speech at the Industrial Conference in Madras during the Christmas Week of 1927, confessed his inability to accept the view that the mission of the British Government in India was purely philanthropic and naively wanted the Government to declare how much they hoped to gain by the exploitation of India.

• What is the lesson to be drawn by a wise

government from the facts of the situation? Not to attribute them merely to the influence of the agitator abroad; not to resort to repressive measures; not to suppress the expression or formation of public opinion; not to close their eyes to the awakening life of the nation; not to despise the intelligentsia and flout their opinions; but earnestly to set about the task of closing the differences which divide the people from the government and bringing the government into accord with public opinion and sentiment. One of the first things that English statesmen have to learn is to clear their minds of cant and not to pretend that they are the disinterested guardians of the millions of people of India. They have to recognize that their policy has often been the result of a conflict of their duties as guardians with the national interests of Britain and has been often swayed by the preponderance of Imperial interests. It is not necessary, and it may not be just, to impute to our guardians a conscious dereliction of duty. Interest often warps men's judgment and English statesmen are no exceptions to this proposition. Even the most paternal guardian finds it difficult to believe that his ward has attained sufficient discretion to be left to his own control. In the language of Mr. Bonar Law, "The most difficult time in the relations between father and son was when the son was beginning to reach the stage of manhood and when the father must realize that he was no longer in a position to give orders."<sup>1</sup> It will involve a difficult process of education for the

<sup>1</sup> *Studies in the Constitution of the Irish Free State*, by J. G. Swift MacNeill, p. 19.

Imperialist statesmen to view the situation from any other angle of vision than the one to which they have been accustomed. The late Field-Marshal Wilson gasped in indignant astonishment when he thought of the possibility of the Indian Council with a lot of natives on it refusing to allow native troops to be sent on expeditions outside India. It is also not the habit of the English Government to make timely concessions to popular demands with any show of grace. We have only to refer to the manner in which England dealt with the question of parliamentary reforms, the Corn Law Repeal movement, the Irish question and the suffragette movement. English politicians are constitutionally unable to understand a peaceful agitation or to take time by the forelock. Unless an agitation becomes very widespread and intensive, they are not disposed to believe in the reality or justice of it, and they think it may be ignored or repressed. The intrinsic merits of the case seldom influence their judgment. According to Dr. Gilbert Slater, political effect depends not on actual violence, but rather upon the evidences of intense emotion among those who are capable of effective violent action combined with restraint. He refers to the elections of Waterford and Clare as typical of the most effective popular demonstration, where bodies of men, representative of a vast population, showed by their action that they were prepared to risk extremities for a cause, but made their demonstration in an absolutely irrefragable manner.<sup>1</sup> The policy of procrastination

<sup>1</sup> Gilbert Slater's *The Making of Modern England*, p. 97.



has great disadvantages. It leads to growing estrangement between the government and the people. It increases bitterness of feeling and even if concessions are eventually made, they are made in such a manner that they fail to evoke the sentiment of gratitude which would attend upon a generous and prompt response. In the meanwhile, the sober and moderate politicians in the country who pin their faith to constitutional agitation lose their hold upon their countrymen and the people begin to listen to men of extreme views. The younger generation of politicians largely belongs to the extremist school and has no faith in the efficacy of constitutional agitation. They say it has no sanction behind it and they hearken to the voice of the prophets who promise Swaraj within three months or a year. It is because they think that Mr. Gandhi's gospel of Satyagraha offers the prospect of such a sanction, that they have come to believe in it and make experiments in the practice of it.

Is it possible then to go back upon the reforms introduced in 1921? To do so would be disastrous to the prestige of Britain and the interests of the British connection. It would permanently alienate India from Britain and would strengthen the hands of the few agitators who wish to persuade the people that the political salvation of India must be sought outside the British Empire. None of the fantastic schemes which have been put forward by reactionary bureaucrats offers any solution of the problem of unrest. It is out of the question to sit still and mark time and extend the period of probation. A policy

of merely tinkering the present constitution will be equally futile. The only course consistent with the best interests of Britain and India alike is to advance without wavering in the hopeful spirit of the Montagu-Chelmsford Report, a document which for political insight and wise statesmanship must take rank with the Durham Report. The Government must proceed along the road indicated in that report and take a bold step forward in the direction of autonomy in the provinces and introduction of responsibility in the internal civil administration in the sphere of the central government and take the other steps indicated in the earlier chapters, so that the declining faith of the people in the intentions of government may be revived. I do not wish to ignore or minimize the immensity of the problem which confronts the British Government. If England is the disinterested guardian she claims to be, and has a genuine solicitude for the abiding welfare of the country, she would have to steer the Government of India between the Scylla of Imperialism and the Charybdis of communalism. She would have to resist the temptations of confounding her own interests with her duties as a guardian and seeking temporary ease and popularity by truckling to the forces of communalism. I have not lost my faith in the British nation's love of justice or in the capacity of British statesmanship to rise to the situation. The time has come for England to stand by and allow her ward to manage his own estate, reserving to herself during the transition period a power of re-entry in case of any dangerous departure from sound policy.

The Empire is now at the cross-roads; the stability of the British connection and the peaceful progress of India on constitutional lines towards full responsible government depend alike upon the choice of the right road by the Imperial Government. The present policy of England is essentially based upon distrust of the loyalty of the people. But can such a policy be ever expected to produce trust and loyalty in the minds of the people? Mutual distrust between the government and the people must weaken the strength of the government and lower its moral prestige. Imperialist politicians in England believe that it will not be possible for the peoples of this vast country ever to become a united nation and that it will always be possible to play off one community or class against another and maintain the present regime for all time. The British Empire in India is undoubtedly a wonderful phenomenon in the history of modern times. The only empire with which it challenges comparison is that of Rome in ancient history; but even the Empire of Rome went to pieces in course of time. Is the British Empire with its vast possessions and heterogeneous populations likely to escape a similar fate? History records no instance of a country as large as Europe minus Russia, and containing a population of over three hundred millions being held in permanent subjection by another nation. For how long would it be possible to hold such a country by force or by the policy of *divide et impera*? The title of Britain to hold India has been repeatedly admitted by her statesmen to rest upon moral grounds, upon the conviction of the people that the British

connection is compatible with their attainment of the highest national ideals. Will England allow it to be said that though she has championed the cause of freedom in the world and helped the subject nationalities of other powers to recover their independence, she cannot sympathize with the aspirations of her own subjects of a different race and colour? The only way by which the British connection with India can escape the fate of the Roman empire is to allow the British Crown to be identified with the national interests and aspirations of the people; and the only way in which such identification can be effected is by the grant of responsible government and by the assumption by the British sovereign of the position of a constitutional ruler. Such a policy would give India the fullest scope for self-development as in the case of the dominions. On no other footing would it be possible to maintain the Empire in all its strength and glory. The policy of jingoism resulted in the loss of the American colonies and in the alienation of Catholic Ireland. The lesson of America was not lost upon the British Government in their dealings with the dominions; but the British Imperialists cherish the belief that the lesson of America has no application to India, inhabited as it is by non-European races. If India is to be a lost dominion of the Empire, it will be lost by the adoption of the policy advocated by the Imperialist jingoes of sitting tight upon national aspirations, and not by a policy of graceful concession to national sentiment. India is the last and the most important citadel of Imperialist jingoism; we can therefore understand how painful it must be to the representa-

tives of this class to renounce their domination ; but that is the only way of saving the Empire. It was a most agreeable surprise to England and the rest of the world when India threw herself with enthusiasm into the great war on the side of the allies. England will find that an emancipated India will be even more loyal to the empire and add to its strength even more than the great self-governing colonies. The fact that the people of India are not of the same race or colour would make no difference. The cultural hold that England has and will maintain over India and the tie of gratitude will prove a far better cement of empire than the control which is maintained by force of arms. Political India is not so blind as to be unable to appreciate the solid advantages of a lasting partnership in the British commonwealth of nations. The elevation of the status of India from that of a dependency to that of an equal partner like the self-governing dominions will be the proudest achievement of England in the pages of history.

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